PUBLIC SECTOR

GOVT. JUSTICE

1986

JAN - JULY

First hearings expected to be in February

Jo'burg small claims court has quiet start

(252) 3/11/86 STAR

There were no angry consumers with faulty fridges, unpaid employees, traffic accident victims or landladies claiming rent from tenants — in fact, yesterday's launch of Johannesburg's small claims court office was remarkably uneventful

Although no one queued at the office on the first floor of the Johannesburg Magistrate's Court, clerk of the court Mr U I P Krohnert and his assistant, a law student, were prepared to offer tissues and sympathy to distraught claimants

CHEAP AND SIMPLE REDRESS

Initiated last year, the small claims court scheme — which makes it cheap and simple for consumers to seek legal aid — was a triumph for those seeking redress without the costs or complexity of normal litigation

The "people's courts" in Pretoria, Rustenburg, Durban, Maritzburg, Port Elizabeth and Bloemfontein are already in full swing but Johannesburgers have not yet cottoned on to the advantages of the scheme

Inexpensive, and with simplified proceedures and a minimum of paperwork, the smalls claims courts promise "informal justice" A dispute or claim for damages may not exceed R1 000. Although the final decisions by the commissioners are binding, judgments are subject to review

People living within the Johannesburg magisterial district are advised to approach Mr Krohnert, or his legal assistants, in room 1027.

After interviewing claimants, the clerk of the court will decide whether the matter is legitimate and then help compile a letter of demand to the defendant The defendant then has two weeks to make a settlement

If no reply is received within this period, a summons will be sent and a date for a court appearance arranged

The first hearings are expected to function from February in the City Hall, where Johannesburg's chief magistrate, Mr O A de Meyer, has requested space for two courts to sit on weekdays

"But there is no certainty at this stage about the venue Initial hearings will probably be held at the Hillbrow court," Mr de Meyer said

"Individuals, not companies, may come forward with their complaints — although a company may be called upon to be a defendant," he said.

Mr Meyer advised the public to approach the clerk of the court or the law clinics at the University of the Witwatersrand and at the Rand Afrikaans University for help in drafting letters of demand and summonses.

"In the next few weeks the interest shown by the public in this project will tell us whether we need to call in more people to assist us," said Mr Meyer

Department still silent after police video show

BUS DAY 15/1/86

252

PETER HONEY

THERE was no indication by late yesterday how the Justice Department would respond to a judicial recommendation that magistrates, who attended a police video presentation and lectures on political violence in South Africa, should not preside at the trial of anyone accused of a "political" offence arising out of the current unrest.

The Judge President of Natal, Mr Justice A J Milne, and three other judges ofthe Natal Division were unanimously of the view that magistrates who attended the police presentation in Durban on November 15 should not preside at unrest trials, or those involving the African National Congress, the United Democratic Front or any organisation identified in the police lecture notes as being responsible for such offences.

Their findings followed a request by Justice Minister Kobie Coetsee to Judge Milne to investigate the material presented by SAP officers.

Judge Milne said he endorsed their views and passed on their recommendations to the chief magistrate of Durban, Pine Pienaar. Pienaar refused to comment yesterday, saying it was a "purely domestic matter".

Business Day asked Justice Department spokesman Dave Swanepoel several questions yesterday concerning the recommendations, but at the time of going to press he had failed to reply.

Court okay to cell inspections

WEEKLY M 10/1/86

By ANTON HARBER

IN an unusual behind-closed-doors judgement, an East London Supreme Court has established the right of detainees to a court order to search a police station if there is evidence they have been tortured

Although the order was refused in this particular case, legal observers saw the judgement as an important breakthrough for the rights of security law detainees

The application, made by six former detainees, also revealed startling allegations of brutal torture, particularly the use of severe electric shock treatment

Proceedings of the court case, which took place late last month, were kept totally secret The applicants asked for the secrecy to ensure that police would not know such an order may be granted

They also asked the court to grant them immediate access to two police stations to inspect and identify any torture apparatus that may have been there

They said the apparatus may be relevant to civil claims they intend filing against the Minister of Law and Order for alleged torture during their detention

The application made use of an unusual and controversial aspect of the law — known as an Anton Piller Order The order is frequently sought in commercial cases but unprecedented in political cases The applicants first had to establish that such an order existed in law

Justice D Kannemeyer, with a full bench, ruled it did exist in law and could be granted in this case if the right conditions existed if it could be proved that the evidence was vital and might be destroyed if the order was not granted

However, he refused the order in this case, on the grounds that the evidence was not vital because there was enough other evidence to proceed with the case

This latter part of the judgement surprised lawyers. It meant that one needed enough evidence to prove the order was needed, but not too much or further evidence may become unnecessary.

The application was made by Fundisile Matshini, Katie Francis, Wordsworth Jorda, Nomtobeko Dyini, William Mazitsha and Alfred Ngesi, all of Duncan Village, East London

At least four of them are expected to proceed with civil actions against the Minister Two of them are believed to be reconsidering in the light of this judgement

In affidavits before the court, the six applicants gave detailed allegations of their treatment in the Duncan Village and Fleet Street Police Stations, both in East London.

All said they were severely beaten and repeatedly subjected to shock torture, sometimes until they passed out. Many of the allegations were supported by medical evidence

They described a kind of "electric chair" into which they were strapped and one described the use of what appeared to be a cattle prod.

They alleged these were used repeatedly on them, sometimes making them pass our repeatedly

"I screamed, and it seamed that I was screaming loudly and shrilly. At first, I tried to control myself, but I was then shocked on the front and back of my left shoulder and I was unable to stop myself from screaming," one applicant, Fundisile Matshini, said.

Some of them said they had eventually made accusations against people they had never previously met.

"I was so frightened that I pointed out two people whom I didn't know. They were taken off in the direction from which I had come. I did not know anyone in that room. I picked out those two becuase they were standing together," he said.

Coetsee warns on 'bush courts'

AR6US 10/1/86

252

By FRANS ESTERHUYSE
Political Staff

THE Minister of Justice, Mr Kobie Coetsee, said today revolutionaries in South Africa were using "bush courts" to exercise power without justice

Speaking at Kathu, near Sishen in the Northern Cape, he said he rejected such practices and warned that the Government would not tolerate them

Mr Coetsee was opening a new magistrate's office and police station at the iron-ore mining town

CERTAIN JUDGMENTS

He said that in recent criticism of South Africa it was claimed certain court judgments were a victory for human rights, as if there were conflict between the courts and the Government

This was a senseless argument The fact was that the courts were able to give such judgments because they were respected by the Government

It was, in fact, the Government of the day that would ensure that such judgments were carried out.

No justice was possible without the power provided by the State

TYRANNY

"When this has been said, it is equally important to underline that power without justice, like that occurring elsewhere in Africa, is nothing but a tyranny," Mr Coetsee said

"People who want to apply revolutionary power in South Africa are, in fact, using their bush courts to exercise power without justice. I reject that"

Mr Kobie Coetsee

soldiers with they were

Praise for SA judiciary

Star Times 11/11/86 25-2

Staff Reporter

THERE were no other courts in the world where the integrity of judges and magistrates was higher than in South Africa, the Minister of Justice, Mr H J Coetsee, said yesterday at the official opening of a R2-million police station and magistrate's court complex at the Northern Cape town of Kathu

Mr Coetsee, a member of the State Security Council, also warned that revolutionary "tyranny" would not be tolerated in the Republic.

Where no rule of law existed, chaos would naturally reign and no community could plan, work or forge ahead without safety and order, he said

"Our legal system cannot be outclassed," he said

"There are attacks, incriminations and accusations that our judgments in law are not objective and independent. I am convinced and satisfied we can boast and also be thankful we have always had men who not only maintain our legal system, but have also expanded and improved the system."

Quoting a former judge, he said: "To say our courts are just and impartial is not saying much The truth is there are no courts anywhere in the world whose judges' and magistrates' integrity is higher than ours . "

"Critics of the RSA who believe that a bill of rights can be enforced by the courts — the alpha and omega of all South Africa's problems — naturally make the mistake of thinking courts can enforce such orders without the State granting them the necessary power to do so," he said.

"Lately, there was a court judgment hailed by our critics as a triumph for human rights as if a struggle was being waged between the courts and the State It is nonsense to argue that."

Courts could make such judgments only because the "government of the day" had given them the authority to do so, he said

He defined tyranny as the exercise of power without justice — "like elsewhere in Africa"

rsday, January 16, 1986

Unionist in Casspir fall 'was drunk'

Mercury 16/1/86

252

JOHANNESBURG—A Johannesburg inquest court yesterday visited a temporary police station in Tsakane near Brakpan to examine the Casspir from which trade unionist Andries Raditsela was thought to have fallen after being arrested on May 4 last year.

The Magistrate, Mr L Steenkamp, decided on an inspection in loco during the evidence of W/O John Matthew Wiese, who told the Court he had arrested Mr Raditsela during an unrest incident in Tsakane about 8 a m on May 4

W/O Wiese said that as they stopped at the Tsakane police station, he had heard a scuffle at the back of the Casspir where Mr Raditsela and another black man were sitting. He was later told that one of the men had fallen out of the Casspir.

He said he had seen Mr Raditsela lying on the ground and then being helped to his feet by two policemen He appeared drunk but did not seem injured

Asked by the Deputy Attorney-General of the Transvaal, Mr A C Human, why he had not helped him down the stairs of the Casspir, W/O Wiese said the Casspir was very narrow and there was not enough room for two people on the stairs

Video tape

At the inspection in loco, the Court officials examined the back of the Casspir that was used on the day Mr Raditsela was arrested

The Casspir and the police station were filmed by SABC-TV, who are to make the video tape available for reference by the Court.

Earlier, W/O Wiese told the Court that Mr Raditsela had vomited in the police station but he had attributed this to drunkenness.

He said that two hours after being arrested, Mr Raditsela had appeared to become more drunk, but his condition had improved by midday

During this time, he was being interrogated by a W/O Prins of the security police who had asked W/O Wiese why Mr Raditsela was ill.

W/O Wiese had replied that the man was drunk. W/O Prins had then said that if Mr Raditsela was not drunk, he would need medical attention

W/O Wiese told the Court he had not thought it necessary to obtain medical treatment for Mr Raditsela because he was convinced the man was drunk

W/O Wiese said he had arrested Mr Raditsela on suspicion of inciting unrest in Tsakane.

He said he had been in charge of a Casspir which had gone to Tsakane township where a bakery delivery truck had been set alight.

Suspicious

About 500 people were dancing around the burning truck waving their fists He said he had received a report that a white car with an ND registration had been involved in the burning of the truck and the occupants had incited unrest

About 8 a m he came across a white car with ND registration plates and became suspicious when he noticed that the car had only covered 340 km. He then demanded the ignition keys from Mr Raditsela

While trying to take the keys from Mr Raditsela by force he had pushed him to the ground, but had taken care not to injure him. He denied Mr Raditsela had been assaulted in any way

The hearing continues today — (Sapa)

Magistrates' recusal decision

ABOUT 30 Durban magistrates who attended a police audio-visual lecture on political violence last year would follow this week's judicial recommendation to recuse themselves from specific political trials, a Justice Department spokesman in Pretoria said yesterday

The Judge President of Natal, Mr Justice A J Milne, and three other Natal judges recommended to the chief magistrate of Durban this week that magistrates who saw the police presentation on November 15 should not preside at unrest trials or hearings

Justice Department spokesman Dave Swanepoel told *Business Day* 65% of the magistrates in Durban had attended the police briefing.

PETER HONEY

The briefing had dealt with the "communist onslaught" against SA and sketched the history of organisations like the ANC, PAC and the UDF

The judges found the police briefing itself of little concern, but objected to the fact that it was presented by police officers who portrayed as fact, opinions which could be disputed in court.

Police did not initiate briefing

CAPE TIMES 16/1/86

Own Correspondent·

DURBAN. — The meeting at which police presented videos and lectures to prosecutors and many of Durban's magistrates was convened by Durban's Chief Magistrate, Mr J J Pienaar, it was disclosed yesterday

A spokesman for the Department of Justice in Pretoria, Mr Dave Swanepoel, said the initial invitation had not come from the police

"It was not compulsory for magistrates to attend — 30 out of 65 did," he added.

Mr Pienaar's secretary yesterday said he had no comment to make

On Tuesday, the Judge President of Natal, Mr Justice Milne, recommended to Durban's Chief Magistrate that magistrates who attended the meeting in Durban last November should not preside at any political trial arising from the country's unrest or involving the ANC, the UDF or any organization identified in the lecture notes as being responsible for such offences

The guidelines followed a request from the Minister of Justice, Mr Kobie Coetzee

'Independence of judiciary at stake'

Mr Swanepoel said. "The Minister of Justice has on various occasions expressed his disapproval of briefing of magistrates under circumstances such as has occurred in Durban, but these are matters which should and can be best dealt with by the courts themselves"

● Sapa reports that Mr Andries Geyser, president of the Natal Law Society, said the independence of the judiciary in South Africa could be at stake if a repeat of the recent meeting of Durban magistrates were to take place.

Mr Dave Dalling, PFP spokesman on Justice, said the statement showed beyond doubt that the action of the police was incorrect and prejudical to the proper administration of justice

"A statement should be made giving assurance that no magistrate who attended the meeting will preside at a political trial," he said.

A UDF spokesman said the organization welcomed the decision of the Judge President, but that it must be remembered that chance factors brought the activities of the police to public notice

"Otherwise this gross violation of what remains of justice and fair play in present day South Africa would have taken a further dramatic plunge"

Raditsela lawyers in dramatic urgent court application

LAWYERS of the family of the late trade unionist Mr Andries Raditsela are to bring an urgent court application in the Rand Supreme Court on Friday.

By NKOPANE MAKOBANE

The application to oppose a decision last Friday by a Johannesburg magistrate presiding the inquest into Mr Raditsela's death, Mr T R Steenkamp, allowed counsel for the Minister of Law and Order, Mr P Oosthuizen, to put leading questions to police witnesses

On Friday, Mr P Streicher, for the Raditsela family, objected to Mr Oosthuizen's leading question when he cross-examined Warrant Officer John Matthew Wiese, the police officer who arrested Mr Raditsela He said the witness should only be cross-examined.

Mr Steenkamp overruled the objection He said Warrant Officer Wiese was a witness of the court and had not been called to testify by any of the two parties

Mr Streicher had then asked for a postponement to consider the position of his legal team in view of the ruling His objection came when Mr Oosthuizen asked W/O Wiese about the unrest situation in townships near Brakpan

Mr Raditsela (29), a senior shop steward of the Chemical Industrial Workers' Union, died of a head injury on May 6 at Baragwanath Hospital, two days after his arrest and subsequent release He was also an executive member of the now defunct Federation of South African Trade Union (Fosatu)

Mr Steenkamp is assisted by former State pathologist, Professor J D Loubser, Mr Streicher, assisted by Ms P Revelas are instructed by Cheadle, Thompson and Haysom. Mr Oosthuizen assisted by Mr R Strydom appear for the Ministers of Law and Order and Defence. Mr B Georgou appears for six doctors of the Transvaal Provincial Administration. The Attorney-General is represented by Mr A C Human and Mr D A Gordon

'Attorneys for Bench' proposal

Staff Reporter

THE Association of Law Societies has reacted strongly "to rumours that magistrates are to be considered for appointment to the Bench"

In a statement yesterday, the new president of the association, Mr Roger Cleaver, urged that if the demand for judges could not be met by practising advocates, then practising attorneys should be considered next.

"The fact that there are scarcely 800 practising advocates in South Africa means that in selecting judges for the Supreme Court, the state has an extremely limited choice," Mr Cleaver said

Attorneys could be expected to have the independence of the judiciary "very much at heart", he said

"South Africa has about 6 000 attorneys. Several hundred of them are senior partners in the larger legal practices, the largest of which has 41 partners"

'Step in right direction'

The fact that attorneys were serving as commissioners in small claims courts — whose success was welcomed by the association — was a step in the right direction, he said

The profession was also giving urgent attention to the position of black attorneys

"We recognize that because of the situation in South Africa black attorneys have certain problems We hope now that blacks are being able to own fixed property, black attorneys will receive more conveyancing work and not be obliged to rely so heavily on criminal cases and third party claims in the courts," Mr Cleaver said

Black attorneys could not rely on much income from divorce court work or even routine commercial work such as the forming of close corporations, he said

CAN Times 24/1/86

252

'Law for all' campaign plan

Staff Reporter

THE Association of Law Societies of RSA is to launch a major "law for all" campaign, the association's newly-appointed president, Mr Roger Cleaver, announced yesterday

The campaign would be aimed at increasing knowledge and understanding of the law — especially among young people, Mr Cleaver said.

And, in South Africa's complex society, it was vital that the law be seen as the surest guarantee of justice, he added

"The programme will counteract the generally negative feelings many people in our community have about the law

"Many people associate the law with criminal courts and a vast number of administrative regulations either prescribing or proscribing certain acts.

"We feel our profession should definitely take the initiative in a programme which will not only lead to better group relations but also improve the image of lawyers," he said

The campaign of information about the law in general would be based on a pilot programme — adapted from the American "street law" programme — which was conducted by a team headed by the deputy dean of the law faculty at the University of Natal, Professor David McQoid-Mason.

"Last year, two one-day 'street law' workshops were attended by about 60 black schoolteachers and pupils from Umlazi Another workshop was attended by a multi-racial group of about 50 teachers and pupils," Mr Cleaver said

Booklet

Since then, more teachers and pupils had asked that the programme be introduced at their schools on a regular basis — and soon, he said.

In September last year, the association agreed to fund a national legal education programme which would extend the "street law" concept to adults It was now forming a multi-disciplinary advisory board for the programme and was designing and providing the necessary educational material

● Mr Cleaver also announced that the association would issue a booklet on wills and estates this year as a "special service" to the public The booklet would be supported by an Afrikaans television programme to be screened between March and May

Mamelodi shootings: Report issued

SOWETAN 24/1/86

ATTORNEYS responsible for collecting statements from Mamelodi residents this week submitted a summary of their findings.

The attorneys are in a fact-finding committee of the Pretoria Council of Churches into the incidents that led to a mass shootout in Mamelodi last year

The commission is headed by Mr Arthur Chaskalson, who is assisted by Mr E Moseneke and Bishop Ndwandwe as an assessor

The terms of reference of the commission are

- To investigate incidents that led to the march,
- To investigate the march itself, and its aftermath, to draw up a report of the conclusion based on the facts disclosed in accordance with the above.

The commission has decided to proceed with the inquiry which will be held from February 3 until February 14 at the Mamelodi YMCA

Invitations have been extended to organisations both in Mamelodi and in Pretoria as well as to the SAP to give evidence before the commission

Opportunity will be given for witnesses to testify in camera, and anyone who wishes to forward evidence may contact the attorneys at 365 Struben Street, first floor, Sidend Building off Prinsloo Street, Pretoria

ARGUS 24/1/86 252

State urged to use attorneys as judges

Supreme Court Reporter

LAWYERS have urged the appointment of practising attorneys rather than magistrates if South Africa's advocates cannot meet the demand for judges.

The Association of Law Societies was "reacting to rumours" that magistrates are to be considered for appointment as Supreme Court judges.

Attorneys should be considered "for the sake of the independence of the judiciary" said Mr Roger Cleaver, the association's president.

Their role as commissioners in the new small claims courts was a "step in the right direction".

Judges were drawn from the ranks of the 800 practising advocates. This meant the State had "an extremely limited choice".

However there were 6 000 practising attorneys who could be "expected to have the independence of the judiciary very much at heart", said Mr Cleaver.

Another matter to which the profession was giving "urgent attention" was the position of black attorneys.

PROPERTY

Mr Cleaver said "We recognise that because of the situation in South Africa black attorneys have certain problems.

"We hope that now they are able to own fixed property, black attorneys will receive more conveyancing work and not be obliged to rely so heavily on criminal cases and third party claims."

Black practices could not rely much on income from divorce work or even routine commercial work such as the forming of close corporations, he said.

New whipping move

Capt Times 1/2/86 252

Political Staff

THE government is to press ahead with a controversial measure to extend whipping as punishment for unrest-related offences

In terms of the Criminal Procedure Amendment Bill, released earlier this week, whipping may be imposed on males convicted of murder, arson, malicious damage to property, public violence and sedition.

However, corporal punishment may not be imposed with imprisonment unless the whole or part of the imprisonment is suspended.

When the bill was first published last year, it was strongly criticized by the Progressive Federal Party, who said the government should be doing away with corporal punishment, rather than extending its scope

The PFP's Mrs Helen Suzman said then that South Africa was the only country in the Western world which still used whipping as punishment

City Small Claims Court gets going

Staff Reporter

THE long-awaited Small Claims Court — offering the man in the street access to justice without prohibitive legal costs — is under way in Cape Town.

The court, which will deal with claims of up to R1 000, will be run as a pilot project for six months, after which the Minister of Justice will decide on its future.

A clerk of the court has been appointed but the first sitting is unlikely to be before the beginning of March.

Mr Louis van Zyl, chairman of the advisory board for the court, said no claims had yet been lodged.

FIRST SITTING

March 10 had been set provisionally for the first sitting because claims took time to process.

Sittings will be on weekdays in Garmor House, Plein Sreet, between 4pm and 7pm.

"The object is to give the man in the street an opportunity to have his day in court The proceedings will be completely informal to enable private citizens to bring cases without the assistance of lawyers," said Mr van Zyl.

The procedure for instituting a claim is a follows·

Contact the clerk of the court, Mrs C J Jooste, at ☎ 45 1611 or 102 Garmor House, Plein Street.

ASSISTANT

She will put you in touch with a legal assistant who will help formulate your claim, advise on whether the court will hear the claim and help to draw up the formal demand and required summons No fee will be charged

On issuing the summons the clerk of the court will set a date and a time for the hearing of the action.

Court procedures are informal and simple and no legal representation will be allowed. The commissioner — an attorney, advocate or law teacher appointed by the State — will hear the evidence and give a decision

The Cape Town Small Claims Court may be used by people resident in the city's magisterial district for claims of up to R1 000.

Certain cases, including claims against the State and divorce, may not be brought

BLACK WOMAN'S NOTE TO POLICEMAN

TEN Sebokeng residents who are charged with the killing of two people in the area pleaded not guilty in the Pretoria Supreme Court yesterday.

By ALINAH DUBE

The accused, nine men and a woman, were making a first appearance before Mr Justice van der Walt and two assessors.

They are Mr Ratoslaine Samuel Mashela (64), Mr Lazarus Biknyana Kolokoto (25), Mr Thami Mayfair Zwane (25), Mr Sidwell Sealane Mpela (25), Mr Khoase Michael Phakwe (22), Mr Pule Thomas Maine (24), Mr Playmatic Rentleneng Kolobe (28), Ms Ou Lady Marcia Sobekwa (32), Mr Zwelakhe Josia Zwane (25) and Mr Khulu Jacob Mthembu (20)

They are facing two counts of murder and another charge of subversion

The case arises from the death of Mr Ceasar Motjeane, then a town councillor, and Mr Phineas Matibidi during the Vaal Triangle unrest a year ago Both killings took place after a rampaging mob allegedly started stoning and burning property in the township on September 3, 1984

This was shortly after a residents' meeting at a local Roman Catholic Church that day, it was said

The State alleged that Mr Motjeane and Mr Matibidi were assaulted with stones and objects, and or stabbed and set alight They died as a result

A Vanderbijlpark district surgeon, Dr D B H le Roux, told the court that Mr Motjeane's body had two bullet wounds in the right hip when he examined him two days after his death

He said he died as a result of multiple injuries

Of Mr Matibidi, Dr le Roux said although he had a stab wound on the heart, the destruction of his skull could have caused his death "His facial bones were completely shattered The whole outline of the head was deformed," he said

A Soweto police officer, Colonel Simon Sauer, told the court that on the day of the killings he was sent to investigate allegations of unrest in Sebokeng.

He said that when he arrived at the late councillor's house, he found the half burnt body of a man at the gate Three cars were also burnt, he said

During his investigations, he said, he was "shown a house situated not far from that of the dead councillor and found his body lying in the backyard "There were a lot of stones next to him and the injuries he had on his face showed that he could have been stoned earlier," Colonel Sauer said

Shops were burnt, roads barricaded and property destroyed in unrest incidents that day, he said

While continuing with his investigations, Col Sauer said he suddenly felt someone putting "something in my hand It was a piece of paper from a black woman whom I could not identify"

After perusing the paper, the police official said he found a list of names of people he believed were either witnesses or suspects in the case

Under cross-examination by Advocate David Soggot, the colonel said he was not sure of how many names were in the piece of paper but admitted that the last two names could not have been included in the list when he received it from the unknown woman on the day of the killings

He said he did not count the names but handed the list over to one of the policemen who were involved in the investigations "I only made sure that it was going into the right docket," he said

Small Claims Court operational soon

Cape Times 4/2/86

252

Staff Reporter

CAPETONIANS will soon have access to justice without having to run up expensive legal bills when the Small Claims Court, or People's Court, comes into being in the City

The court puts the benefits of the legal system within everyone's reach as the only cost involved is the cost of having a summons served

Defended cases will be heard by State-appointed commissioners, who will be either advocates, attorneys or teachers of law with at least seven years experience.

Legal assistants will help — at no cost — prospective litigants formulate their claims which may not exceed R1 000

Claims which may not be heard in the court, include cases against the State, contesting the validity of wills and divorce claims

Companies, corporations or associations may not institute claims

A Clerk of the Court for the Cape Town Small Claims Court which is housed in Garmor House, Plein Street, will be there on weekdays from 4pm to about 7pm

The first hearing is unlikely to be heard before the end of February

Inquiries can be directed to the Clerk of the Court, Mrs C J Jooste, at ☎ 45 1611 or at 102 Garmor House, Plein Street, between 8am and 4 30pm on weekdays

The courts, justice and the emergency

Cape Times 4/2/86 252

By GERALD GORDON QC
and
DENNIS DAVIS
Associate Professor, Faculty of Law, UCT

IT IS claimed by some and denied by others that South Africa is undergoing a process of revolution By this is meant a revolution in government

Whichever view is correct, what is incontrovertible is that since 1948 South Africa has been undergoing a revolution of a different kind — a revolution in the quality of, and attitude to, the law of the country

On January 10, Mr Kobie Coetsee, the Minister of Justice, in opening a new police station and magistrates' court in the Northern Cape, praised the integrity of our judges and magistrates as among the best in the world — a "legal system which cannot be outclassed"

He then said "Lately there was a court judgment hailed by our critics as a triumph for human rights as if a struggle was being waged between the courts and the state It is nonsense to argue that " Courts could make such judgments only because the "government of the day" had given them the authority to do so, he said

Constitution

The last sentence, revealing a condescending attitude to the courts, is remarkable and quite out of keeping with the correct constitutional position

The "government of the day" does not "*give* authority" to the courts to make judgments The authority derives from the constitution, which is permanent, whereas governments last only as long as the electorate chooses to keep them there

Mr Coetsee's statement provides a clear example of the government's attitude toward the courts As long as the courts are required to serve in the battle for legitimacy which the South African government is waging with the African National Congress and other opposition groups, so long will the courts be tolerated

Should the battle be lost, the courts will be in danger of losing all their independence and becoming direct instruments of government

We have only to recall the attempt made by the government in the early '50s when, unable to get the required two-thirds majority to remove the coloured voters from the common roll, they endeavoured to set up a "High Court of Parliament" which was no more than the legislature disguised in judicial garb and to which an appeal would have lain from the Appellate Division's decisions adverse to the government

Though this attack on the judiciary failed, it did not curb the executive appetite

The tendency to executive expansion is typical of authoritarian regimes, be they communist or fascist. Article 112 of the Soviet constitution provides "The judges are independent and shall be subordinate only to the law," but it does not say how this independence is achieved More correctly, they are independent of everything except the supreme party organs

Judicial administration thus becomes a mere aspect of the general policy of the day and no judge dare give a decision against the demands of the regime

In Germany, Hitler empowered the Reich's minister of justice "to build up the Nationalist-Socialist administration of justice in accordance with my instructions in so doing he may depart from the existing law"

In 1934 hundreds of men in Germany, suspected by Hitler of an attempted coup, were shot without charge or trial. None of the gunmen was punished

In the Reichstag shortly afterwards, Hitler said "For 24 hours I constituted myself the Supreme Court of Germany" He was more than that, he was investigating officer, prosecutor, judge, executioner

Under our present state of emergency, declared on July 31, 1985, and extended to the Cape on October 26, anyone can be arrested without trial and indefinitely detained on, as Mr Justice Kannemeyer said in a recent Eastern Districts judgment, the action of a "raw recruit" in the army or police

This of course sets the power of the courts to protect the rule of law and civil liberties at nought And there is no power to punish the member of a force who does the arresting because the emergency regulations indemnify his actions unless committed in bad faith

The powers of the police are enormous They are investigating officers, persecutors, judges and executioners and they make their own laws (regulations)

They can detain a person without charge or trial, keep him locked up for as long as they like and then release him, often without even telling him the reason for his detention, except to quote some section of their regulations

And an example of "laws" made by the police is the absurd decree, unparalleled, save behind the Iron Curtain or in nazi Germany, issued last week by the Divisional Commissioner of Police, Brigadier C Swart, under the emergency regulations wherein he banned visual protest such as "Troops out of the Townships" T-shirts and car-stickers like "Apartheid is the Emergency", "Equal Education" or "End Conscription", offenders faced a fine of up to R20 000 or imprisonment for 10 years Happily the minister withdrew the decree almost immediately

To return to Mr Coetsee's statement — the attitude it reflects is one which is regrettably contagious and rubs off on to lesser figures within the hierarchy

Thus when Mr Carter Ebrahim

But in South Africa, in statute after statute — as to Citizenship, Group Areas, Population Registration, Suppression of Communism, Bantu Authorities, Native Law Consolidation and so on — administrative powers were widended at the expense of the judicature

It was a tendency seen elsewhere, for example, in the England of the '30s where Lord Justice Hewart was provoked into writing his "The New Despotism" But nowhere in the Western community has this leaning to "despotism" been as forceful as in South Africa, and all in the cause of consolidating and promoting apartheid

The culmination of the process was the Public Safety Act of 1953 preparing for the declaration of emergencies in which the three powers could be concentrated as now in the hands of the executive, and particularly of the police

Meanwhile, the onus of proof in criminal trials of political content was shifted in many statutes to the accused to establish his innocence Then, after many invasions of private rights and civil liberties, there came on to the permanent statute book between the two emergencies, 1960 and 1985, the greatest invasion of them all — detention without charge or trial, first for 90 days, then for 180 days and finally without limit

In step with the legislative changes restricting the functions and powers of the courts, the attitude of many in and around the government towards the role of the judges and the rule of law became increasingly antagonistic

For example, when in the early '50s the Appellate Division rejected the implementation of a policy of racially separate amenities which were "unequal", many members of the National Party, incensed at this blow to apartheid, condemned the decisions

Thus Mr G F van L Froneman, MP (later the Administrator of the Free State) said "If the Appeal Court wanted to be treated with respect, it should give decisions interpreting the sentiments of the people who stood supreme in the country" (House of Assembly Debates Vol 82, col 2044, 20/8/1953.)

In other words, the courts are to be the vocal organs of the people, representing and vindicating the policy of the ruling party This is in effect what Mr Carter Ebrahim and Mr Kobie Coetsee have stated in 1986

A threat of another kind to the administration of justice should be mentioned. It involves the recent giving by the police of lectures to a number of magistrates on certain aspects of the unrest combined with a video presentation

Special arrangements

The Judge President of Natal, Mr Justice Milne, appointed three of his judges to examine the material presented at the lectures

They were unanimous in the view that no magistrate who attended the gathering should preside at the trial of a political offence arising out of the unrest or involving the ANC, the UDF or any organization identified in the lecture notes as being responsible for such alleged offences

They said it was "objectionable" that special arrangements were made for the police to present the material Mr Justice Milne endorsed their views and recommended to the Minister of Justice that

CT. 4/2/86 252

the Minister of Education and Culture in the House of Representatives, defeated the recent teachers' application in the Supreme Court for pupils and students to write supplementary examinations, he boasted that the decision proved that "I have authority" and "we will put an end to this kind of thing where they (the teachers) believe they have authority to challenge the minister".

In fact, so far from being "a vindication of policy" (also claimed), the judgment included expressions of "great regret" on the part of the judges at the situation and of "genuine sympathy for innocent victims of the circumstances"

Prior to 1948, the separation of powers — legislature, executive and judiciary — inherited as it was, from the English Act of Settlement of 1707, was strictly enshrined in the South African constitution which guaranteed to judges their independence of the executive.

This achievement in England was perhaps the greatest triumph over tyranny and it was carried across the Atlantic by the founding fathers of the United States, who were astute enough to ensure that this division of labour was as perfect as possible and to prevent one branch of the system from gathering in its hands all the important prerogatives of sovereignty

none of these magistrates should preside at any such trial. Nearly two-thirds of the magistrates in the Durban area — about 30 out of 46 — were affected

Here was a clear case of a segment of the executive, the police, making a real attempt to influence the course of justice in the courts. To his credit this time, the minister firmly accepted the recommendation and his Department of Justice on January 15, 1986 issued a statement accordingly, adding that Mr Kobie Coetsee had "on various occasions" expressed disapproval of briefing of magistrates in circumstances such as occurred in Durban.

In their endeavours, therefore, to sway the views of magistrates, the police have been blocked by another segment of the executive This is to the good However, what is bad is there have been *various* occasions when the minister's disapproval of such improper behaviour has been provoked And it will be seen how the police, who hardly need encouragement in trying to influence the course of justice, will be readily encouraged by ministerial statements that "the government of the day gives" the courts their power to judge

It is well recognized by legal commentators that judicial proceedings serve to authenticate political action by the state (See Otto Kirchheimer's "Political Justice" 1961) However, at the same time courts can perform the vital role of being a bulwark between the rights of the individual and the excesses of the executive. For this reason the courts become the site of struggle

(In the second article, the role of the South African courts as ramparts between the executive and civil liberties will be examined)

'Choose attorneys as Supreme Court judges'

By Hannes de Wet

The State should opt for practising attorneys, rather than magistrates, for appointment to the Bench, to solve the demand for Supreme Court judges, says Mr Roger Cleaver, president of the Association of Law Societies

"Magistrates are inevitably perceived as being part of the system or the State For the sake of the independence of the judiciary, practising attorneys should be considered first," Mr Cleaver told *The Star*

He was commenting on rumours that magistrates were to be considered for appointment as Supreme Court judges

EXTREMELY LIMITED CHOICE

Mr Cleaver said it was true that the Bar could not continue to be the only source of judges There were scarcely 800 practising advocates in South Africa which meant that the State had an "extremely limited choice". But appointing magistrates to the Bench, Mr Cleaver said, was not the solution

"Magistrates' experience tends to be limited to criminal law and they will be seen as being part of the State The more than 6 000 attorneys are the logical alternative and several hundred of them are senior partners in the larger legal practices

"The argument that attorneys are not suited for the Bench because they don't have Supreme Court experience doesn't hold water. Any competent and experienced attorney will be able to study his way into Supreme Court procedure fairly easily," he added

Judge sets aside T-shirt conviction

4/24/86 DISPATCH

BISHO — Mr Mbonisi Sandi, 23, of Grahamstown, has won his appeal against his conviction for wearing a Saawu T-shirt at Hamburg in January last year

Mr Chief Justice De Wet, with Mr Justice Pickard concurring, has set aside Mr Sandi's conviction and sentence

Mr Sandi had been sentenced in the Zwelitsha Regional Court to six months' suspended for three years

Mr Chief Justice De Wet said in his judgment that he considered Mr Sandi's lack of knowledge that Saawu was banned in Ciskei could be reasonably true

The regional court had heard that when Mr Sandi was arrested, a Lieutenant Dyakophu had asked him whether he knew that Saawu was a banned organisation and he did not reply However, Mr Sandi had denied that he had been asked whether he knew it was an unlawful organisation When charges were put to him at the police station he had told the police he did not know that Saawu had been banned and repeated that when he made a statement to the police The magistrate held that the question had in fact been put to Mr Sandi

Mr Chief Justice De Wet said the magistrate had found that the failure to explain to the lieutenant that he had not known that Saawu was a banned organisation sufficed to show that he had the necessary wrongful intent

Apart from the fact that the appellant immediately claimed his ignorance of the banning in Ciskei at the police station when notified of the charge against him, he repeated that he had not known of the banning in his written statement to the police the next day

"Undue weight must not be given to the fact that he did not make a statement to the lieutenant It is the right of every person arrested to remain silent if he so wishes," Mr Chief Justice De Wet said

He said the magistrate rejected Mr Sandi's statement that he did not know that Saawu had been declared an illegal organisation in Ciskei The magistrate said that because Ciskei had been independent for four years Mr Sandi should not have assumed that the law in Ciskei and South Africa was the same

The magistrate said the court was of the opinion that if a person wanted to visit another country he must acquaint himself with the laws of that country If he did not do so, he could not fall back on the excuse that he had not known

Mr Chief Justice De Wet said the maxim "ignorance of the law is no excuse" had no validity in their law and if the appellant was unaware of the fact that Saawu was a prohibited organisation that fact would be a good defence

"I consider it would be unrealistic and unreasonable to require a visitor to a foreign country to acquaint himself with the laws of that country I cannot envisage any tourist travelling through Europe acquainting himself with every law of every country he might visit Certain prohibitions are common to all civilised countries, but statutory prohibitions can very often be of such a nature that a visitor would not automatically realise that a specified act would be unlawful

"I consider that the appellant's lack of knowledge could be reasonably true The conviction and sentence are accordingly set aside" — DDR

Courts, justice and emergency (2)

(252)

Cape Times 6/2/86

By GERALD GORDON QC and
DENNIS DAVIS, Associate Professor, Faculty of Law, UCT

IN OUR first article we outlined how since 1948 the whole trend of government policy was towards the widening of executive power at the expense of the judiciary and even of the legislature As an example of this policy we cited a speech of Mr Kobie Coetsee, the Minister of Justice, on January 10, 1986, in which he was reported to have said inter alia "Courts could make such judgments because 'the government of the day had given' them authority to do so". This, we pointed out, was not in keeping with the correct constitutional position

Mr Coetsee has since acknowledged the correctness of this principle, but has informed us that he had been misquoted in the Cape Times of January 11 and that the misquote had unfortunately not been picked up by his department

A full report of his speech (in Afrikaans) with which he has now kindly provided us, shows that he actually stated "The courts give such judgments because the state respects them and it is the government of the day which will ensure that the judgments are carried out"

It is clear therefore that the minister said the courts' authority to judge proceeds from the state and not from the government

We unreservedly accept this correction — the error was due to a faulty translation — and express our regrets from the conclusions we drew as to Mr Coetsee's personal attitude to the constitutional structure of the country.

However the essential argument of our first article was to stress that historically since 1948 many measures had been put on the statute book limiting the scope and function of the courts and indeed at times stifling their efficacy - by meeting judgments which favoured civil liberties with new legislation or regulations that, as it were, closed the gaps

The purpose of this second article is to examine how the courts have over the years and particularly now under the emergency faced the threats to their role of protecting the individual against the state and further to assess to what extent that role is grounded upon our Roman-Dutch heritage and also upon natural law.

"HITLER," wrote Harvard Professor Lon Fuller analysing the German judiciary of the 1930s, "did not come to power by a violent revolution He was chancellor before he became the leader

"The exploitation of legal forms started cautiously and became bolder as power was consolidated The first attacks on the established order were on ramparts which, if they were manned by anyone, were manned by lawyers and judges These ramparts fell almost without a struggle" (1958 Harvard Law Review 630 at 659)

The question arises as to whether our judicial ramparts have been defended as tenaciously as they could have been. Some South African judges have replied that, given the sovereignty of Parliament, the judges' role is merely to interpret the laws as laid down by Parliament As Judge L C Steyn, a former Chief Justice of South Africa, once said

"The task of our courts — I would emphasize their only task — (is) to ascertain the intention of Parliament as expressed in the enactment It would be an evil day for the administration of justice if our courts should deviate from the well-recognized tradition of giving politics as wide a berth as their work permits it is not our function to write a codicil to the will of Parliament" (1967 Tydskrif 101 at 106)

In analysing the experience of the German judiciary during the nazi reign, the eminent German jurist Professor Gustav Radbruch considered that the argument that the only task of the courts was to interpret the dictates of Parliament, implied that

"Law prevails because it is law, and it is law if in most cases it is backed by power which can make it prevail This concept of law and its applicability (we call it the positivistic doctrine) rendered both lawyers and the people defenceless against the most capricious, brutal and criminal statues" (1973 South African Law Journal 234 at 244)

In South Africa there is a powerful argument against the adoption of Judge Steyn's approach The oath a judge takes on accepting his appointment is that he will "administer justice to all persons alike without fear, favour or prejudice, and, as the circumstances of any particular case may require, in accordance with the law and customs of South Africa"

The "law and customs" clearly include the rule of law, the reasonable control of authority and the protection of individual rights and liberties, all of which are principles of the Roman-Dutch law. (Ben Beinart, 1981 Acta Juridica, 62-3.)

A passive judicial approach to the question of individual rights particularly in cases of doubt, is even more difficult to understand when the preamble to the Republic of South Africa Constitution Act of 1983 is considered

The preamble states inter alia that our goal is "to uphold Christian values and civilized norms and the equality of all under the law and to respect and protect the human dignity, life, liberty and property of all in our midst ."

It can, for example, hardly be said that detention without charge or trial is "a Christian value" or "a civilized norm" And as for the right to be heard before one is detained without trial — the *audi alteram partem* rule — it was said in the English courts in 1723 (The King v The University of Cambridge).

The laws of God and man both give the party an opportunity to make his defence, if he has any Even God Himself did not pass sentence upon Adam before he was called upon to make his defence

In cases of doubt, it seems incumbent upon the judiciary to interpret legislation and regulations in accordance with the jurisprudential principles of the judge's oath and the preamble to the constitution

Again there is the question to what degree natural law is part of our inherent system

In his "History of Roman-Dutch Law" Judge J W Wessels, Chief Justice of the Union in the twenties, said "We owe to the theory of natural law far more than is usually imagined to understand the scientific development of the Roman-Dutch law the student should never lose sight of the fact that natural law or the law of nature was the cornerstone of the whole fabric"

It is natural law which postulates that certain standards of human behaviour are unbreakable no matter what the statute law may lay down

Natural law applies in most civilized countries as it did in Germany before Hitler came to power

"The freedom of a state to decide what is law and what is injustice is not unlimited," said a German court of appeal in 1952 in finding a number of people guilty of murdering Jews by aiding their transportation to the notorious death camps. The court rejected their plea that they were justified in acting in terms of the nazi "laws", however brutal "There is," the court said, "a certain fundamental sphere in law which cannot, according to general legal conceptions, be infringed by any statute or any official act."

What of the South African judicial record, particularly during the past few years?

The most significant change in judicial attitude occurred in the Komani and Rikhoto cases

Judge Leon there held that the court is entitled to examine whether a police officer has a factual basis for his belief that a person has committed or intends to commit certain offences or is withholding information in relation to such offences. On the strength of this finding a number of Natal detainees were released

In a similar approach, the Eastern Cape Supreme Court held that the Minister of Law and Order cannot order an emergency detainee to be detained for longer than 14 days without affording the detainee a right to be heard — in other words to make representations as to why he should not be detained further

In keeping with its previous record of using legislation to overrule judicial decisions, the government almost immediately amended the emergency regulations to exclude entirely the right of a detainee to be heard Following on this Mr Justice Zietsman, in another case in the Eastern Cape courts, held that the amending regulations were valid and that detainees have no right to be heard More recently the Transvaal Supreme Court adopted the same approach

The Cape Supreme Court has heard six cases arising out of the emergency (i e. since October 26, 1985) It has found for the state in five and against it in one.

Of the five perhaps the case of Omar and Others v Minister of Law and Order and Others is the most important. The point at issue was similar to that in the Eastern Province and Transvaal courts just mentioned.

The Cape court was asked to order the release of detainees held in terms of the emergency regulations because the minister had not given them an opportunity of being heard The essence of the case was whether the State President is empowered by regulation to exclude the right to be heard when the enabling statute, the Public Safety Act, is silent on the issue

Mr Justive Vivier, delivering the majority judgment, said that the right to be heard was a fundamental right in our law but that it could be excluded by the State President, as the Public Safety Act empowered him to make any regulation which in his opinion was necessary to restore law and order.

By contrast Mr Justice Friedman could find no clear indication in the enabling statute that this fundamental procedural right had been excluded and accordingly held that the State President had acted *ultra vires* in attempting to abolish this

where the Appellate Division found in favour of the rights of migrant workers to remain permanently in urban areas

Similarly there have been changes in the courts' approach to labour relations. The recent Transvaal decision concerning the Marievale Mines dispute in which Judge R J Goldstone upheld the order of an Industrial Court that hundreds of dismissed black miners who had gone on a legal strike, be reinstated, is a case in point.

In the area of civil liberties, however, there does not appear to have been any major shift in judicial thinking until 1985

In that year the Natal Supreme Court was prominent in two cases In the Maritzburg treason trial the role of the presiding judge, Mr Justice Milne, first in cutting down upon the discretion of the attorney general to refuse bail, and later in dealing with the state's case with the greatest measure of critical circumspection, proved to be vital in the collapse of the tenuous state case against 12 United Democratic Front leaders.

The courts generally appear to have been reluctant to exercise any form of judicial control over police power of detention until the decision in the Natal case of Kearney and Other v Minister of Law and Order

right by regulation

These judgments show all too clearly that in many cases where the law is doubtful or ambiguous, judges do have what has been termed "a choice of law". In other words, the courts are not a pin table or slot machine. The records of the Appellate Division are packed with divided judgments.

Judge Vivier and Judge Munnik, the Judge President who concurred with him, decided against the detainee's right to be heard and to be released if he was deprived of that right Judge Friedman decided in favour of the detainee's having this right

There is in South Africa no bill of rights, no set of unbreakable principles guaranteed by statutes — other than the very general statement in the preamble to the 1983 constitution referred to above

In America the Federal Supreme Court has from the outset had full power to test whether any law passed by the legislature was constitutional or not. It is conceded therefore that by contrast the South African courts labour under distinct restrictions.

However, as some of the above judgments have shown, there have been tangible moves to protect civil liberties on the basis of our common law and upon the principles of natural justice which, as we have seen, is a cornerstone of our system. This protection by the courts carries a major hope for freedom in the battle against the excesses of police action which has been so evident in the horrible months of the recent "unrest".

Will that hope be fulfilled?

C.T. 6/2/86

252

Apartheid and the legal system

7/2/86 STAR

Black confidence in courts needed

(252)

Pretoria Bureau

An overview of the American Bar Association's two-day focus on the legal aspects of apartheid has pointed to a disturbing indictment levelled at the role of the judicial officer in contemporary South Africa.

The legal profession had to do all it could to restore black confidence in the impartiality of the courts as there was an unhealthy polarisation in the country and the profession.

Writing the in the latest issue of *De Rebus*, the magazine of the Association of Law Societies of South Africa, Professor Bhadra Ranchod, head of the Department of Private Law, University of Durban-Westville, highlighted some aspects of the seminar held in Washington DC in July last year, among them the preparedness of many South African lawyers to openly advocate civil disobedience.

The majority of speakers were black practitioners whose perception of the law and the enforcement agencies differed materially from that held by their white colleagues

And judging from the attitudes of some of the speakers, there was a real danger that blacks were losing confidence in the legal system

They had no say at parliamentary level and appeared to be outsiders in the administration of justice where all judges, magistrates, prosecutors and State officials are whites, said Professor Ranchod

Speakers saw the new Constitution as perpetuating apartheid and supported civil disobedience as a legitimate means of effecting change

They argued that the Government not only lacked authority, but was unresponsive to demands to effect change peacefully

It had instead enforced laws which were unjust and violated individual dignity

CONSEQUENCE

The current wave of violence was perceived as a direct and predictable consequence of the denial of fundamental rights to the majority of people.

Black attorneys said they experienced difficulties in securing articles.

They said they often had to return home annually causing insecurity, and there were obstacles in setting up office near the courts which were usually in the white areas. Many did so illegally and faced prosecution if caught.

Professor Ranchod added that the organised profession should demonstrate its concern for the black lawyer by expressing its support for the elimination of discriminatory laws.

Appeal to UN on 6 in death cell

THE Pan Africanist Congress has appealed to the security council of the United Nations to help save the lives of six Sharpeville residents who were sentenced to death last year for killing a councillor.

The six are Theresa Ramashamula, Mojalefa Reginald Sefatsa, Oupa Moses Diniso, Reid Malebu Mokoena, Duma Joshua Khumalo and Francis Don Mokgesi.

They were convicted and sentenced to death in the Pretoria Supreme Court for allegedly killing Mr Jacob Khuzwayo Dlamini, former deputy mayor of Sharpeville, during disturbances in 1984.

At a security council meeting held at the weekend to consider the "situation in South Africa," the PAC said "Over the past two decades more than 100 PAC members have been executed."

Source: Sowetan 9/9/85

Human rights report spotlights SA violence

WASHINGTON — Lawmakers and security forces were to blame for much of the deprivation and violations of human rights in South Africa, according to a United States government report issued last night

It accused police of often using excessive force during demonstrations and "arbitrary" use of detention powers in the state of emergency

The review also tackled the Group Areas Act, the Internal Security Act, the Criminal Procedures Act, and other laws

The report said that in spite of recent changes in South Africa, "discriminatory laws and practices are woven throughout the fabric of life, notably in the constitution itself"

The 20-page report, one of the longest chapters in a bulky review of human rights practices in most countries worldwide, was released yesterday by the State Department's Bureau for Human Rights and Humanitarian Affairs

It said South Africa's black majority suffered from "pervasive, legally-sanctioned racial discrimination"

Indians and coloureds also suffered extensive racial discrimination, but to a lesser degree.

"Against a backdrop of slow, incremental change and a deep economic recession, political discontent and ferment increased dramatically in the nation's black and coloured townships during 1984-85," the report said

Police often quelled demonstrations with excessive force, using teargas, birdshot, whips and rubber bullets, the report said

"Police have also used live ammunition to disperse demonstrators," the report noted

Because of restrictions last year on other forms of gatherings, funerals became a principal means for blacks to express discontent, the report said

Many people had disappeared, reportedly into police custody, for long periods

Some missing for a long time were suspected by friends and associates to have been killed by security forces

Security laws, particularly the Internal Security Act, allowed police "considerable latitude and generally unsupervised discretion in the arrest and detention of suspects, and in the interrogation of detainees

Lengthy periods of detention, during which authorities are not obliged by law to present formal charges, are a frequent occurrence and offer considerable potential for police abuse of detainees"

The report continued "Much black township violence — in particular, attacks on the homes and persons of black policemen and township Government officials — was probably inspired, at least in part, by the ANC, whose current public strategy is to render the townships ungovernable and to attack so-called 'collaborators' in the black community"

Despite substantial reforms in the area of petty apartheid, substantial social segregation still existed

"Social segregation, however, is being enforced with less rigidity than has been the case in the past and is gradually becoming a matter of local option," the report said

Press freedom had deteriorated in 1985, even though the Press continued, when possible, to engage in "vigorous criticism of the Government and its policies"

The government had used laws circumscribing Press freedom "in such a way as to ensure a degree of self-censorship", the report said

'People's court' starts tonight

STAR 18/2/86 252

The first of the small claims court hearings in the Johannesburg magisterial district will be held today at the City Hall

At the official opening, which starts at 5 pm, a mock hearing will be held to demonstrate to the public how the "people's court" operates

Thereafter hearings will be heard at the Hillbrow Magistrate's Court daily, from 5 pm to 7 pm until March 4 A new venue will be found after that date.

To date, 51 summonses have been issued.

Matters set down on the roll this week cover a range of disputes

PERSONAL LOAN

A person is being sued for allegedly failing to settle a personal loan A car-owner is claiming R220 spent on repairs after another motorist reversed into his car A secretary says her employer, an attorney, owes her a 13th cheque An artisan has alleged that a hardware store has not paid him for a painting contract

Compared to the nine other centres countrywide, where these "night courts" are already in full swing, Johannesburg's small claims court opened to a slow start on January 2.

By January 23 only 10 summonses had been issued

Initiated last year, the small claims court is a triumph for those seeking redress without the costs or complexity of normal litigation

New cases may be referred to the Clerk of the Johannesburg Magistrate's Court, Room 1026

At present, jurisdiction of the court is restricted to those people living or working in Johannesburg, alternatively if the matter arose in the magisterial district

Small claims court guide helps layman

The implementation of small claims courts in South Africa promises to satisfy an urgent need to settle minor civil disputes in an informal manner

A comprehensive user's guide, "The Small Claims Court", has recently been published by the director of the Unisa Legal Aid Centre Mr I M Bredenkamp, to explain to the layman the operation and legal implications of the court

"Pre-trial preparation is probably the most important factor in winning a case in court Before instituting a claim a person should ask 'Do I have a right? Was there a violation of this right? Do I have a remedy?'," advises Mr Bredenkamp

At the launch of the book, the chairman of the centre, Professor Marinus Wiechers, said. "Our lives are dominated by law However, when the ordinary man wants to enforce his rights, he is often confronted with intricate court procedures and the prospect of high cost

"It is hoped the institution of the small claims courts will herald a new and exciting era of making legal action both accessible and understandable"

Some points to remember are

- Claims may not exceed R1 000
- No action may be instituted against the State
- The court has no jurisdiction in matters where damages are sought for defamation, malicious prosecution, wrongful imprisonment or arrest, seduction or breach of promise to marry
- If a court believes a case contains difficult questions of law which cannot be adequately or fairly decided by it, proceedings may be stopped

Commissioner explains procedure

Mr Ralph Zulman SC (front) and Mr Edwin Letty are sworn in as commissioners by the chief magistrate of Johannesburg, Mr O A De Meyer, at the first hearing of the Johannesburg Small Claims Court in the City Hall last night.

Mock trial illustrates robust approach of small claims courts

The first sitting of the much-publicised Johannesburg "night court" yesterday was an anticlimax for the numerous invited guests when neither of the expected hearings reached the court room

But, in place of the first real small claims court hearings, a short mock trial was staged in the City Hall to demonstrate how the court would work

Of the first two expected hearings, one was settled out of court Litigants in the other — a claim for the repayment of a loan — did not turn up and the matter was postponed indefinitely

In the mock trial, Mr Jan Burger complained that a radio he had bought from a radio shop did not work when he took it home

He was awarded the full cost of the radio by the commissioner, Mr Edwin Letty, who explained each stage of the proceedings

He asked each of the litigants to relate his story, questioned them and invited them to ask each other questions.

When they had finished, he explained that he would consider the merits of the case before giving judgment, adding jokingly

"At this stage I would adjourn the court and rush off to see what it says in the book."

A robust approach to justice was required Judgments would tend to be given without postponements, he said

Mr Letty and Mr Ralph Zulman SC were sworn in as commissioners by Johannesburg's Chief Magistrate, Mr O A de Meyer

Speaking during the opening ceremony, Mr Zulman said the court had come into existence after a recommendation by the Hoexter Commission.

INTIMIDATING

The commission had suggested the man in the street felt "lost in an alien world" amid the complicated procedures, lengthy forms and intimidating atmosphere of the traditional courtroom.

Author William Thackeray had written that courts were "sties for fattening lawyers"

The "night court" should be none of these things

Lawyers would not be permitted to take part and consequently proceedings would be "free, to all intents and purposes," Mr Zulman said

Speakers stressed the small claims court was a public service

Future hearings will be at the Hillbrow Magistrate's Court daily from 5 pm to 7 pm and are open to members of the public

Personal debt to be disputed

The Johannesburg small claims court is now well under way and its second hearing tonight involves two neighbours who could not settle a dispute over a personal debt

The hearing will the first held at the Hillbrow Magistrate's Court.

Mr Sam Bekier is suing Mr Werner Nordmann, both of Orange Grove, for R1 000 This is the maximum claim allowed in the "night courts"

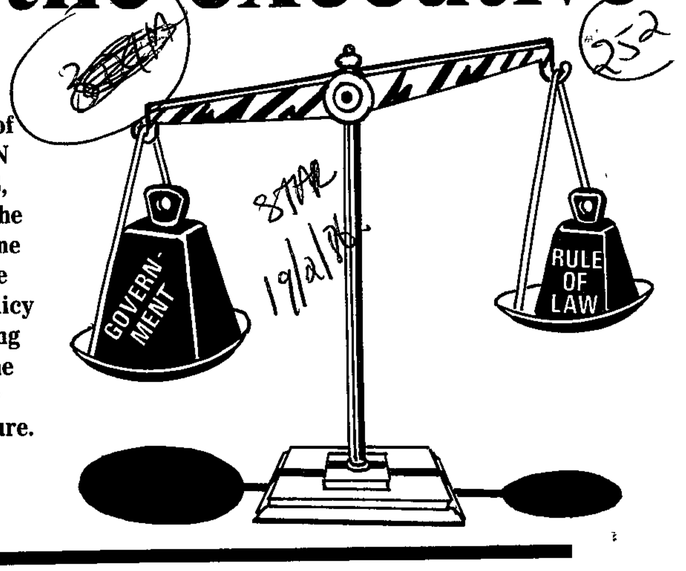
Mr Bekier alleges he lent Mr Nordmann the money last November and received a promissory note that Mr Nordmann would repay the debt within four days.

"As soon as I heard the small claims court announce it would be operating in Johannesburg, I got in quick to stake my claim," Mr Bekier said.

"This is probably why my case is the first to be heard in Hillbrow.

"I am impressed with the speed the claim has come to court and it hasn't cost me a cent," he added.

Courts and the executive



In this article, the first of two, GERALD GORDON QC and DENNIS DAVIS, Associate Professor in the UCT Law Faculty, outline how since 1948 the whole trend of government policy was towards the widening of executive power at the expense of the judiciary and even of the legislature.

It is claimed by some and denied by others that South Africa is undergoing a process of revolution By this is meant a revolution in government

Whichever view is correct, what is incontrovertible is that since 1948 South Africa has been undergoing a revolution of a different kind — a revolution in the quality of, and attitude of the Government to, the law of the country

As long as the courts are required to serve in the battle for legitimacy which the South African Government is waging with the African National Congress and other opposition groups, so long will the courts be tolerated

Should the battle be lost, the courts will be in danger of losing all their independence and becoming direct instruments of government

We have only to recall the attempt made by the Government in the early '50s when, unable to get the required two-thirds majority to remove the coloured voters from the common roll, they endeavoured to set up a "High Court of Parliament" which was no more than the legislature disguised in judicial garb and to which an appeal would have lain from the Appellate Division's decisions adverse to the Government

Though this attack on the judiciary failed, it did not curb the executive appetite

The tendency to executive expansion is typical of authoritarian regimes, be they communist or fascist Article 112 of the Soviet constitution provides "The judges are independent and shall be subordinate only to the law," but it does not say how this independence is achieved More correctly, they are independent of everything except the supreme party organs

Judicial administration thus becomes a mere aspect of the general policy of the day and no judge dare give a decision against the demands of the regime

In Germany, Hitler empowered the Reich's Minister of Justice "to build up the Nationalist-Socialist administration of justice in accordance with my instructions in so doing he may depart from the existing law"

In 1934 hundreds of men in Germany, suspected by Hitler of an attempted coup, were shot without charge or trial None of the gummen was punished

In the Reichstag shortly afterwards, Hitler said "For 24 hours I constituted myself the Supreme Court of Germany" He was more than that, he was investigating officer, prosecutor, judge, executioner

Under our present state of emergency, declared on July 31 1985 and extended to the Cape on October 26, anyone can be arrested without trial and indefinitely detained on, as Mr Justice Kannemeyer said in a recent Eastern Districts judgment, the action of a "raw recruit" in the army or police

This, of course, sets the power of the courts to protect the rule of law and civil liberties at nought And there is no power to punish the member of a force who does the arresting because the emergency regulations indemnify his actions unless committed in bad faith

The powers of the police are enormous They are investigating officers, prosecutors, judges and executioners, and they make their own laws (regulations)

They can detain a person without charge or trial, keep him locked up for as long as they like and then release him, often without even telling him the reason for his detention, except to quote some section of their regulations

And an example of "laws" made by the police is the absurd decree, unparalleled save behind the Iron Curtain or in Nazi Germany, issued recently by a Divisional Commissioner of Police, Brigadier C Swart, under the emergency regulations

He banned visual protest such as "Troops out of the Townships" T-shirts and car-stickers like "Apartheid is the Emergency", "Equal Education" and "End Conscription", offenders faced a fine of up to R20 000 or imprisonment for 10 years Happily, the Minister withdrew the decree almost immediately

The attitude of the Government towards the courts and the laws they apply is one which is regrettably contagious, and rubs off from the higher ranks on to lesser figures in the hierarchy

Thus when Mr Carter Ebrahim, the Minister of Education and Culture in the House of Representatives, defeated the recent teachers' application in the Supreme Court for pupils and students to write supplementary examinations, he boasted that the decision proved that "I have authority" and "we will put an end to this kind of thing where they (the teachers) believe they have authority to challenge the Minister"

In fact, so far from being "a vindication of policy" (also claimed), the judgment included expressions of "great regret" on the part of the judges at the situation and of "genuine sympathy for innocent victims of the circumstances"

Before 1948, the separation of powers — legislature, executive and judiciary — inherited as it was from the English Act of Settlement of 1707 — was strictly enshrined in the South African constitution, which guaranteed to judges their independence of the executive

This achievement in England was perhaps the greatest triumph over tyranny and it was carried across the Atlantic by the founding fathers of the United States, who were astute enough to ensure that this division of labour was as perfect as possible and to prevent one branch of the system from gathering in its hands all the important prerogatives of sovereignty

But in South Africa, in statute after statute — as to citizenship, group areas, population registration, suppression of communism, Bantu authorities, native law consolidation and so on — administrative powers were widened at the expense of the judicature

It was a tendency seen elsewhere, for example in the England of the '30s where Lord Justice Hewart was provoked into writing his "The New Despotism" But nowhere in the Western community has this leaning to "despotism" been as forceful as in South Africa, and all in the cause of consolidating and promoting apartheid

The culmination of the process was the Public Safety Act of 1953, preparing for the declaration of emergencies in which the three powers could be concentrated as now in the hands of the executive, and particularly of the police

Meanwhile, the onus of proof in criminal trials of political content was shifted in many statutes to the accused to establish his innocence

Then, after many invasions of private rights and civil liberties, there came on to the permanent statute book between the two emergencies, 1960 and 1985, the greatest invasion of them all — detention without charge or trial, first for 90 days, then for 180 days and finally without limit

In step with the legislative changes restricting the functions and powers of the courts, the attitude of many in and around the Government towards the role of the judges and the rule of law became increasingly antagonistic

For example, when in the early '50s the Appellate Division rejected the implementation of a policy of racially separate amenities which were "unequal", many members of the National Party, incensed at this blow to apartheid, condemned the decisions

Thus Mr G F van L Froneman MP (later the Administrator of the Free State) said "If the Appeal Court wanted to be treated with respect, it should give decisions interpreting the sentiments of the people who stood supreme in the country" (House of Assembly Debates Vol 82, col 2044, 20/8/1953)

In other words, the courts are to be the vocal organs of the people, representing and vindicating the policy of the ruling party This is in effect what Mr Ebrahim has stated in 1986

A threat of another kind to the administration of justice should be mentioned It involves the recent giving by the police of lectures to a number of magistrates on certain aspects of the unrest combined with a video presentation

The Judge President of Natal, Mr Justice Milne, appointed three of his judges to examine the material presented at the lectures

They were unanimous in the view that no magistrate who attended the gathering should preside at the trial of a political offence arising out of the unrest or involving the ANC, the UDF or any organisation identified in the lecture notes as being responsible for such alleged offences

They said it was "objectionable" that special arrangements were made for the police to present the material Mr Justice Milne endorsed their views and recommended to Mr Kobie Coetsee, the Minister of Justice, that none of these magistrates should preside at any such trial Nearly two-thirds of the magistrates in the Durban area — about 30 out of 46 — were affected

Here was a clear case of a segment of the executive, the police, making a real attempt to influence the course of justice in the courts To his credit the Minister firmly accepted the recommendation and his Department of Justice on January 15 issued a statement accordingly, adding that Mr Coetsee had "on various occasions" expressed disapproval of briefing of magistrates in circumstances such as occurred in Durban

In their endeavours, therefore, to sway the views of magistrates, the police have been blocked by another segment of the executive This is to the good However, what is bad is that there have been various occasions when the Minister's disapproval of such improper behaviour has been provoked

It is well recognised by legal commentators that judicial proceedings serve to authenticate political action by the State (See Otto Kirchheimer's "Political Justice" 1961) However, at the same time courts can perform the vital role of being a bulwark between the rights of the individual and the excesses of the executive For this reason the courts become the site of struggle

● TOMORROW: The authors examine the role of the South African courts as a bulwark between the executive and civil liberties.

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252

Magistrate 'blundered' says judge

Supreme Court Reporter

A COMMUNITY leader convicted of crimen injuria for insulting a Prince Albert magistrate had his sentence and conviction set aside on appeal in the Supreme Court, Cape Town.

Miss Justice van den Heever said the presiding magistrate in the case, Mr J A Nel, had made "blunders in his reasoning" and showed "a lack of objectivity".

"He accepted that all the others were angels and only the accused was a devil," she said.

In June 1985 Mr Jan Schoeman, 56, of Enslin Street, Prince Albert was fined R90 (or 60 days) and sentenced to a further three months' imprisonment, suspended for three years.

The court found that a letter he sent to the police, in which he alleged that a magistrate, Mr D J Pretorius, was negligent, biased, irresponsible, behaved badly in front of the community and twisted the law, had impaired Mr Pretorius's dignity.

Miss Justice van den Heever said she was surprised that the magistrate claimed his dignity was impaired.

"It was a relatively incoherent letter written by a not well-educated coloured man," she said.

"Someone with a clear conscience, in my opinion, would have to be exceptionally thin-skinned to feel his honour was hurt by a letter like this that was sent privately to the police and not widely published."

Mr Schoeman, who often acted as a spokesman for his community, gave evidence which showed that he was "convinced" there were grounds for his complaint against the magistrate.

However, no attempt was made to investigate these complaints.

Mr Jan Schoeman — sent letter to police.

If Mr Schoeman believed in good faith the allegations in his letter he could not be guilty of crimen injuria.

The decision to allow Mr Pretorius to give evidence in camera "surprised" the judge.

"I know of no justification for this. It appears to be prima facie an irregularity."

Because of Mr Nel's "blunders" in his reasoning the conviction and sentence were set aside.

Mr Acting Justice Griessel concurred.

Defending SA's judicial ramparts

252 STAR 22/2/86

In Part One, yesterday, GERALD GORDON QC and DENNIS DAVIS, Associate Professor in the UCT Law Faculty, outlined how since 1948 the whole trend of government policy was towards the widening of executive power at the expense of the judiciary and even of the legislature.

Today, in the second article, they examine how the courts have over the years, and particularly now under the emergency, faced the threats to their role of protecting the individual against the State. They also assess to what extent that role is grounded upon the country's Roman-Dutch heritage and also upon natural law.

"Hitler," wrote Harvard's Professor Lon Fuller analysing the German judiciary of the 1930s, "did not come to power by a violent revolution. He was chancellor before he became the leader

"The exploitation of legal forms started cautiously and became bolder as power was consolidated The first attacks on the established order were on ramparts which, if they were manned by anyone, were manned by lawyers and judges. These ramparts fell almost without a struggle" (1958 Harvard Law Review 630 at 659.)

The question arises as to whether our judicial ramparts have been defended as tenaciously as they could have been Some South African judges have replied that, given the sovereignty of Parliament, the judges' role is merely to interpret the laws as laid down by Parliament

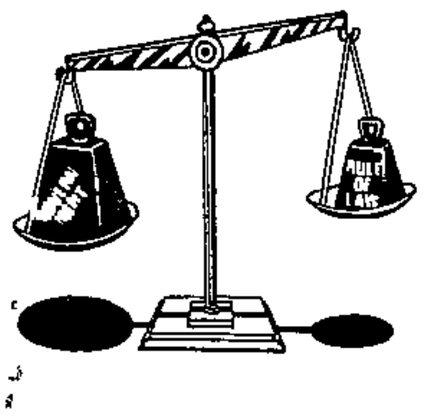
As Judge L C Steyn, a former Chief Justice of South Africa, once said "The task of our courts — I would emphasise their only task — (is) to ascertain the intention of Parliament as expressed in the enactment. It would be an evil day for the administration of justice if our courts should deviate from the well-recognised tradition of giving politics as wide a berth as their work permits. It is not our function to write a codicil to the will of Parliament" (1967 Tydskrif 101 at 106)

In analysing the experience of the German judiciary during the Nazi reign, the eminent German jurist, Professor Gustav Radbruch, considered that the argument that the only task of the courts was to interpret the dictates of Parliament, implied that

"Law prevails because it is law, and it is law if in most cases it is backed by power which can make it prevail This concept of law and its applicability (we call it the positivistic doctrine) rendered both lawyers and the people defenceless against the most capricious, brutal and criminal statutes" (1973 South African Law Journal 234 at 244)

In South Africa there is a powerful argument against the adoption of Judge Steyn's approach The oath a judge takes on accepting his appointment is that he will "administer justice to all persons alike without fear, favour or prejudice, and, as the circumstances of any particular case may require, in accordance with the law and customs of South Africa"

The "law and customs" clearly include the rule of law, the reasonable control of authority and



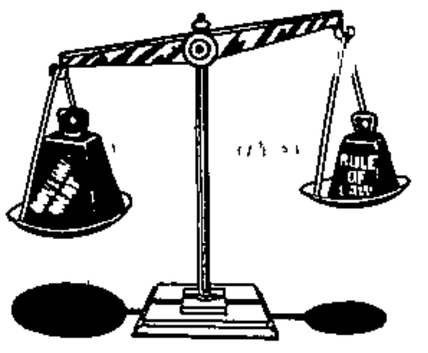
the protection of individual rights and liberties, all of which are principles of the Roman-Dutch law (Ben Beinart, 1981 Acta Juridica 62-3.)

A passive judicial approach to the question of individual rights particularly in cases of doubt, is even more difficult to understand when the preamble to the Republic of South Africa Constitution Act of 1983 is considered

The preamble states, inter alia, that our goal is "to uphold Christian values and civilised norms and the equality of all under the law and to respect and protect the human dignity, life, liberty and property of all in our midst . ."

It can, for example, hardly be said that detention without charge or trial is "a Christian value" or "a civilised norm". And as for the right to be heard before one is detained without trial — the *audi alteram partem* rule — it was said in the English courts in 1723 (The King v The University of Cambridge)

"The laws of God and man both give the party an opportunity to make his defence, if he has any Even God Himself did not pass sentence upon Adam before he was called upon to make his defence"



In cases of doubt it seems incumbent upon the judiciary to interpret legislation and regulations in accordance with the jurisprudential principles of the judge's oath and the preamble to the Constitution

Again there is the question to what degree natural law is part of our inherent system

In his "History of Roman-Dutch Law", Judge J W Wessels, Chief Justice of the Union in the '20s, said "We owe to the theory of natural law far more than is usually imagined To understand the scientific development of the Roman-Dutch law the student should never lose sight of the fact that natural law or the law of nature was the cornerstone of the whole fabric"

It is natural law which postulates that certain standards of human behaviour are unbreakable no matter what the statute law may lay down

Natural law applies in most civilised countries as it did in Germany before Hitler came to power

"The freedom of a State to decide what is law and what is injustice is not unlimited," said a German court of appeal in 1952 in finding a number of people guilty of murdering Jews by aiding their transportation to the notorious death camps

The court rejected their plea that they were justified in acting in terms of the Nazi "laws", however brutal "There is," the court said, "a certain fundamental sphere in law which cannot, according to general legal conceptions, be infringed by any statute or any official act"

What of the South African judicial record, particularly during the past few years?

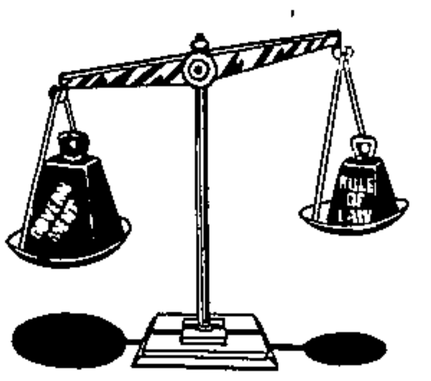
The most significant change in judicial attitude occurred in the Komani and Rikhoto cases where the Appellate Division found in favour of the rights of migrant workers to remain permanently in urban areas

Similarly there have been changes in the courts' approach to labour relations The recent Transvaal decision concerning the Marievale Mines dispute in which Mr Justice R J Goldstone upheld the order of an Industrial Court that hundreds of dismissed black miners who had gone on a legal strike, be reinstated, is a case in point.

In the area of civil liberties however, there does not appear to have been any major shift in judicial thinking until 1985

Last year the Natal Supreme Court was prominent in two cases In the Maritzburg treason trial the role of the presiding judge, Mr Justice Milne, first in cutting down upon the discretion of the Attorney-General to refuse bail, and later in dealing with the State's case with the greatest measure of critical circumspection, proved to be vital in the collapse of the tenuous State case against 12 United Democratic Front leaders

The courts generally appear to have been reluctant to exercise any form of judicial control over police power of detention until the decision



in the Natal case of Kearney and Other v Minister of Law and Order

Mr Justice Leon there held that the court is entitled to examine whether a police officer has a factual basis for his belief that a person has committed or intends to commit certain offences or is withholding information in relation to such offences On the strength of this finding a number of Natal detainees were released

In a similar approach, the Eastern Cape Supreme Court held that the Minister of Law and Order cannot order an emergency detainee to be detained for longer than 14 days without affording the detainee a right to be heard — in other words the opportunity to make representations as to why he should not be detained further

In keeping with its previous record of using legislation to overrule judicial decisions, the Government almost immediately amended the emergency regulations to exclude entirely the right of a detainee to be heard

Following on this Mr Justice Zietsman, in another case in the Eastern Cape courts, held that the amending regulations were valid and that detainees have no right to be heard. More recently the Transvaal Supreme Court adopted the same approach

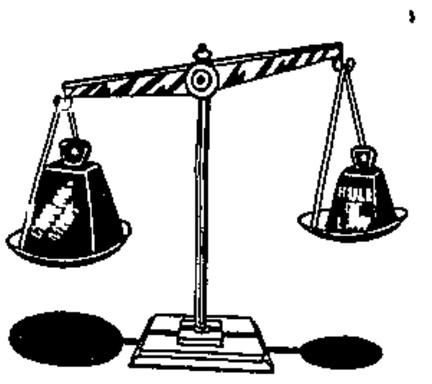
The Cape Supreme Court has heard six cases arising out of the emergency (since October 26 1985) It has found for the State in five and against it in one

Of the five perhaps the case of Omar and Others v Minister of Law and Order and Others is the most important The point at issue was similar to that in the Eastern Province and Transvaal courts just mentioned

The Cape court was asked to order the release of detainees held in terms of the emergency regulations because the Minister had not given them an opportunity of being heard The essence of the case was whether the State President is empowered by regulation to exclude the right to be heard when the enabling statute, the Public Safety Act, is silent on the issue

Mr Justice Vivier, delivering the majority judgment, said that the right to be heard was a fundamental right in our law but that it could be excluded by the State President, as the Public Safety Act empowered him to make any regulation which in his opinion was necessary to restore law and order

By contrast, Mr Justice Friedman



could find no clear indication in the enabling statute that this fundamental procedural right had been excluded and accordingly held that the State President had acted *ultra vires* in attempting to abolish this right by regulation

These judgments show all too clearly that in many cases where the law is doubtful or ambiguous, judges do have what has been termed "a choice of law" In other words, the courts are not a pintable or slot machine The records of the Appellate Division are packed with divided judgments

Mr Justice Vivier and Mr Justice Munnik, the Judge President who concurred with him, decided against the detainees' right to be heard and to be released if they were deprived of that right Mr Justice Friedman decided in favour of detainees having this right

There is in South Africa no Bill of Rights, no set of unbreakable principles guaranteed by statutes — other than the very general statement in the preamble to the 1983 Constitution referred to above

In America the Federal Supreme Court has from the outset had full power to test whether any law passed by the legislature was constitutional or not It is conceded, therefore, that by contrast the South African courts labour under distinct restrictions

However, as some of the above judgments have shown, there have been tangible moves to protect civil liberties on the basis of our common law and upon the principles of natural justice which, as we have seen, is a cornerstone of our system

This protection by the courts carries a major hope for freedom in the battle against the excesses of police action which has been so evident in the horrible months of the recent "unrest"

Will that hope be fulfilled?

Botha to cut economic red tape

BUSDAY 21/2/86

252

CHRIS CAIRNCROSS

STATE President P W Botha is to be given wider powers enabling him to bypass Parliament to suspend laws and cut through red tape impacting on business and impeding economic development in SA

In terms of the Temporary Removal of Restrictions on Economic Activities Bill tabled in the House of Assembly yesterday, Botha will, by proclamation, be able to suspend any legislation which in his opinion impedes economic progress or competition in the field of commerce.

These extraordinary powers are to be granted for three years, but may be extended by Act of Parliament if the need exists

The primary purpose of this new draft legislation is to facilitate and speed up the participation of the small entrepreneur and the informal sector in the economy

Areas over which Botha may exercise this executive power include:

☐ Requirements for the registration and licensing of businesses, undertakings, industries, trades and occupations, and the employment and use of land and premises,

☐ Registration of employees;

☐ Payment of contributions to the Unemployment Insurance Fund and the Workmen's Compensation Fund;

☐ Registration of and control over factories,

☐ Regulation of conditions of service and working hours and the days on which and times when business may be done,

☐ Supervision of and use of machines;

☐ Protection of the health and safety of employees;

☐ Health requirements with which premises and buildings on or in which activities are carried out;

☐ The prohibition or regulation of, or restriction on, the erection of dwellings, buildings and other structures,

☐ The conveyance of persons and goods within, from and to a specific area;

☐ The establishment of towns and town planning.

SA may get night court system

21/5/18 STAR (252)

PARLIAMENT — After the success of small claims courts, the Government was considering starting night courts for small offences, Mr Kobie Coetsee, Minister of Justice, said yesterday

Replying to the Second Reading debate in the House on Justices of the Peace and Commissioners of Oath Amendment Bill, he said normal magistrates' courts were "inundated and beleaguered" — and small trials could be decided by night courts

He said he also had in mind traffic offences for trial at these courts which could well be presided over by justices of the peace (JPs)

The Minister said exclusion of Members of Parliament from holding JP appointments was necessary as the division between political power and judiciary must not only exist but seen to exist

JPs would be appointed in all districts, he said — Sapa

CITY P. 23/2/86

252

Claims against Ministers 'too hot' for public

By MARTIN NTSOELENGOE

AFFIDAVITS by Munsieville and Kagiso residents against the Law and Order Minister and Defence Minister were temporarily shelved by the Rand Supreme Court this week – because they are "too hot to handle".

In an unusual move, lawyers for both the residents and the Ministers agreed the affidavits should not be made public until both ministers had had time to study them.

The papers will only be made public on March 28.

This ruling is believed to be the first of its kind in South Africa's legal history Once a matter is called into an open court, papers usually become public documents.

But in this case the allegations against Louis le Grange and Magnus Malan were of such a nature that all parties agreed it would be unfair if they were published before both Ministers had the opportunity to study and reply to the affidavits

Said the judge "This is a most unusual procedure and one not lightly implemented".

A special application was brought before Judge RJ Goldstone by three church leaders and the Krugersdorp Residents' Organisation chairman on allegations concerning the conduct of cops and soldiers in the three Krugersdorp townships.

The applicants were KRO chairman Dikeme Joseph Makgotlo, Congregationalist Reverend Bethuel Mongwaketsi, Methodist Reverend Jacob Sefatse and Catholic Father Samson Kataka.

The papers were served on the Law and Order Minister and Defence Minister on Thursday last week, so they had no time to look into the allegations of misconduct

In a statement read in court this week, Law and Order Minister Le Grange said that although he did not admit any of the allegations, he viewed them in a serious light

He undertook to instruct senior police officers unconnected to the West Rand to investigate the claims.

He also undertook to pass instructions to all policemen in the West Rand prohibiting them from committing unlawful acts.

In a similar statement, the Defence Minister said it was SADF policy to treat the public with respect and not to "overdo things". He said force members were expected to act with proper discipline and lawfully, with the minimum force essential to prevent and combat unrest.

Dennis Kuny, SC, assisted by JHA Munnick represented the three churchmen and the KRO chairman PA Hattingh, SC, and Bruce Berman appeared for the Law and Order Minister, and Jurie Wessels assisted by John Coetzee for the Defence Minister.

Detention without trial

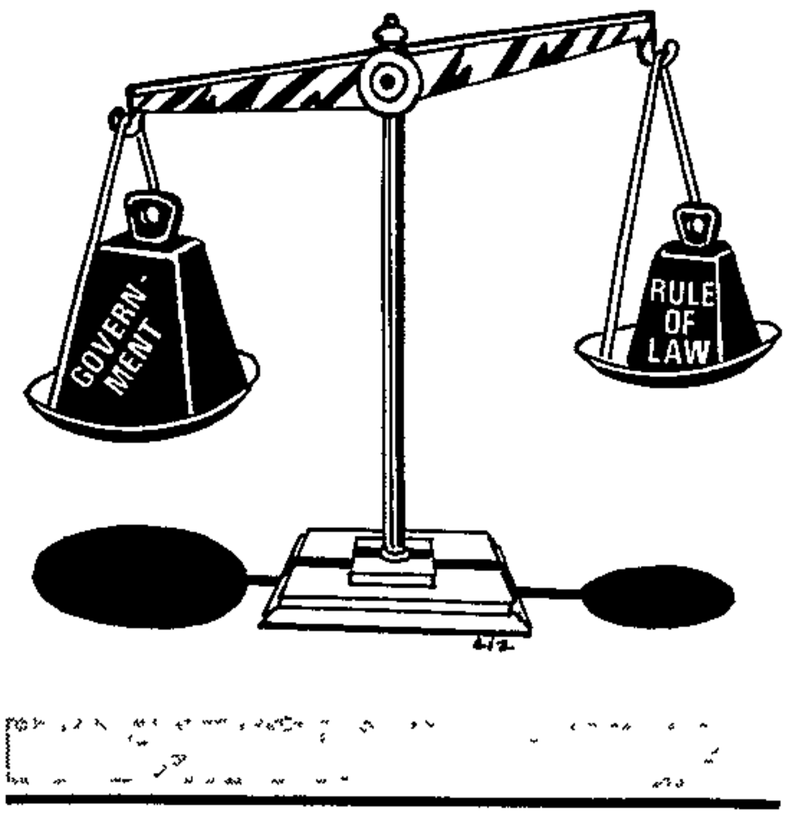
STAR 26/2/86

252

It is estimated that from 1963 — when Minister of Justice Mr John Vorster placed detention without trial on the statute books with the "90-days detention Act" — to the end of last year, between 43 500 and 48 500 people were held for various periods without trial.

These figures, based on research by the Institute of Race Relations and the Detainees' Parents Support Committee (DPSC), are incomplete as they do not include large numbers of detainees in the so-called homelands. The DPSC calculates that in 1985 10 998 people were detained without trial under security legislation and the emergency regulations, 629 of whom are still being held

In this, the first of two articles on detention without trial, FIONA MACLEOD looks at the origins of this controversial system



law and human rights are upheld in South Africa prick their fingers time and again on the thorny issue of detention without trial

Among the most criticised features of South African society, both locally and internationally, detention without trial took root, ironically, at the hands of a man who was himself detained without trial for nearly three months

He spent 42 days in solitary confinement and was interned for 13½ months as a subversive by the South African Government

Legislation aimed at preserving State security by detaining its suspected enemies — which eventually evolved into the present complex, comprehensive and controversial Internal Security Act — was first placed on the statute books by Mr John Vorster

As Minister of Justice, Mr Vorster introduced, in April 1963, the General Law Amendment Act, known as the "90-days Act"

This legislation was passed in reaction to the tabling of the report of the Snyman Commission of Inquiry, which found the root cause of the Paarl riots of 1962 had been the activities of Poqo, the military wing of the banned Pan Africanist Congress (PAC).

Poqo planned to overthrow the Government by revolutionary means in 1963 and to create a socialist democratic state in which whites would have no political rights, the report said

Empowered

The "90-days Act" empowered a senior police officer to arrest without warrant and detain any person who he suspected, "upon reasonable grounds", of having committed, or having information about the commission of, sabotage or offences under the Suppression of Communism or Unlawful Organisations Acts.

Detainees were held incommunicado for the purpose of interrogation until such time as the Commissioner of Police was satisfied they had answered all questions satisfactorily, or for "90 days on any particular occasion"

They were not allowed to see legal advisers and no court of law had the power to order their release.

It was under this Act that African National Congress leader Walter Sisulu, Indian Congress leader A M Kathrada, L.G Bernstein of the Congress of Democrats, Govan Mbeki, Dennis Goldberg and 12 others were arrested in July 1963 Their detention culminated in the Rivonia sabotage trial almost four months later

Mr Vorster told the *Sunday Tribune* two days after the arrest "The happenings of the past few days have vindicated the 90-day detention clause . people must realise that the communists are playing for very high stakes indeed These are not men who play according to the rules To try to combat them with conventional methods is just a waste of time"

It was also under this Act that advocate Bram Fischer, chairman of the Communist Party in South Africa, was detained for three days in July 1964 He was later jailed for life for offences under the Suppression of Communism Act

Interference

The 1963 Act provided a further interference with personal liberty — the so-called "Sobukwe clause", which authorised the continued imprisonment without trial of a person who had finished serving a sentence for a political offence, where the Minister of Justice was satisfied that the person was "likely to advocate, defend or encourage the achievement of any of the objects of communism" on his release

This provision was urgently needed because Robert Sobukwe, president of the PAC, was soon to complete a three-year sentence arising out of his participation in events leading to the Sharpeville shootings in 1960

The "Sobukwe clause" did not become a permanent part of the law, but required annual renewal by resolution of both Houses of Parliament For the next five years the provision was renewed and each year Sobukwe's continued detention was ordered by the Minister of Justice

In 1969 it was allowed to lapse and Sobukwe was released from Robben Island

On January 11 1965, the 90-day detention clause was withdrawn Mr Vorster told Parliament on January 28 that 1 095 people had been detained under the provision during the 18 months in which it had been in operation

Convicted

Of these, 575 were charged, 272 of whom had been convicted, 210 discharged and 93 were on trial or awaiting trial Mr Vorster conceded that 26 people had been held under the 90-day clause for offences not connected with either sabotage or subversion

Head of the Centre for Applied Legal Studies Professor John Dugard notes in his book "Human Rights and the South African Legal Order" "There were serious allegations of assaults upon detainees during interrogation and three detainees died violently, but the courts showed a reluctance to question the methods of interrogation employed by the Security Police and moreover held that detainees might be rearrested immediately on release and held for subsequent periods of 90 days"

In the last days of the 1965 parliamentary session, Mr Vorster introduced a shock measure — the Criminal Procedure Amendment Bill, which authorised an Attorney-General to order the arrest and detention of any witness likely to give material evidence for the State in any criminal proceedings in respect of certain political and common law offences, whenever he was of the opinion that such a person might be intimidated or abscond, or whenever he deemed it "to be in the interest of such person or of the administration of justice"

This law, known as the "180-day detention law", authorised detention for up to six months and no person, other than a State official, was permitted access to a detainee No court had jurisdiction to release a 180-day detainee

In 1976 the 180-day detention provision in respect of political crimes was transferred from the Criminal Procedure Act to the Internal Security Act It still exists today as section 31 of the Internal Security Act

"The 180-day detention law formally differs from the 90-day law in that it does not expressly authorise police interrogation of the detainee and its declared purpose is simply the detention of witnesses," says Professor Dugard

Questioned

"In practice, however these differences are of little relevance The detainee may be questioned by the police and not infrequently he will appear in court as an accused person rather than as a State witness

"Although the courts have on occasions castigated the use of third degree methods of interrogation, they have shown little inclination to question the exercise of the Attorney-General's discretion to arrest.

"The Terrorism Act of 1967, which permits indefinite detention without trial, largely replaced the 180 day law It was, however, widely used between 1965 and 1967, during which period almost 400 persons were held under it Less than half this number were called as witnesses in criminal prosecutions"

In his book "Vorster — the man", John D'Oliveira records comments Mr Vorster made about his own detention without trial by the Smuts Government when he was Chief General of the Ossewa Brandwag "People talk about the terrors of solitary confinement I know all about it and I knew I would last the course. It is all a matter of guilty conscience

"You must take yourself in hand immediately because, it's very funny you know, you can sit in a room like this all day without bothering to go out But let them lock you into even this large room and immediately you want to go out.

"So you can understand how you feel when you are locked into a tiny cell only 10 feet by 12 feet Understand how one feels when they slam that iron door shut."

D'Oliveira also records a discussion he had about detention without trial with Mr Vorster, who was detained and interned between September 1942 and February 1944

D'Oliveira "Having been detained and interned without trial, how did you feel about having to do it to other people?"

Responsibility

Vorster "If you have got to do it, do it, but don't apologise for doing it. In all my political carreer, you have never heard me apologising or trying to shy away from responsibility"

"Are you saying that if the government of the day identifies a man as a threat to the State, then it is its duty to lock that man up even without the benefit of a trial?"

"If I see a man or a woman as a threat to the State and if there are valid reasons for not bringing that person to trial, then I must take them out of circulation one way or another That is my responsibility as Minister of Justice"

"But what if you made a mistake?"

" to this day I do not know that I made a mistake I always made pretty sure before we acted against anybody Right from the word go, I told my chaps that I did not want them to treat people they were holding as we were treated ourselves Whenever it happened that people were not treated properly — and it did happen in a few cases — I never hesitated to take action"

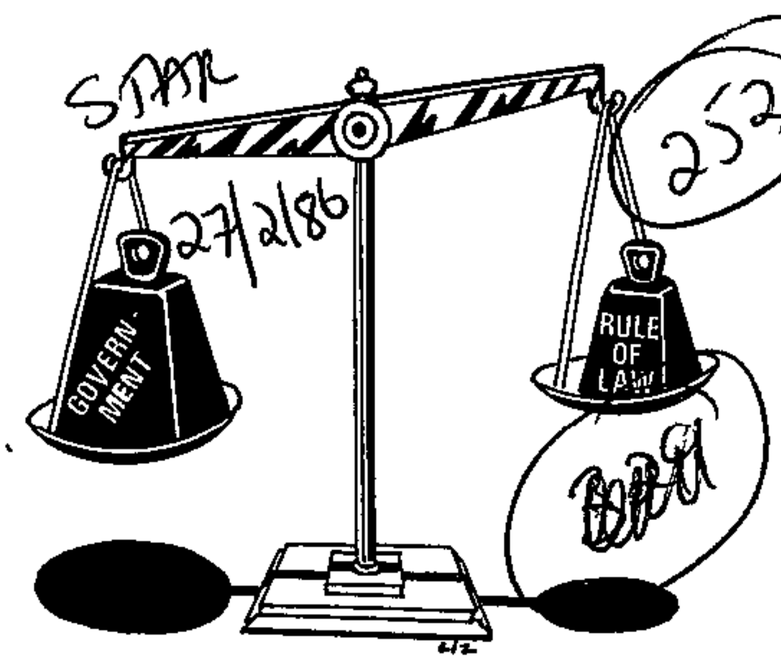
"Why did you ask Parliament for so much power in regard to detention without trial?"

Revolution

"I identified the threat and I took measures accordingly Look, there was a communist plot to overthrow the government and take South Africa by revolution and it was my job to stop it It was my job to break the subversive machine in South Africa and, if the police did not have the powers they needed to do the job, then it was my duty to give them those powers I promised them that I would not send them into the fight against communism empty-handed"

● TOMORROW: A look at detention without trial under emergency regulations, the Terrorism Act and the Internal Security Act

Emergency powers



In this, the second of two articles on detention without trial, FIONA MACLEOD looks at the origins of this controversial system in South Africa.

Ten years before Mr John Vorster tabled security legislation providing for the "90-days detention Act", Parliament passed a law which allowed for detention without trial under a state of emergency

In 1953, in order to put an end to a passive resistance campaign promoted by the African National Congress, the Public Safety Act was passed.

This statute empowers the Government to declare a state of emergency when it considers public safety to be threatened and to issue such emergency regulations as it considers "necessary or expedient for providing for the safety of the public"

The threatened use of these powers was sufficient to bring the defiance campaign to an end and it was not until March 1960 that a state of emergency was declared under the Public Safety Act. After the police shooting at Sharpeville of demonstrators against the carrying of passes, the Government issued regulations which, among others, permitted arrest without warrant and detention without trial

This emergency continued for 156 days, during which 11 503 people were held

It was under this same Act that the Government declared a state of emergency in 36 magisterial districts on July 21 1985 It is still effective in most of those areas

Rendered powerless

The Detainees' Parents Support Committee (DPSC) has calculated that there were 7 361 emergency detainees in 1985 and 403 between January 1 and February 6 this year

In "Human Rights and the South African Legal Order", the head of the Centre for Applied Legal Studies, Professor John Dugard, says "In exercising its emergency powers the Government is given free hand the courts are rendered powerless

"There is no commission to which an aggrieved detainee can appeal, such as one finds in the emergency laws of other countries"

Shortly after the national emergency ended in August 1960, a state of emergency was declared in the Transkei under a number of old Cape statutes

Regulations, which have been retained by the independent Transkei Government, empower the police to detain indefinitely, for the purpose of interrogation, persons suspected of having committed any offence and prohibit access to legal advisers

Several laws providing for detention without trial were passed between the end of the 1960 emergency and 1982, when the Internal Security Act consolidated much security legislation.

The most Draconian was section 6 of the Terrorism Act of 1967, which by providing for indefinite detention without trial coupled with interrogation in solitary confinement, placed few restraints on the powers of the Security Police

The jurisdiction of the courts to order the release of a detainee or to pronounce upon the validity of any action taken in terms of the section was expressly excluded

The justification advanced for this legislation was given by the then Minister of Justice when he said in Parliament "One must form an opinion of this measure against the entire background of the domestic onslaughts which have been made against law and order in our country since 1960

Assurances accepted

"These terrorists who are returning now are to a great extent the fruits of the undermining activities of the ANC, PAC, Swapo and the communists It is for the most part their so-called trained freedom fighters who are now returning"

Says Professor Dugard: "By 1967 the white public had become accustomed to detention without trial as a result of the gradual introduction of this institution Moreover, it had come to accept the assurances of the Government that such measures were necessary for the preservation of existing order

"Consequently, there was little opposition to the Act. In Parliament itself, Mrs Helen Suzman MP alone voted against the Bill at the second reading"

No one was allowed access to Terrorism Act detainees except the Minister of Justice or an officer of the State acting in his official capacity. If circumstances permitted, a detainee could be visited in private by a magistrate at least once a fortnight

In 1983 Minister of Law and Order Mr Louis le Grange revealed that 4 140 people had been detained under section 6 of the Terrorism Act before it was replaced by section 29(1) of the Internal Security Act in 1982

"The net effect of the Terrorism Act was to empower the police to conduct in secret pre-trial interrogations of any person who they suspected had any involvement, no matter how remote, with the widely defined crime of terrorism No judicial control existed at all and the detainees were virtually at the mercy of their captors," says Professor Harold Rudolph in his book, "Security, Terrorism and Torture"

The 1982 Internal Security Act, which followed the report of the Rabie Commission of Inquiry into internal security and which is still operative today, provided certain safeguards against the abuse of detainees

Administrative decision

However, critics point out that the decision to detain and interrogate remains an administrative decision subject to no real form of judicial control

There is also no independent right of access to detainees and tales of abuse, as well as deaths, in detention continue

The Act contains four sections under which the authorities are given the power to detain individuals

- Section 28(1) provides for preventive detention The Minister of Law and Order is empowered to detain an individual, by means of a renewable written notice, in order to prevent the commission of offences considered by him to endanger the safety of the state
- Under section 29(1) any police officer of the rank of lieutenant-colonel and up may order the detention of a person for an indefinite period for the purposes of interrogation
- Under section 31 an Attorney-General may order a person to be held as a potential witness in a trial, the limit being until the trial ends, or for six months if the trial has not started within those six months
- Section 50 authorises any policeman of the rank of warrant-officer and up to detain a person for 48 hours This period is extendable to 14 days upon application to a magistrate

The purpose of this final provision is described by the Act as "action to combat state of unrest".

SAVE THE SIX

By STAN MHLONGO

ONCE again, Sharpeville – the dusty Vaal township that has known so much sorrow over the past three decades is mourning.

But this time, the township that has seen so many of its young and old folk die at the hands of South Africa's 'security' forces, will hold no funerals to bury its dead

Rather, grief-stricken residents gather in little groups every night to pray for six of their young people, who have a date with the hangman The cold and chilly atmosphere that pervades the air is like that of a funeral

Sharpeville's residents are united in their grief

Unlike hundreds of other young people throughout the country who have been buried as martyrs because of their opposition to apartheid, the bodies of the six will become the property of the State after the hangings

But already, Sharpeville's youth remember them as heroes

The six – Theresa Ramashamola, 24, Reid Mokoena, 22, Duma Khumalo, 26, Francis Mokgesi, 28, Oupa Diniso, 30 and Reginald Selatsa, 30, were recently sentenced to death for killing former Lekoa town councillor Khuzwayo Jacob Dlamini

Ramashamola is believed to be the first woman in South Africa to be sentenced to death for an act which had serious political undertones

The people of Sharpeville are hoping for a miraculous intervention to save their comrades from the hangman

And throughout the country, people are praying daily that an appeal against the death sentence imposed on the six succeeds

The people of Sharpeville – irrespective of political affiliation – have united in prayer and in their efforts to save the six

Said one Sharpeville activist "You find yourself a victim of apartheid despite your political affiliation – whether you support Azapo or the UDF, or the ANC or PAC

"So you must understand that the comrades found themselves accused of murdering a councillor because they just could not stomach the humiliation and suffering under the Government's apartheid laws They could not stomach apartheid"

Dispute over Moutse area taken to Supreme Court

PARLIAMENT — The dispute over the incorporation of the Moutse area into kwaNdebele at the beginning of this year following its earlier excision from Lebowa would not come before the House as the matter had been taken to the Supreme Court, the Speaker, Mr Johann Greeff ruled yesterday

Mrs Helen Suzman (PFP, Houghton) has had a private member's motion on the Order Paper for a number of weeks The motion would give two former Moutse members of the Lebowa Legislative Assembly leave to be heard at the Bar of the House to tell of their disapproval of the disputed area's incorporation into kwaNdebele.

The Speaker said he had been notified that the Lebowa Government had applied to the Supreme Court to have the proclamation incorporatingMoutse into kwaNdebele declared null and void

"I accordingly rule that as (the proclamation) is now going to be adjudicated upon by a court of law, the matter is sub judice and the honuorable Member for Houghton's notice of motion ... cannot be considered by Parliament before the court has pronounced judgment."

Mr Dave Dalling (PFP, Sandton) asked if he could ask him a question on the matter.

Mr Greeff said he could see him in his chambers later — Sapa.

De Jonge sent charge sheet

PARLIAMENT — Mr Klaas de Jonge the Dutch fugitive wanted on terrorism charges, was supplied with a charge sheet through diplomatic channels, the Minister of Foreign Affairs, Mr Pik Botha, said yesterday

Replying to a question from Mr Frank le Roux (CP, Brakpan), Mr Botha said R14 903 had been spent on travelling and subsistence expenses for officials negotiating with the Dutch Government over Mr de Jonge, who has taken refuge in his country's Pretoria embassy

"The Netherlands Government was informed that a charge sheet would be furnished to Mr de Jonge through the normal diplomatic channels," he said — Sapa

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Amnesty drive against SA 'abuse'

STAR 3/3/86 p 252

LONDON — Amnesty International has launched a new worldwide campaign to end what it says are increasing human-rights abuses in South Africa and published a letter to the State President, Mr P W Botha, spelling out steps needed to protect basic rights.

The London-based organisation has often addressed Mr Botha and his Government about the detention without trial of political prisoners, procedures in trials of political prisoners, alleged torture and the death penalty in South Africa.

"However, abuses of human rights continue daily and have increased markedly over the past year," Amnesty said in the letter.

In an accompanying report, Amnesty said there had been more than 800 deaths associated with heightened unrest related to apartheid between September 1984 and November 1985 and several thousand people were detained without trial for political reasons.

The group repeated its often-stated concern about reports of widespread and systematic torture of political detainees, at least 12 of whom were reported to have died in police custody between January 1981 and November 1985.

Amnesty said that more than 100 people were hanged in South Africa every year. Most of the executions were for murder, but the death penalty could be used for other serious crimes.

The group said that of 115 people hanged in Pretoria Prison in 1984, all but three were Africans or coloureds.

"A disproportionate number of Africans and coloureds are executed when compared with the population ratio between these groups and the white and Asian minorities," it said.

Measures needed to protect basic human rights included the release of people imprisoned only because of their beliefs or origins, action to stop arbitrary detention and the removal of immunity from prosecution which Amnesty said protected police accused of torture.

The organisation, with 500 000 members, said it would send letters expressing concern from around the world to South African officials, community leaders, company executives and members of church bodies and trade unions. — Sapa-Reuter.

oycott
6 600 meal

UDF campaign to save six

THE United Democratic Front has launched a campain to save the "Sharpeville Six" from the hangman.

The six were found guilty in the Pretoria Supreme Court last December of murdering Lekoa's deputy mayor, Kuzwayo Jacob Dlamini, during the Vaal rent protest in 1984.

Dlamini, his house and his car were burned on December 3, 1984 after widespread rioting in the area over proposed rent increases.

Ever since they were sentenced, their families have been living in hope, awaiting an appeal lodged by their attorney.

The six under sentence of death are:

- Mojalefa Reginald Sefatsa, 30, married with one child, a self-employed fruit and vegetable vendor.
- Moses Oupa Diniso, 30, married with two children, an inspector at a steel factory before his arrest.
- Reid Malebo Mokoena, 22, is unmarried but has a son aged three.
- Theresa Ramashamola, 24, unmarried, was employed at a roadhouse at the time of her arrest.
- Joshua Duma Kumalo, 26. He is unmarried, with a six-year-old son.
- Francis Manentsa Mokhesi, 28, married, with a seven-year-old daughter, was

By SEFAKO NYAKA

employed as a window-dresser in Vanderbijlpark. He is well-known in the township as a first division soccer player of Vaal Professionals.

Two of their co-accused Motseki Christian Mokubung, 23, and Gideon Motsiri Mokone, 21, were convicted of public violence and subversion and were each sentenced to an effective eight years' imprisonment.

The UDF and the Vaal branch of the Detainees Support Committee hope to bring the case to the attention of the public through prayer services and the media. The first prayer meetings was held at Khotso House last Friday.

Ramashamola is the first woman sentenced to hang for an unrest-related crime.

She told acting Justice W F Human that while she was part of the march she was hit on the head by a rubber bullet and had then gone to a nearby house for treatment.

The judge, however, ruled that although she had been injured she had continued in the attack.

Ramashamola was also found to have slapped a woman who screamed that Dlamini be left alone and that the fire be put out.

The judge said that showed Ramashamola identified herself with the crowd's intention to kill Dlamini.

Detainee action: Bop minister in contempt of court?

By Jo-Anne Collinge

Lawyers are expected to ask the Bophuthatswana Supreme Court today to declare the homeland's Minister of Law and Order to be in contempt of court over the alleged failure of police to comply with an order authorising access to three men in custody

In an urgent action brought at the weekend in Mmabatho, the Metal and Allied Workers' Union (Mawu) and Johannesburg attorney Mr Peter Harris secured a *habeas corpus* order authorising them to see Mawu member Mr Jeremiah Moropa and schoolboys Edwin Matseke (17) and Lazarus Mandlazi (18) who have been held at GaRankuwa police station since Thursday

They are to return to court today alleging the court order was contravened yesterday when lawyers were prevented from seeing Mr Moropa

The contempt claim will be made as part of a major court action — spearheaded by the Catholic Archbishop of Pretoria, Bishop George Daniels — for an interdict restraining the GaRankuwa police from unlawfully detaining or assaulting residents

On Saturday, Mr Harris stated in papers before the court there were strong indications the arrest of Mr Moropa was due to his assistance in preparing the main court application

ASSAULT ALLEGATIONS

Mr Moropa, the court was told, had played a key role in collecting the necessary evidence for this application and particular protection was sought for members of his union

The two youths detained were applicants in the main court action Their attorney told the court "I have a special responsibility for the two youths who feared reprisals I assured them they had nothing to fear and it was proper to launch such an application"

It was claimed in papers that allegations of assault in custody were pervasive in GaRankuwa and that the two schoolboys in question had already been subjected to beatings by the police

Suspicion of ill-treatment of the three had been aroused by the fact that police at GaRankuwa had denied that they were in custody

However, as Mr Harris and an advocate prepared to leave the police station on Friday after receiving this information, they saw Edwin Matseke and Lazarus Mandlazi being led through the charge office by a policeman, the court was told

Lazarus Mandlazi's eye was allegedly swollen and bruised.

come of the Venda Government·

(i) Income Tax:
An estimated amount of R6 665 000

(ii) An estimated amount for the payment of Venda's share in the Customs Union Revenue Pool R42 105 000.

(iii) Rand Monetary Area.
Estimated transfer of R1 484 560.

(2) (a) No Loans in terms of project aid agreements are included in the amount mentioned under (1)(a).

(i) and (ii) Fall away

(b) Yes.

(i) One grant for an action program for the creation of job opportunities

(ii) R4 000 000

(3) (a) and (b) The final budgetary allocation for the 1986-87 financial year has not yet been finalised.

Investigation into statistics on offences

HANSARD Q COL 399.
35. Mr P G SOAL asked the Minister of Justice: 10/3/86

(1) Whether, with reference to his reply to Question No 107 on 26 February 1985, the investigation by his Department into the keeping of statistics on offences in general has been completed; if not, (a) why not and (b) when is it anticipated that it will be completed; if so, (i) who was responsible for carrying out this investigation and (ii) what were the findings;

(2) whether his Department keeps statistics on court cases; if not, why not; if so, on what basis,

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

The MINISTER OF JUSTICE:

(1) Yes.

(a) and (b) Fall away

(i) Departmental officials in conjunction with the Central Statistical Services and departments with source material at their disposal

(ii) The result of the investigation is that the system now operates as follows:

Statistical information with regard to offences, furnished by the South African Police, the South African Railway Police and the Military Police, is kept and processed by the Central Statistical Services. These statistics are processed in accordance with a code list which is divided into two parts The first part of the code list deals with serious offences. Only statistics dealing with the first part (the serious offences) are processed, as it is not justified economically to keep statistics of the less serious offences. A report containing statistics of offences for the period 1 July to 30 June is released annually by the Central Statistical Services. Several amendments have been made to the code list for serious offences and the new list will come into operation on 1 July 1986.

(2) Yes The following statistics are collected annually for the period 1 July to 30 June in respect of criminal court cases in magistrate's courts:

Number of criminal cases completed with evidence.

Number of criminal cases completed without evidence
Number of cases completed in terms of section 112(1)(b) of the Criminal Procedure Act, 1977 (Act 51 of 1977).
Number of cases completed in terms of Chapter 19 of the Criminal Procedure Act, 1977
Number of cases completed in terms of Chapter 19(A) of the Criminal Procedure Act, 1977
Total number of criminal cases recorded

The Registrars also supply particulars of the number of criminal cases recorded in the Supreme Court of South Africa and the number of appeals and reviews for the relevant period.

The honourable member is also referred to the Department's Annual Report and the statistics given therein

(3) No statement is called for.

Detainees

HANSARD 10/3/86
48 Mrs H SUZMAN asked the Minister of Justice:
Q COL 401

(a) How many persons were detained in 1985 under section 31(1) of the Internal Security Act, No 74 of 1982, (b) for how long was each such person detained and (c) how many such persons are still being detained?

The MINISTER OF JUSTICE.

(a) 41 persons

(b) 1 person—3 January 1985 to date;
1 person—8 January 1985 until 6 Fe bruary 1985;
1 person—18 January 1985 until 15 August 1985,
1 person—31 January 1985 to date;
1 person—13 February 1985 until 19 July 1985;
1 person—14 February 1985 until 26 July 1985,
1 person—18 February 1985 until 13 June 1985,
1 person—21 February 1985 until 30 August 1985;
2 persons—2 May 1985 until 16 July 1985,
1 person—22 May 1985 until 16 July 1985,
1 person—28 May 1985 until 10 December 1985,
1 person—5 June 1985 until 4 November 1985,
6 persons—10 June 1985 until 30 October 1985,
6 persons—10 June 1985 until 31 October 1985,
2 persons—10 June 1985 until 1 November 1985,
1 person—10 June 1985 until 4 November 1985;
1 person—13 June 1985 until 15 October 1985;
1 person—13 June 1985 to date,
2 persons—15 August 1985 to date;
2 persons—15 August 1985 until 10 December 1985,
2 persons—2 September 1985 to date;
1 person—16 October 1985 to date,
1 person—17 October 1985 to date,
2 persons—5 November 1985 to date,
1 person—3 December 1985 to date

(c) 12 persons were in detention on 31 January 1986

Detainees

HANSARD 10/3/86
49 Mrs H SUZMAN asked the Minister of Justice:
Q COL 402.

(1) How many persons are being detained at present under section 31(1) of the Internal Security Act, No 74 of 1982,

(2) whether any such persons have been detained for longer than three months; if so, (a) how many and (b) for what period in each case;

(3) in respect of what date is this information furnished?

(b) Period

1 person—23-01-1985 until 03-06-1985
1 person—15-04-1985 until 15-05-1985
1 person—18-04-1985 until 30-08-1985
1 person—18-04-1985 until 27-08-1985
1 person—03-05-1985 until 21-08-1985
1 person—03-05-1985 until 28-08-1985
1 person—21-06-1985 until 27-11-1985

1 person—15-07-1985 until 05-08-1985
1 person—28-11-1985 to date
3 persons—09-10-1985 to date
1 person—09-12-1985 to date
3 persons—19-12-1985 to date

(c) Crime

Murder
Murder
Murder and attempted murder
Murder and attempted murder
Murder and attempted murder
Murder and attempted murder
Murder (4 charges) and abduction (2 charges)
Attempted murder
Murder and public violence
Intimidation and conspiracy to murder
Murder
Murder

Strikes

155. Dr A L BORAINE asked the Minister of Justice,

How many workers in each race group were (a) charged with and (b) convicted of illegal strikes and related conduct in 1985?

The MINISTER OF JUSTICE:

The information is not readily available in the Department In an effort to be of assistance to the Honourable Member, the following information, for the period 1 July 1984 to 30 June 1985, was obtained from the Central Statistical Service·

(a)	Whites	1
	Coloureds	0
	Indians	0
	Blacks	84
	Total	85
(b)	Whites	1
	Coloureds	0
	Indians	0
	Blacks	64
	Total	65

Crown Mines site

181. Mr D J DALLING asked the Minister of National Education.

(a) What progress was made in 1985 in developing a national sport centre and stadium at the Crown Mines site and (b) what further progress is it anticipated will be made in 1986?

The MINISTER OF NATIONAL EDUCATION:

(a) Owing to the poor economic position little progress could be made with the development of the sports centre Negotiations, however, are under way in connection with the erection of a speedway and arena with 10 000 seats, as well as a Big Tee golf-course. Negotiations with representatives of soccer broke down during 1985 when discord and disintegration occured in the soccer ranks

(b) (i) Negotiations will continue during 1986, in order to erect the speedway and Big Tee golf-course Depending on the economic climate, attempts to involve the private sector will continue Everything possible will be done to provide the envisaged soccer stadium

(ii) As part of the infrastructure a further parking area for 2 800 motor vehicles, and more entrances were provided, while entrance roads were broadened during 1985 The infrastructure will be further improved and updated during 1986

International sporting associations

189. Mr D J DALLING asked the Minister of National Education·

(a) Of what international sporting associations is South Africa a fully participating member and (b) in respect of what date is this information furnished?

The MINISTER OF NATIONAL EDUCATION:

(a)

International Surfriders Association	Surfriding
International Triathlon Federation	Triathlon
International Motorsport Federation	Formula "K"
International Formula "K" Commission	Formula "K"
International Gymnastics Federation	Gymnastics
European Federation of Sea Anglers	Light tackle boat angling
International Ju-Jitsu and Tai Jitsu Federation	Ju-Jitsu
International Martial Art Federation	Ju-Jitsu
International Jukskei Association	Jukskei
International Power Boat Union	Power Boating
American Powerlifting Federation	Powerlifting
International Aerosport Federation	Aerobatics
	Power Flying
	Microlight
	Radio Flyers
	Gliding
	Experimental Aircraft
	Ballooning
International Microlight Committee	Microlight
International Model Power Boat Union	Model Power Boating
International Model Yacht Racing Union	Model Yacht Racing
International Motorsport Federation	Motorsport
Hurlingham Polo Association	Polo
International Polo Federation	Polo
The Pony Club	Pony Club
International Homing Pigeon Federation	Homing Pigeon
International Rowing Federation	Rowing
International Rugby Football Board	Rugby
International Schwinger Federation	Schwinger
International Clay Pigeon Shooting Federation	Clay Pigeon shooting
International Shooting Friends	Air Rifle shooting
International Practical Shooting Confederation	Practical shooting
International Veteran and Vintage Association	Veteran and Vintage
International Trampoline Federation	Trampoline and Tumbling
Royal Caledonian Curling Club	Curling

(b) 31 January 1986.

Staff shortages

191. Mr D J DALLING asked the Minister of Justice·

Whether any services provided by his Department were suspended in 1985, (a) owing to staff shortages and (b) for any other reasons; if so, (i) what services and (ii) where?

The MINISTER OF JUSTICE:

(a) and (b) No

(3) Since the privatisation of Sasol Two a partial capital repayment to the value of R887,6 million plus interest was made to the Fund. From this, however, an amount of R453,8 million which included profit on capital and interest, was paid back to the State Income Fund in respect of Parliamentary grants to Sasol Two and Three. Shares in Sasol Three were also purchased for R180,8 million while R18 million was made available to Escom.

(4) Further repayments of R300 million plus interest was made respectively by Sasol Two and Three. The Fund is furthermore strengthened as a result of interest on outstanding amounts payable by Sasol Two and Three.

(5) The outstanding commitment of Sasol Two towards the State is R1 091 million plus interest, while the projected value of Sasol Three's commitment is estimated at approximately R2 300 million These amounts will accrue to the Central Energy Fund

(6) The credit balance of the Central Energy Fund is in the first place owned by the motorist and it will be employed to the benefit of the motorist taking cognisance of priority requirements The establishment of synthetic fuel plants is regarded as a first priority being in the best interest of the motorist and the country. If the contemplated synthetic fuel projects (including the Mossel Bay gas conversion project) be established, it is estimated that total financing requirement from the Central Energy Fund will peak at R6 133 million during 1991

(7) The credit balance in the Central Energy Fund is invested with approved financial institutions at the most advantageous interest rates

Crimes of violence

HANSARD 10/3/86 Q COL 411.

105 Mr D J DALLING asked the Minister of Justice.

(1) How many (a) Blacks, (b) Coloureds and (c) Indians were hanged in 1985 for crimes of violence against Whites;

(2) how many Whites were hanged in 1985 for crimes of violence against (a) Blacks, (b) Coloureds and (c) Indians?

The MINISTER OF JUSTICE:

(1) and (2) Blacks executed after having been convicted and sentenced to death in connection with crimes of violence committed against—

(a)	Blacks	46
(b)	Coloureds	4
(c)	Indians	6
(d)	Whites	44
(e)	Blacks and Whites	2

Coloureds executed after having been convicted and sentenced to death in connection with crimes of violence committed against—

(a)	Blacks	2
(b)	Coloureds	26
(c)	Indians	0
(d)	Whites	7

Indians executed after having been convicted and sentenced to death in connection with crimes of violence—

Nil

Whites executed after having been convicted and sentenced to death in connection with crimes of violence committed against—

(a)	Blacks	2
(b)	Coloureds	0
(c)	Indians	0
(d)	Whites	4
(e)	Whites and Blacks	1

Advertisements

111 Mr D J DALLING asked the Minister of Education and Development Aid:

(1) What was the total amount spent by the Department of Development Aid in 1985 on placing advertisements for any purpose in newspapers in the Republic,

(2) what amount was paid to each specified newspaper in the above regard in that year?

The MINISTER OF EDUCATION AND DEVELOPMENT AID:

(1) R400,00.

(2) *The Citizen* . . . . . R400,00.

Advertisements

124 Mr D J DALLING asked the Minister of Justice:

(1) What was the total amount spent by the Directorate Justice in 1985 on placing advertisements for any purpose in newspapers in the Republic;

(2) what amount was paid to each specified newspaper in the above regard in that year?

The MINISTER OF JUSTICE:

(1) R1 630,72

(2) *Sunday Times* . . . R902,72
Rapport . . . . R728,00.

Stock theft

HANSARD 10/3/86 Q COL 414.

135. Mr R W HARDINGHAM asked the Minister of Justice:

How many persons were convicted of theft of (a) small stock and (b) large stock in the magisterial districts of (i) Mooi River, (ii) Kokstad, (iii) Himeville, (iv) Matatiele, (v) Bushman's Nek and (vi) Umzimkulu during 1985 or the latest specified period of 12 months for which figures are available ?

The MINISTER OF JUSTICE:

The following information is for the year 1985

	(a) Small stock	(b) Large stock
(i) Mooi River	9	5
(ii) Kokstad	13	0
(iii) Himeville	10	14
(iv) Matatiele	1	11

(v) Bushman's Neck: Included in the statistics in respect of Himeville.

(vi) Umzimkulu Umzimkulu is situated in Transkei and statistics are not available.

Detainees

HANSARD 10/3/86 Q COL 414.

142. Mrs H SUZMAN asked the Minister of Justice:

Whether any persons were detained in 1985 in terms of section 185 of the Criminal Procedure Act No 51 of 1977, if so, (a) how many, (b) for what period was each of them detained and (c) in respect of what crime in each case?

The MINISTER OF JUSTICE

Yes

(a) 16.

Detainees tell of brutal torture in cells

Archbishop in bid to end Bop 'assaults'

11/3/86. STAFF

252

By Jo-Anne Collinge

Affidavits alleging more than 50 incidents of torture and assault by Bophuthatswana police stationed at Garankuwa, with colour pictures of alleged sjambok and wire whip wounds, were placed in the hands of Mmabatho Supreme Court judge Mr E A T Smith this week.

President Lucas Mangope, Bophuthatswana's Minister of Law and Order, did not admit liability for the assaults He and 10 other respondents, however, conceded a temporary order restraining the police from unlawful detention and assault

At the head of the 13 people who brought the action was Pretoria's Catholic Archbishop, the Most Rev George Daniels, who explained his concern for Garankuwa, part of his diocese, in court papers

"It appears members of the Bophuthatswana police stationed at Garankuwa are waging a campaign of intimidation of the local population, by their large-scale and apparently arbitrary detention, assaults and threats of detention and assault

"The police seem to have identified as particular victims of their campaign of intimidation members of the Roman Catholic Church, members of trade unions, particularly the Metal and Allied Workers' Union, school children and youths and members of the public who find themselves caught up in the web of violence which has apparently become the fabric of life in Garankuwa," he said

"The general pattern of the campaign of police intimidation seems to be large-scale and arbitrary arrests Those arrested are generally detained for only a few days, often without access to the outside world.

"Very many are never charged with any offence and, judging from their interrogation and treatment in detention, are never even under suspicion or investigation for the commission of any particular offence

"During their detention they are almost invariably brutally assaulted and abused"

The Archbishop alleged detainees were.

- Whipped with sjamboks, canes, batons and whips.
- Assaulted by hitting and kicking
- Subjected to strenuous physical exercise
- Maltreated by tyres being placed round their necks
- Deprived of food, water and medical attention
- Subject to various forms of humiliation, including verbal abuse and the forced removal of clothing

Restrained victim

The Archbishop said two young women had made sworn affidavits claiming police had raped them.

He said photographs of the victims made it "apparent the wounds displayed must have been deliberately inflicted upon a restrained victim and could not have been inflicted in the course of lawful police duties".

Archbishop Daniel said among the affidavits were some by Catholics who alleged they had been singled out for additional assaults because of their faith. He claimed police had "callously" entered and damaged church property

A hawker, Mr Stanford Rakgabele (25), alleged he was struck with a rifle butt on the head as he was arrested. Later, as he was dragged towards the police van, a policeman allegedly "held the R-1 rifle like a bat and swung it at me I covered my head with my hands and the rifle hit me on the left wrist and broke my wrist", he said

He alleged he and a group of youths were assaulted in "a big room" on February 11

"There were a large number of policemen in the room. They were armed with canes, sjamboks and whips It appeared as if some kind of signal had been given because all of a sudden these policemen started to shout at us to take off our clothes I took off my clothes and stood naked before the policemen who hit me with these weapons

"I screamed in pain and tried to avoid the thrashing However, there were too many policemen and I was hit extremely hard Blood was all over the place as it poured from my wounds and also the wounds of other youths who were being thrashed The sound was too terrible as children screamed and cried

"The policemen appeared to have lost all control as they shouted, kicked and hit us I noticed a number of youths lying motionless on the floor, much blood pouring from the wounds on their buttocks and backs"

The other affidavits make similar allegations Some detainees alleged they were so badly assaulted they could not walk into court. One man was admitted to the intensive care unit of a Johannesburg hospital with renal failure, allegedly caused by the beating.

STPR 11/3/86 (251) 252

Judge can't accept 'Barnabus 20' in treason trial

(251)

Own Correspondent

MARITZBURG — Transcriptions of some conversations tape-recorded by Security Police bristled with errors, defence counsel Mr M T Moerane said in the treason trial here yesterday.

Many tapes and transcriptions, and translations of the transcriptions have been handed in as exhibits by State counsel. State and Defence counsels have agreed some accurately reflect what transpired at meetings but others were hopeless, Mr Moerane said.

Mr Moerane, who was cross-examining Security Branch Warrant Officer B Myati, said there had been many incorrect spellings and wrong words in the Zulu transcription of a tape There had probably also been mistakes in the translation from Zulu into English

Mr Moerane said Mr Myati had transcribed a bugged telephone conversation between Mr Dusi Eric Ngcobo and a person known as Barnabus. He said Mr Myati had written down "Barnabus 20"

Judge President Mr Justice Milne said the conversation had probably gone "Barbabus Lo". Mr Myati said that it had sounded like Barnabus 20 to him when he was doing the transcription.

Mr Justice Milne said this was explicable only on the basis that the recording was so appalling he could not hear properly or his hearing or memory was defective.

Mr Moerane said that Mr Myati had probably written "Barnabus Lo", in a poorly made L, and the typist had typed it as "Barnabus 20".

The hearing continues

distinctive features...

Another ten face threat of gallows

AS the campaign to save the "Sharpeville Six" from the hangman's noose gathers momentum, the lives of a further 10 people are at stake in another largely-unreported trial

The Sharpeville Six — five men and one woman — are in death row, awaiting execution following their conviction for the murder of the deputy mayor of Lekoa, Kuzwayo Dlamini, at the start of the uprising in the Vaal Triangle in September 1984

The "Sebokeng 10" — nine men and one women — have been charged with the murder of another councillor in the Lekoa Town Council, Caesar Motjeane, and his driver, Phineas Matibidi, in the Vaal Triangle at about the same time. The 10 have a further charge of sedition.

The trial of the 10 before Judge Piet van der Walt in the Supreme Court in Pretoria is approaching a climax.

The prosecution led by Eben Jordaan has called eight witnesses, five of whom have given evidence in camera Counsel for the defence, David Soggot, who protested against the giving of evidence in camera, is expected to apply to the court to discharge the accused.

One state witness who gave evidence

By PATRICK LAURENCE

in camera admitted under cross-examination by Soggot that he hallucinated while in detention

— What did you actually see, what was it about?

— I saw a policemen coming into the room, that is the cell, to come and collect me to the room where they were going to assault me

— Was it, as you experienced it, terrifying? — Yes.

The witness admitted that he had become deeply depressed in prison and had contemplated suicide

Earlier under cross-examination the witness told the court he had been kept alone in a cell and assaulted by police during interrogation, apparently because his answers did not satisfy them.

— You had a pair of dentures? — Yes.

— What happened to them? — They were broken.

— By what? What caused it? — A fist of a policeman struck me on my mouth, on my cheek.

— They wanted you to admit that you participated in the killing of Caesar? — Yes.

Minister to open people's court in Cape

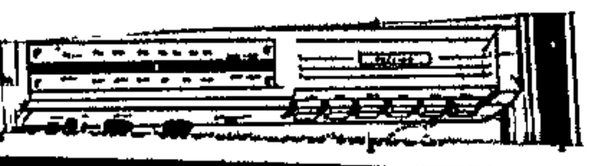
Staff Reporter

CAPE TOWN — The Minister of Justice, Mr Kobie Coetsee, will officially open Cape Town's Small Claims Court tomorrow.

The first cases will come before the court immediately after the opening, said the clerk of the court, Mrs C J Jooste.

More than 200 individuals had approached the court about legal action, but unfortunately it had no jurisdiction over many of them, she said.

The court will sit in Garmor House, Plein Street.



Coetsee argues for end to 'black courts'

20/3/80 STAR

252

PARLIAMENT — A Bill which will abolish special courts for blacks and integrate their functions with ordinary courts was read a second time yesterday after a division in which all except the Conservative Party supported it.

Replying to the second-reading debate on the Special Courts for Blacks Abolition Bill, the Minister of Justice, Mr Kobie Coetsee, said the CP's argument that black indigenous law was under attack as a result of the measure was unsubstantiated

Indigenous law could not replace Roman Dutch law, but its rich historical and cultural input could not be rejected, so a special place had to be found for it in South Africa's legal system

This had been done by making provision for administrators of justice to take indigenous law into account, where relevant, in their decisions.

It was also important all should have adequate access to the judiciary and that there should be trust in it

Mr Coetsee explained that of the 305 Commissioner's Courts — blacks' appeal courts — 253 had already been administered by magistrates who fulfilled the functions of commissioners

Only 52 had been administered by commissioners and the Hoexter Commission of Inquiry had recommended these be transferred to the Department of Justice.

The Bill also provides for the retention of chiefs' and headmen's courts as long as they continue to meet the needs of black people, and that the black divorce court be placed under the administration of the Minister.

However, it would not be abolished until the establishment of the family court, where all black divorce cases would then be held

Mr Coetsee said he could not accede to an appeal from Mr Dave Dalling (PFP, Sandton) for the immediate abolition in terms of the Bill of the black divorce court.

"What will happen is we'll expose those couples who can still enjoy a speedy and less expensive divorce to the Supreme Court and the expense involved there," he said — Sapa

Kinikini state witness breaks down in court

(252) DISPATCH 20/3/86

Dispatch Correspondent

PORT ELIZABETH — A state witness in the Kinikini murder trial being heard in the Grahamstown Supreme Court denied a submission by the defence team that she had treated Uitenhage's black community with "utter contempt and disregard"

The witness, whose name may not be revealed, later burst into tears during cross-examination

She was testifying in the trial against 10 people charged with the murder of Uitenhage community councillor, Mr Benjamin Kinikini, his two sons, two nephews and a friend of the family on March 23 last year

Mr J. Poswa, for the defence, told the court he had been given several examples of the witnesses' arrogant behaviour towards people in the community

The witness, referred to as Witness J, denied all the allegations concerning her behaviour

Mr Poswa put it to the witness that she had encouraged the activities of certain men in the Kinikini family and the vigilante group which operated in the Kwanobuhle township, and that she was visibly under the influence of liquor on these occasions

Mr Poswa further suggested to the witness that the Kinikini family and their associates were a law unto themselves before March 23 last year, and that they were seen to have openly brandished firearms in Kwanobuhle streets on March 22

The witness denied having instigated attacks on houses of United Democratic Front (UDF) and Parents Committee members in Uitenhage.

She also denied that she had spoken of the UDF and other progressive organisations during her trip to London in May last year, although she confirmed she had been invited overseas by an organisation called "Victims" to speak of the murders

Witness J further confirmed she had met with a prominent UDF leader in Port Elizabeth in the company of her evangelistic brother to beg for forgiveness as she was tired of being ostracisd by the Uitenhage community

In reply to a question by Mr Poswa, she admitted that she knew Mr Silumko Kinikini, one of the deceased, had died before a case against him was settled She confirmed he was charged with shooting a certain person called Vumile, while in the company of Mr Eric Kinikini and Mr Xola Toba.

One of the assessors, Mr B P Loots, conveyed his condolences to the witness for the losses she had suffered as a result of the murders on March 23

He asked her if she would, in reality, have behaved in the aggressive manner described by the defence team and whether her husband would have allowed her to act in such a manner She replied that she had not done so, and that her husband would not have tolerated it

The trial continues today

137 cases brought against Minister

A TOTAL of 137 lawsuits, of which one succeeded with a counter-claim and 88 were settled out of court, were brought against Law and Order Minister Louis le Grange.

In a written reply to a question from Peter Gastrow (PFP Durban Central), Le Grange said 68 of the cases related to damage of vehicles, 29 to unlawful arrest, 29 to assault, four to shooting incidents, three to being bitten by police dogs, and one each to loss of maintenance, confiscation of a vehicle, damage to property due to police action and loss of prisoner's property while in police custody. — Sapa.

Amazing judgment sets detainees free

WEEKLY M. 21/3/86

By JO-ANNE BEKKER

LAWYERS rushed to the Supreme Court late yesterday in a bid to secure the release of people in "preventive detention", following an extraordinary judgment by the Bloemfontein Appeal Court earlier in the day

In the startling ruling yesterday morning, Chief Justice Rabie and four judges found unanimously that Law and Order Minister Louis le Grange had served invalid detention orders on 14 activists — including the "Consulate Six" — in August 1984

He found that Le Grange had failed to give reasons for their detention.

This finding could have major implications for all detainees held under Section 28 of the Internal Security Act, which allows for indefinite preventive detention

At present, eight people are known to be detained under this section, but the numbers are likely to increase as, in the wake of the lifting of the State of Emergency, the authorities turn to existing legislation to deal with detainees

Yesterday evening's urgent application was made on behalf of Ramoshoane Mokaba, Lulu Mnguni and Mofapa Mohlaba. The men have been held in Diepkloof Prison since July 1 last year

More applications are likely to follow

Rabie's ruling spanned three separate appeals It dismissed Le Grange's appeal against a Natal Supreme Court decision which ordered the release of six Section 28 detainees early in September 1984 (UDF activists Archie Gumede, George Sewpershad, M J Naidoo, Mewa Ramgobin, Billy Naar and Paul David subsequently sought refuge in the British Embassy in Durban, when new detention orders were issued)

And it upheld the appeal by the "Consulate Six" and eight Transvaal

● To PAGE 2

LATE FLASH

THE Rand Supreme Court last night ordered the immediate release of three people in "preventive detention", following the extraordinary earlier ruling by the Appellate Division on the issue

Justice RJ Goldstone found their detention orders were invalid and had no force in law He ruled their imprisonment in Johannesburg Prison was unlawful

The application was unopposed.

Agreement was reached on a fourth detainee, Khethiwe Mbokweni, who is currently in the psychiatric ward of the Johannesburg Hospital and unable to sign papers for an application She will also be released

Glum silence: Two conservative University of the Witwatersrand students ponder the disintegration of their meeting this week, which featured two senior Unita men as guest speakers. Poster-wielding black students disrupted the meeting with a pro-MPLA protest. Security guards were called in to restore the peace.

Picture GIDEON MENDEL, AFP

Detainees freed

WEEKLY M. 21/3/86

From PAGE 1

Section 28 detainees against subsequent Supreme Court rulings which found the detention orders to be valid.

To many of the appellants, Rabie's ruling is a qualified victory Most have completed long stints in detention and have since been released

In his judgment, Rabie said the detention orders informed the people concerned on what statutory grounds Le Grange had ordered their detention, but did not give the detainee all the Minister's reasons for doing so — as required under Section 28

In his view, the judge said, the legislature intended that the detainee should have a fair opportunity to deal with the Minister's reasons for detaining him and persuade him that the issuing of the order was unjustified.

Therefore, to inform the detainee only of the statutory grounds on which he stood accused would hardly give him or her a fair opportunity to make representations, Rabie said.

Grave concern over Bill giving PW wide powers

Own Correspondent

GRAVE fears have been raised in trade union and civil rights circles over proposed legislation to grant President P W Botha vast discretionary powers to "undermine" trade unions and scrap workers' rights and benefits.

Concern reached a peak yesterday as groups opposing the Temporary Removal of the Restriction on Economic Activities Bill learned that today was the deadline for submission of representations to the parliamentary standing committee on Home Affairs which is considering the legislation.

Black Sash president Mary Burton yesterday appealed for an extension of the deadline for presenting evidence as many interested parties were unaware of the impending legislation.

She said the proposed law could lead to the removal of workers' rights and "create opportunities for tremendous exploitation".

Congress of SA Trade Unions (Cosatu) is to send an urgent telex to Cape Town today to detail its objections to the proposed legislation which empowers the President to bypass Parliament and suspend measures restricting "entrepreneurial activity" by slashing "red tape".

Cosatu will argue that the new measure allows the rights and protections workers have won over the years to be whittled away in the name of promoting small business.

The National Committee Against Removals (NCAR) said: If this Bill becomes law the State President will be granted vast discretionary powers to undermine the trade union movement and introduce 'sweatshop' conditions whereever and whenever he may wish."

NCAR said the Bill was part of the move towards implementing "orderly urbanisation" as outlined by the President's Council report on urbanisation.

It described as irresponsible the possible scrapping of health and safety protections and enforced contributions to UIF and workmen's compensation funds.

While the provision of employment was clearly necessary, NCAR said "this country cannot afford extending the appalling lack of protection and widespread exploitation of black workers in the Bantustans to the rest of the country."

STAR
21/3/86
252

Appeal Court finds orders for detention of 16 invalid

BLOEMFONTEIN — The Appeal Court yesterday found that detention orders served on 16 people in August 1984, including six people who subsequently sought refuge in the British Consulate in Durban, were invalid.

The Chief Justice, Mr Justice Rabie, with Mr Justice Trengove, Mr Justice Hoexter, Mr Justice Botha and Mr Justice van Heerden concurring, upheld appeals by Mr Curtis Ephraim Nkondo and seven others against a judgment of Mr Justice H H Nestadt, and by Mr Archibald Jacob Gumede and seven others against a judgment of a Full Bench of the Natal Supreme Court.

The Appeal Court dismissed an appeal by the Minister of Law and Order and Lieutenant Strydom, Officer Commanding Maritzburg Prison, against a decision of Mr Justice B Law in the Natal Supreme Court on September 7 1984 to release Mr Gumede and six others from detention. The appeal was dismissed with costs, including those of two counsel.

After Mr Justice Law had ordered the release of Mr Gumede, of Clermont, Mr Chandereo Sewpersadh (Verulam), Mr Mooroohgiah Jayarajapathy Naidoo (Durban), Mr Mawalal Ramgobin (Verulam), Mr Billy Nair (Durban), Mr Bhekuse Samil Kikine (general secretary of the SA Allied Workers' Union) and Mr Kader Hassim, an application was brought by Mr Nkondo to the Witwatersrand Supreme Court for the release of himself and seven others.

● On September 10 1984 Mr Justice Nestadt held that the detention under section 28 (1) of the Internal Security Act was valid.

State drops evidence in transcripts

MARITZBURG — In a dramatic development in the treason trial here yesterday, the State said it would no longer rely on nine transcripts of South African Allied Workers' Union (Saawu) meetings handed in as evidence last week.

The defence team had alleged that all the transcripts were "gibberish, bristled with errors" and that some of them were "misleading"

According to the indictment, the transcripts contained evidence of conduct the State would have relied on to prove its allegations of treason, or alternatively terrorism and furthering the aims of an unlawful organisation, against Mr Thozamile Gqweta, Mr Sisa Njikelana, Mr Samuel Kikine and Mr Isaac Ngcobo

The transcripts referred to nine Saawu meetings held in East London between April and November 1981

The trial was adjourned to Monday, when the State will present a "revised" indictment. — Sapa.

Judgment reserved in Delmas terror trial bail application

Political Reporter

DELMAS — In the treason trial in Delmas, Mr Justice Kees van Dijkhorst yesterday reserved judgment after argument in a new bail application by 22 men who are facing charges of high treason, subversion, incitement to murder and furthering the aims of banned organisations.

Judgment in this second application for bail — the first failed last year — is expected on Monday

The men on trial are members of the United Democratic Front, the Vaal Civic Association, the Azanian People's Organisation and the Azanian Youth Unity and among them are UDF leaders Mr Terror Lekota, Mr Moss Chikane and Mr Popo Molefe

The hearing started two months ago and is expected to last at least a year Some of the accused have been in custody for 17 months.

Mr Arthur Chaskalson — who argued the bail application for the defence — said that the condition listed for a new application when the first was turned down, had been met.

The condition was an improvement in the security situation and the lifting of the state of emergency.

Mr P B Jacobs, for the State, told the court that the lifting of the state of emergency was not enough and the defence had failed to show that the security situation in the country had improved to the extent where the 22 accused could be freed on bail.

Mr Jacobs also submitted that the seriousness of the charges against the 22 was sufficient to induce them to flee the country

According to affidavits handed in on behalf of the State, there was reason to believe that, if the 22 men were freed, they would contribute to instability in the country, threaten the security of the State, fan the unrest in the Vaal Triangle and intimidate witnesses

In addition, Mr Jacobs argued, few of the accused had the means of providing bail and bail provided by friends and associates would not be sufficient reason for them to remain in the country to stand trial

The State asked that bail be refused

The hearing proper will resume today

Three more freed after judge rules detentions invalid

By Jenni Bennun

A Rand Supreme Court judge yesterday ordered the release of three men held in terms of section 28 of the Internal Security Act, after an Appeal Court ruling that certain detention notices were invalid

Three urgent applications were brought by Mr Ramoshoane Peter Mokaba, Mr France Mofapa Mohlala and Mr Lulu Louis Aaron Mnguni against the Minister of Law and Order.

Late yesterday, Mr Justice R J Goldstone granted an order declaring the detention of the men was wrongful and unlawful The notices purporting to authorise their detention in terms of section 28 of the Internal Security Act were also declared invalid

Mr Justice Goldstone ordered the Minister of Law and Order and the officer commanding the new Johannesburg Prison to release the men.

The urgent applications were brought hours after the Appeal Court in Bloemfontein found detention orders on 16 people in August 1984 were invalid

Mr Justice Goldstone said "I have little doubt the orders in these applications are in substantially similar terms to those considered by the Appelate Division, which were declared invalid."

In papers before the Rand Supreme Court, it was submitted the detention notices were invalid because they did not comply with the requirements in section 28 of the Internal Security Act

The applications were not opposed.

Mr R J Goldstone was on the Bench Mr I Mahomed SC, assisted by Mr B S Spilg, appeared for Mr Mokaba, Mr Mohlala and Mr Mnguni Mr B W Burman appeared for the Minister of Law and Order.

Two white students reinstated

Medunsa tension mounts at court ruling

STAR 21/3/86 (8) (252)

Pretoria Correspondent

Tension is mounting on the campus of the Medical University of South Africa (Medunsa) after yesterday's Pretoria Supreme Court decision that two white students whose registrations had been cancelled because of alleged "black" opposition should be reinstated forthwith.

Passing judgment in an urgent application brought by the students, Mr Pieter Ernst Kruger and Mr Darryl Charles Wilke (both 21), Mr Justice A J Heyns said "mass thuggery" could not be allowed to interfere with the careers of law-abiding students.

Earlier, the court heard that Messrs Kruger and Wilke had been properly registered as third-year medical students at Medunsa. They attended classes from January 28 until February 11, when black students on the campus embarked on a mass stayaway

Registrations cancelled

On February 17, however, Messrs Kruger and Wilke were summoned by the Rector, Professor L T Taljaard, and told their registrations had been cancelled in terms of the Medunsa Act of 1976, as amended, because of alleged opposition to their presence by the university's overwhelmingly black student body

Both Messrs Kruger and Wilke hold "pre-medical" BSc degrees from the universities of Pretoria and the Witwatersrand respectively, the court heard

They were two of only seven white undergraduates at Medunsa, which also caters for some 150 white postgraduates. The court heard the majority did not, however, object to the presence of the postgraduates, but held that the presence of Messrs Kruger and Wilke and their three colleagues meant that allegedly deserving black students were being "forced out".

Neither Mr Kruger nor Mr Wilke had managed to gain admission to three so-called "white" universities before being accepted by Medunsa.

Mr Pierre de Wet, for Medunsa, told the court the decision to suspend the white undergraduates had been largely motivated by threats of anarchy and possible violence on the campus

Mr Bill Prinsloo, for the applicants, said the principle of "fairness for all before the law" was the overriding factor in the matter.

Namibia plans open education

STAR 21/3/86 (28) (60)

The Star's Africa News Service

WINDHOEK — The days of apartheid-style education in Namibia may be numbered, following the announcement yesterday that the Multi-Party Conference (MPC) Government has accepted a controversial report on education

IN THE COURTS

Judge warns public not to touch Toti accused Zondo

MR JUSTICE LEON warned yesterday that he would deal swiftly, summarily and severely with any member of the public who tried to touch alleged Amanzimtoti bomber Andrew Zondo.

He said this in a statement at the start of the trial in Scottburgh yesterday.

Zondo, 19, has pleaded not guilty to murdering the five people who died in the bomb blast at the Sanlam shopping centre on December 23 last year.

He has also pleaded not guilty to attempting to murder members of the public who were there at the time.

Mr Justice Leon said there had been two incidents two days ago — one he did not witness and the other he did not hear

In the first, a member of the public apparently struck Zondo in the face, while in the second a member of the public tried to encourage another to commit violence on the accused by saying "Kill him."

"This is a court of law and this court will decide if the accused is guilty or innocent, and this court alone will decide what punishment he will receive," the judge said.

Maritzburg psychiatrist Dr Alan Trengrove-Jones said he believed it was a waste of time sending Zondo for mental observation. It was his opinion that at present Zondo was not suffering from a mental disorder.

He said it was impossible for any psychiatrist to comment on Zondo's mental state on December 23 without having all the evidence that had been led in court.

The psychiatrist was called to give evidence by the State, which was opposing an application by the defence to have Zondo sent for mental observation. The doctor said that in the hour he had interviewed Zondo, he had found him cooperative with a clear level of consciousness.

Mr Justice Leon refused the application for Zondo to be sent for mental observation. The judge said, however, that he had asked Trengrove-Jones to remain in attendance for the rest of the trial because it might be necessary to reconsider the question at a later stage.

The trial was adjourned until Monday to allow the defence time to engage senior counsel — Sapa.

'Witness friend' appointed

Pretoria Bureau

The Department of Justice has announced the appointment of a "witness friend" to help in alleviating the delays witnesses sometimes encounter at trials

The department said it was aware of and concerned about the delays and inconveniences which wasted man-hours and time

The positive attitude of witnesses was vital, but delays at criminal proceedings were often unavoidable, said a Press statement released by the department

It was the responsibility of the prosecutor to arrange the daily court roll A number of factors played a role The duration of each case had to be calculated as precisely as possible, but the fact that a case was placed on the roll for a particular day was no guarantee proceedings would start or finish on that day, the statement said

Communication between the prosecutor and witness was not always possible due to the lack of time available to the prosecutor and, when a court was in session, attention had to be devoted to the case on hand

A "witness friend" has already been appointed on a trial basis in Johannesburg, Bloemfontein, Durban, Cape Town, Port Elizabeth and Wynberg.

This measure was part of the continual process to ensure the smooth administration of justice, said the statement

Kagiso witnesses to tell of actions by SAP, SADF

Staff Reporter

The application brought by the Krugersdorp Residents' Organisation, asking the Rand Supreme Court for relief against "particularly grave" allegations concerning the conduct of policemen and members of the South African Defence Force, has been referred for the hearing of oral evidence

None of the allegations may be published until the matter comes to court on April 21

The allegations concern Kagiso, Kagiso 2 and Munsieville, all in the Krugersdorp area The applicants have not been granted any interim relief

Oral evidence is due to heard on April 21 on whether the Krugersdorp Residents' Organisation is legally entitled to bring the application and whether members of the South African Police and the South African Defence Force are guilty of the alleged unlawful conduct

The oral evidence will include that concerning

- Whether members of the SAP and SADF are guilty of the alleged unlawful conduct set out on the occasions listed on a schedule
- Whether the allegations against the police and Defence Force members are wilfully false, or made in furtherance of the objectives of the African National Congress
- Whether the allegations are made to gain publicity in support of the organisations' objectives, including that of undermining the authorities and the authority of the South African Police and creating "liberated areas" in Kagiso, Kagiso 2 and Munsieville
- Whether there was violence and/or unrest in these areas prior to January 1986 or whether they were peaceful

21/3/86

Appeal judgment may lead to more releases

STAR

More people held in preventive detention (section 28) may apply for their release as a result of the precedent-setting judgment of the Appellate Division in Bloemfontein yesterday

The Appeal Court, presided over by the Chief Justice Mr Justice P J Rabie, yesterday upheld two appeals by 16 people held in terms of a notice issued under section 28 of the Internal Security Act.

The court found their detention notices were invalid

Late yesterday the release of three detainees was ordered by a Rand Supreme Court judge after three urgent applications were brought to court against the Minister of Law and Order.

The basis of the applications was the decision of the Appeal Court given hours earlier. The detention notices, it was argued in the Appeal Court cases, did not comply with the requirements of section 28(3)(b) of the Act and were therefore invalid

A requirement of section 28(3)(b) is that a statement written by the Minister should accompany the detention notices and should set forth such reasons and information which induced the Minister to issue such a notice, as could be disclosed without detriment to the public interest.

● See Page 6.

Court payments to soar in April

Pretoria Bureau

Maximum allowances paid to witnesses in court proceedings increase dramatically from April 1, it was announced yesterday.

They rise from R25 to R100 and from R10 to R40 a day for essential expenditures, though average payments will be lower.

Psychiatrists, paid R35 an hour for examining an accused, will in future be paid R60 an hour. Court attendance payments of R15 a day for expert witnesses will be increased to R35 an hour for as long as they are in court.

The DEPUTY MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING:

(1) No. (a) and (b) fall away.

(2) No

Rebel cricket tours

*20 Mr J H VAN DER MERWE asked the Minister of National Education.†

(1) Whether his Department (a) contributed (i) directly and (ii) indirectly to the financing of the so-called rebel cricket tours in the Republic and (b) rendered assistance in any other manner in this connection; if so,

(2) (a) what amounts were involved, (b) what was the nature of such assistance and (c) in respect of what period is this information furnished?

†The MINISTER OF NATIONAL EDUCATION:

(1) (a) (i) and (ii) No funds for the direct or indirect financing of the so-called rebel cricket tours were provided for in my Department's budget.

(b) Yes At the request of the SA Cricket Union, an official of the Department of National Education was made available for the purpose of accompanying the following touring teams as liaison officer·
Sri Lanka tour of 1982
West Indian tour of 1983
West Indian tour of 1983/84

(2) (a)	(b)	(c)
Sri Lanka tour R3 075	Salary and out-of-pocket expenses of the official, as well as travelling expenses to enable him to join the team.	21/10/82 to 13/12/82
West Indian tour R2 250	Salary and out-of-pocket expenses of the official, as well as travelling expenses to enable him to join the team.	14/2/83 to 17/2/83
West Indian tour R2 904	Salary of the official, as well as travelling expenses to enable him to join the team.	17/11/83 to 31/1/84

QCR 691·

Politics: active participation

HANSARD 25/3/86

*21. Mr J H VAN DER MERWE asked the Minister of Justice·† 252

Whether (a) magistrates and (b) other members of the Department of Justice may participate actively in party politics, if not, why not; if so, subject to what conditions?

†The MINISTER OF JUSTICE·

(a) and (b) The hon member's attention is directed to the provisions of section 30 read with section 19(g) of the Public Service Act, 1984 (Act 111 of 1984) and Prisons Regulation No 71(1)(y) Mr Speaker, with leave of the House I shall lay upon the Table the provisions mentioned

Section 30·

"*Political rights of officers and employees* — Subject to the provisions of section 19(g) an officer or employee may—

(a) be a member and serve on the

QCR 694

HANSARD 25/3/86

management of a lawful political party;

(b) attend a public political meeting, but may not preside or speak at such a meeting;

(c) not draw up or publish any writing or deliver a public speech to promote or prejudice the interests of any political party."

Section 19(g)·

"*Misconduct.*— An officer, other than a member of the services or the National Intelligence Service, is guilty of misconduct and may be dealt with in accordance with the provisions of section 20, if he—

(g) makes use of his position in the public service to promote or to prejudice the interests of any political party;

. "

Prisons Regulation No. 71(1)(y).

"(1) A member or temporary warder who contravenes or fails to comply with any provision of the Act or these regulations (other than a contravention or non-compliance which is expressly declared to be an offence under the Act or these regulations) or who—

. . .

(y) makes use of his position in the Prisons Department to promote or to prejudice the interest of any political party,

. . .

shall be guilty of a contravention of the Act or of these regulations, as the case may be."

SATS vehicle

HANSARD 25/3/86

*22. Maj R SIVE asked the Minister of Law and Order: 255 256

(1) Whether, with reference to the reply of the Minister of Transport Affairs to Question No 17 on 18 February 1986, the investigation into the use of a South African Transport Services vehicle by security forces for patrolling townships has been completed; if not, (a) why not and (b) when is it anticipated that it will be completed; if so, (i) when and (ii) what were the findings,

(2) whether any action is to be taken as a result; if not, why not; if so, what action;

(3) whether the security forces utilising this vehicle were members of the South African Police; if not, which branch of the security forces utilised the vehicle; if so, (a) who authorised the operation, (b) what is the (i) name, (ii) rank and (iii) experience of the officer in charge of the operation, (c) what are his qualifications, (d) how many members of the police were engaged in this operation, (e) what specified arms were used and (f) how many rounds were fired;

(4) whether any persons were (a) killed and (b) injured as a result; if so, (i) how many, and (ii) what were their ages, in each case;

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

†The MINISTER OF LAW AND ORDER:

(1) Yes.

(a) and (b) Fall away.

(i) and (ii) The police investigations are completed. The inquest dockets have been submitted to the Attorney-General for his decision

The MINISTER OF LAW AND ORDER

(1) Transvaal 1 190
Natal 510
Cape Province 839
Orange Free State 316

Total 2 855

(2) 3 908.

HANSARD 25/3/86 QCon 731.

Parity in salaries

208. Mr D J DALLING asked the Minister of Administration and Economic Advisory Services.

(1) In what categories has full parity been achieved in the salaries paid to officers of different race groups in the Department of Justice;

(2) what is the total number of non-White officers in the said Department who enjoy full parity in salary,

(3) in what categories has full parity not been achieved in the salaries paid to officers of different race groups in that Department,

(4) what is the total number of non-White officers in that Department who do not enjoy full parity in salary,

(5) (a) what steps are being taken to eliminate the existing disparity and (b) when is it estimated that such disparities will be eliminated?

The MINISTER OF ADMINISTRATION AND ECONOMIC ADVISORY SERVICES:

(1) *Coloured and Indian*
State prosecutor and higher ranks
Magistrate and higher ranks
Justice Administration Clerk and higher ranks
Court Interpreter and higher ranks
Security Assistant and higher ranks
Storekeeper and higher ranks
Provisioning Administration Clerk and higher ranks
Personnel Clerk and higher ranks
Accounting Clerk and higher ranks
Legal Officer and higher ranks
Legal Administration Officer and higher ranks
State Advocate and higher ranks
Assistant State Attorney and higher ranks
Assistant State law Advisor and higher ranks
Regional Magistrate and higher ranks
President and Permanent Member, Appeal Court for Commissioners' Courts and Divorce Court
Warder and higher ranks

Black
Magistrate
Chief Court Interpreter
Senior Storekeeper and higher ranks
State Prosecutor
Warrant Officers and higher ranks up to Lieutenant Colonel

(2) Coloured and Indian 2 234
Black 607

(3) *Coloured and Indian*
None (enjoy full salary parity)

Black
Court Interpreter
Justice Administration Clerk
Security Assistant
Sargeant
Warder
Storekeeper
Provisioning Administration Clerk
Assistant Provisioning Administration Clerk
Accounting Clerk

(4) Coloured and Indian . . . Nil
Black 7 003

(5) (a) In order to effect its policy of parity in the salaries of the different population groups The Government accepted a plan divided into different phases in which the wage gap was to be narrowed and eliminated on a horizontal basis from the highest to the lowest levels This plan has to a large extent been effected in concurrence with general salary increases granted in recent years The elimination of further differences, in both salaries and measures, at present receives attention during occupational specific maintenance investigations.

(b) As and when maintenance investigations into occupational groups are carried out, but within the framework of available funds

HANSARD 25/3/86 QCon 733

Identity documents/influx control

213 Mr D J DALLING asked the Minister of Law and Order:

How many Blacks in (a) the Sandton municipal area and (b) Alexandra Township were charged in 1985 with offences relating to (i) identity documents, (ii) influx control and (iii) curfew laws?

The MINISTER OF LAW AND ORDER.

(a) Sandton
(i) 273.
(ii) 254.
(iii) None.

(b) Alexandra
(i) 5.
(ii) 18
(iii) None.

HANSARD 25/3/86 QCon 734

Housing

313. Mr R A F SWART asked the Minister of Constitutional Development and Planning:

(1) (a) How many houses were built by each specified Development Board in 1985 and (b) what was the amount spent on (i) housing and (ii) infrastructural development for such housing by each Development Board in the 1984-85 financial year;

(2) whether there is a shortage of housing in townships in any Development Board area; if so, how many units are required in each specified Development Board area?

The MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING:

	(1)(a)	(b)(i) R	(ii) R	(2)
Eastern Tvl	522	899 388	1 842 878	748
Northern Tvl	Nil	Nil	Nil	279
West Rand	100	884 000	938 000	2 780
East Rand	130	2 942 877	7 587 137	7 961
Northern Cape	Nil	Nil	Nil	5 407
Orange Vaal	503	4 988 392	8 157 548	2 122
Southern OFS	Nil	Nil	Nil	4 300
Eastern Cape	966	4 600 422	1 473 346	8 755
Western Cape	3 001	25 321 737	40 746 919	9 051
Natalia	Nil	Nil	2 893 200	12 400
Central Tvl	Nil	Nil	Nil	1 217
Western Tvl	222	609 420	3 322 603	3 553
Highveld	52	390 000	125 000	4 723

HANSARD 25/3/86 QCon 733

Repatriations

347. Mrs H SUZMAN asked the Minister of Constitutinal Development and Planning:

(1) How many Black workers from (a) Zimbabwe, (b) Lesotho, (c) Swaziland, (d) Botswana and (e) Mozambique were repatriated in 1985;

(2) how many of these workers in each category had been granted exemption

(2) Yes

(a) During January and February of this year.

(b) and (c) Initially 180 persons left Mgwali. They represented 317 families who desired to move These families, including the 180 persons representing them, were settled at Frankfort in Ciskei

(3) No

Q.C.Q. 795
HANSARD 26/3/86

Immorality Act

348 Mrs H SUZMAN asked the Minister of Justice:

(1) How many cases under section 16 of the Immorality Act were referred to each Attorney-General in the Republic in 1985 prior to the repeal of the legislation;

(2) how many of the persons concerned were (a) prosecuted and (b)(i) acquitted and (ii) convicted,

(3) what total number of persons were prosecuted under this legislation since its introduction till its repeal?

The MINISTER OF JUSTICE:

Attorney-General	(1) Cases referred	(2)(a) Persons prosecuted	(b)(i) Persons acquitted	(ii) Persons convicted
Pretoria	0	0	0	0
°Johannesburg	4	2	0	2
Bloemfontein	4	0	0	0
*Kimberley	5	10	0	6
Cape Town	6	0	0	0
Grahamstown	3	0	0	0
Pietermaritzburg	0	0	0	0

°The cases were withdrawn against 6 persons
*The cases were withdrawn against 4 persons.

(3) The information is not readily available.

Q.C.Q. 795
HANSARD 26/3/86
252

Lawsuits against Minister

367. Mr P H P GASTROW asked the Minister of Justice:

(1) Whether any lawsuits have been brought against him in his capacity as Minister of Justice by members of the public; if so, (a) how many in each specified year and (b) what (i) were the circumstances of the lawsuit, and (ii) was the outcome in each case;

(2) whether he paid out any moneys (a) as a result of successful lawsuits brought against him and (b) in out-of-court settlements; if so, what total amount in each specified year?

The MINISTER OF JUSTICE

The Honourable Member is referred to the reply to written question No 103 of 1985 The information for 1985 is as follows

(1) Yes. The given statistics include letters of intention to institute action

(a) 46

(b) (i)

Number	Cause of action
10	unlawful arrest
16	unlawful detention
5	negligent cause of damage to private property
1	insufficient medical treatment
7	assault
4	malicious prosecution
1	maladministration
1	conduct of a messenger of the court
1	defamation

(ii)

Claims settled out of court	Claims not furthered by the plantiff	Claims pending	Claims dismissed
2	13	26	5

(2) (a) No

(b) Yes, R21 177,00

The amount includes settlements reached pursuant to letters of intention to institute action

Kwelera: income

375. Mr P R C ROGERS asked the Minister of Education and Development Aid:

(1) Whether his Department receives any income from the residents of the area known as Kwelera; if so, (a) what total amount was so received during the latest specified period of 12 months for which figures are available and (b) how was this amount made up,

(2) (a) what total amount was spent by his Department in respect of this area during the above-mentioned period and (b) on what items and/or services was it spent?

The MINISTER OF EDUCATION AND DEVELOPMENT AID:

(1) No

(2) (a) Nil

(b) Falls away

Mooiplaas: income

376 Mr P R C ROGERS asked the Minister of Education and Development Aid:

(1) Whether his Department receives any income from the residents of the area known as Mooiplaas; if so, (a) what total amount was so received during the latest specified period of 12 months for which figures are available and (b) how was this amount made up;

(2) (a) what total amount was spent by his Department in respect of this area during the above-mentioned period and (b) on what items and/or services was it spent?

The MINISTER OF EDUCATION AND DEVELOPMENT AID:

(1) No

(2) (a) Nil.

(b) Falls away.

Heckel: income

377. Mr P R C ROGERS asked the Minister of Education and Development Aid:

(1) Whether his Department receives any income from the residents of the area known as Heckel; if so, (a) what total

Western Cape Development Board

536. Prof N J J OLIVIER asked the Minister of Constitutional Development and Planning:

Whether any money has been allocated by the Western Cape Development Board in respect of the 1986-87 financial year for maintenance and development projects in (a) Langa, (b) Nyanga, (c) Guguletu and (d) Crossroads, if not, why not; if so, (i) what total amount and (ii) on what specified maintenance or development projects will this money be spent?

The MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING:

The Western Cape Development Board is at present in the process of drawing up the 1986/87 estimates which financial year commences on 1 July 1986 The Honourable Member should, however, note that for the purpose of the estimates the Board does not distinguish between the townships as mentioned but regard them as one and the Board will therefore not be in a position to furnish the information in the form as asked.

Illegal immigrants

558. Mrs H SUZMAN asked the Minister of Justice:

(1) (a) How many persons were being held on suspicion of being illegal immigrants as at the latest specified date for which figures are available and (b) how long had each been in custody as at that date;

(2) whether these persons have appeared in court, if not, why not; if so, (a) on what date or dates, (b) in which court or courts, and (c) what were the findings, in each case?

The MINISTER OF JUSTICE:

The information is not readily available

Death sentences

560. Mrs H SUZMAN asked the Minister of Justice:

How many death sentences in each race group were commuted in 1985?

The MINISTER OF JUSTICE:

Blacks	23
Coloureds	11
Total	34

Waaihoek Resettlement Area

568 Mr M A TARR asked the Minister of Education and Development Aid

(1) Whether, with reference to the reply of the Deputy Minister of Development and of Land Affairs to Question No 13 on 9 April 1985, any persons have been resettled in the Waaihoek Resettlement Area near Ladysmith in Natal, if so, (a) what total number of (i) adults and (ii) children have been resettled in this area, and (b)(i) from what specified farms were these persons moved, and (ii) when were these persons resettled in Waaihoek, in each case,

(2) whether all these persons agreed to move to Waaihoek, if not, (a) how many persons did not agree to the move and (b) why were they moved to this area in each case,

(3) (a) how many sites had been developed in Waaihoek, and (b) what total amount had been spent on this area, as at the latest specified date for which figures are available?

The MINISTER OF EDUCATION AND DEVELOPMENT AID

(1) Yes.

(a)(i)	(ii)	(b)(i)	(b)(ii)
221 adults	199 children	420 persons from Stendal Mission	27-30/11/84
31 adults	61 children	92 persons from Sunvalley	11/85
20 adults	50 children	70 persons from Sunvalley	4/85
5 adults	10 children	15 persons from Platteland	3/85
11 adults	24 children	35 persons from Doringbos	6/85
10 adults	17 children	27 persons from De Haig	1/85
3 adults	4 children	7 persons from De Haig	5/85
4 adults	20 children	24 persons from Waayhoek	2/85
15 adults	42 children	57 persons from Waayhoek	5/85
6 adults	3 children	9 persons from Waayhoek	8/85
6 adults	16 children	22 persons from Waayhoek	11/85
9 adults	14 children	23 persons from Waayhoek	12/85
10 adults	18 children	28 persons from Doringkraal	7/85
6 adults	13 children	19 persons from Bester	3/85
22 adults	21 children	43 persons from St Chadds	1/85
22 adults	25 children	47 persons from St Chadds	2/85
9 adults	6 children	15 persons from St Chadds	9/85
55 adults	63 children	118 persons from Weenen	Apr/July 1985
11 adults	7 children	18 persons from Stenndal	Dec. 1984
14 adults	21 children	35 persons from Stenndal	Jan. 1985
12 adults	1 child	13 persons from Stenndal	Apr. 1985
9 adults	8 children	17 persons from Roosboom	July 1985
7 adults	16 children	23 persons from Jonono	May 1985
4 adults	6 children	10 persons from Jonono	Oct. 1985
4 adults	4 children	8 persons from Weenen	Sept. 1985
10 adults	14 children	24 persons from Matiwaanskop	June 1985
18 adults	23 children	41 persons from Umbulwane	June 1985
548	709	1 257	

(2) Yes

(3) (a) 1 242.

(b) R3 105 000.

(As at 1 March 1986)

Officials seconded to national states

569. Mr S S VAN DER MERWE asked the Minister of Education and Development Aid

(1) (a) How many officials in the Public Service had been seconded to each specified national state, (b) what post was held by each such official, and (c) what was the cost of the secondment of such officials, as at the latest specified date for which figures are available,

(2) whether all posts in the national states in respect of which secondment is required are filled at present, if not, how many remained vacant as at the latest specified date for which figures are available;

(3) whether any further secondments are envisaged; if so, how many?

The MINISTER OF EDUCATION AND DEVELOPMENT AID:

(1) (a) and (b). The information as requested is contained in the attached schedule

The MINISTER OF TRANSPORT AFFAIRS:

(1)

	Cape Town Station	Table Bay Harbour
(a)	3	4
(b)	95	17
(c)	3	4
(d)	34	72
(e)	99	26
(f)	502	284
(g)	50	68
(h)	44	26

Woodstock does not have its own Railways Police post and cases which occur at this Station are reported to the Railways Police post at Cape Town Station.

(2)

	(a)	(b)	(c)
Murder	—	—	7
Robbery	10	2	100
Rape	—	—	7
Assault with intent to do grievous bodily harm	3	14	89
Common assault	2	9	114
Theft	35	56	695
Burglary	3	9	106
Malicious damage to property	4	1	65

Family housing units

603. Mr P G SOAL asked the Minister of Education and Development Aid:

(1) (a) How many family housing units were built in 1985 in each national state by (i) the national state authority, (ii) private owners and (iii) the South African Government and (b) what was the total amount spent by each in respect of each national state;

(2) whether there is a shortage of housing units in any national state; if so, how many units are required in respect of each national state;

(3) whether any family housing units are being built in the national states at present by (a) the national state authority, (b) private owners and (c) the South African Government; if not, why not, if so, (i) how many units are being built by each in each national state and (ii) when are they due to be completed in each case?

The MINISTER OF EDUCATION AND DEVELOPMENT AID:

(1) (a)

	(i)	(ii)	(iii) (Selfbuild scheme houses erected by Blacks with South African Development Trustfunds).
Lebowa	Unknown	Unknown	65
KaNgwane	Unknown	Unknown	237
KwaZulu	Unknown	Unknown	868
Gazankulu	Unknown	Unknown	130
South African Development Trust Land	Unknown	Unknown	1 589

(b)

Lebowa	Unknown	Unknown	R 262 000
KaNgwane	Unknown	Unknown	R 895 351
KwaZulu	Unknown	Unknown	R2 734 594
Gazankulu	Unknown	Unknown	R 455 000
South African Development Trust Land	Unknown	Unknown	R3 242 973

(2) Yes, it is not possible to give a completely accurate figure as the shortage of housing also depends on the actual demand It is estimated that the shortage in terms of units is as follows·

Lebowa	18 180
QwaQwa	24 240-30 000
KwaZulu	100 000 (80 000-100 000)
KaNgwane	6 000
KwaNdebele	3 850
Gazankulu	2 000
South African Development Trust Land	14 948
Total	169 218

(3) (a) Yes

(b) Yes

(c) No

(i) (a) and (b) The number of houses which are built by the national states and private owners are not known.

(c) The South African Government has implemented selfbuild schemes within all the national states and no longer builds family housing units

(ii) It is not possible to indicate when the houses will be completed as it is an ongoing process

Bankruptcy

610 Mr H H SCHWARZ asked the Minister of Justice:

How many persons were declared bankrupt in each Division of the Supreme Court in 1985?

The MINISTER OF JUSTICE:

Division	Persons
Transvaal Provincial Division	2 456
Cape of Good Hope Provincial Division	603
Orange Free State Provincial Division	563
Natal Provincial Division	339
Northern Cape Division	109
Eastern Cape Division	258

Companies under compulsory liquidation

611 Mr H H SCHWARZ asked the Minister of Justice:

How many companies were place under compulsory liquidation in the area of each Master of the Supreme Court in 1985?

The MINISTER OF JUSTICE:

Division	Companies
Transvaal Provincial Division	1 232
Cape of Good Hope Provincial Division	429
Orange Free State Provincial Division	154
Natal Provincial Division	258
Northern Cape Division	23
Eastern Cape Division	137

Bonus bond prize money: unclaimed

616. Mr H H SCHWARZ asked the Minister of Finance:

(1) What amount in bonus bond prize money was unclaimed as at the latest specified date for which figures are available;

(2) whether any action is to be taken in regard to such unclaimed money; if so, (a) what action and (b) when?

The MINISTER OF FINANCE:

(1) R2 025 400—as at 28 February 1986.

(2) Yes.

(a) All redeemed bonds are continuously compared with winning

	Male	Female	Total
Financing and insurance	212	—	212
Domestic service	1 612	625	2 237
Other	821	4	825
Total	29 486	658	30 144
Mozambique			
Agriculture	7 190	7	7 197
Mining and quarrying	57 902	—	57 902
Manufacturing	762	3	765
Electricity	15	2	17
Construction	441	8	449
Wholesale and retail	405	2	407
Transport	255	2	257
Financing and insurance	92	—	92
Domestic service	796	24	820
Other	756	3	759
Total	68 614	51	68 665
Swaziland			
Agriculture	1 678	313	1 991
Mining and quarrying	15 756	—	15 756
Manufacturing	1 550	458	2 008
Electricity	77	8	85
Construction	537	2	539
Wholesale and retail	209	40	249
Transport	205	40	245
Financing and insurance	64	15	79
Domestic service	263	759	1 022
Other	228	53	281
Total	20 567	1 688	22 255
Zambia			
Agriculture	216	3	219
Mining and quarrying	24	—	24
Manufacturing	72	—	72
Electricity	3	—	3
Construction	40	—	40
Wholesale and retail	67	1	68
Transport	54	2	56
Financing and insurance	19	—	19
Domestic service	212	2	214
Other	116	2	118
Total	823	10	833
Zimbabwe			
Agriculture	702	—	702
Mining and quarrying	102	—	102
Manufacturing	389	1	390
Electricity	42	3	45
Construction	214	—	214
Wholesale and retail	638	—	638
Transport	700	3	703
Financing and insurance	282	—	282

	Male	Female	Total
Domestic service	3 768	6	3 774
Other	574	4	578
Total	7 411	17	7 428
Other foreign Black workers (Countries of origin not identified)			
Agriculture	54	22	76
Mining and quarrying	72 362	—	72 362
Manufacturing	204	3	207
Electricity	87	29	116
Construction	173	3	176
Wholesale and retail	107	72	179
Transport	121	132	253
Financing and insurance	41	50	91
Domestic service	80	297	377
Other	81	80	161
Total	73 310	688	73 998

Intimidation Act

471 Mrs H SUZMAN asked the Minister of Justice

Whether any persons were convicted in 1985 of offences under the Intimidation Act, No 72 of 1982, if so, how many persons in each race group?

The MINISTER OF JUSTICE:

The information is not readily available. Statistics on the number of convictions will be kept by the Central Statistical Services as from 1 July 1986 The following statistics were however obtained with regard to convictions in the areas of jurisdiction of the undermentioned Attorneys-General

Attorney-General	*Number of persons*	*Race Group*
Bloemfontein	None	
Grahamstown	None	
Johannesburg	11	Black
Kimberley	None	
Pietermaritzburg	1	Black
Cape Town	Note readily available	

Subsidized border fencing

478. Mr R W HARDINGHAM asked the Minister of Education and Development Aid:

Whether his Department bears the cost of subsidized border fencing; if so, (a) how many kilometres of fencing were erected between the Republic and each specified national state during the latest specified period of two years for which figures are available and (b) what was the cost involved?

The MINISTER OF EDUCATION AND DEVELOPMENT AID:

The Departement of Development Aid does not bear the cost of subsidized fencing, but will bear the cost of fences which are to be erected on the borders of the self-governing national states after those borders have been finalized. A start will only now be made with this process So far no such fencing has been erected.

Legal Aid Board

480 Mr D J DALLING asked the Minister of Justice:

Whether any legal aid services were suspended by the Legal Aid Board in 1985; if so, (a)(i) which services and (ii) for what period and (b) why were these services suspended?

The MINISTER OF JUSTICE:

Yes

(a) (i) The instituting or opposing of divorce actions, or any action which is connected with divorce actions; criminal and civil appeal, all briefs to advocates in the lower courts in criminal as well as civil cases; all briefs to senior advocates in the Supreme Court in criminal as well as civil cases. The Director of the Legal Aid Board however retained the authority to grant legal aid in deserving cases

(ii) In respect of divorce cases, from 18 November 1985 till further notice, and in respect of the other matters, from 11 November 1985 till further notice The Board will reconsider the suspensions on 21 March 1986

(b) In order not to exceed the voted funds.

President's Council: brass doorknobs

492 Mr P G SOAL asked the Minister of Public Works

Whether his Department was responsible for the provision of brass doorknobs in the building housing the President's Council, if not, who was responsible for providing these items; if so, (a) how many doorknobs were provided, (b) when were they provided and (c) what was the total cost of these doorknobs?

The MINISTER OF PUBLIC WORKS

Yes

(a) 108 pairs.

(b) August 1984

(c) R4 680.

Pensions

512 Mr B B GOODALL asked the Minister of Constitutional Development and Planning:

(1) (a) How many Black persons in the Republic applied for old-age pensions in 1985 and (b) how many of these applications (i) has been (aa) granted and (bb) turned down and (ii) were still under consideration as at the end of that year;

(2) what was the total number of Black persons receiving old-age pensions as at the latest specified date for which figures are available?

The MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING:

(1) (a) and (b) (i)(bb) and (ii) Special records are not kept of the information required A new data system is being implemented which will provide for the supply of such information in future

(b) (i)(aa) It is estimated that 32 302 Black persons were granted social pensions in 1985. This figure reflects only pensions granted by the Department of Constitutional Development and Planning and does not include those granted by the self governing national states

(2) 266 332

Independent States: size in hectares

516. Mr R A F SWART asked the Minister of Education and Development Aid.

(1) What was the size in hectares of each of the four independent Black states as at the latest specified date for which figures are available;

(2) whether any land was added to any of these states in 1984 and 1985; if so, how many hectares were added to each of these states in each such year?

The MINISTER OF EDUCATION AND DEVELOPMENT AID:

(1) Transkei 4 287 000 ha
Ciskei 747 000 ha
Bophuthatswana 4 166 000 ha
Venda 687 000 ha

(As at 1 March 1986.)

(2) Yes

	1984	1985
Transkei	33 300 ha	20 536 ha
Ciskei	97 000 ha	—
Bophuthatswana	90 073 ha	—
Venda	19 300 ha	—

Resettlement

523. Mr P G SOAL asked the Minister of Constitutional Development and Planning

(1) Whether (a) Seshego, (b) Waterval and (c) Vleifontein are being developed as resettlement or relocation areas in the Transvaal; if so, (i) why, (ii) from which townships are persons to be resettled in these areas and (iii) when will they be resettled;

(2) whether these resettlement areas have been or are to be incorporated in any national or independent Black state, if so, (a) in which state in each case and (b) when;

(3) whether there are any persons resident in these areas at present; if so, (a) what was the population of each of these areas as at the latest specified date for which information is available and (b) to which ethnic group do these persons belong in each case,

(4) what (a) is the distance of each of these three areas from the nearest specified White town or towns and (b) specified transport facilities are available between these resettlement areas and each such White town?

The MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING:

(1) (a), (b) and (c). Yes.

(i) To improve the living conditions of Blacks who were residing in sub-standard housing.

(ii) Le Rouxville (Pietersburg) in the case of Seshego and Hatshikotah (Louis Trichardt) in the case of Waterval and Vleyfontein.

(iii) Re-location of Le Rouxville residents to Seshego has been completed Re-location of Hatshikotah Shangaan and Venda families to Waterval and Vleyfontein has been completed. Negotiations with remaining family heads for the re-location on a family basis in any of the three settlement areas mentioned are presently under way.

(2) Yes

(a) Seshego in Lebowa, Waterval in Gazankulu and Vleyfontein in Venda.

(b) Already incorporated

(3) Yes

(a) Seshego 44052, Waterval 2190 and Vleyfontein 5560

(b) Mostly North Sothos, Shangaans and Vendas in Seshego, Waterval and Vleyfontein respectively. Information on other ethnic groups is not readily available

(4) (a) Seshego is about 8 km from Pietersburg, Waterval is about 22 km and Vleyfontein about 27 km from Louis Trichardt.

(b) Transport by passenger bus in each case

of what date is this information furnished?

The MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING:

(2)

	(a)(i)	(ii)	(b)
Chaiwelo	1981	1986	420 flats
Jabulani	1981	1986	434 flats
Naledi Ext 2	1982	1986	777 houses
Protea North	1983	1987	2 527 houses
Naledi Ext 2 (Provision of services)	1985	1986	1 312 sites
Naledi (Emergency camp)	1986	1986	272 sites
Nancefield (Site and Service Scheme)	1986	1988	601 sites
Private Sector Naledi Ext 2	1984	1986	376 houses

(3) Yes.

	(a)(i)	(ii)
Naledi Ext 2	One	777 houses
Nancefield (Site and Service Scheme)	One	601 sites

(b) 10 March 1986

Income Tax

414 Mr P R C ROGERS asked the Minister of Finance

(1) What amount was collected in individual income tax by means of the PAYE system in the 1985 tax year,

(2) (a) in how many instances did the final assessments result in (i) repayments owing to over-taxation and (ii) additional payments owing to under-taxation and (b) what were the total amounts due in each case?

The MINISTER OF FINANCE:

(1) R5 377 704 356

(2) (a) (i) 925 658.

(ii) 724 060

(b) (i) R217 408 182.

(ii) R1 153 377 336.

Note. Abovementioned figures exclude loan levy and relate to assessments *raised* during the period 1 March 1984 to 28 February 1985

Incest

426. Mr P R C ROGERS asked the Minister of Justice:

How many cases of incest were tried in each province of the Republic during the latest specified period of 12 months for which figures are available?

The MINISTER OF JUSTICE

The information is not readily available in the Department. According to the Central Statistical Services the number of persons convicted of incest in the various provinces for the period 1 July 1984 until 30 June 1985 is as follows

Cape Province	18
Transvaal	12
Natal	3
Orange Free State	3

Appeals

427. Mr P R C ROGERS asked the Minister of Justice:

(1) Whether any appeals in the Appellate Division of the Supreme Court were pending as at 31 December 1985; if so, (a) how many and (b) how many of these were (i) civil and (ii) criminal appeals;

(2) how many such appeals in each category have been lodged since 1 January 1986?

The MINISTER OF JUSTICE:

(1) Yes.

(a) 258

(b) (i) *Civil appeals:*

Pending	129
Number lodged, but records not yet received	26
Judgement reserved	7
Total	162

(ii) *Criminal appeals*

Pending	90
Number lodged, but records not yet received	4
Judgement reserved	2
Total	96

(2) Appeals received for the period 1 January 1986 until 28 February 1986:

Civil appeals	12
Criminal appeals	16

Houses

429 Mrs H SUZMAN asked the Minister of Constitutional Development and Planning:

What was the total number of houses built for Blacks in the 1984-85 financial year in each of the nine main urban areas in the Republic?

The MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING:

Pretoria	92
Witwatersrand	3 742
Bloemfontein	None
Pietermaritzburg	None
Cape Town	4 640
Durban	None
Kimberley	45
Port Elizabeth/Uitenhage	2 902
Vereeniging/Vanderbijlpark/ Sasolburg	501

Workers requisitioned

446. Mr K M ANDREW asked the Minister of Constitutional Development and Planning:

How many workers were requisitioned from (a) Lebowa, (b) Gazankulu, (c) Qwaqwa, (d) KaNgwane, (e) KwaZulu, (f) KwaNdebele, (g) Venda, (h) Bophuthatswana, (i) Ciskei and (j) Transkei by each specified Development Board in 1985?

The MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING:

Development Board: Western Cape

(a) Lebowa	0
(b) Gazankulu	0
(c) QwaQwa	28
(d) KaNgwane	0
(e) KwaZulu	25
(f) KwaNdebele	0
(g) Venda	0
(h) Bophuthatswana	300
(i) Ciskei	6 957
(j) Transkei	42 611

Development Board. Eastern Cape

(a) Lebowa	23
(b) Gazankulu	3
(c) QwaQwa	4
(d) KaNgwane	0
(e) KwaZulu	42
(f) KwaNdebele	7
(g) Venda	8
(h) Bophuthatswana	389
(i) Ciskei	5 536
(j) Transkei	4 064

Development Board: Northern Cape

(a) Lebowa	12
(b) Gazankulu	15
(c) QwaQwa	41

DEREGULATION

FIN-11/11L 28/3/86 252

Pruned powers

The unusual powers to be given to State President P W Botha for taking regulatory pressures off private-sector interests have met widespread approval — and some confusion. The Bill, short-titled the Temporary Removal of Restrictions on Economic Activities Bill, does not confer blanket powers on Botha to spring the elimination of laws and other regulations on unsuspecting businessmen.

He will be able, by proclamation, wholly or partly to suspend or grant exemption from *any* enactment — *barring* an Act of Parliament. However, Botha can suspend wholly or partly Acts which affect "matters" listed in a Schedule.

The Schedule lists a wide range registration and licensing of practically all economic activities; registration of employees; payments to the Unemployment Insurance and Workmen's Compensation funds; registration and control over factories; conditions of service and times of conducting business; use of machines; protection of employee health and safety; health requirements applying to premises; the erection of buildings; transport of persons and goods; and the establishment of towns and town planning.

The concept behind these powers was mooted in numerous reports, notably from the President's Council, a Department of Manpower Report, and a White Paper on job creation. The memorandum to the Bill, perhaps, hits the nail on the head: "In commerce (the regulation of human activities) has resulted in the impediment of economic progress and competition to an improper extent."

The powers are perceived as bold to the extent of signalling the will to go ahead with deregulation. When the powers are first exercised, deregulation, long hinted at by Cabinet Ministers and made part of official policy for small business in 1985, will move from generalities to specifics.

Now the question is in what areas the powers will first be exercised. Simon Brand, Development Bank CE, highlights these: regulations affecting black taxi businesses; local regulations and conditions of doing business; building standards; and labour legislation in general. ■

Figures released on jailed juveniles

Political Staff

MORE than 5 000 children were in South African jails as sentenced and unsentenced prisoners at the end of January this year, the Minister of Justice, Mr Kobie Coetsee, said yesterday.

He said 1 864 males and 152 females under the age of 19 were being held as unsentenced prisoners on January 31 this year.

A further 2 860 male and 176 female juveniles were being held as sentenced prisoners then.

Mr Coetsee, who was replying to a question tabled in the House of Assembly by Mr David Dalling (PFP Sandton), said 87 of the children were white, 34 were Asian, 1 716 were coloured and 3 215 were black

He said the number of children under the age of 18 years jailed during the last 12 months was not readily available and could only be compiled by way of a special survey.

The extension and centralizing of the statistical system was presently being undertaken and indications were that more extensive statistics would be available in the latter half of 1987.

He also said that research into the desirability and feasibility of special prisons for juvenile prisoners had been concluded and as a result it had been decided to implement a specialized treatment programme for sentenced juveniles.

"This treatment programme, which will include a literacy programme, classroom education and market-orientated training programmes, will be offered on a centralized basis to certain regions," Mr Coetsee said. "A prison at Leeuwkop Prison Command is presently being prepared for this purpose and it will be put into operation as a first priority during 1986."

CNT Trials 28/3/86

52

Trevor Wentzel to be set free

Supreme Court Reporter

ROBBEN ISLAND prisoner Mr Trevor Wentzel, 25, is to be set free after a successful appeal yesterday against his terrorism conviction and five-year sentence

Mr Wentzel was chairman of the Ravensmead Youth and Students' Organization at the time of the elections for the tricameral Parliament

On January 9 last year, he was convicted of assisting in preparations for a petrol-bomb attack on the home of Labour Party candidate Mr "Hansie" Christians on the eve of the August 1984 elections

Burned tyres

Mr Justice M R de Kock said yesterday there was evidence that Mr Wentzel had not accompanied the men who went to bomb candidates' houses, and "never expressed any agreement with the plan to produce or use petrol bombs".

The judge said Mr Wentzel admitted burning tyres earlier that day, but the magistrate had ruled this did not constitute an "act of violence" Mr Wentzel was sent to buy more petrol under the impression that it would be used on tyres

"When he returned, he heard of the plan to bomb candidates' houses. He objected and said it would be madness to go ahead with it"

While remonstrating with his companions, he put down the five-litre can of petrol and it was taken The State claimed he had "knowingly made the petrol available".

Mr Justice De Kock said it would be "unsafe" to sustain a conviction on the State's construction of Mr Wentzel's evidence.

Not a "sell-out"

There was no conclusive evidence he had identified himself with the scheme. In fact, he had persuaded two of his companions not to proceed.

Mr Wentzel did say he had not wanted to be seen as a "sell-out", or "chicken", but one could not conclude from this that he had voluntarily parted with the petrol.

"I do not consider it fair that he be held responsible because he put the can on the ground in argument and lost control of it"

It had not been proved beyond reasonable doubt that Mr Wentzel had, in any way, aided the perpetrators of the crime, said Mr Justice De Kock.

Mr Justice A J Lategan concurred with the judgment Mr A M Omar, instructed by R Vassen and Co, appeared for Mr Wentzel Mr P J A van der Merwe appeared for the State

Cape Times, Monday, March 31, 1986

R41 000 of 'bail fund' paid attorney's fees

Staff Reporter

MOST of the "bail fund" collected from New and Old Crossroads residents for 169 women arrested for public violence last year was used to pay a Pretoria attorney's legal fees — including expenses of more than R750 a day

The lawyer represented Old Crossroads leader Mr Johnson Nxobongwana and 72 women involved in the case.

According to documents handed to the Cape Times last week by members of the New Crossroads Committee (NCC), the Pretoria attorney, Mr Isaac Swartzberg, was given R29 500 to represent Mr Nxobongwana and 72 of the women The women pleaded guilty

The remainder of the women chose local legal representation

According to his firm's account to a Mr Albert Yawa, of the NCC, the attorney incurred R11 336,51 in hotel, petrol and car expenses and air fares when covering the 15-day trial

After air fares, flying from Pretoria to Cape Town and back each day, Mr Swartzberg would have incurred expenses of some R400 a day — including accommodation, the figures indicate This did not include consultation fees

His total bill amounted to R41 308, and R11 808 was still outstanding

Asked why out-of-town legal representation was sought and not local attorneys, the NCC members declined to comment.

"That's Mr Nxobongwana's business," one said

However, it would appear that local legal representation was sought twice, but in each case dropped as the lawyers concerned had not known "the Prime Minister" or "the right people", the Cape Times has learnt.

The NCC members said that about R15 000 was collected from Old Crossroads residents — the rest from elsewhere, including New Crossroads

The money collected by the NCC before the trial in July was to cover legal fees and to post bail for the accused

The alleged abuse of the "fund" and claims by New Crossroads residents that Mr Nxobongwana was attempting to establish a power base in the area have been cited as the cause of the violence between "fathers" and "comrades" which left nine "fathers" dead and three women wounded last week.

Apart from the money handed over to Mr Swartzberg, about R2 450 was given back to 29 women who were acquitted This was confirmed by a United Women's Congress (UWCO) member, Mrs Sophia Mbenge

Mr Swartzberg could not be contacted A member of his firm in Pretoria said last week that he was "away out of town" until April 4

Meanwhile, it has been disclosed from different sources that R15 collections taken from New and Old Crossroads residents recently made them "eligible" to vote in an election last month for a new chairman of the New and Old Crossroads committees

Voters who paid R15 were told it was for a "photograph" of the candidates, residents said.

Mr Nxobongwana was re-elected chairman of both committees, the NCC said, and they deny he was trying to establish a power base in the area.

Of the 150 000-odd residents in New and Old Crossroads, fewer than 6 000 voted in the election, residents claimed

The NCC has also accused the police of siding with the UWCO, a United Democratic Front affiliate, and other organizations

They claimed that if police at Guguletu police station had arrived soon after being informed that the homes of Mr James Mehlala and Mr Fenfolo Sitwaye — both NCC members who were murdered last Wednesday evening — they would both "be alive today."

A police liaison officer for the Western Cape, Captain Jan Calitz, denied that police were taking sides in the issue.

● The branch chairman of the General Workers Union and publicity secretary for the Western Cape Hostels Association, Mr Johnson Mpukumpa, appealed to leaders on both sides to meet and settle their differences "as soon as possible".

"The violence will destroy the unity of the black people if it continues The people must consider this very seriously," he said.

Man guilty of Toti deaths

ANDREW SIBISO ZONDO, 19, was found guilty yesterday of murdering the five people who died from injuries suffered in the bomb blast at the Sanlam shopping centre in Amanzimtoti on December 23 last year.

He was also found guilty by Mr Justice R N Leon of attempting to murder other members of the public present at that time.

Zondo had previously pleaded not guilty in the Supreme Court sitting in Scottburgh. The trial resumed yesterday after adjourning to allow the defence to obtain senior counsel.

At the end of the State's case yesterday, D Kuny, SC, appearing for Zondo, closed his client's case without leading evidence.

In his judgment, Mr Justice Leon said of the bomb blast that what began for so many as a happy day ended in a "dire, appalling tragedy".

He said the State called a large number of witnesses whose evidence was not called into question by the defence.

It was established beyond any question that a limpet mine placed in a refuse bin caused the explosion.

The judge read from a statement which Zondo made to a magistrate, in which he said he wanted to say that the person who planted the bomb at Amanzimtoti was himself.

The judge said it was beyond all question that Zondo was guilty as charged, and that was the unanimous judgment of the court. The hearing continues. — Sapa

Toti bomber admits to second thoughts

Zondo sees other ways for blacks

Bus. Day 3/4/86

252

CONVICTED Amanzimtoti bomber Andrew Zondo said yesterday violence was not the way to help blacks.

He told the Scottburgh Supreme Court he was now convinced there were other methods of achieving change.

Zondo, 19, was found guilty by Mr Justice R N Leon on Tuesday of murdering five people in the December 23 Sanlam Centre blast.

During evidence concerning extenuating circumstances, Zondo said African National Congress members failing to carry out orders were strictly punished.

He said they were sent to camps and not allowed to come back to SA

Zondo said he had defied instructions and taken the risk of injuring (rather than killing) people at the busy Amanzimtoti shopping centre at the height of the holiday season

He said his teacher had arranged an IBM bursary for him to study computer science at Natal University if he matriculated

Professor Fatima Meer said she met Zondo for the first time on Friday when she had spoken to him for four hours.

She said Zondo grew up totally within the ambit of bantu authorities and education — designed to keep blacks servile.

Meer said Zondo had become permeated with a sense of contradiction at a very early stage. His parents, who were highly religious, had been silenced into complacency.

Defence counsel D Kuny, SC, arguing for the finding of extenuating circumstances, said planting the bomb was unfortunately an act that encapsulated the tragedy of South African society.

Zondo was still in his teens and had all the promise that his intelligence, sensitivity and enthusiasm for life gave.

Zondo had first gone to Swaziland where he was encouraged by the ANC to come back and continue his education. He would have done so but for the fact that he was arrested and put in the invidious position of being forced to agree to give away certain colleagues.

Kuny said Zondo had felt he had no alternative but to leave the country. Continuing matric and going to university had no longer been an option open to him

Kuny said the bomb had not been planted out of greed or to seek personal gain. Zondo had rather been driven by frustration, anger and bitterness.

State prosecutor Ross Stuart said it was a crime against society as a whole and not a spur-of-the moment act

What sort of man could enter a crowded shopping centre, he asked, with a bag of death?

Stuart said only an inherently evil mind could have taken the steps up the passage to place the bomb in the bin

The hearing continues. — Sapa.

STAR 7/4/86

Wits reaffirms speech freedom

(251)

(252)

By Sue Pleming, Education Reporter

The council and senate of the University of the Witwatersrand has reaffirmed its commitment to freedom of speech and rejected violence in all forms

This was contained in a resolution passed at the weekend — after recent incidents of violence at the university

About two weeks ago a Students Moderate Alliance (SMA) meeting which was to be addressed by Unita representatives was disrupted by black students

Two days later an alleged informer had to be saved after being chased by several hundred students

"Even if deviations from the practice of free speech in the university are seen as a 'spill-over' or 'spin-off' from society on to our campus, they are to be deplored and discouraged," the resolution said

It added that in view of present conditions in South Africa, it was inconceivable that the university would not be affected by insecurity, fear and intolerance.

PLEA FOR TOLERANCE AND RESTRAINT

"Such encroachment on our campus, with its 18 000 students of many backgrounds and beliefs, may from time to time make it difficult for students to faithfully carry out the university's commitment to free speech and fair debate."

The council and senate appealed to university leaders and the university community to "exercise tolerance and restraint in the faith of the many provocations of life in South Africa"

It also called for a halt to behaviour which enfringed the right of all opinions to be heard The council and senate reaffirmed that in instances where members of the university contravened the disciplinary code governing behaviour, appropriate disciplinary procedures would be invoked

Middelburg (Transvaal)
Secunda
Standerton
Wakkerstroom
Ermelo

Belfast
Bethal
Volksrust
Piet Retief
Carolina

London: national convention

*24 Mr L F STOFBERG asked the Minister of Foreign Affairs.†

(1) Whether he or any members of his Department intend attending a so-called provisional national convention of leading South African political leaders which is to be held in London soon, if so, why,

(2) whether his Department is involved with arrangements for South African politicians to attend this convention; if so, (a) why and (b) who are the politicians;

(3) whether he will make a statement on the Government's standpoint in this connection?

The DEPUTY MINISTER OF FOREIGN AFFAIRS:

(1) No, as far as I am aware, no so-called provisional national convention of leading South African politicians was held in London Rumours to that effect were pure newspaper speculation and were confused with a conference organised by the Wilton Park Conference Centre on the theme "South Africa in Crisis" and which ultimately was cancelled and replaced according to reports by an informal exchange of views Neither myself nor members of my Department were invited to the conference

(2) No

(3) No, it is not proper or customary for the Government to take a stand on unfounded newspaper speculation

Guguletu: members of ANC

*25 Mr S S VAN DER MERWE asked the Minister of Law and Order·

(1) Whether, with reference to his reply to Question No 26 on 18 March 1986, any person escaped capture in Guguletu on 3 March 1986, if so, what were the circumstances surrounding this escape,

(2) whether the identity of this person has been established; if so, who is this person,

(3) whether the police received any information that this person (a) was a member of the African National Congress, (b) had received any military training and (c) was armed; if so, (i) what information and (ii) when,

(4) whether this person has since been apprehended; if so, (a) when and (b) where,

(5) whether the post-mortem reports on the persons killed on this occasion have now been completed, if not, why not; if so, what was the cause of death in respect of each such person,

(6) whether any of the persons killed had gunshot wounds in the head, if so, (a) how many and (b) what was the (i) nature and (ii) extent of these head wounds,

(7) whether the police had any (a) information on when these persons became members of the African National Congress, (b) knowledge of which part or formation of the African National Congress they belonged to and (c) access to records of the membership of these persons of the African National Congress, if so, (i) what is the nature of this information, (ii) to which formations of the African National Congress did they belong, (iii) what records did the police have access to and (iv) where did they gain access to these records;

(8) with reference to paragraph 5 (b) of his reply to the above-mentioned question, (a) where did the training of these persons as terrorists take place, (b) what were the dates of this training, (c) who conducted the training and (d) what is the nature of the evidence in the possession of the police that these persons received such training,

(9) whether the police received any information on the number of persons who would be involved in the proposed attack on a police station, as referred to in paragraph 11 (c) of his reply to the above-mentioned question; if so, how many persons were there to be in this group?

†The MINISTER OF LAW AND ORDER·

(1) Yes, when the shoot-out began, a person or persons fled from the scene

(2) No, investigation to determine without doubt his or their identity, is continuing

(3) No

(a) to (c) Fall away.

(4) No.

(a) and (b) Fall away

(5) Yes, according to the finding of the port-mortems the cause of death with regard to each of the persons is attributed to gunshot wounds

(6) Yes

(a) All the deceased

(b) (i) and (ii) Until the inquest has taken place, I am not prepared to furnish the detail of the wounds

(7) (a) Yes.

(b) Yes

(c) No

(i) to (iv) Fall away.

(8) (a) Some in the RSA and others abroad

(b) During the period May 1985 until December 1985

(c) The African National Congress

(d) It is neither the policy nor the custom to make known such information.

(9) No.

Kabokweni magistrate's court

*26. Mr S S VAN DER MERWE asked the Minister of Justice.

(1) Whether any officials attached to his Department were witnesses to an incident at the Kabokweni magistrate's court near White River on or about 11 March 1986; if so, (a) what officials and (b) what was the nature of the incident;

(2) whether a crowd of persons was present at the court on that date; if so,

(3) whether any court proceedings were interrupted as a result of the presence of this crowd; if so, in what manner;

(4) whether any officials attached to his Department took any action in regard to this crowd (a) as a result of court proceedings having been interrupted and/or (b) for any other specified reasons, if so, (i) who, (ii) what action and (iii) with what result?

CAPE TIMES 10/4/86

'Necklace' murder, beatings in township

252 1178

Own Correspondent

PORT ELIZABETH. — Kangaroo courts, which in the past have meted out brutal punishment to "offenders", appear to have made a return to at least one black township in the Eastern Cape, police said yesterday

This follows the "necklace" murder in Port Alfred of one man and the brutal beating of others allegedly accused by "comrades" of theft, police said

They added that when the courts operated in the townships last year, residents had been forbidden to lay charges at police stations

A 40-year-old Port Alfred township resident interviewed yesterday said he had been handcuffed to a beam by about 20 "comrades" and beaten with a sjambok. He was told his punishment had been ordered by a man known to him as a leader of the United Democratic Front

He showed the reporter scars and deep open wounds left on his back and buttocks by numerous lashes

Around his wrists were raw wounds sustained when he was made to hang handcuffed from a beam in the "courtroom" while being beaten

He said he had been accused of stealing certain items from a woman

He was made to witness the beating of another man. Several "comrades" then fetched four other people named by the beaten man as also being responsible for the theft

"The four men were handcuffed to a chain hanging from the roof and the 'comrades' took turns in beating their backs to a pulp," he said

On Tuesday he heard that the charred body of one of the men who was beaten had been found

Lieutenant-Colonel Gerrie van Rooyen, police liaison officer in the Eastern Cape, yesterday confirmed that a number of people had been severely beaten by what appeared to be a "people's court" and that the charred body of one of those beaten was later found in the township

A number of arrests had been made and the investigation was continuing

State witness admits to 'altered' tapes

WEEKLY MAIL
11/4/86

By TONY OOSTHUIZEN,
Pietermaritzburg

A RECORDING of statements made by an alleged co-conspirator of the four treason trialists on trial in the Pietermaritzburg Supreme Court contains "portions where changes had been made" to the recording, including an "obvious interruption", the court was told this week.

An expert state witness, Colonel Leendert Jansen, made these admissions this week after defence advocate Clifford Mailer played a portion of the tape in court and alleged that the recording had been edited in "interesting" places

The "Lesotho tape" referred to was allegedly found by South African raiders during a "pre-emptive strike" into Lesotho in 1982

Mailer said it was interesting that the interruption in the recording came at a time when the alleged co-conspirator, answering questions by an interviewer, denied any knowledge of African National Congress meetings.

The transcript read:

"(Question) So, because he said there were a number of meetings here But that was mostly ANC business then?

"(Answer) No, I don't know anything about ANC meetings . (break in recording or piece recorded over) "

The State alleges in the indictment that the tape contains statements by a person in Lesotho with whom the accused — Thozamile Gqweta, Sisa Njikelana, Samuel Kikine and Isaac Ngcobo — had conspired to overthrow the government through violence.

Jansen, a Doctor of Science, agreed that the recording had portions where changes had been made and said that he had "ill considered " his decision that the recording was original and had not been tampered with

Earlier, during his evidence, Jansen said he had examined all the tapes being used as evidence in the trial and had found that "there had been no attempt to edit them".

Cape Town Divisional Council	60
Springbok	17
Stellenbosch	49
Kimberley	50
Upington	85
Warrenton	7
Bloemfontein	42
Odendaalsrus	50
Reddersburg	7
Welkom	112

Rent increases

51 Mr P G SOAL asked the Minister of Local Government, Housing and Works·

(1) Whether, with reference to his reply to Question No 8 on 26 February 1985, the 20 applications received in 1984 for rent increases in respect of houses and blocks of flats were approved; if not, why not, if so, what was the (a) amount and (b) percentage of the rent increase approved in respect of each specified (i) house and (ii) block of flats,

(2) whether any applications for rent increases in respect of rent-controlled dwellings in the Johannesburg North constituency were received in 1985, if so, (a) how many, and (b) with what result, in respect of each suburb comprising this constituency, a list of which has been furnished to the Minister's Department for the purpose of his reply?

The MINISTER OF LOCAL GOVERNMENT, HOUSING AND WORKS

(1) (a), (b), (i) and (ii)

Housing Units	Increased from (p m)	To (p m)	Percentage increase
(a) 3 Third Avenue, Park Town North	R351,06	R367,10	4,569%
(b) 8 Fourth Avenue, Park Town North (House was reconstructed in 1962 and no determination is thus made)			
(c) 18 Twelfth Avenue, Park Town North	R429,11	(First determination)	
(d) 14 Seymour Avenue, Park Town North	R448,52	R537,30	19,794%
(e) 7 Escombe Avenue, Park Town North	R311,13	R356,24	14,499%
(f) 41A Seventh Avenue, Park Town North	R275,00	R398,88	45,047%
(g) 56 Eleventh Avenue, Parkhurst	R400,48	R458,74	14,547%
(h) 62 Ninth Avenue, Parkhurst	R246,83	R324,64	31,523%
(i) 24 Eighth Avenue, Parkhurst	R251,15	R334,52	33,195%
(j) 40 Ninth Avenue, Parkhurst	R190,77	R247,00	29,475%
(k) 104 Nineteenth Avenue, Parkhurst	R239,38	R286,31	19,604%
(l) 14 Selkirk Avenue, Parkhurst	R300,00	R364,92	21,640%

Flat blocks	Increased from (p m)	To (p m)	Percentage increase
(a) Illovo Mansions, Illovo	R6 426,73	R7 701,07	19,828%
(b) Dunkeld Mansions, Illovo	R8 192,54	R9 483,86	15,762%
(c) Tyrwhitt Court, Rosebank	R3 392,35	R3 918,29	15,503%
(d) Bonny Doon, Rosebank	R5 001,63	R5 733,88	14,640%
(e) Tylney Hall, Rosebank	R2 556,03	R3 279,87	28,319%
(f) Harrogate, Rosebank	R5 845,45	R7 183,28	22,886%
(g) Antrim Court, Rosebank	R3 534,30	R4 245,63	20,126%
(h) Villaguy-and-Peter House, Rosebank	R3 995,20	R4 526,25	13,292%

HoA

(2)(a) and (b)

Housing units	Increased from (p m)	To (p m)	Percentage increase
(a) 34 Cradock Avenue, Rosebank	R797,78	R908,78	13,913%
(b) 56 Eleventh Road, Rosebank	R458,74	R505,15	10,116%
(c) 24 Eighth Road, Rosebank	R334,52	R380,00	13,596%
(d) 62 Nineth Road, Rosebank	R324,64	R375,15	15,588%
(e) 4 Loch Avenue, Park Town	R500,00	R671,17	34,234%
(f) 14 Selkirk Way, Park View	R300,00	R398,27	32,756%
(g) 14 Seymour Avenue, Park Town North	R537,35	R613,66	14,201%
(h) 12 Fourth Avenue, Park Town North	R429,96	R454,79	5,775%
(i) 37 Seventh Avenue, Park Town North	R360,86	R405,77	12,445%
(j) 41A Seventh Avenue, Park Town North	R398,88	R441,18	10,604%

Flat blocks	Increased from (p m)	To (p m)	Percentage increase
(a) Mildura Court, Park Town North	R2 863,54	R3 621,34	26,464%
(b) Dudley Court, Park Town North	R2 331,79	R2 538,80	8,878%
(c) Villaguy-and-Peter House, Rosebank	R4 526,25	R5 170,60	14,236%

FRIDAY, 11 APRIL 1986

†Indicates translated version

For written reply.

General Affairs

Legal Aid Board

479 Mr D J DALLING asked the Minister of Justice.

(1) (a) What are the current estimated liabilities of the Legal Aid Board and (b) what funds are currently held by this Board to meet such liabilities,

(2) whether the Government makes any contribution to the funds held by the Legal Aid Board, if so, what was this contribution in the latest specified financial year for which information is available?

The MINISTER OF JUSTICE.

HoA

(1) (a) A rough estimate done by the staff of the Legal Aid Board on information obtained from about one thousand concluded cases and projected on to about thirty two thousand live cases (some of them up to fourteen years old) indicates that the Board may receive accounts for about R12 million in respect of those cases over the next fourteen years.

(b) R545 718 in respect of legal costs as at 28 February 1986 Running costs excluded

(2) Yes, R5 847 000 for the 1985/86 financial year

Technikons

590 Mr H E J VAN RENSBURG asked the Minister of Education and Development Aid·

How many (a) White, (b) Coloured, (c) Asian and (d) Black members of the aca-

Annexure B

Quarries and Salt Works

Year	Mines	Whites	Asians	Coloureds	Blacks	Total
1976	538	1 618	260	1 209	14 232	17 319
1977	475	1 858	253	1 277	13 489	16 877
1978	404	1 865	252	1 428	13 336	16 881
1979	476	1 834	270	1 720	13 438	17 262
1980	495	1 831	278	1 422	14 327	17 858
1981	513	1 840	257	1 365	14 132	17 594
1982	469	1 839	241	1 472	13 436	16 988
1983	489	1 808	234	1 391	12 476	15 909
1984	521	1 867	221	1 417	12 659	16 164
1985	545	1 849	221	1 415	12 433	15 918

ANNEXURE C

Revenue received from Mines per Financial Year

Income Tax	1984/85	1983/84	1982/83	1981/82	1980/81
Coal mines ...	75 290 213	62 338 595	124 440 038	45 175 761	47 051 804
Copper mines	30 473 687	9 832 323	5 365 384	3 546 275	24 889 205
Diamond mines	540 661	980 345	3 825 147	−8 300 574	38 625 802
Gold mines ...	1 598 923 241	1 700 965 179	1 278 171 037	1 542 125 426	2 794 756 027
Iron ore mines	679 981	735 818	53 207	6 093 070	−26 425
Manganese mines ..	8 264 209	8 761 151	25 261 923	−4 074 885	13 152 751
Tin mines ...	917 406	3 532 625	2 399 735	2 494 583	3 674 974
Other mines (platinum included) ...	108 216 766	65 550 342	38 723 818	59 932 379	84 237 439
Non-mine tax ...	609 141 040	694 246 762	590 951 786	497 881 501	505 933 512
Revenue from mining leases					
Gold mines ...	374 871 146	520 628 369	367 856 170	589 157 623	838 195 072
Diamond mines	952 590	9 796 379	373 924	4 238 414	18 456 561
Other mines	5 913 927	6 295 531	5 965 783	18 982 773	23 565 081
Other revenue					
Diamond export duty	41 364 741	39 643 573	33 328 824	24 920 168	24 797 439

Source: Commissioner for Inland Revenue

Sabotage

362. Mrs H SUZMAN asked the Minister of Justice

How many persons charged with offences relating to sabotage were (a)(i) acquitted, (ii) convicted of sabotage, and (iii) convicted of lesser offences, in 1985 and (b) still awaiting trial at the end of 1985?

The MINISTER OF JUSTICE:

The given statistics are in respect of persons charged with the offence of sabotage:

(a) (i) 11
(ii) 3
(iii) 1

(b) 7

Duncan Village: revenue

689. Mr E K MOORCROFT asked the Minister of Constitutional Development and Planning:

(1) (a) What was the total revenue generated through all channels for the Black township of Duncan Village, East London, in respect of the 1984-85 financial year, (b) in what manner was each specified amount of this revenue generated and (c) what was the total expenditure on (i) administration, (ii) development schemes and (ii) any other specified items in respect of this township;

(2) how much of this amount was spent on (a) the building and/or renovation of housing, (b) the building and/or maintenance of roads and drains, (c) the provision of electricity, including street lights, (d) refuse removal and (e) other specified amenities and services;

(3) whether any other development schemes were undertaken; if so, (a) what schemes and (b) at what cost?

The MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING:

Black township: Duncan Village, East London

		Financial year 1984-85 R
(1) (a)	Total revenue	1 396 688
(b)	Service charges	
	House rent	796 258
	Lodger fees	50 323
	Tax	61 305
	Cemetery fees	13 904
	Rent: Post Office	6 400
	Shops	1 452
	Crèche	7 328
	Halls	1 122
	Admission fees	1 664
	Compound fees	754
	Sundries	9 798
	Hostel fees	354
	Debtors Redemption	424 960
	Interest	14 844
		6 222
	Total	R1 396 688
(c)	Total expenditure:	
	(i) Administration.	
	Salaries	551 721
	Contributions Pension Fund	58 817
	Unemployment Insurance Fund	1 500
	Bonusses	40 311
	Workmen's Compensation	3 501
	Printing and stationery	4 020
	Uniforms and protective clothing	5 783

Alleged threat to petrol bomb home

COURT WARNS COP

252

17/4/96
SOWETAN

THE Pretoria Supreme Court yesterday issued a temporary order restraining an Atteridgeville policeman from petrol-bombing a local house or injuring the minor kids in the family.

Mr Justice M J Strydom granted the order restraining Mr David Mudawo from either using a petrol bomb or handgrenade to attack Mrs Mirriam Sekgothe's house

The policeman was also ordered not to injure, harass or intimidate her minor children.

Mrs Sekgothe brought the application following alleged threats by Mr Mudawo on April 4 and 10 that he would attack her house and shoot her son, Sello, a suspect, if he did not report at the local police station on April 14

By MONK NKOMO

The respondents were Mr Mudawo, who is attached to the Atteridgeville police station, and the Commissioner of Police, General Johan Coetzee.

The judge did not issue an interdict against Mr Coetzee following an out of court agreement between the lawyers of both parties

Mr Justice Strydom referred the whole matter for hearing because the five policemen identified in supporting affidavits as being responsible for earlier assaults and petrol-bombings in the township, had denied the allegations

The five policemen involved were identified as Mr Andrew Mphahlele, Mr Mudawo, a Mr Sibiya, Mr Lesley Mogotsi and Mr Godfrey Mampuru.

The Deputy Chief Commissioner of Police, Lieutenant-General Gideon de Witt, yesterday submitted that although he did not know whether the allegations against the policemen were true or false, they were regarded in a serious light.

"The Commissioner of Police has personally issued instructions that the allegations be fully investigated and should the complaints be found substantiated, the necessary steps will be taken to have the culprits prosecuted before the courts," the court heard.

Slain councillor turned down safety offer — Page 7

Stop Order facilities for subs .. Artisans

94

Another day's business in the court of smiles

252 Weekly Mail April 18 - 24 1986

Mondays to Fridays at 5pm sharp, a rather strange court sits for business: informal, polite ... and with not a prosecutor in sight. WILMAR UTTING visits Johannesburg's new Small Claims Court

MINUTES before opening time, the only occupants of the yard outside the Small Claims Court in Hillbrow were two rats, both of them big and dead

They were latent victims, explained a friendly court policeman, of the bomb found in the Hillbrow Police Station a few weeks ago Not only did its diffusion shatter windows — here the policeman invited an inspection of various holes — but it also had a devastating effect on the resident rats They had been scampering frenziedly around the roof ever since, and each day two or three more succumbed to their injuries and crept out to die in the sun.

The inspection over, the policeman offered to fetch an observer a glass of water, serving it, quaintly, in a small wine glass

This, after all, is Johannesburg's Small Claims Court, where politeness and informality are the keywords. The court opened on January 2 this year, sitting from Mondays to Thursdays at 5pm in the Hillbrow Magistrate's Court With a student clerk of the court, assisted by other students, it has already issued 300 summonses and heard 135 cases — all involving amounts of under R1 000.

The presiding officer is an attorney or advocate with more than seven years' experience and who is appointed as a commissioner by the Chief Magistrate. There is no prosecutor or intimidating formality. Even the court orderly, ushering in the commissioner, simply announced with a smile "We'd like to start now."

Two sturdy black women, N Manaka and L Mokwena, were asked to take a seat at the table before the bench They had a complaint about a Mrs L Jordaan.

On the bench was Mrs Karen Faulkes-Jones

"Now, ladies," she said with a gracious smile, "which language would you care to use?"

The first lady chose English, the second said she was easy, she spoke any language extremely well.

"Therefore, in deference to Mrs Manaka's preference, we shall use English," decided the bench

Unfortunately the defendant could not be present, being overseas, and the ladies were asked if it would be convenient for them to return on May 14 Smiling thanks all round, they left

The next case was Ismael vs Ismael, a slight, brisk Mrs Carol Ismael vs a big, slow-moving Mr I Ismael, with large soft eyes and an air of secret suffering Mrs Ismael carried a business-like file and presented her case briskly:

I Ismael was her former husband and they had divorced in January, 1981 She had been awarded maintenance of R50 each for three children. Now there was only one minor daughter, presently staying with her husband However, he was responsible for schoolbooks and fees and medical costs for the child as well, and back bills now amounted to R949,61. He had refused to collect registered letters she had sent to his home and business.

Did Mrs Ismael have copies of invoices? Indeed she did, she said, opening her file

"Each slip also has a handwritten explanation of what was purchased, writing he cannot fail to identify since it is his own child's," Mrs Ismael said.

Then, decided Mrs Faulkes-Jones, Mr Ismael would read out each slip as it was handed to him and would be given the opportunity of conceding or denying his responsibility

Mr Ismael read each slip slowly, listing jotters, pencils, rulers, rubbers, paper stars, tackies, shoes and socks, agreeing he was responsible for these purchases

"Now for the medical bills," said Mrs Ismael, diving back into her file

But Mr Ismael had had enough Could he suggest a short cut to the bench? Certainly, he could.

Well, he accepted his responsibilities, but there had come a stage when his wife said if he did not pay he could not see his children The reason he had not paid up was, he confessed, "just nastiness".

"How would you feel," he asked Mrs Faulkes-Jones — dainty in black suede jacket and skirt with a flirtatious frilly hem and tiny gleaming shoes — "how would you feel if you were paying maintenance each month and when you phoned to speak to your child her mother asked if you had made an appointment?"

That, however, was a separate issue. Did Mr Ismael accept he was responsible for an amount totalling R949,61? Yes, he did. Could he pay this amount? No, he could not

Mrs Faulkes-Jones announced that the court had now to hold a financial inquiry but asked that details of Mr Ismael's private affairs be treated as private.

How much did he earn each month? He mentioned a modest sum, saying he worked for a shopkeeper in Westonaria.

"That doesn't sound much," said Mrs Faulkes-Jones.

Mr Ismael agreed it wasn't much, particularly as his job entailed what he called "managerial aspects". Mrs Ismael smiled down at her folded hands.

Could Mr Ismael list his monthly expenses?

Yes, well, his boss paid him in cash and took care of his tax and rent, so he paid only his petrol which was the biggest expense, and gave his daughter pocket money, bought toiletries for both and smoked a packet of cigarettes a day

"But Mr Ismael, if my arithmetic is correct, there is very little left, and you have made no provision for medical costs, clothing or —"

Mr Ismael did not buy clothing

"Mr Ismael," said Mrs Faulkes-Jones, with gentle persistence, "what do you *eat?*"

Eat? This was something he never thought about

But surely he had to eat *something?*"

Yes, he and his daughter did eat something, but they had such small appetites that the something was practically nothing

Could he not tell the court what he spent on food?

Mr Ismael thought deeply, then recalled he had given his daughter R20 two weeks ago for meat

But he was not a nasty man, he didn't have it in him, and he was prepared to now repay his wife R50 a month for the bills, he said

"But, Mr Ismael," said Mrs Faulkes-Jones, "your expenses are already higher than your income, even without the R50 a month maintenance".

Mrs Ismael's hand shot up. Correction Maintenance had been R50, but it was now R85. Like everything else, it had gone up

Mrs Faulkes-Jones sighed softly. Mr Ismael sighed heavily. What was to be done?

Well, he said cautiously, there was one possibility. He already worked six days a week, but his boss had said he could open the shop on Sundays, and although extra money had not been discussed

Right Mrs Faulkes-Jones could now issue her court order Mr Ismael was to pay off his debt in R100 instalments

Now entered Chris Mullins, plaintiff, and Ian Molesman, defendant

Mullins had let a room to Molesman and Molesman had upped and off last Christmas without giving notice, and he now owed Mullins R220 for rent for January and R16,47 in unpaid telephone bills He had three witnesses, a former, a current and a future lodger, all waiting to testify that when they "joined" they had understood they had to give a month's notice

And what had Molesman to say?

"What can I say?"

"Well, you have to say something, you came here to defend the claim," said Mrs Faulkes-Jones reasonably

Molesman said he would not dispute that Mullins may have mentioned notice, but that was irrevelant because Mullins knew that he, Molesman, was leaving

Mullins denied this, claiming all Molesman had said was that he was considering taking a cottage

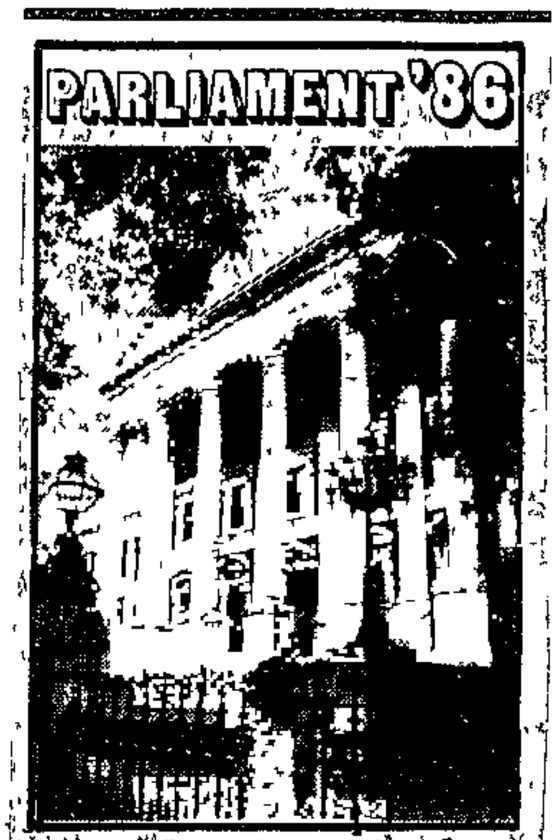
No, corrected Molesman, he had said he was *seriously* considering taking a cottage

The court found this discussion had no bearing on the matter, since the legal position was that a monthly tenant had to give a month's notice, and could Molesman pay Mullins R236,47.

No, Molesman could not, because he had picked up a R300 speeding fine, and the traffic court — with a hopeful glance at the bench — "is not as understanding as you, madam."

Mrs Faulkes-Jones acknowledged this with a modest smile. But when could he pay? He agreed to pay R200 this month and the balance next month, and everyone went cheerfully home, scattering "good nights".

● People wishing to bring a claim of less than R1 000 before the Small Claims Court should first send a letter of demand to the debtor by registered post or deliver this against a signature. The letter should also outline the basis of the claim After 17 days from the posting of the letter they should visit the Small Claims Office in the Johannesburg Magistrate's Court with a copy of the letter and proof of mailing Summons will then be issued and, if ignored, the case will be set down for hearing



Justice in disrepute — Dalling

Political Staff

PARLIAMENT — Judicial enforcement of discriminatory laws had brought the administration of justice into disrepute, *Mr Dave Dalling (PFP Sandton)* told the Assembly

He said the enforcement of laws such as the Population Registration Act, the Group Areas Act and the Pass Laws had "diminished the legitimacy of our courts in the eyes of the black public"

A Human Sciences Research Council study had published "adverse findings" on the inequality of access to courts, and on the fact that civil courts were administered almost exclusively by whites

Mr Justice Nicholas had also said that because of separate development, a large part of the population regarded the courts "as instruments of oppressive social policies".

Stellenbosch University's law faculty dean Professor H J Erasmus had recommended that the legitimacy of the courts could be improved by abolishing discriminatory laws and involving more blacks at all levels of the judicial process

Mr Dalling said only five of 4 000 magistrates were not white.

Vagrancy/drunkenness

354 Mr K M ANDREW asked the Minister of Law and Order †

How many (a) males and (b) females of each race group were arrested in 1985 for (i) vagrancy and (ii) drunkenness in the Cape Town police station area?

The MINISTER OF LAW AND ORDER

	(a)		(b)	
	(i)	(ii)	(i)	(ii)
White . . .	57	12	511	37
Coloured	662	255	2 738	855
Asian	—	—	—	—
Black	63	15	223	26

Mineral products

438 Mr L F STOFBERG asked the Minister of Finance †

(1) Whether there were any fluctuations in the rand prices of mineral products recently, if so,

(2) whether his Department exercises control over the indicated (a) selling prices, (b) tonnage in relation to such selling prices and (c) yields in respect of mineral products, if not, why not, if so, what control in each case,

(3) whether the exchange receipts in respect of mineral products are realised in accordance with the actual selling prices abroad, if not,

(4) whether he intends taking steps to ensure that exchange and tax receipts in this connection are maximised, if so, what steps?

The MINISTER OF FINANCE

(1) Yes The value of the rand has also fluctuated against other currencies

(2) (a), (b) and (c) No The sales of minerals takes place on the free market As these are highly competitive markets the Government cannot prescribe selling prices or yields to anyone

(3) In terms of the Exchange Control Regulations 1961 no person may export goods at a price less than the value thereof

(4) Control over the receipt of export proceeds is exercised by the banks by way of a prescribed export declaration form, which must be completed by exporters at the time of shipment, and on which *inter alia* is stipulated the amount to be received and the date of receipt Any person failing to comply with the requirement to transfer to South Africa the full proceeds of exports within a period of seven days of payment is guilty of contravening the Exchange Control Regulations and liable on conviction to a fine of up to R250 000 Spot checks on the receipt of the proceeds of exports are undertaken by inspectors of the South African Reserve Bank

In terms of section 103 of the Income Tax Act losses arising from the sale of minerals (particularly precious stones) at less than their market value, can be disregarded in calculating taxable income

As is evident from the abovementioned information, the Government through the enforcement of section 103 of the Income Tax Act and the exchange control regulations, seeks to maximise exchange and tax receipts

Bheki Zacharia Mvulani

448 Mr P G SOAL asked the Minister of Law and Order

(1) Whether, with reference to his reply to Question No 14 on 11 June 1985, the inquest into the death of Bheki Zacharia Mvulani has been completed, if not, why not, if so, (a) when and (b) what were the findings,

(2) whether any action has been taken as a result of the findings, if not, why not, if so, what action,

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

The MINISTER OF LAW AND ORDER

(1) Yes

(a) 11 February 1986

(b) The presiding magistrate could make no finding as to whether the death was caused by an act or neglect which includes or constitutes a crime on the part of someone else

(2) No, the inquest docket has been referred to the Attorney-General for his decision.

(3) No

Stock theft

450 Mr P R C ROGERS asked the Minister of Law and Order

(a) How many cases of theft of (i) small stock and (ii) large stock were reported in the police station area of Komga during 1985 or the latest specified period of 12 months for which figures are available and (b) how many persons in the said area were charged with theft of (i) small stock and (ii) large stock during that year or period?

The MINISTER OF LAW AND ORDER

January to December 1985

(a) (i) 55

(ii) 6

(b) (i) 41

(ii) 3

Stock theft

451 Mn P R C ROGERS asked the Minister of Law and Order

(1) How many cases of theft of (a) small stock and (b) large stock were reported in the police station areas of (i) East London, (ii) King William's Town, (iii) Stutterheim, (iv) Cathcart and (v) Queenstown during 1985 or the latest specified period of 12 months for which figures are available,

(2) how many persons were charged with theft of (a) small stock and (b) large stock in each of these police station areas during the said year or period.

The MINISTER OF LAW AND ORDER

January to December 1985

	(1)		(2)	
	(a)	(b)	(a)	(b)
(i) East London .	37	34	16	8
(ii) King William's Town . . .	27	5	3	—
(iii) Stutterheim .	124	29	77	2
(iv) Cathcart .	28	5	11	2
(v) Queenstown .	139	13	32	—

Trespass

467 Mrs H SUZMAN asked the Minister of Law and Order

How many (a) Whites, (b) Coloured persons and (c) Indians were arrested for trespass by the South African Police in 1985?

The MINISTER OF LAW AND ORDER

(a) 929

(b) 11 097

(c) 723

Over 1m summonses were issued last year

25/4/86 (252) BUS DAY

Business Day Reporter

SOUTH AFRICANS sank deeper into debt during January , according to Central Statistical Services (CSS) figures released in Pretoria yesterday

The number of summonses issued between November and January increased by 8,1% to 216 077 (199 800 last year) and the number of civil judgments for debts rose by 10,7% or 103 768 (93 708)

CSS points out that the number of judgments in January alone seasonally increased by 13,3% compared with last December. The increase was 18,6% compared with January last year.

For the first time, more than a million summonses were issued last year. The increase amounted to 17,5% over 1984.

Civil judgments for debts last year rose by 15,7% compared with 1984

However, the big increase was in the amounts related to the judgments — up by a massive 89,1% from R357,8m in 1984 to R676,6m

Liquidations in the January-November period increased by 39,6% and insolvencies by a 72,5%.

Policemen fined for Nair assault

By CARMEL RICKARD

TWO Durban Security Policemen were convicted and fined this week for assaulting UDF leader Billy Nair in detention

W/O Johannes de Wet and Sergeant Gary van Sluys were both found guilty of assaulting Nair during his detention last year, leaving him with a perforated eardrum and eye injuries

De Wet was fined R175 or 75 days and Van Sluys R50 or 25 days Both policemen were suspended without salary shortly after the incident, and both now face a formal board of inquiry According to De Wet's lawyer, he has been advised that if found guilty he will be dismissed.

The two policemen both pleaded not guilty and claimed Nair, because of his strong political convictions, had injured himself to bring the police into disrepute.

Magistrate J Jacobsz dismissed these claims and pointed to several flaws in the defence of the two accused which led him to accept Nair's version, even though he had found him to be "not an entirely satisfactory witness".

Magistrate Jacobsz said he took into account the fact that the assault was not very serious and had not left lasting damage

However, he felt it necessary to make it clear to the rest of the police force that such actions would not be tolerated

"The particular circumstance of the case (that the assault was on a political detainee) means that the incident must be viewed in a more serious light It happens increasingly often that complaints are brought against the police and unfortunately many are proved true.

"In such cases as this the police have a special responsibility not to bring the rest of the force into disrepute The great prominence given such cases in the media also brings the state and the police into disrepute"

Nair is to sue the Minister of Law and Order and the two policemen concerned for R50 000 for unlawful detention and assault

BY GARRY TRUDEAU

been (a) arrested, (b) charged, (c) brought to trial, (d) acquitted and (e) found guilty in terms of section 16 of the Immorality Act since its inception as at the date of repeal of that section?

The MINISTER OF LAW AND ORDER:

(1) (a) 223

(b) 191.

(2) (a) 929

(b) 859

(c) 733

(d) 221

(e) 527

Note In terms of the Archives Act, 1962 (Act 6 of 1962) registers are kept for only 5 years and destroyed thereafter The requested information is available only for the period 1 July 1980 until 30 June 1985

Hillbrow/Norwood/Lombardy: offences

626 Mr H H SCHWARZ asked the Minister of Law and Order

How many cases of (a) murder, (b) culpable homicide, (c) assault with intent to do grievous bodily harm, (d) common assault, (e) rape, (f) robbery, (g) theft of vehicles and cycles, (h) damage to property, (i) housebreaking with intent to steal and theft and (j) possession of drugs were reported at each specified police station in (i) Hillbrow, (ii) Norwood and (iii) Lombardy in 1985?

The MINISTER OF LAW AND ORDER

	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Hillbrow	36	12	257	833	76	395	4 009	717	2 089	4
Norwood	14	9	50	122	12	72	1 102	272	797	—
Lombardy East	7	5	26	52	19	49	371	94	469	—

Note Abovementioned statistics are furnished for the period 1984-07-01 until 1985-06-30 Statistics with regard to 1985-07-01 until 1985-12-31 are not readily available

Livestock

657. Mr P R C ROGERS asked the Minister of Law and Order

(1) (a) How many cases of livestock that were mutilated and/or killed by (i) dogs, (ii) persons and (iii) unknown assailants were reported to the South African Police in the magisterial districts of (aa) East London, (bb) King William's Town, (cc) Stutterheim, (dd) Komga, (ee) Cathcart and (ff) Queenstown during the latest specified period of 12 months for which figures are available and (b) what were the numbers of livestock involved in each case,

(2) whether the (a) persons and (b) owners of the dogs responsible for mutilating and/or killing such livestock were (a) identified and (b) charged, if so, how many in each case?

The MINISTER OF LAW AND ORDER

(1)

	(a) (i)	(a) (ii)	(a) (iii)	(b)
(aa) East London	—	2	2	33
(bb) King William's Town	—	1	—	1
(cc) Stutterheim	—	—	—	—
(dd) Komga	—	—	—	—
(ee) Cathcart	—	—	—	—
(ff) Queenstown	—	1	—	1

(2) (a) Yes

(aa) 1 person

(bb) 1 person

(b) None

(aa) and (bb) Fall away

Note No statistics are kept by the South African Police with regard to livestock savaged by dogs Abovementioned statistics are furnished for the period 1 July 1984 until 30 June 1985 Statistics for the period 1 July 1985 until 31 December 1985 are not readily available

State of emergency

686. Mr P G SOAL asked the Minister of Law and Order

What total number of persons (a)(i) died and (ii) were injured by (aa) policemen and (bb) any other specified persons, and (b) were (i) detained and (ii) arrested by the South African Police, in connection with incidents related to the state of emergency during the period 21 July 1985 to 7 March 1986?

The MINISTER OF LAW AND ORDER:

(a) (i) (aa) 371

(bb) 416

(ii) (aa) 1 194

(bb) 740

(b) (i) 18 569

(ii) 7 097

Internal Security Act

726 Mr D J DALLING asked the Minister of Law and Order

Whether any persons were (a) charged with and (b) convicted of contravening section 46 of the Internal Security Act, No 74 of 1982, in 1985, if so, (i) how many, and (ii) how many of these persons were under the age of 18 years, in each case?

The MINISTER OF LAW AND ORDER

Yes

(a) (i) 1 414

(ii) 482

(b) (i) 467

(ii) 233

Internal Security Act

745 Mr R R HULLEY asked the Minister of Law and Order.

(1) (a) What total number of persons were detained in terms of the Internal Security Act, No 74 of 1982, in

1984 and 1985, respectively, and (b) (i) in terms of which section or sections of the said Act and (ii) for what period was each such person detained,

(2) whether any persons so detained were (a) charged and (b) convicted; if so, how many in each case in respect of each of the above years?

The MINISTER OF LAW AND ORDER

(1) (a) 1984 — 505 persons

1985 — 2 387 persons

(b) (i) 1984 — 339 persons were detained in terms of section 29(1)

166 persons were detained in terms of section 50(1)

1985 — 463 persons were detained in terms of section 29(1))

1 924 persons were detained in terms of section 50(1)

(ii) The information is not readily available

(2) Yes

(a) 1984 — 119 persons (art 29(1))

60 persons (art 50(1))

1985 — 121 persons (art 29(1))

114 persons (art 50(1))

(b) 1984 — 68 persons (art 29(1))

None (art 50(1)).

1985 — 22 persons (art 29(1))

8 persons (art 50(1))

Greenmarket Square: persons detained

759 Mr S S VAN DER MERWE asked the Minister of Law and Order

(1) Whether any members of the South African Police took any action against any persons at Greenmarket Square in Cape Town on or about 22 March 1986, if so, (a) what action, (b) against whom and (c) why,

(2) whether any persons were arrested or detained on this occasion, if so, (a) how many persons, (b) in terms of what statutory provision and (c) why,

(3) whether these persons were subsequently (a) charged or (b) released, if so, when,

(4) whether the policemen involved were armed on this occasion, if so, what was the nature of the arms in their possession,

(5) whether these arms were used on this occasion, if so, (a) in what manner and (b) for what purpose?

The MINISTER OF LAW AND ORDER

(1) No.

(2) to (5) Fall away

Claremont/Pinelands by-elections

802 Mr R R HULLEY asked the Minister of Home Affairs

Whether any dates have been set for the by-elections arising from the vacancies in the Claremont and Pinelands constituencies, if so, what are these dates, if not, why not?

The MINISTER OF HOME AFFAIRS

No The matter is still under consideration and an announcement will be made as soon as possible

QUESTIONS UNDER NAME OF MEMBER

'Power for peace'

Staff Reporter

UNITED Democratic Front activist and law lecturer Mr Raymond Suttner told a UCT law conference at the weekend that "people's power", of which one aspect is "people's justice", is staring the country in the face

In his paper on the Nature of Repression in South Africa and the People's Courts, he said many in the audience would probably be sceptical of "people's justice"

Mr Suttner said there was an important distinction between "people's power" and ungovernability

"With people's power control is being exercised, where there is ungovernability there is no control by the people or the authorities People's courts are responsible and accountable to the communities concerned and therefore exclude kangaroo courts"

He said the rise of people's power was related to the loss of legitimacy of the police and courts

People's courts were not trying to imitate "white courts" but trying to create peace

Punishment, according to Mr Suttner, was not an important factor in people's justice and it was "pointless to use violence when poverty is the cause"

The emphasis, he said, was on compensation, such as the return of stolen goods, and the basic approach was to educate people, build unity and integrate people into community organizations

Mr Suttner cited examples of how police in Port Elizabeth referred complaints to the UDF "comrades" to solve community problems, "recognizing they are more effective"

He concluded that attempts to control crime by street committees and people's courts had helped to unite people.

He said kangaroo courts were not responsible to the community and "may be run by irresponsible youths as opposed to people's courts" where correction was the emphasis

April - 1986

252

'Power for peace'

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29/4/86

Application in Supreme Court is overtaken

A Supreme Court application over the funeral of a trade unionist yesterday came to nothing when court procedures were overtaken by the event

The Metal and Allied Workers' Union (Mawu) made an urgent application to the Rand Supreme Court for the setting aside of restrictions placed on the vigil and funeral of Mr Terrian Kortman by the chief magistrate of Kempton Park

Mr Kortman was a member of Mawu

The vigil was scheduled for Sunday night and the funeral service for Monday morning.

Mawu's lawyers tried to bring the application on Saturday, but were told by the registrar of the Supreme Court that the judge would only hear the matter on Monday morning.

Yesterday afternoon Mr Sydney Kentridge SC, for Mawu, told Mr Justice O'Donovan that the application had become moot, since the body and the coffin were already on their way to the burial

The vigil was over — it had been held the previous evening

POSTPONED

Whether a funeral service had been held or not, he did not know, but while he was addressing the court the coffin was apparently being taken straight from Mr Kortman's family's house to be buried

Mr Kentridge asked that the matter be postponed sine die and that each party pay its own costs

Mr Johann Gautchi, for the chief magistrate of Kempton Park, asked that an order for costs be awarded against Mawu on the grounds that the application should never have been launched.

Mr Justice O'Donovan said the matter had become purely academic and he did not regard it as necessary for the court to decided on its merits. He postponed it sine die and made no order as to the costs

Mr S Kentridge SC, assisted by Mr P Pretorius, instructed by the Legal Resources Centre, appeared for Mawu Mr J Gautchi appeared for the chief magistrate of Kempton Park

Lawyers meet on Bill of Rights

Pretoria Bureau

A group of the country's foremost lawyers will meet in Pretoria tomorrow and Friday to thrash out ideas for a Bill of Rights for South Africa

The conference is the brainchild of the University of Pretoria law faculty which has organised it under the auspices of the Society of University Teachers of Law

Organisers have brought together an impressive group of legal brains, representing the political factions of the country from left to right

The aim of the conference is to debate the issues surrounding a Bill of Rights and to contribute to the reform debate

Although no political parties will be represented, many speakers are known to be representative of political bodies, including the Conservative Party and the United Democratic Front

Participants include Professor John Dugard, of Wits University's Centre for Applied Legal Studies, Mr Arthur Chaskalson SC of the Wits Legal Resources Centre, Mr Justice L W H Ackerman and Mr Justice J C Kriegler of the Transvaal Supreme Court, Mr Justice J M Didcott of the Natal Bench and a judge of appeal, Mr Justice G P C Kotze and law professors from the universites of Natal, Cape Town, Pretoria and Potchefstroom

Delegates also represent the practising members of the Bar and sidebars

Argus 30/4/86 252

Coetsee 'a Scrooge' over judges' pay

Mr Coetsee

THE Minister of Justice, Mr Kobie Coetsee, has rejected a plea for judges' salaries to be doubled

Parliamentary Staff

But he has indicated that their salaries would soon be increased

Mr Pat Poovalingam (Sol, Reservoir Hills) accused Mr Coetsee of being "Scrooge personified" with regard to the salaries of Supreme Court judges

Mr Coetsee said in his reply that judges could never be paid enough

BUS DAY 1/31/86 252

PARLIAMENT

Report scorned

A RECENT University of Cape Town report on the torture of detainees was "not worth the paper it was typed on", Law and Order Minister Louis le Grange said in the House yesterday.

The report — by UCT's Criminology Department — was "subjective, unscientific, prejudiced" and included "totally incorrect statistics and assertions".

Professors from Unisa and the universities of Stellenbosch and Port Elizabeth had contributed to an SAP reply to the report, Le Grange said. He agreed with their finding that the report was worthless.

Helen Suzman said earlier the report found "all manner of assaults on detainees" took place, including "beatings, electric shocks and psychological abuse".

Le Grange said Suzman and her colleagues tried to give the impression that South Africa was "a big torture factory" — Sapa

Lebowa: call for laws

A ONE-MAN commission of inquiry into alleged misappropriation of Lebowa Development Corporation funds recommends that legislation concerning this and other such corporations should be considered.

The report, by L W Dekker, was tabled yesterday.

In a White Paper released at the same time, Education and Development Aid Minister Gerrit Viljoen said the recommendation had been referred to Lebowa and other self-governing national states.

On allegations about the Lebowa Development Corporation, the commission found chairman Dr J H Pretorius had received amounts to which he was not entitled, but "is of the opinion there was no intent to be dishonest". Pretorius was however negligent and "this must have had a negative effect on staff". — Sapa.

● COETSEE

Change in court procedures possible

THE Department of Justice is investigating procedures used in small claims courts in an attempt to speed up civil and small criminal cases in magistrates' courts, according to Justice Minister Kobie Coetsee.

The result could be a "total change in court procedure and systems", he said in his reply to the debate on his budget vote in the House of Representatives

He also said he had ordered an investigation into a possible extension of the courts' role in protecting individual rights.

He said the investigation, by the SA Law Commission, would have to consider whether the role of the courts in protecting the rights of people detained without trial was adequate

He said that, even during the state of emergency, the courts had been accessible to individuals. This should be the test in determining the effect of the Public Safety Bill, which would give the Law and Order minister wider powers in dealing with unrest.

He was also seriously considering legislation to increase the jurisdiction of magistrates' courts to hear civil claims for higher amounts.

Cecil Herandien (LP Macassar) had earlier said that a coloured magistrate or prosecutor would never have the privilege of presiding over a case involving a white person.

Whites caught in the coloured area of Athlone were charged in Wynberg, he said.

Herandien added that he was concerned that coloured graduates were turned away by the Department of Justice because of lack of accommodation for them.

In his reply, Coetsee said justice was "colour-blind" and there was a shortage of coloured applicants to join the department. — Sapa.

CAPE TIMES 2/5/86

Parliament and Politics

Probe into courts' protection of rights

HOUSE OF REPRESENTATIVES. — The Minister of Justice, Mr Kobie Coetsee, said yesterday he had ordered an investigation into a possible extension of the courts' role in protecting individual rights.

Replying to debate on his budget vote, he said the investigation, by the SA Law Commission, would also have to consider whether the role of the courts in protecting the rights of people detained without trial was adequate.

He said that, even during the state of emergency, the courts had been accessible to individuals. This should be the test in determining the effect of the Public Safety Bill, which would give the Minister of Law and Order wider powers in dealing with unrest.

"Even a state of unrest and emergency must, in a civilised society, be conducted according to organized rules."

Mr Coetsee said the commission had begun its investigation.

● The Department of Justice is investigating the use of procedures initiated by the small claims courts to speed up the activities of civil and possibly small criminal cases in the magistrate's courts, Mr Coetsee said.

The small claims courts had devised ways of speeding up the administration of justice and it would have to be seen if this could be extended to other systems.

For instance, in complicated civil cases involving larger amounts in a magistrate's court, commissioners or academics such as those used in the small claims courts could assist magistrates on a voluntary basis

The question arose whether this could not be extended to small criminal cases such as traffic offences.

He was also seriously considering legislation to increase the jurisdiction of magistrate's courts to hear civil claims for higher amounts.

Responding to statements that coloured magistrates were not allowed to try whites, Mr Coetsee said justice was "colour-blind"

However, there was a shortage of coloured applicants to join the department.

● There was no limit to the promotional prospects of any member of the prisons service, Mr Coetsee said.

He said the highest rank held by a coloured was that of colonel, while there were also many coloured warrant officers in charge of white non-commissioned officers

Mr Coetsee said there was parity in the salaries of all prisons' service personnel and differences in the allocations for prisoners were being phased out.

Members of the service also had equal opportunities to further their studies and were encouraged to do so — Sapa

Councillor denies running down children

2/5/86. STAR

252

Staff Reportor

DELMAS — A Huhudi councillor yesterday denied in the Circuit Court here that he had run over three children in his van when his house was being attacked by a mob, on June 16 last year

Mr Stephen Matlhoko, vice-chairman of the Huhudi Community Council, is the 50th state witness to give evidence in the trial of 22 men charged with treason

He said that, hearing that his home was being attacked, he drove a van to Huhudi, Northern Cape He found a mob stoning the house

Mr George Bizos SC, for the defence, questioned the witness about a report, made to the police at the time by a Mr Matlhoko, aged 27. It concerned the knocking down of three children

Mr Stephen Matlhoko told the court he was not sure who could have made the report. His son and his brothers were all in their mid and late twenties, but he knew nothing of their involvement in the accident.

SERIOUS CONDITION

One of the youths injured was in a serious condition The van which had knocked him down had belonged to Mr Stephen Matlhoko

"I put to you that you were in a vehicle which, if not deliberately, at least recklessly, you drove into the young people," Mr Bizos said

"There is no truth in what you have put to me," Mr Matlhoko replied

Mr Matlhoko was also questioned on UDF meetings held in the township, which was resisting being resettled in Pudimo in Bophuthatswana 52 km from Huhudi

The group of accused, which includes high-ranking officials from the UDF and its affiliates, have all pleaded not guilty to treason and alternative charges of terrorism, subversion and murder relating mostly to unrest in the Vaal Triangle in 1984

Appeal against joint funeral veto

THE families of three Wattville victims of police action yesterday brought an urgent aplication in the Rand Supreme Court to declare invalid a magistrate's notice restricting conditions for a joint funeral

The action was still being heard late yesterday

The three were killed as a result of police action at a May Day rally in the Benoni township The families want the burials to take place at a joint funeral on Saturday but the magistrate's notice restricted the funeral to today, Friday, and limited the number of mourners to 200

By SEFAKO NYAKA

Meanwhile, the families of the eight victims of the recent violence in Alexandra made a fresh attempt yesterday to get magisterial permission to hold a mass funeral on Saturday

The funeral was scheduled for yesterday but the acting chief magistrate of Randburg, R Mandelstam, refused permission

Lawyers acting on behalf of the families said Mandelstam had asked for additional evidence, but had again turned down the application yesterday

In Tembisa, the mass funeral of three unrest victims had to be abandoned on Wednesday after a lengthy wrangle between the security forces and relatives of the deceased who refused to travel in buses arranged and driven by soldiers.

By the time the security forces agreed to allow the families to use their own transport, the 1pm deadline set for the funeral by the local magistrate, Edward Parsons, had expired, and the funeral had to be cancelled

Relatives also claimed that the undertaker had been ordered by police not to release the bodies for the customary night vigil the previous night but to take the bodies to the Nepo Cinema only on the day of the funeral

Night vigils were, however, held at the homes of the victims in defiance of the order and two people are alleged to have died at the vigil of Vincent Xaba after being shot by the police.

At the other vigil held at the Maiole Cinema about six people sustained broken legs and arms when they jumped from the gallery after police had fired teargas into the cinema.

The funeral was originally scheduled to have been held at the Jan Lubbe Stadium, but was moved to the Nepo Cinema in terms of the magistrate's order.

The mother of one victim claimed that soldiers had told her they would help mourners fill the grave if she agreed that her son's body be handed over for burial

She refused, and they "became very agitated", the mother said.

ssion impenetrable

By PATRICK LAURENCE

the years in diplomatic manoeuvres

Small claims' procedures could speed up cases

PARLIAMENT — The Department of Justice is investigating the use of procedures initiated by the Small Claims Courts to speed up the activities of civil and possibly small criminal cases in the Magistrates' Courts, according to the Minister, **Mr Kobie Coetsee**

He said in his reply to the debate on his Budget vote that the result could be a "total change in court procedure and systems"

The Small Claims Courts had devised ways of speeding up the administration of justice and it would have to be seen if this could be extended

For instance, in complicated civil cases involving larger amounts in a Magistrate's Court, commissioners or academics such as those used in the Small Claims Courts could assist magistrates on a voluntary basis without becoming part of the normal magisterial system

EXTENDED

The question arose whether this could not be extended to small criminal cases such as traffic offences

He was also seriously considering legislation to increase the jurisdiction of Magistrates' Courts to hear civil claims for higher amounts

Replying to other points raised, Mr Coetsee said he had accepted in principle that some thing had to be done about the high divorce rate, and especially the problems of children. However, the answer lay in the socio-economic field, not in the tighter administration of justice

Responding to statements that coloured magistrates were not allowed to try whites, Mr Coetsee said justice was "colourblind" — Sapa

Justice Minister at a Bill of Rights

252

21/5/86

Political Staff

PARLIAMENT — The Minister of Justice, **Mr Kobie Coetsee**, has hinted at a Bill of Rights.

He told the House of Representatives that the South African Law Commission was investigating the question

Speaking during the debate on his vote, Mr Coetsee said it was perhaps time that the courts played a role in protecting the individual and the group "on the basis of a Bill of Rights".

He had asked the Law Commission to investigate group rights and the possible extension of individual rights Though Mr Coetsee announced this inquiry last week in the Assembly, he did not then place it in the context of a Bill of Rights.

Mr Peter Mopp (LP, Border) asked if the commission would touch on detention without trial

Mr Coetsee said cognisance would be taken of existing laws and the inroads they might make on individual rights

The commission would also have to consider whether in relation to detainees, "the role allocated to courts is adequate".

Mr Cecil Kippen (LP, Durban Suburbs), had asked if the Minister would accept any curtailment of the courts' right to question enacted laws

Mr Coetsee said Mr Kippen's underlying question was whether the courts could test laws against a Bill of Rights

They could not because there was no Bill of Rights, but this did not mean individual rights were not protected

According to the constitution, courts had the right to question if Parliament had legislated according to its own rules

They could decide a Minister had not applied his mind to legislation or had acted *male fide*

PUBLIC SAFETY

Asked how the Law Commission's inquiry would affect the Public Safety Bill, Mr Coetsee said that to safeguard peaceful people, it was necessary to maintain law and order.

But the test of a civilised state was whether, even during unrest and emergency, civilised rules were maintained.

During the present unrest, Mr Coetsee said, the courts had remained accessible He referred to the recent Natal Supreme Court decision ordering the release of detainees

'Split prosecutors and magistrates'

Political Staff

PARLIAMENT — Magisterial and prosecutors' posts should be separated, Mr Peter Mopp (LP Border) said during the debate on the Justice vote.

It was imperative that the judiciary be seen to be separate from prosecutors

Magistrates should be appointed from among the ranks of practising lawyers, not just from prosecutors.

Mr Mopp said the basis of sentencing long-term prisoners was inconsistent and the system for reviewing sentences should be overhauled — Sapa.

'Absence of basic rights has to be addressed'

Pretoria Bureau

Durban advocate Mr Zac Yacoob yesterday called for a bill of rights which recognised the apartheid system was totally bad and the people's struggle for liberation was totally justified

Taking part in a panel discussion at a bill of rights symposium in Pretoria yesterday, Mr Yacoob rejected a bill of rights which was founded on the premise that apartheid was partly good and this good should be built upon

Mr Yacoob added that a bill of rights for South Africa would have to address the absence of even basic rights for the majority of people Such a document could not be seen in isolation from the people's struggle

In contrast, Professor S C Jacobs of Potchefstroom University rejected a bill of rights which did not guarantee white minority rights or make provision for the self-determination of groups

Professor D M Davis, of the University of Cape Town, warned that a bill of rights in the present South African context could prove a fundamental obstacle to changing the undemocratic structure of society

VETO

It could afford whites enough veto power to ensure that change did not affect the substance of South African social formation

A liberal bill of rights would amount to a revolution and was not likely to be considered by the present Government, he said

At present there was a tendency among opposition groups to dismiss all rights as cynical manifestations of a crumbling white hegemony

However, the future of human rights in this country was dependent upon the preservation of a democratic tradition and, given the record of the State, a huge burden now lay upon the extra-parliamentary opposition, said Professor Davies

Another speaker, Mr M S Motshekga, from Unisa and a member of the Democratic Lawyers Congress, pointed to the Freedom Charter as a South African bill of rights which guaranteed the rights of whites

The Government was not valid in the eyes of the majority and a new order must be established on the basis of the Freedom Charter while there was still enough goodwill among blacks, said Mr Motshekga

Bill of Rights or power struggle

2/5/86 STAR 252

By Kym Hamilton,
Pretoria Bureau

A Bill of Rights must be incorporated into the constitution within the next two to three years or South Africans could resign themselves to a struggle for power, Professor John Dugard, of the Centre for Applied Legal Studies at the University of the Witwatersrand, warned yesterday

Individual rights and the supremacy of law would become luxuries which even the idealists would be forced to abandon

Professor Dugard told a gathering of lawyers at a Bill of Rights symposium hosted by the University of Pretoria yesterday that South Africa was on the verge of cataclysmic change

A bill of rights was essential to restoring the confidence of blacks in the law as an instrument of justice and a method of conflict resolution, he said

The end of World War 2 had heralded a new era in international human rights But South Africa had retreated into the policy of apartheid which invoked the law to promote racial discrimination and political repression, particularly during the Vorster era

This era was the bleakest in South African history The country became a police state

For most political figures, survival was the main objective But in the 1970s a new awareness in individual liberties grew

Today there was an urgent need for even a limited Bill of Rights However the government firmly rejected the idea that a Bill of Rights be included in the 1983 constitution

INCOMPATIBLE

The protection of individual rights and apartheid were completely incompatible One could not seriously contemplate the introduction of such a manifesto unless one was prepared to accept the total abolition of the apartheid legal order and the repeal of many of the provisions of the Internal Security Act

The Government still had a long way to go, but there were more hopeful signs among the judiciary The courts had adopted a more benevolent approach

Individual judges had been willing to commit themselves in favour of a Bill of Rights, but some did not share this view

But the "left" was rapidly losing its enthusiasm

For years blacks had pleaded for legal protection of human rights Now that whites, and even possibly the National Party Government, were more sympathetic, blacks — who increasingly saw power round the corner — appeared reluctant to accept an instrument seen as a way of protecting whites

A Bill of Rights could create a climate for negotiation, unban the ANC, give the courts the right to set aside descriminatory laws and help to salvage the harm done by years of apartheid laws

'No place for ethnic clauses in Rights Bill'

Pretoria Bureau

The protection of ethnic or group rights had no place in any Bill of Rights for South Africa, a Potchefstroom law professor told a Pretoria symposium yesterday

Professor Lourens M du Plessis said a person's desire to protect his language and cultural rights was embodied in any Bill of Rights, which guaranteed the right of freedom of association

An individual's race should have no claim on his rights as a citizen as this was an unrealistic human right. Any legal reference to race was, by definition, unjustified racism, he said.

He urged South Africa to adopt a Bill of Rights, but warned that this should not be seen as a solution to the country's problems. Instead it was a basis on which to build a just and new order.

He pleaded for a Bill of Rights which, instead of attempting to patch the divisions caused by an abnormal racial aristocracy, guaranteed the political rights of all individuals.

payment

'Vast damage done to SA'

Pretoria Correspondent

A former Appeal Court judge, Mr G P C Kotze, has called for further constitutional change in South Africa embracing, among other things, a bill of rights enforced by a more powerful Appellate Division of the Supreme Court

Opening the Bill of Rights symposium presented by the Pretoria University's Law Faculty, he referred yesterday to the "vast damage" done to South Africa by its security legislation and the way it was implemented

He said "vast powers of detention" were still vested in the Minister of Law and Order in terms of Sections 28 and 29 of the Internal Security Act, notwithstanding the appointment of the Rabie Commission and the adoption of less harsh security legislation

'HARSH AND WRONGFUL'

"The harsh and wrongful manner in which this legislation is sometimes applied, to the detriment of the freedom of the subject, emerges from the recent unanimous judgment of the Appelate Division of the Supreme Court and demonstrates a need for the reinforcement of the judicial power vis-a-vis the legislative and executive powers," he said.

The solution to the problem, he pointed out, rested in the vesting of power in the country's highest court to test the denial of human rights against a bill of rights

This power should include the right to set aside legislative, administrative or executive action in case of clashes with the constitution

5/5/86 Star 252

Apartheid must be priority. Dugard

● DUGARD

GERALD REILLY

A BILL of Rights could not be seriously contemplated unless the apartheid legal order was abolished, Professor of Law and director of the Centre for Applied Legal Studies at the University of the Witwatersrand John Dugard said yesterday

Addressing a symposium on "A Bill of Rights for SA" in Pretoria he said the unwillingness of government to consider such a Bill flowed directly from its continued adherence to the apartheid laws

There was no suggestion that the Group Areas Act, the Population Register Act and a host of other discriminatory and repressive laws were to be repealed

The government still had a long way to go before it could be expected to endorse a Bill of Rights Blacks had pleaded for years for the legal protection of humans rights Increasingly they saw power just around the corner and those who had suffered long outside the protection of the law were now unwilling to see their oppressors brought within this protection

In the period prior to 1985, while the world advanced in terms of human rights, South Africa retreated into the policy of apartheid A Bill of Rights seemed an unattainable goal as a ruthless government set about destroying constitutional safeguards, repealing common law rights and emasculating the courts

Dugard said he feared if a Bill of Rights were not incorporated into the constitution within the next two or three years "we can forget about it and resign ourselves to a struggle for power in which individual rights and the supremacy of the law become luxuries"

Potchefstroom University's Professor L M du Plessis said a Bill of Rights would only be meaningful in a country where all citizens enjoyed full political rights and where a majority government was in power

Ex-appeal judge calls for a Bill of Rights

SERIOUS consideration should be given to the constitutional establishment of a Bill of Rights enforced by a more powerful Appellate Division of the Supreme Court, former Appeal judge G P C Kotze said in Pretoria yesterday

Opening a symposium, on "A Bill of Rights for SA", Kotze said the security legislation and the way it was applied had done the country irreparable damage

He said many South Africans had not been "left cold" by the death of black consciousness leader Stephen Biko

"I believe that every member of the Bench regrets there is so strong a tendency in SA to give ministers, boards, the police and officials, instead of the judicial authorities, wide

GERALD REILLY

powers and almost unbridled discretion to assail human rights"

The answer to the problem lay in the granting of power to the country's highest court to test contraventions of human rights

This included the right to set aside administrative or executive action in the event of a collision with the constitution or legislation

In the past, the ability of the Supreme Court to declare a law invalid had been extremely limited, he said The present constitution clearly laid down that no court had the right to investigate or give judgment on the validity of an Act of Parliament

Referring to the tragic consequences of the security legislation exemplified by the Biko occurrence, he said vast power of detention remained vested in Law and Order Minister Louis le Grange.

"The harsh and wrongful manner in which this legislation is sometimes applied to the detriment of the freedom of the subject emerged from recent unanimous judgment of the Appellate Division."

This demonstrated the need for a reinforcement of the judicial power in relation to the legislative and executive authorities

Kotze was referring to three cases.

He said the position was perplexing Until now, the political order had been based on racial discrimination

Notwithstanding a commendable attempt to break with the past by adopting a new constitution, he said, a solution to the country's problems was not yet in sight.

3/5/86 STAR

252

Prof criticises legal system

By Sue Leeman,
Pretoria Bureau

The South African Bench is failing in many cases to protect individual rights — a situation which must be urgently remedied, says Professor Dion Basson of the University of Pretoria

He told a lawyers' conference on human rights in the capital yesterday that a new legal approach was needed, the removal of discriminatory legislation and the adoption of a Bill of Rights as well as a revision of the system of appointing judges

The Supreme Court must be re-instated as "a bastion of individual freedom", he said.

The legal system had lost much of its legitimacy because of unfair laws and the fact that judges were often inclined to make their rulings in line with the current status quo

Human rights and freedoms — upon which the legal system was theoretically based — were therefore not being fully protected

"Lack of trust in a legal system is one of the strongest invitations to revolution," Professor Basson said

A Bill of Human Rights would help judges to declare unfair laws constitutionally null and void

Many judges tended merely to implement the commands of a sovereign legislature This approach was largely due to the Westminster system of constitutional law which promoted the idea of parliamentary sovereignty.

Judges' backgrounds and training often led to their acceptance of the status quo and the sovereignty of Parliament

The profesor said what was needed was to reform the law in line with the legal values which underpinned the freedom-oriented Western legal tradition. Judges should make their rulings in line with these values, and not those of the status quo

The method of appointing judges should also be reconsidered and people from other race groups appointed to the Bench

"We must guard against purely political appointments All judges must be appointed on merit alone and they must all hear all types of cases "

Professor Basson said unfair laws must be abolished, but in the meantime the Supreme Court should speak out against unfair legislation whenever possible

Supreme Court hears claims of SAP brutality

LIAM EGAN

ALLEGATIONS of police brutality were made in the Rand Supreme Court yesterday by the secretary of the Krugersdorp Residents' Organisation (KRO)

Secretary Laurence Ntlokoa, 28, of Kagiso, was the first of 114 residents of Kagiso 1, Kagiso 2 and of Munsieville who will appear before Justice R Goldstone alleging unlawful acts committed by the security forces last year

Residents have all filed affidavits to accompany the application brought by the KRO against the Law and Order Minister, the Divisional Commissioner of Police on the West Rand and the Defence Minister.

All three respondents have denied the allegations affidavits. They claim the allegations were made to further the aims of the ANC and/or to create "liberated" areas in the three West Rand townships

During his day-long testimony, Ntlokoa said the decision to bring the application before a court was taken by the KRO on January 27 after police allegedly disrupted a student meeting in Kagiso.

Ntlokoa told the court police broke up the meeting by firing teargas into Saint Peter's Higher Primary hall and whipping schoolchildren as they streamed out.

The hearing continues today

Difficult to identify those guilty of violence, court told

Staff Reporter

It was very difficult to identify people who committed acts of political violence in the townships of Kagiso and Munsieville, because these acts often occurred at night or the perpertrators disappeared soon afterwards, the secretary of the Krugersdorp Residents' Organisation (KRO) told the Rand Supreme Court yesterday.

'UNLAWFUL ACTS'

The KRO have alleged that the police and SADF are guilty of committing unlawful acts in the townships of Kagiso I and II and Munsieville

In February the KRO brought an urgent application against the Minister of Law and Order, the Minister of Defence and the District Commissioner of Police for the West Rand, in an attempt to win an order restraining the security forces from committing "unlawful acts" in these areas

All three respondents have denied the allegations made in 114 affidavits submitted to the court

Under cross-examination, Mr Laurence Ntlokoa (28) said it was very difficult to identify the people who committed acts of political violence in the townships, but the KRO was not in favour of such violence

He was explaining to the court why he was not sure how effective an anti-crime campaign launched by the KRO had been

Mr Ntlokoa said the KRO had launched the campaign last December and they felt it had been successful.

But sometimes, he said, people who had been teargassed or shot at reacted violently against people or objects they felt represented a repressive ruling system

Under cross-examination he told the court several affiliate organisations were represented on a general council with senior KRO members and that Kayco (Kagiso Youth Congress) had seven branches

Each branch represented a geographical area, some of which included six or seven streets He said the organisation had to split into branches because memebership grew too large.

Amnesty group urges Botha to take action

Bus Day 8/5/86

252

LONDON — Amnesty International's Nordic sections have appealed to President P W Botha to end "human rights violations" in SA as a matter of urgency

The open letter, signed by 25 parliamentary leaders in Finland, Norway, Sweden and Denmark, claims there has been a marked increase in torture, political killings, political imprisonment and detention without trial

"Tension and unrest arising from the apartheid policy have

Own Correspondent

resulted in human rights violations and human suffering which we consider to be of concern not only to the citizens of South Africa, but to the international community as a whole," says the Amnesty letter

A second letter to Botha, signed by GM of the Norwegian Employers' Confederation Ral Kraby, urged the President to take positive steps to ensure rapid change

Rebellion need not be violent, court told

By Mike Cadman

Rebellion against an existing regime need not be violent, the secretary of the Krugersdorp Residents' Committee (KRO) told the Rand Supreme Court yesterday.

Mr Laurence Ntlokoa (28) was giving evidence in the hearing of an urgent application brought by the KRO against the Minister of Defence, the Minister of Law and Order and the Divisional Commissioner of Police for the West Rand in February.

The KRO has asked that an order be granted restraining security forces from committing unlawful acts in the townships of Munsieville and Kagiso I and II.

The KRO application is supported by 114 affadavits containing allegations which include killing of innocent people, assault and damage to property, entering homes without a warrant, harrassment and intimidation.

The respondents have claimed the KRO statement is either wilfully false, made to further the aims of the African National Congress, or to further the aims of the KRO to undermine the authorities and create "liberated zones" in the townships.

Mr Ntlokoa said revoloution and rebellion need not be violent, as suggested by counsel for the Minister of Law and Order.

"You can have a coup d'etat without bloodshed," Mr Ntlokoa said. "Revolution is the total change of what already existed, but sometimes it does not have to be violent."

Mr Ntlokoa said a boycott of Greyhound buses in Kagiso and Munsieville could be seen as peaceful rebellion which achieved something, because the company's management was prepared to talk and make concessions.

Mr Bruce Berman, for the Minister of Law and Order, asked Mr Ntlokoa if it was true that South African Breweries had given the KRO R18 000 and that he was driving a new car.

Mr Ntlokoa said his car had been hired for him by a group of attorneys and that SAB had not donated any money to KRO.

Mr Ntlokoa said the rumour about the money and the car had been started by someone in the townships recently.

"The rumour is very strong in the township You have obviously been talking to the police a lot," Mr Ntlokoa said to Mr Berman.

Yesterday was the third consecutive day Mr Ntlokoa has given evidence.

The hearing continues continues.

Alex court order sought to remove troops from stadium

By Rich Mkhondo

The Alexandra Action Committee (AAC) is to seek a court order requiring policemen and soldiers posted at the local stadium to withdraw so that residents can go ahead with a mass funeral next week

AAC publicity secretary, Mr Naude Moitse said that the joint funeral of 22 people was planned for May 15

"For about three weeks now, troops have been present 24 hours a day at the stadium, our major venue of meetings and funeral gatherings," he said

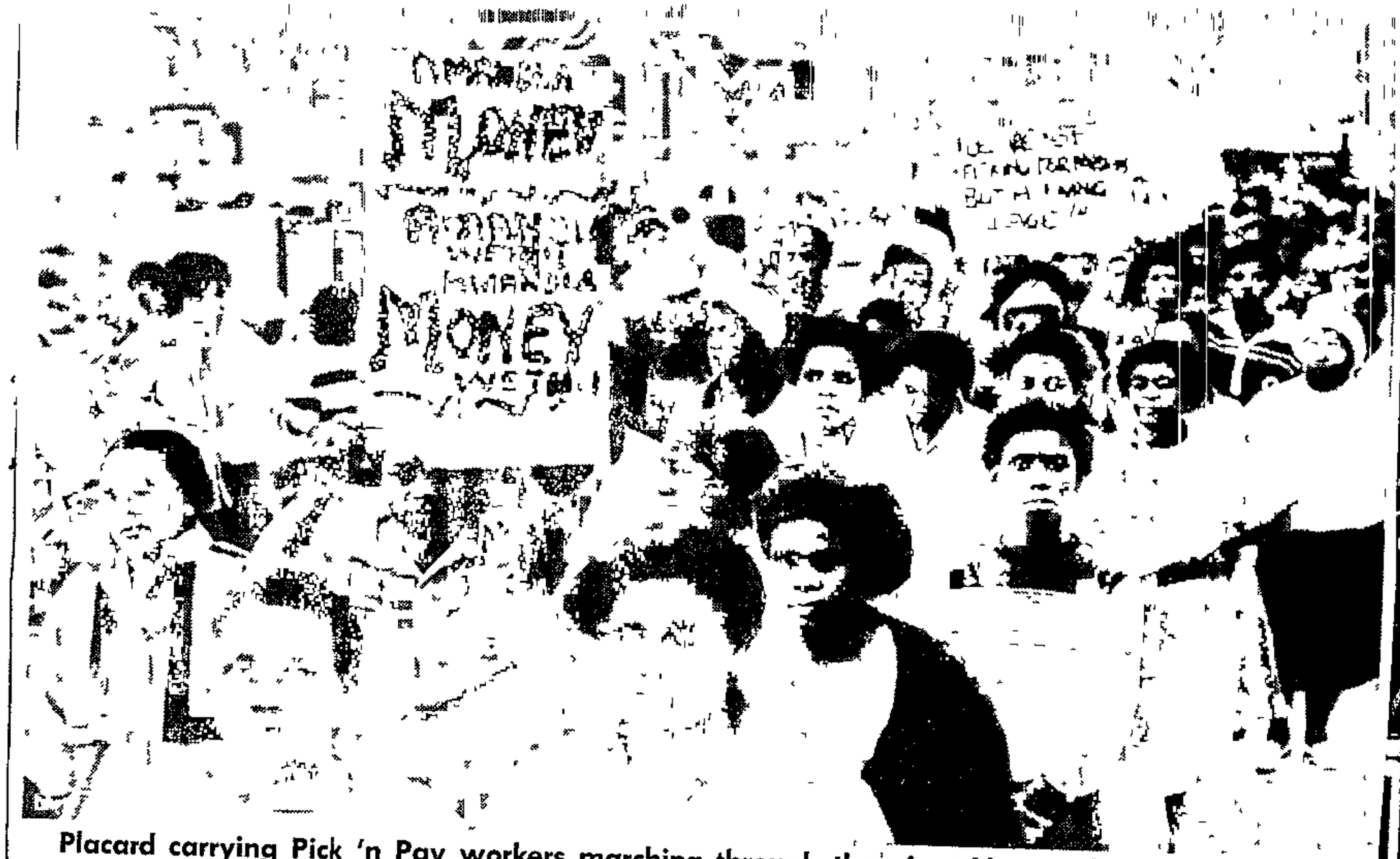
"We appeal to the police to leave members of the bereaved families alone and to stop urging them to bury their dead privately

"We have also asked members of the PFP to help us have the troops removed," Mr Moitse said

Another AAC executive member, Mr Moses Mayekiso, said "We do not understand why the troops have made the stadium a no-go area and turned our township into a war zone"

Mrs Winnie Mandela, Congress of South African Trade Unions (Cosatu) president Mr Elijah Barayi and UDF Cape president Mr Trevor Manuel will be among the speakers at the mass funeral

The names of at least eight people who have died since April 28 in Alexandra were released yesterday They are Collin Ntohla, Elias Mdluli, Victor Banda, Vusi Dube, Ace Hlongwane, Abion Makhathini, Zephania Mdakane and Jacob Phefadu



Placard carrying Pick 'n Pay workers marching through the giant Norwood store yesterday. The workers have been staging a sit-in at the store from Wednesday in support of wage demands.

Pick 'n Pay in court bid to prevent violence

● From Page 1

result of the action was not known

In Port Elizabeth, Grahamstown and the Transvaal, Pick 'n Pay is in the process of drawing up papers, but management is still assessing the situation in these areas before taking action

In Johannesburg, talks between management and the Commercial, Catering and Allied Workers Union of South Africa are to start today

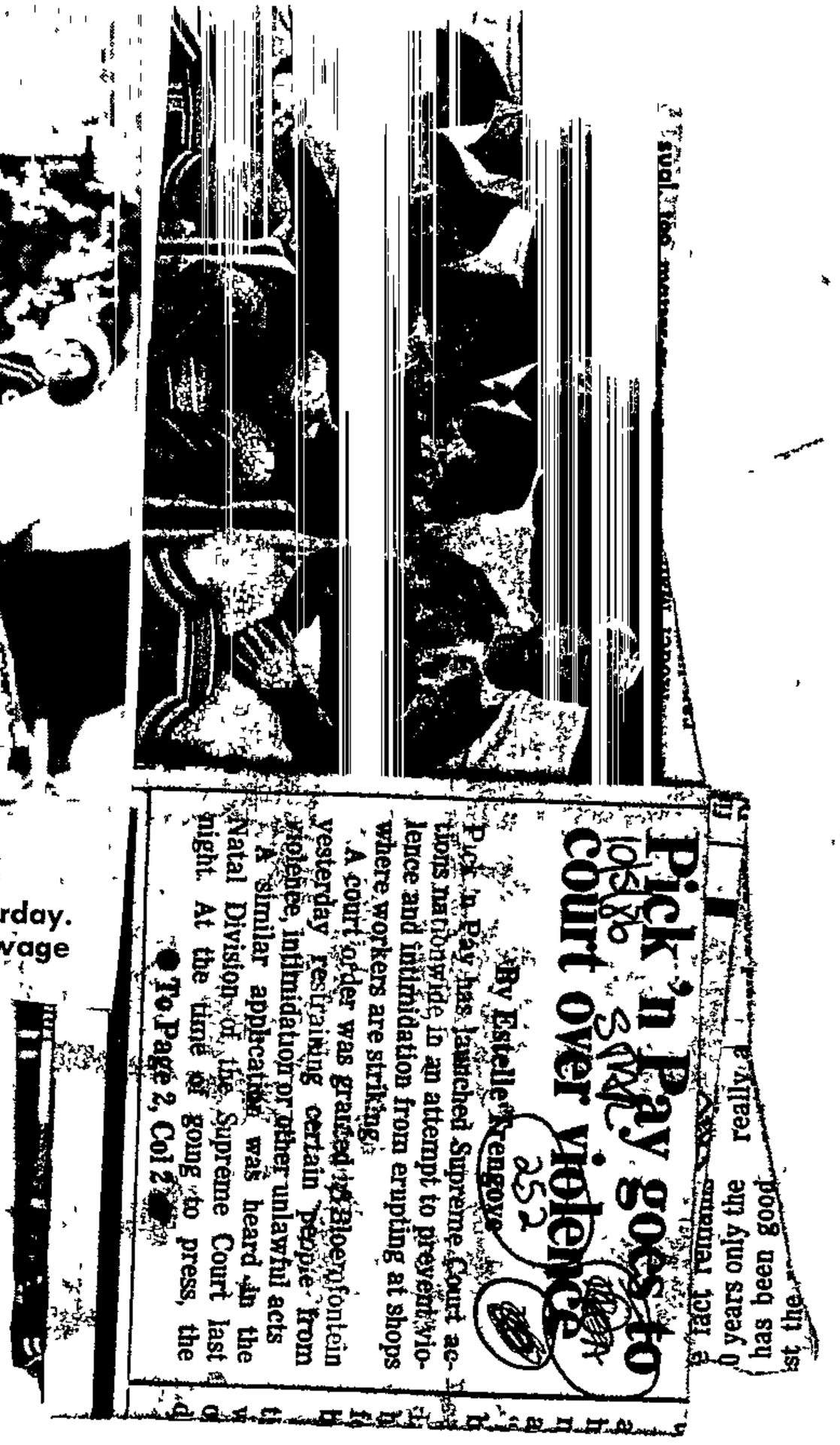
Urgent court actions were initiated after pandemonium at a Durban store when striking workers allegedly manhandled customers and workers defying the strike call

At present, an estimated 6 200 workers are striking at 45 Pick 'n Pay outlets

A Pick 'n Pay spokesman emphasised that the company was not trying to evict the striking workers by means of court action

"We don't deny workers the right to strike If it is a peaceful strike, we can accept it as part of the process leading to negotiations"

It was unacceptable, however, if people's behaviour became so unruly that it scared away customers



Pick 'n Pay goes to court over violence

By Estelle Krengoye

Pick 'n Pay has launched Supreme Court actions nationwide in an attempt to prevent violence and intimidation from erupting at shops where workers are striking.

A court order was granted in Bloemfontein yesterday restraining certain people from violence, intimidation or other unlawful acts.

A similar application was heard in the Natal Division of the Supreme Court last night. At the time of going to press, the

● To Page 2, Col 2

'Best visit we've had all year!'

11/5/86.

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252

CP Reporter

THREE prisoners – including two convicted murderers – made a daring escape from Pretoria Central Prison early this week

Prison Services spokesman Lt Col Danie Immelman said convicts Eric Nhlapo, 34, Joseph Mokoena, 30 and Jabu Dube, 31, broke out of the visitors' hall after smashing a glass petition with the help of three accomplices

They then apparently stabbed WO Pieter Molema in the chest and threatened Sgt J Sithole with a gun

The prisoners and their accomplices – who had apparently visited them in prison – escaped in a yellow BMW, registration number KVY988T

Nhlapo was jailed for 23 years in 1982 after being convicted on charges of murder and robbery with aggravating circumstances

Mokoena was serving 20 years for murder and robbery with aggravating circumstances after being convicted in August 1982

Dube was serving 25 years for robbery with aggravating circumstances.

12/5/86 MONDAY

252

Alexandra — town under siege

ALEXANDRA, north of Johannesburg, is a township in the grip of the local political activists — the "comrades" They claim to have run all the affairs of the township since the eruption of a terrific wave of unrest on February 15

Under the banner and leadership of the political activists and the resultant high level of political consciousness, the local masses have reached a stage where there is little or no co-operation between them and government authorities

This no doubt led to the massive police and army raid at the weekend.

"A decision has been taken to form an alternative administrative strucuture to govern the township, because the residents rejected any government-appointed administration," say the comrades "Residents have successfully been mobilised so they can defend themselves against the police"

Petrol-bomb attacks and gutting of residences of local town councillors, consumer boycotts of their businesses and general ostracism has resulted in the fall of the town council and the en mass resignation of the council officials

Members of the police still remain major targets of the political activists and scores of other hostile residents. Only rubble remains of what used to be their houses after furious residents set them alight. A battleline has been drawn between the South African Police and the local residents Highly politicised youths brandishing AK47 rifles stalk the township on days of mass prayer meetings and funerals of unrest victims.

Police informers — or sell-outs, as government collaborators are commonly known — pay heavy prices of either being stoned to death or have burning tyres — "necklaces" — put around their necks until they are dead.

More happenings, unthinkable in the history of black resistance to apartheid in SA, have occured in Alexandra. Developments since February 15 — "the six-day war," which left more than 20 people dead — are astonishing

One of the more astonishing is the establishment of "people's courts" by the "comrades" The courts deal with all kinds of cases, ranging from civil matters to the most serious of crimes.

Local people tell hair-raising tales about the "people's courts" "There are tyres hanging on the walls of these 'courts,' ready to be used as 'necklaces' around the necks of those who have been found guilty," claim the people.

I set out to find one of these courts — and to report its proceedings It involved days of shadowy contact with people whose names and faces I did not and still do not know Some met me in the dark; others kept their faces hidden.

At one stage I thought I would never get anywhere near the "people's court" But at last — on a cold May day in Alex — I found myself sitting quietly in the corner of a tiny, spotless room about to witness a case in the "people's court".

SIPHO NGCOBO

EXCLUSIVE report by SIPHO NGCOBO

Justice inside a comrades 'people's court'

Graphic PNINA FENSTER

IT IS 2.30pm on a cold May Saturday afternoon in strife-torn Alexandra township, north of Johannesburg Nine men, most of them young, in their 20s and 30s, are sitting around the table, in a tiny but spotlessly clean room.

The silence is deafening Uneasy, frightening tension grips the venue This room serves as Alexandra's own "people's court," where cases of all kinds — rape, theft, housebreaking, family disputes, you name it — are dealt with by local political activists — "the comrades"

Four of the men, sitting on one side of the room, are wearing their red, black and white caps bearing the slogan "Aluta Continua" (The struggle continues)

They are prosecutors, ready to cross-examine the accused and do the normal routine court tasks, just like in any other court of law

On the other side of the room is another, a more relaxed, calm man, about 32-years-old. He is not wearing a cap. His smile shows his strong set of white teeth. He is the presiding magistrate of the day

All five men are members of the Alexandra Action Committee (AAC), a group responsible for the running of the township's affairs after the en bloc resignation of the unpopular local town council.

The group monitors and co-ordinates day-to-day activities of the yard and street committees it has formed to create a barrier between the police and residents

In Alex hardly anybody goes to the police these days They report their cases to the "comrades"

Next to "the magistrate" is an angry-looking old man, about 64, a typical manual worker, in a blue overall He is staring intently at another young man in front of him as if to pounce and strangle him

The old man is a complainant and the young man is the accused, facing five counts of housebreaking and theft.

The young man turns and looks down at the pine table. He is shabby and shaking like a leaf. He has on a light V-neck jersey, no vest, no shirt underneath. His hair is uncombed and his bloodshot eyes are restless

Looking at him, I suddenly wondered whether his shaking had to do with the fear of being about to be tried by the "comrades" who, in township circles, are associated with "the necklace" (a burning tyre around the neck) by anyone who offends "the oppressed, the nation".

Next to the shaking man are two others, sitting quietly with their hands folded. They are both witnesses called by the the angry old man

There was I, in one corner of the "people's courtroom," pen and my shorthand notebook ready To find the "people's court" I had been passed along a shadowy chain of unknown people Some talked to me in the dark; some I could barely see.

At one stage I thought I would never get anywhere near the "people's court"

At last I found myself before a complainant that the people's court functions in such a way that every one of us here has got a right to talk and defend himself as much as he can

"You all know of the misconceptions and ridiculous talk about us, the comrades. We are said, in misinformed quarters, to be the most ruthless, bloodthirsty, uncompromising and always ready to kill or even burn alive without flicking an eye"

Silence grew heavier

The "magistrate" cleared his throat and looked at the accused, whose eyes were wide open by now

He continued. "I can assure you that all these beliefs are not true. They are all flimsy, malicious rumours spread by the system to discredit us and tarnish the integrity of those committed to fighting the oppressive policies of the country's ruling government.

"We are committed to positive and constructive change and not destruction. We want to rebuild Alexandra and engender a spirit of trust among its residents We want to live as a united and civilised people, free of crime

"We must solve our problems amongst ourselves and not go to the Boers, who have no love for us, who begrudge us, who molest and kill us for reasons even unknown to them and the world over So, be free comrade. But please tell the truth, because through it we can hope to build Alexandra and the whole nation of South Africa. Now, we shall start," he said

MAGISTRATE. "The accused is facing five charges of housebreaking and theft committed on different occasions at the house belonging to 'ntate' (Southern Sotho for daddy) A total of five shirts and hardware tools were stolen during this period.

"We also note that the accused used to stay in the same yard as 'ntate' before he (the accused) was

COMPLAINANT: "This boy was lying when he said he broke into my house only on three times He first broke into my house on December 7 and then every end of the month from January till April Five of my most beautiful shirts, my witchdoctors' bones and tools were stolen and I want them back! Do you hear me?

"I have a family in Pietersburg and I go there every end of the month and this boy knows it. He waits for the end of the month when I am away and then breaks in and steals.

"It seems the boy has got something against me I cannot understand why he must keep stealing for me when there are so many other houses and so many people in Alexandra Why me?"

The magistrate turns to the four prosecutors

"Comrades if you wish to ask questions or make any comments"

PROSECUTOR (number one) turns to the accused "Do you admit that you broke into 'ntate's' house five times and stole the tools, the bones and five shirts?

ACCUSED: "No, I only broke in and stole three times"

PROSECUTOR. "What did you steal?"

ACCUSED (hesitates) "I cannot remember eh e h, I was drunk."

PROSECUTOR. "Were you drunk on the three occasions you broke in and stole?"

ACCUSED: "Yes, I was drunk and do not remember what happened"

PROSECUTOR. "Oh! If I understand you well, you cannot remember anything you have done or do under influence of alcohol?"

ACCUSED: "Yes"

PROSECUTOR. "Then how do you remember that you broke into 'ntate's' house three times and not five times, as he claims? How do you remember that you broke into the house because you had no place

court. Same questions asked in SeTsonga but, like before, the accused keeps quiet)

PROSECUTOR (number two) cross-examines the accused "Comrade, you say when you broke into 'ntate's' house you only wanted to sleep Then why did you steal?

ACCUSED: "I did not steal."

PROSECUTOR (number three) "Comrades! This man is wasting our time He has just told us that he broke in three times and stole three times He also says he only broke in because he had no place to sleep

"He tells us he was drunk and he loses his memory when he is drunk But surprisingly, he recalls that there were soldiers patrolling the streets All of a sudden he did not steal What is all this? What must we believe?

"I am left with one impression, and that this man is a liar"

PROSECUTOR (number four, the youngest of them all in court) "I want you to tell me the truth, comrade Where are the goods you stole?"

ACCUSED: "I have still got some of them"

PROSECUTOR. "So you did steal them?"

The accused admits the thefts The young prosecutor goes on

"Now, comrade, I am going to ask you the last question, and this is very important to you and all the people of Alexandra Are you prepared to live peacefully with the people of Alexandra?"

ACCUSED: "Yes! Yes!"

MAGISTRATE turns to the old man "'Ntate,' it is clear that the accused is guilty of the five charges. What do you say to that? What must we do with him?"

THE OLD MAN, still fuming "My child! Thupa ya lukisha! (sjamboking is the best medicine) The boy must be sjamboked!"

The **MAGISTRATE** ignores the old man and turns to the two witnesses

PROSECUTOR (number four) starts "'Ntate,' one of the Alexandra Action Committee's major objectives is to build the community, and you will notice that crime has decreased considerably since we started running our own affairs after the fall of the local town council and our resolution to build the wall separating us from the police.

"We do not believe the accused is beyond redemption. He can be rehabilitated and then join the struggle for freedom of the oppressed people and contribute in rebuilding and reorganising Alexandra and the whole of our land.

"He may be a potential freedom fighter who will one day free you and me from the chains of oppression, but provided he is converted into a sober-minded human being.

"Sjamboking a man does not necessarily mean he will change. However, we do not imply that the method we contemplate using to convert the accused will definitely work We are only hoping it will work It has worked before

"We will work hard to make the accused a good person and we will also ask you to help us change this man What do you say? Can you help us?"

OLD MAN "My children, I am very pleased If only that was possible and if he could give up liquor You know, I like this boy"

The magistrate, the prosecutors, the complainant and the accused's nephews, after a brief deliberation, resolved that the accused should be allowed to stay with his nephews while undergoing rehabilitation

"You cannot hope to rehabilitate a renegade, a vagabond who does not even have a place to stay" They resolved

☐ He would never be allowed to take liquor;

☐ A selected committee of AAC members, the complainant, the accused's nephews will monitor how

inside a comrades 'people's court'

Graphic: PNINA FENSTER

putes, you name it – are dealt with by local political activists — "the comrades"

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At last I found myself before a young man. "Comrade!" He was smiling. "The masses think you are an agent of the system That is why they won't give you any information. That is the reality of our situation," he said, flashing another smile.

After a long and friendly discussion he gave me permission to visit a "people's court"

So here I was, in the corner of the tiny courtroom with nine other men and the frightening, uneasy tension still gripping it.

Although a certain degree of flexibility marks the proceedings, the atmosphere in this "court" is astonishingly formal.

The old man's angry stare at the scruffy looking accused and the deafening silence is interrupted by the stern voice of the "magistrate," speaking in English.

"Comrades Before the court starts, I would like to remind the accused, the two witnesses and the complainant that the people's court functions in such a way that every one of us here has got a right to talk and defend himself as much as he can.

"You all know of the misconceptions and ridiculous talk about us, the comrades We are said, in misinformed quarters, to be the most ruthless, bloodthirsty, uncompromising and always ready to kill or even burn alive without flicking an eye"

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"We also note that the accused used to stay in the same yard as 'ntate' before he (the accused) was expelled by his own nephews. Do you plead guilty or not?"

ACCUSED: "I admit that I broke into the old man's house, but only thrice and my intention was not to steal. I broke in because I had no place to sleep after I had been dismissed by my two nephews and "

"He is lying! He is lying!" interjects the old man.

The magistrate intervenes and politely admonishes the complainant to give the accused a chance to talk.

ACCUSED: "I had nowhere to sleep and a stoep of one of the houses in the yard served as my refuge every night. But as there were too many soldiers patrolling the streets I became scared and decided to break in."

MAGISTRATE. "Now, can we hear from you 'ntate.' Tell us what happened as much as you can."

COMPLAINANT: "This boy was lying when he said he broke into my house only on three times He first broke into my house on December 7 and then every end of the month from January till April. Five of my most beautiful shirts, my witchdoctors' bones and tools were stolen and I want them back! Do you hear me?

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ACCUSED: "Yes"

PROSECUTOR. "Then how do you remember that you broke into 'ntate's' house three times and not five times, as he claims? How do you remember that you broke into the house because you had no place to sleep? And if you were drunk how could you have remembered that there were soldiers patrolling the streets on those nights and that you were scared of them?"

(The accused keeps quiet)

PROSECUTOR. "Comrade, talk! You are wasting our time. You should remember that the time you are wasting is significant to us. People are oppressed and the time you are wasting,we freedom fighters could be utilising to contribute to the liberation of our people. Now talk!"

(The accused still keeps quiet)

MAGISTRATE intervenes "Is that clear, comrade?"

ACCUSED: "E h eh I do not understand SeSotho I speak SeTsonga (Shangaan)

MAGISTRATE: "Do you need an interpreter?"

ACCUSED: "Yes."

(The interpreter is brought into court. Same questions asked in SeTsonga but, like before, the accused keeps quiet)

PROSECUTOR (number two) cross-examines the accused "Comrade, you say when you broke into 'ntate's' house you only wanted to sleep Then why did you steal?

ACCUSED: "I did not steal."

PROSECUTOR (number three) "Comrades! This man is wasting our time. He has just told us that he broke in three times and stole three times. He also says he only broke in because he had no place to sleep.

"He tells us he was drunk and he loses his memory when he is drunk. But surprisingly, he recalls that there were soldiers patrolling the streets All of a sudden he did not steal. What is all this? What must we believe?

"I am left with one impression, and that this man is a liar"

PROSECUTOR (number four, the youngest of them all in court): "I want you to tell me the truth, comrade. Where are the goods you stole?"

ACCUSED: "I have still got some of them."

PROSECUTOR: "So you did steal them?"

The accused admits the thefts. The young prosecutor goes on.

"Now, comrade, I am going to ask you the last question, and this is very important to you and all the people of Alexandra. Are you prepared to live peacefully with the people of Alexandra?"

ACCUSED: "Yes! Yes!"

MAGISTRATE turns to the old man. "'Ntate,' it is clear that the accused is guilty of the five charges. What do you say to that? What must we do with him?"

THE OLD MAN, still fuming: "My child! Thupa ya lukisha! (sjamboking is the best medicine) The boy must be sjamboked!"

The **MAGISTRATE** ignores the old man and turns to the two witnesses, who are both nephews of the accused. "Why did you dismiss your uncle from your house? Relate briefly"

WITNESS (number one): "This man is our uncle and we like him a lot. But on pay days he would misuse all his wages on liquor and when he is broke he starts stealing He steals from us, from everyone, and this has been going on for years. He is just too much of a thief He is an embarrassment to the whole family"

WITNESS (number two): "It is true; our uncle's problem is liquor He does not even have a bank book because of alcohol."

MAGISTRATE: "Let us say your uncle gives up liquor Would you accept him back home?"

WITNESSES. "Yes."

MAGISTRATE (addresses the four prosecutors): "Comrades, will one of you give some political education?"

PROSECUTOR (number four) starts: "'Ntate,' one of the Alexandra Action Committee's major objectives is to build the community, and you will notice that crime has decreased considerably since we started running our own affairs after the fall of the local town council and our resolution to build the wall separating us from the police.

"We do not believe the accused is beyond redemption. He can be rehabilitated and then join the struggle for freedom of the oppressed people and contribute in rebuilding and reorganising Alexandra and the whole of our land.

"He may be a potential freedom fighter who will one day free you and me from the chains of oppression, but provided he is converted into a sober-minded human being.

"Sjamboking a man does not necessarily mean he will change. However, we do not imply that the method we contemplate using to convert the accused will definitely work. We are only hoping it will work. It has worked before.

"We will work hard to make the accused a good person and we will also ask you to help us change this man. What do you say? Can you help us?"

OLD MAN: "My children, I am very pleased. If only that was possible and if he could give up liquor You know, I like this boy"

The magistrate, the prosecutors, the complainant and the accused's nephews, after a brief deliberation, resolved that the accused should be allowed to stay with his nephews while undergoing rehabilitation.

"You cannot hope to rehabilitate a renegade, a vagabond who does not even have a place to stay" They resolved.

- ☐ He would never be allowed to take liquor;
- ☐ A selected committee of AAC members, the complainant, the accused's nephews will monitor how he progresses;
- ☐ Though he will not be told how to use his money, his savings would nevertheless be monitored by the old man, the nephews and the special committee.

The Magistrate declares an end to the people's court proceedings.

Everybody rises. There is laughter and shaking of hands All faces are bright and radiant. Even the young, scruffy accused is no longer shaking. His eyes no longer restless, he shares a joke with his nephews. The old man joins in. They all laugh.

About 600m away, an army Buffel of the South African Defence Force was moving slowly, still patrolling the troubled township

Where I was, some of the nine men were still laughing, others smiling broadly

"Oh! The African people. They are never without their smiles," I thought and left.

Bhutto suspends hectic opposition campaign for Ramadan

ISLAMABAD — Benazir Bhutto yesterday suspended her hectic opposition campaign for Ramadan, the Muslin fasting month the government hopes will break the momentum of her drive for new elections in Pakistan.

Her whirlwind tour of the country, which began with her triumphant return to Lahore on April 10 from self-exile in Europe, has confirmed Bhutto's image as the most charismatic of the politicians opposed to General Mohammad Zia-ul-Haq

Her "caravan for change" has taken her to all the main cities of Pakistan except the capital Islamabad, which she is due to visit after the month of dawn-to-dusk fasting is over

In the first test of its commitment to establishing a democratic system, the civilian government has allowed her full freedom to hold her rallies — but just as firmly has refused to consider polls before the next round due in 1990

Bhutto insists she wants a "peaceful revolution", but many Pakistanis do not think the government would agree to new polls unless faced with violent street unrest.

"There is a thin line between mass mobilisation and militant agitation," Khaled Mehmud, a professor of political science, wrote recently

"If the massive display of popular support does not exert sufficient pressure, she will have to evolve a new plan of action," he said.

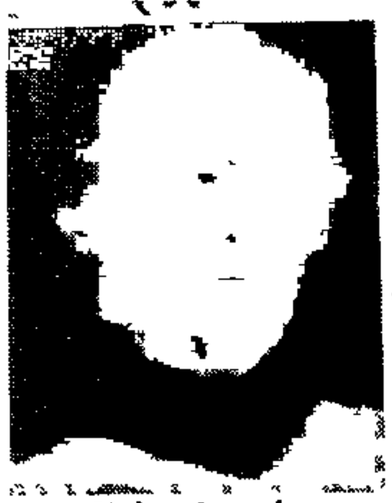
Commentators in Islamabad say Bhutto — daughter and political heir of former Prime Minister Zulfikar Ali Bhutto, overthrown by Gen Zia in 1977 and later hanged — has some tough challenges to face.

"The scorecard of Round One shows impressive pluses for Benazir, but it would be a mistake for her to conclude that the party's over for General Zia-ul-Haq," Mushahid Hussain, editor of the Islamabad daily *Muslim*, wrote.

"Round Two, which should follow Ramadan, will be a test of Benazir's ability to sustain the tempo for change." — Sapa-Reuter

WE regret that because of space problems, Peter Wilhelm's column has been held over until tomorrow.

Niehaus demonstrators lose appeal



Helen Joseph

An appeal by veteran activist Helen Joseph and three others against a conviction by a Johannesburg magistrate last year for demonstrating in court during the Niehaus/Lourens treason trial was dismissed in the Rand Supreme Court yesterday

Helen Joseph of Norwood, Heather Lynn Barclay of Linksfield, Madikoe Thomas Mathate of Soweto and Michael Roussos of Berea had appealed to the Supreme Court after they were convicted and sentenced to R400 (or five months) by magistrate Mr A J Visagie on February 11 last year

An appeal against their sentence was, however, successful yesterday. It was replaced with R100 (or 100 days) suspended for three years

The four were found guilty of demonstrating in the Johannesburg Magistrates Court on September 23 1983 when Carl Niehaus and Johanna Lourens appeared in connection with charges of high treason

Huge increase in private debt

Pretoria Bureau

13/5/86 STAR 252

South African courts handed down nearly 38 000 civil judgments on debt amounting to more than R72 million in February this year alone

In February last year there were 36 000 civil debt judgments totalling R54 million

Figures released by Central Statistical Services in Pretoria show the number of civil debt cases is soaring

There was a total of 103 510 debt judgments between December 1985 and January 1986 as opposed to only 93 775 in the previous period — a 10 percent increase

The number of summonses for debt has risen from 197 056 between December 1984 and February 1985 to 211 986 in the same period in 1985/86 — a seven percent increase

'SA can't fight communism with Red tactics': Kennedy

The Star Bureau

WASHINGTON — South Africa could not fight communism by imitating Soviet injustice, intolerance and internal exile, Senator Edward Kennedy said last night

"Like the Soviet Union, South Africa itself is a prison, stretching from sea to sea, a beautiful land scarred and shamed by its barbed wire," he said after receiving a human rights award here.

He said the thoughts of everyone were with prisoners such as Nelson Mandela and Walter Sisulu "but our prayers are also with the 30-million people living in South Africa, white and black alike, who must share the prison that is apartheid".

Senator Kennedy won an award from the International Human Rights Law Group which monitors human rights in many parts of the world and which has sent lawyers to observe trials in South Africa.

The award was presented by Miss Mpho Tutu. "There is no greater champion of human rights on earth today than her father Desmond Tutu, and the secret weapon in the Tutu family is her mother Leah," the senator said.

Police transcripts inaccurate, court told

By Mike Cadman

Some Security Police transcripts of telephone conversations to be used in the civil action between the Krugersdorp Residents' Organisation (KRO) and the police and SADF are inaccurate, a Rand Supreme Court judge was told yesterday.

Counsel for the KRO, Mr Jules Browde SC, said he and an interpreter had listened to a recording yesterday and found the transcript to be inaccurate.

In addition, the tape was edited, the court was told.

"I listened to one (of the tapes recorded on April 27)). It was a completely edited tape. There were edited versions of long conversations — done by the person making the recording," Mr Browde told the court

The KRO made an urgent application to the Supreme Court in February in an attempt to win an order restraining security forces from committing unlawful acts in the townships of Kagiso and Munsieville The application was supported by 114 affadavits detailing the alleged killing of innocent people, assaults, rape and other unlawful acts.

The Ministers of Law and Order and Defence and the Divisional Commissioner of Police for the West Rand have denied the allegations.

Counsel for the Minister of Law and Order, Mr P Hattingh SC, conceded the tape transcript was inaccurate and said that a court interpreter from Pretoria would work into the night if necessary to make new transcripts for use in cross-examination of KRO secretary, Mr Laurence Ntlokoa, in court tomorrow

It was conceded that, although only one tape had been shown to be inaccurate these inaccuracies might "occur with all the tapes".

Mr Hattingh said he had been assured by his clients that the transcripts were accurate.

Mr Justice R Goldstone said that any wasted costs would be paid by the first and second respondents (the Minister of Law and Order and the Divisional Commissioner of Police for the West Rand)

Last week Mr Browde revealed that telephones of court witnesses were still being tapped after court proceedings had begun.

Mr Browde said in court yesterday that any recordings made after the application was made to the court in February, should not be allowed as evidence He said he believed recordings made after court proceedings had begun amounted to contempt of court

The hearing continues.

Four Soweto men convicted of treason

By Jenni Tennant

Four Soweto men were yesterday convicted in the Rand Supreme Court of treason after they altered their pleas of not guilty and admitted certain acts

The men amended their pleas from not guilty of treason, alternatively terrorism, to guilty of treason.

Admissions of undergoing military training outside South Africa, sabotage, membership of the banned African National Congress and knowledge of arms caches were included in statements handed in.

The men are. Hamilton Mncedisi Dubasi (28), Jongumuzi Sisulu (26); Lumkile Happy Mkefa (21) and Joseph Themba Maja (25)

A fifth man, Mr David Matsose (24), who originally appeared with the four, was found not guilty and discharged two weeks ago

Mr Justice A M van Niekerk, and two assessors, found the men guilty in accordance with their pleas and on the admitted facts

The judge found the four not guilty of the other charges, including terrorism

All the men said they were aware that the aims of the ANC included the overthrow of the Government by violent means and that they had acted in furtherance of these aims

Dubasi, in his statement, admitted that.

- He received military training by instructors of the ANC outside South Africa and became a member of the organisation in 1978.
- He was aware of and associated himself with the arms caches which he showed the police at Emdeni, Langlaagte and Kliptown/Dlamini
- He took part in the sabotage of a Mamelodi pylon

Included in Sisulu's statement was that

- He conveyed ANC members to De Deur on March 11, 1984, to pick up people he assumed were also members of the ANC
- He provided accommodation for Dubasi and Maja and also conveyed messages for Maja

In his written statement, Mkefa said that

- He pointed out places where he left four AK-47 rifles and other goods which were given to him by Joe Masilela (an alleged ANC member) for safe-keeping on August 16 1984.
- On the day of his arrest he was in possession of two hand grenades, an AK-47 cleaning kit, a packet of 9 mm cartridges, a length of safety fuse and the nose cap of an RPG7 projectile that had been given to him for safe-keeping

Dawid Matsose ... acquitted two weeks ago.

- He knew of an arms cache in Emdeni.
- He planted limpet mines under the cars of two policemen in 1984. But he had set them to times when he knew the policemen would not be in them
- He threw two hand grenades near a house in Naledi on May 20 1984

RECEIVED TRAINING

Maja admitted

- He received training as a medical orderly under the auspices of the ANC.
- He entered South Africa in May 1984 to act as a courier for the ANC.
- He was in control of literature, rifle and other armaments found in the car at the roadblock where Dubasi and Sisulu were arrested This material had to be handed over to another member of the ANC

Evidence in mitigation is expected to be led tomorrow

Appearances Mr Justice A M van Niekerk, sitting with two assessors, is on the Bench Mr J A Swanepoel, assisted by Mr A G Berry, appeared for the State. Mr H P Viljoen SC, assisted by Mr S L Joseph, appeared for Dubasi, Sisulu, Mkefa and Maja.

Diepkloof 15 are released

252

SMH 15/5/86

Fifteen Soweto school pupils alleged to have set alight and murdered a policeman were yesterday granted bail in the Protea Magistrate's Court or released into the custody of their parents.

The pupils, who have been in custody for weeks, are alleged to have killed the policeman in Diepkloof during unrest on April 18.

Seven of the boys, aged from 14 to 17, were released into the custody of parents or guardians. The others were granted bail of R300 each.

They are Mr Peter Ntamo (19), Mr Moses Sithebe (18), Mr Alpheus Molefe (18), Mr Dingane Mabogoane (19), Mr Isaac Mosipe (19), Mr William Makgamathe (19), Mr Noel Thobejane (20) and Mr David Diutlwileng (18).

Magistrate Mr D Breedt had earlier ruled that only the accuseds' parents or guardians could remain in court. Others were ordered out.

No plea was entered and the case was postponed to May 28 in the Johannesburg Magistrate's Court.

Friends hoisted the under-aged youths high and sang as they left the court yard.

FIN MAIL

ALEXANDRA

16/5/86

Own affairs?

An ambitious experiment in grassroots democracy, or vicious rule by intimidation? This is the question being asked about the informal system of justice and control springing up in SA's "ungovernable" black townships, as official local authority structures are replaced by the rule of security forces and unofficial community organisation

There is no simple answer Certainly, horrific tales of "necklacings" and beatings of people who have earned the ire of the so-called "comrades" in some townships, bear testimony to viciousness But conditions seem to differ substantially in different areas

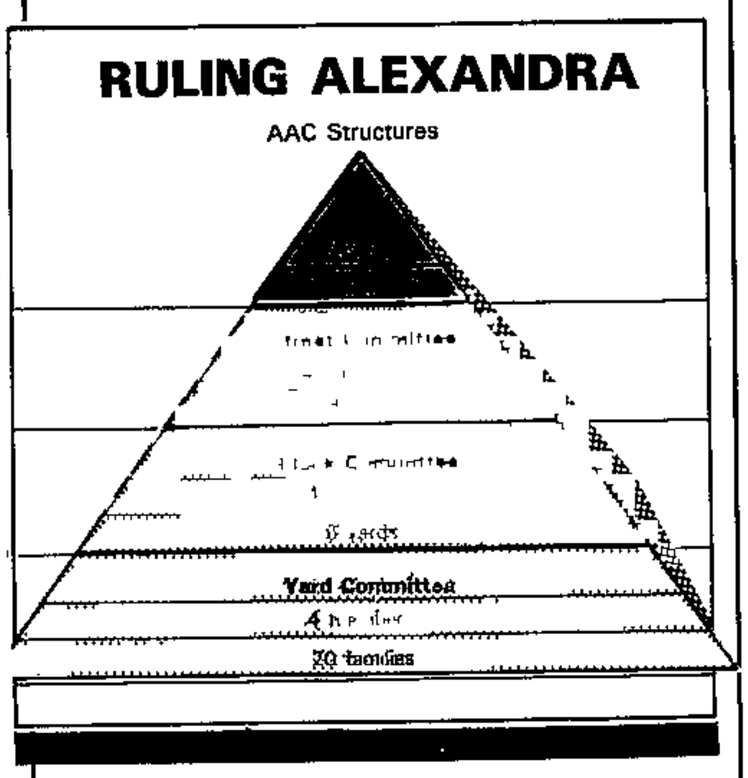
Take Alexandra, that turbulent township north of Johannesburg At present, the dominant organisation is the Alexandra Action Committee (AAC) According to AAC chairman Moses Mayekiso, mob rule is not the order of the day. Instead, he says, the AAC has concentrated on establishing structures eventually to take over the running of the township

How is it being done? Decentralisation is the key. The basic AAC structure is the yard committee, representing about 20 families Emanating from this base are block committees (consisting of about six yard committees); and street committees (made up of seven to eight blocks) At the top of this pyramid structure is the 22-member AAC (see diagram page 57).

Accountability is of paramount concern, making regular report-back meetings a necessity Any resemblance this bears to the way trade unions operate is no accident Mayekiso is a prominent Metal and Allied Workers' Union official, while fellow AAC

RULING ALEXANDRA

AAC Structures



member Sipho Kubheka is employed by the Paper, Wood and Allied Workers' Union And Mayekiso points out that Alexandra is a highly unionised township. He estimates that between 30% and 40% of working residents are union members — far above the national average Many shop stewards also serve on the various AAC sub-committees

According to Mayekiso, the AAC has managed to organise about 60% of Alexandra The major inhibiting factor is the heavy security force presence in the township, which makes it difficult to hold public meetings

The most widely publicised and controversial function of the AAC committees is their role as "peoples' courts" (see box). Right now, their other main function appears to be the politicisation of the community. Says Mayekiso. "We see ourselves as part and parcel of the national liberation struggle and are educating people to play their part "

But many of the residents' grievances, although certainly not all, relate to the state of the township's essential services, and rentals. At this level, however, the AAC has not come very far in formulating its role. Until its collapse, Sam Buti's town council was responsible for township administration and the AAC does not wish to take over the council's mantle. Such is the level of polarisation in Alexandra that it would take a great deal to convince the AAC to have any contact at all with officialdom — even if the authorities were prepared to deal with it

But the irony that government and its agencies will continue to administer these services for the people of Alexandra does not escape Mayekiso and he acknowledges that his committee will have to come up with some answers ■

(252)(331) WEEKLY MAIL. 16/5/86.

An in-camera dilemma: protection or disclosure

THE flow of mysterious "Mr Xs" and "Mrs Zs" at political trials has focused attention on the increasing use of secret state witnesses — and the serious questions it raises.
PAT SIDLEY reports

"MR Z", a secret witness at the treason trial of Helen Passtoors, testified that while training as an ANC guerrilla in Zimbabwe, he had helped load arms into cars, including the vehicle of Passtoors and Klaas de Jonge

Had it not been for the fact that one of the Passtoors lawyers , Kathleen Satchwell, was also a defence lawyer in the Delmas treason trial, it may never have been known that "Mr Z" had given evidence in the Delmas case And if not for this coincidence, "Mr Z" would not have been tested in cross-examination with the evidence he had given at Delmas

In Delmas, only the senior defence lawyers are allowed to use the witness' name for investigation purposes. In the Passtoors case, none of the defence lawyers were allowed to know the secret witnesses' names

Secret witnesses have also been used in the Pietermaritzburg treason trial, currently in progress. It is now emerging that some witnesses testify at more than one trial, their identities formally known to almost nobody but the state

This raises the question of how a witness can be adequately cross-examined when his or her identity is not known, able to be disclosed or publicly heard so that information may be obtained to support or challenge what the witness has said

Lawyers spoken to this week about the matter were deeply concerned about this issue, but would not allow themselves to be identified

Jules Browde, a senior counsel in Johannesburg, spoke in his capacity as chairman of Lawyers for Human Rights, strongly criticising the use of secret witnesses

"It seems to me to be contrary to the principles of justice The system practically precludes an investigation into the witness' background to test his or her reliability. How can you examine credibility with no identity or background?

"It opens the way to tremendous abuse. With witnesses giving evidence in more than one trial, there is no means of comparing the evidence.

"It could lead to a grave miscarriage of justice."

Browde said if the situation is so desperate that a witness' life is threatened, "the state should not call that person as a witness.

periods of time before being brought to testify The accused, once charged, are allowed to see their families and lawyers, to communicate with one another and have specific privileges

The defence lawyers interviewed were uniformly critical of the system of in camera witnesses, saying it opens the way to abuse

"If a witness gives evidence which implicates other people," said one lawyer, "it is very difficult to get at the truth when you can't reveal their identity to others

"It's like saying I landed on the moon with Neil Armstrong and the lawyer not being able to go to Neil Armstrong and say so-and-so said this, is it true?" he said

"The irony of the system is that the secrecy sometimes inspires people to find out who the witness is, and they eventually get to know," said another lawyer who believed that the "protection" put the witness at more risk

Asked how witnesses should be protected, one lawyer said "The protection of witnesses must be weighed against the guilt or innocence of the accused "

A lawyer who favours the use of in camera witnesses when absolutely necessary said "It's a problem courts are faced with all over the world and I don't think any have solved the problem "

In Northern Ireland, for example, witnesses called to give evidence in trials against IRA members do not receive special protection, even though they may be at risk of assassination by the IRA

An expert on Northern Ireland said this week that much of the cross-examination of "supergrasses", as they are called, hinges on their credibility which is established by investigating their backgrounds and seeking damning evidence against them

The authorities appear to deal with their protection in a different way — by giving them new identities after the court hearing

"When the situation is being weighed up (when a witness' evidence is important, but it may threaten his or her life) then it should be examined in favour of the accused who, after all, is presumed to be innocent."

The state's argument, on the other hand, is that a witness' life may be endangered by giving the evidence. There seems to be little doubt of this According to evidence in the Passtoors trial, and to some of the defence lawyers, there is a basis to the argument that there will be violent retribution for those seen as "traitors".

Lawyers are generally critical of this approach to state witnesses Little is said about the conditions under which the witnesses are kept In the main, these are more severe than the conditions under which awaiting trial prisoners are held.

State witnesses are often held in prison in terms of Section 31 of the Internal Security Act. They are often held in solitary confinement for long

FIN MAIL 16/5/86

PEOPLES' JUSTICE

Around the [illegible] th [illegible] ... nyone [illegible]

[illegible] H [illegible] ... SA [illegible] system of justice.

[illegible]

[illegible] conflicts and [illegible] di [illegible] public nuisance [illegible] street fights and [illegible]

[illegible] ... rumes [illegible]

[illegible] to steal [illegible] ... opportunities [illegible]

[illegible] not personally act [illegible] ... He adds [illegible] ... n of crime [illegible] ... andra [illegible] ... statistics on [illegible] ... the [illegible] ... n [illegible] ... criminal [illegible]

[illegible] ... to [illegible] ... He [illegible] ... h [illegible] ... ld [illegible] education. Informers [illegible] ... al [illegible]

[illegible]

The [illegible] ... committee [illegible] ... procedures. [illegible] ... and natural [illegible] ... Neverthe- [illegible] ... t. [illegible] ... o [illegible] ... level, [illegible] ... against [illegible] ... through the [illegible] ... street committee [illegible] ... word [illegible] ... have [illegible] ... job.

HOW A COUNCILLOR'S WIFE ESCAPED MOB

A SEBOKENG resident yesterday described in the Pretoria Supreme Court how she helped a councillor's wife and children escape a stone throwing mob.

By ALINAH DUBE

Giving evidence for the defence, Ms Matimela Esther Lepota said she worked for the councillor, Mr Caesar Motjeane, and his wife, Maud

She told Mr Justice van der Walt and two assessors that it was on the morning of September 3, 1984, when she overheard Mrs Motjeane telling her husband that "people are coming to burn down our house". The councillor's wife was crying, she said.

This took place before Mr Motjeane and another resident, Mr Phineas Matibidi, were attacked and burned later that day, she said.

Ms Lepota said she took one of the Motjeane baby twins to her own home for safety

"After changing the baby's napkin, I immediately went back hoping to rescue the other twin," she said.

"Once in Caesar's yard, I saw his wife and children escaping through a bedroom window. They came to me and with the help of a Mrs Mahlatsi we jumped over the fence. We used a chair to climb over," Ms Lepota said.

Eight people are appearing in connection with the murder of the two men.

(3) (a)

Year	Price in cent per kWh for firm power	Price in cent per kWh for non-firm power	Actual average price in cent per kWh
1977	0,5	0,166	0,390
1978	0,5	0,166	0,381
1979	0,5	0,166	0,408
1980	0,5	0,166	0,400
1981	0,5	0,166	0,166
1982	0,5	0,166	0,167
1983	0,5	0,166	0,167
1984	1,1	0,25	Nil
1985	1,1	0,25	0,255

(b) (i) 0,75 cent per kWh for firm power plus a premium of 0,35 cent per kWh if the supply is reliable, and 0,25 cent per kWh for non-firm power ie during *force majeure* situations and delivery of more than the contracted supply.

It may be mentioned that electricity is not supplied in terms of the Nkomati Accord. It is done in terms of a tripartite agreement between the South African, Portuguese- and Mozambique Governments (called the main agreement) and a supply agreement between Escom, the Portuguese- and Mozambique Governments

(ii) March 1977 to 31 December 1985

Staff transferred

848 Mrs H SUZMAN asked the Minister of Justice.

(1) Whether any staff members attached to the commissioners' courts were transferred from the former Department of Co-operation and Development to his Department with the transfer of these courts in 1984; if so, how many;

(2) whether any of these staff members were subsequently transferred to posts in his Department not related to the work being done by the commissioners' courts; if so, (a) why and (b) how many,

(3) whether any additional staff members have been appointed to fill the vacancies caused in respect of the said courts by the transfer of these staff members; if not, why not; if so, (a) how many and (b) when?

The MINISTER OF JUSTICE.

The hon member is referred to my written answer Question No 839 of 1985.

Maintenance

HANSARD 20/5/86

851 Mrs H SUZMAN asked the Minister of Justice.

QCSL 1808 252

(1) What was the average number of (a) new maintenance order applications made and (b) cases finalised per month at the maintenance court at Observatory, Cape Town, in 1985;

(2) what percentage of (a) maintanance order applications were (i) finalised by the maintenance officer and (ii) referred to trial and (b) fathers failed to comply with maintenance orders in 1985;

(3) whether any of these fathers were prosecuted, if so, what percentage of those who failed to comply were prosecuted;

HoA

(4) What is the average maintenance per child per month granted by these courts in respect of Black persons in 1985?

The MINISTER OF JUSTICE

There is no maintenance court at Observatory, Cape Town Observatory falls within the magisterial district of Cape Town and maintenance enquiries originating from Observatory are held in the Magistrate's Court, Cape Town Statistics of cases which originate from Observatory are not kept separately and the required information is, therefore, not available.

Maintenance

855 Mrs H SUZMAN asked the Minister of Justice.

(1) Whether any complaints have been received by any persons attached to his Department regarding the division of maintenance court functions among Observatory, Wynberg and Cape Town in the Cape Peninsula; if so, (a) when, (b) from whom and (c) what was the (i) nature of the complaints and (ii) response thereto,

(2) whether any action is to be taken as a result, if not, why not, if so, (a) what action and (b) when?

The MINISTER OF JUSTICE

(1) and (2) As far as can be established no complaints have been received by officers of the Department

Divorce

HANSARD 2830

856 Mrs H SUZMAN asked the Minister of Justice

20/5/86 QCSL 1809

(1) (a) How many *in forma pauperis* divorces were granted in 1985, (b) what was the limit in cash or assets for qualification for *in forma pauperis* divorces as at the latest specified date for which information is available and (c)(i) when was this limit for the means test last increased and (ii) what was the increase on this occasion;

(2) whether the means test for *in forma pauperis* proceedings will be re-evaluated in the light of the rising cost of living and the cost of divorce, if not, why not, if so, when?

The MINISTER OF JUSTICE

(1) (a) The required information is not available.

(b) R100.

(c) (i) On 15 January 1965 with the promulgation of the rules regulating the conduct of the proceedings in the several provincial and local divisions of the Supreme Court of South Africa

(ii) Before the commencement of the above-mentioned rules the matter was dealt with separately in each Division of the Supreme Court

In the Transvaal, Natal and Orange Free State Provincial Divisions the limit was R50

In the Cape Provincial Division the limit was R30

(2) Yes. The matter is at present under consideration.

Maintenance

857 Mrs H SUZMAN asked the Minister of Justice.

(1) What percentage of maintenance order applications was (a) finalised by the maintenance officer and (b) referred to trial in respect of (i) Coloured and (ii) White persons in 1985;

(2) what was the average maintenance order granted per month per child in respect of (a) Coloured and (b) White persons in 1985?

A Bill of Rights for SA?

By Hannes de Wet

Three years ago the Minister of Justice, Mr Kobie Coetsee, said that South Africa did not need a Bill of Human Rights. There were enough laws to protect individual rights, he said. Recently Mr Coetsee announced that he had instructed the South African Law Commission to look into the possibility of a Bill of Rights for the country — with a view to protecting both individual and group rights. Will such a Bill necessarily bring an end to all the apartheid laws?

A Bill of Rights for South Africa could become just as "contaminated" as many of the Government's past reform measures — if it is going to be used mainly as an instrument to protect group rights

This warning comes from Professor Dion Basson, constitutional expert at the University of Pretoria

He did not want to speculate on the Government's intentions in looking into the possibility of the Rule of Law, but said "A Bill of Rights could go the same way as the Government's tricameral model for power-sharing — if it becomes just another mechanism to entrench white domination.

"This would happen if a Bill of Rights is primarily used to protect minority group rights

"I just hope that this is not the Government's intention It would mean that a Bill of Rights would become just as contaminated as the Government's present version of power-sharing

"To make such a Bill work, the starting point has to be individual rights — which would bring an automatic end to group areas, separate schools, the Population Registration Act, etc These Acts would all be set aside by the courts

"Such a 'liberal' Bill of Rights would then form the basis of a new system — with free association, free participation, etc"

This would not mean group rights had to fall by wayside, according to Professor Basson

"Once the process of free association has taken its course, group rights can be negotiated by the groups themselves — on a give-and-take basis

"Those groups who want to exclude all others — from say the area in which they live — should be free to do so in terms of private law You could also get something such as State-subsidised private schools, exclusively for whites

"The main point is that the group rights should not be organised by the State — but rather by the groups themselves after they have been allowed to form through free association and natural differentiation

"Then you won't get a situation where the State forces people in certain groups — which is a violation of the individual's right to make his own choice"

Professor Basson was of the opinion that most South Africans would be in favour of a Bill of Rights

Opposition from some leftist black spokesmen — voiced at a recent conference in Pretoria — against the principle of a Bill of Rights was "pure Marxism", said Professor Basson

"The Marxists want a society with no class distinctions at all They say the 'comrades' will protect one another. To them a Bill of Rights would boil down to discrimination"

Professor Basson said he was convinced that a major portion of the country's blacks would want a Bill of Human Rights

"One could just take ones cue from the Freedom Charter If one reads between the rhetoric, the Freedom Charter actually exhudes a moderate, democratic attitude"

According to Professor Basson, a Bill of Rights would guarantee good government — "no matter who is in power"

"It would also ensure that confidence be restored in the courts At the moment a large number of South Africans view the courts, not as objective, but as maintaining the unjust legislative programme of the status quo," he said

"It is imperative that the courts be reinstated as the independent guardians of individual liberty A constitutionally entrenched Bill of Rights will create new opportunities for the courts to invalidate unjust apartheid and security legislation"

There were growing indications, said Professor Basson, that South Africa's judiciary was prepared to do just this

"Court decisions on legal conflicts between an individual and a Government authority have generally been executive-minded during the past 76 years. During the past six months there has been a definite and significant change in this pattern

"It could perhaps be that the judiciary no longer wants to be swept along by the ideology of apartheid," Professor Basson said

'MY DAUGHTER IS INNOCENT...'

As daughter Theresa and others await the hangman in death row

By SIZA KOOMA

WHEN tragedy strikes the home of a single mother, she should be the last person to break lest the whole family disintegrates.

That is why Miss Julia Ramashamole has had to be a pillar since her daughter, Theresa, was sentenced to death last December

Theresa was the only woman among seven men charged with murder of a Sharpeville community councillor, Mr Khuzwayo Jacob Dlamini, who was stoned and set alight by a mob on September 3, 1984

She and five others — Mr Mojalefa Reginald Sefatsa, Mr Reid Malebo Mokoena, Mr Oupa Moses Diniso, Mr Duma Joshua Khumalo and Mr Francis Don Mokgesi — were sentenced in the Pretoria Supreme Court on December 6.

Now the battle for their lives has started in earnest: they have just been granted leave to appeal against their death sentences

Miss Ramashamole, Theresa's mother, was first hit by misfortune in 1977 when her eldest daughter, Celestinah, died after falling ill

Theresa was only 24 when she was arrested Violet, now 24, the girl who comes immediately after Theresa, had to be admitted to hospital after hearing of her sister's conviction and sentence

The last born, Josephine, is still at school

"I nearly lost my mind when I saw my daughter in the cells after sentence was passed," Miss Ramashamole says

"She did not understand what was happening She had lost weight terribly and would take time before answering a question, as if her mind was wandering I felt like swopping places with her "

Miss Ramashamole says that it was only after she had explained to her daughter that the sentence did not mean that she would be sent to the gallows immediately, that an appeal could be made, that she

ings She was also not a secretive child to have hidden her political involvement, if she had any She was unfortunate to be around the scene of the shooting at that time," said Miss Ramashamole

She says that her daughter had very few friends and preferred to stay indoors, sewing lace mats or crotcheting. She also made her mother some mats when she was in detention

"I had no interest in politics too But after what has happened, I will take a firm stance and be actively involved in the struggle I do not care what the cost is I am now prepared to fight for justice in my country."

Miss Julia Ramashamole, who now lives on hope.

'I am now prepared to fight for justice in my country'

Shot

"I have hoped that one day she will come out of that place, free and alive. I believe that she is innocent and that God will not let her die unjustly," she says.

Theresa was working at a roadhouse when she was arrested.

"She had gone visiting a friend on the day of the incidents and I was shocked when I heard that she and the friend had been shot. She had a head wound and the friend was shot in the arm," Miss Ramashamole said.

Theresa and the other seven pleaded not guilty to charges of murder, subversion, alternative charges of malicious damage to property and arson.

"Theresa had no interest in politics and I had never seen her going to political meet-

30/5/86

Sowetan

(b) (i) Target	(ii) Nature of the incident
4 Houses of MP	Handgrenade attacks
31 Businesses	27 Explosions 3 Handgrenade attacks 1 Armed attack
11 Government buildings	9 Explosions 1 Handgrenade attack 1 Armed attack
1 Bus depot	Explosion
1 White school	Explosion
1 Missionary station	Handgrenade attack
1 City Hall	Explosion
1 Kampong	Explosion
16 Electric Sub-stations	Explosions
3 Power masts	Explosions
4 Water pipelines	Explosions
1 Delivery vehicle	Explosion
1 Bus	Handgrenade attack
2 Railway lines	Explosions
Private persons at 6 occasions	3 Handgrenade attacks 3 Armed attacks

Uitenhage

474 Mr P G SOAL asked the Minister of Law and Order

Whether any members of the South African Police have been transferred from Uitenhage since 21 March 1985; if so, (a) what (i) are their names and (ii) were their ranks at the time, (b) where were they transferred to and (c) what are the new positions in each case?

The MINISTER OF LAW AND ORDER:

Yes, since 21 March 1985 a number of transfers from Uitenhage have been carried out in the interest of departmental requirements, but I am not willing to furnish the particulars, since it is a purely internal affair

(a) to (c) Fall away

Drugs

556 Mrs H SUZMAN asked the Minister of Law and Order

(1) Whether any persons were detained in 1985 for interrogation in terms of section 13 of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, No 41 of 1971; if so, (a) how many and (b) for what period was each detained;

(2) whether any of these persons were subsequently (a) charged with and (b) convicted of peddling drugs; if so, how many in each case,

(3) whether any of the persons arrested in 1985 are still in detention for interrogation, if so, (a) how many and (b) for what period has each been so detained?

The MINISTER OF LAW AND ORDER:

(1) Yes

(a) 17 persons

(b) 1 for 3 days.
1 for 6 days
2 for 7 days
3 for 8 days.

1 for 12 days
3 for 17 days
1 for 21 days
1 for 24 days
4 for 27 days

(2) Yes

(a) 11.

(b) 6

(3) No (a) and (b) Fall away

White/Coloured/Black/Indian members

578 Mr S S VAN DER MERWE asked the Minister of Law and Order:

(1) How many Whites, Coloureds, Blacks and Indians, respectively, enlisted in the South African police in 1985,

(2) how many persons in each race group had their service as members of the Police Force terminated in that year (a) on account of (i) resignation, (ii) retirement and (iii) expulsion and (b) for other specified reasons?

The MINISTER OF LAW AND ORDER

(1) White 2 651
Coloured 353
Black 671
Indian 57

(2)

	White	Coloured	Black	Indian
(a) (i) Resignation	911	113	351	34
(ii) Retirement	205	12	162	5
(iii) Explusion	47	33	212	6
(b) Other reasons				
Unfit for training	8	—	6	—
Deaths	78	23	153	5
Medical unfitness	159	15	70	5

Sabotage

563 Mrs H SUZMAN asked the Minister of Law and Order

(a) How many persons were charged with offences relating to sabotage in 1984 and 1985, respectively, and (b) for what period was each of these persons detained before being charged?

The MINISTER OF LAW AND ORDER:

1984

(a) 13

(b) 4 persons for 4 months, 7 days
3 persons for 4 months, 10 days
1 person for 4 months, 11 days
1 person for 4 months, 17 days
3 persons for 5 days
1 persons for a part of 1 day

1985

12

8 persons for 1 day
2 persons for 2 days
2 persons for a part of 1 day

Newlands tribal elders not guilty of assault

Dispatch Reporter

EAST LONDON — Twelve members of the Newlands Tribal Authority, near Mdantsane, were yesterday found not guilty of assault with intent to cause grievous bodily harm

The men appeared in the regional court here before Mr D Cronje on five counts of assault They pleaded not guilty to all charges

The accused were Mr Mtutuzeli Pohadi, 34, Mr Silumko Nono, 30, Mr Billy Khonyashe, 32, Mr Wawa Mkabe, 28, Mr Siphiwo Xoki, 24, Mr Thembekile Mkabe, 28, Mr Sipiwo Mqanase, 23, Mr Eric Yana, 25, Mr Notiti Tese, 31, Mr Thembile Malgas, 31, Mr Ndyebo Gxavu, 30, and Mr Bigboy Delanto, 38

The men's appearance was a sequel to an incident in which several youths in the St Mary administrative area, Newlands, were found guilty and sentenced to 100 cuts each by a tribal court on December 29 last year

Advocate S Kalimashe, for the defence, told the court that the basis of the defence was that the men did not act unlawfully when they meted out the punishment to the youths

He said his clients were members of a lawfully constituted tribal court operating under the Black Authorities Act and the Black Administration Act

The tribal court had sent out summonses to five people but when they arrived at the place where the court was sitting, they were armed with axes and other weapons, Mr Kalimashe said

They had admitted later that their intention was to interrupt the proceedings of the court, he said

A state witness, Mr Pumzile Vesele, told the court that he had been forced by a certain Tsoli to lay charges against the accused

Under cross-examination by the prosecutor, Mr L Halson, Mr Vesele admitted that he was sentenced to cuts by the court but added "I was guilty as we had gone to the court with weapons with the intention of assaulting the elderly members of the court"

Before Mr Vesele was called, Mr Halson applied to have the proceedings held in camera as he had information that the proceedings might be disrupted by some members of the public, he said

The application was opposed by Mr Kalimashe

The public had a right to listen to the proceedings as the accused had been administrators of the law and were now appearing in another court for carrying out their duty, Mr Kalimashe said

Mr Cronje warned the public to behave and not to pass remarks when witnesses were giving evidence

Riot police were present at the trial and all people entering the court building were bodily searched

Bill nullifies protecting arm of the courts

By Sheena Duncan
of the Black Sash

There has been a good deal of talk lately about a Bill of Rights for South Africa, but the astonishing thing is the almost total lack of discussion of the most fundamental protection it would offer — the right of people to be protected by the courts from detention without trial

In 1½ hours of "Microphone-in" on Radio South Africa this was not mentioned once In the "Network" discussion of the same subject it was only as the programme faded out that one of the participants mentioned detention without trial

Protection of people against arbitrary arrest and detention is an absolutely essential requirement of any Bill of Rights

INJUSTICES

It is this which measures whether or not a society is just and whether or not citizens will be free to protest, resist, and oppose other injustices that arise from the way in which they are governed.

While academics and sage political commentators write learned articles about the theory of a Bill of Rights and the possibility of the present Government introducing such a thing, there is a piece of legislation being dealt with in Parliament which finally and completely destroys any idea of the Rule of Law in South Africa

If the Public Safety Amendment Bill becomes law it will allow the Minister of Law and Order to impose a virtually permanent state of emergency in any area without calling it a state of emergency

The memorandum which accompanies the Bill says as much. "The declaration of a state of emergency is a drastic measure and has far-reaching consequences for the Republic There is, therefore, a clear need for a mechanism by which the necessary additional powers could be granted to the Security Forces in areas where public disturbance, disorder, rioting or public violence occurs, to enable them to cope with the situation without a declaration of a state of emergency and the concomitant consequences"

The Bill provides that:

- The Minister of Law and Order may by notice in the *Government Gazette* declare any area to be an unrest area if he is of the opinion that public disturbance, disorder, riot or public violence is occurring or threatening in the area

This declaration will remain in force for three months, but can be extended by the Minister with the approval of the State President.

- The Minister can make any regulations for an unrest area which "appear to him to be necessary or expedient".

He can do this simply by publishing a notice in the *Government Gazette*. He can declare any regulation he has made applicable outside the unrest area.

- The regulations can include provision for the detention of people There is no restraint on the Minister's powers to lock people away without any recourse to the courts for their protection.

If a person is detained for more than 30 days, the Minister must within 14 days after the 30 days has elapsed table the name of the person in Parliament.

If Parliament is not sitting, and/or Parliament is not sitting for half the year, he must table the names within 14 days after the next session begins

That is all It is not a restraint. The Bill says. "No interdict or other process shall issue for the staying or setting aside of any . notice issued by the Minister or any regulation ... and no court shall be competent to inquire into or give judgment on the validity of any such .. notice or regulation"

This Bill is very brief It does not need to be long and detailed because the Minister can make law by himself and any law he chooses to make by regulation cannot be challenged in the courts

It is absolutely no good discussing Bills of Rights for individuals or groups unless we begin by repealing all legislation which allows the State to imprison people without trial, and unless this new Bill is withdrawn in its entirety

It was skilful of the Government to publish the Bill on the same day that it published the White Paper on urbanisation. Public attention was deflected. We need to wake up

We who are white South Africans need to remember when we criticise Mr Robert Mugabe's Government in Zimbabwe for infringing human rights that he is using the laws bequeathed to him by the previous government headed by good old Smithy.

We also need to look at what is happening in our own country now. We have brought the law into disrepute

HORRIBLE

We have removed the protection of the courts from individuals and allowed thousands of people to be detained without raising our voices about it

Is it any wonder that we now see the establishing of "people's courts" and the arbitrary and horrible execution of those who are accused of being informers and collaborators?

Is it any wonder that we are seeing the growth of vigilante movements and public declarations by individuals that they intend to take the law into their own hands?

We have brought this about. If we mean what we say about a Bill of Rights we had better restore the Rule of Law now

Those of us who have shouted about this for so long are now old and tired. Soon there will be no one left to care and it will be too late for tears.

Seven plead for bail

By MONK NKOMO

SEVEN people, including five Atteridgeville high school pupils whose appeal for bail was recently rejected in the Pretoria Supreme Court, have now petitioned the Chief Justice to grant them leave to appeal further.

Mr Happy Ramohoebo (20), a Standard 8 pupil at D H Peta High School, Mr Prince Pheta (18), Mr Howard Sefole (18), a Standard 7 pupil at D H Peta High School, Mr May Ledwaba (32) and three minors are charged with murder.

They have appeared in court several times in connection with the death of Mr Zandile Sindane who was allegedly murdered, set alight and buried in Atteridgeville in February this year.

The accused have all pleaded not guilty.

Some of the accused told the court during their recent apearance that after their arrest they were taken to the Atteridgeville Police Station, assaulted and threatened with death by the police if they did not admit the allegations.

Some of the accused said they were also made to sit with their legs apart and kicked in their private parts

The magistrate, Mr D P van den Berg, refused to grant them bail.

He said following evidence by State witnesses, "the risk of avoiding trial is great and the likelihood is strong that the legal process will be frustrated". The accused, he added, would interfere with State witnesses.

Soweto four to appeal

LIAM EGAN

AN APPEAL against sentence has been lodged on behalf of four Soweto men who yesterday received terms of imprisonment in the Rand Supreme Court ranging from five to 14 years.

James Dubasi, 28, Jongumzi Sisulu, 26, Lumkile Mkefa, 21, and Joseph Maja, 25, were earlier convicted of treason by Mr Justice A M van Niekerk, after making certain admissions in terms of the Criminal Procedures Act.

In sentencing Dubasi to 12 years' imprisonment, Sisulu to five years, Mkefa to 14 years and Maja to 10 years, the judge said he was satisfied the men had acted to further the aims of the ANC

Although none of them had given evidence in mitigation of sentence, the judge said he accepted a statement handed to the court by their counsel outlining the "deprivations of their respective childhoods".

He accepted as an additional mitigating factor "the recent remarkable changes in government policy which the men could not have forseen at the time of committing the crime in 1984".

That each of the men were first offenders and that three of the men had already spent 22 months in custody was also taken into account.

The judge said Dubasi, by sabotaging an Escom pylon in 1984, had seriously disrupted the power supply to Pretoria.

He described Sisulu as a young man who had "fallen into bad company". The judge said placing explosives which wrecked the cars of two Soweto policemen, was a "shocking offence" by Mkefa.

He described Maja — who admitted to receiving training as a medical orderly from the ANC — as an ANC courier who had received and transmitted messages on behalf of the organisation in SA.

No date has been set for the application for the appeal against sentence.

ANC 4 given jail terms

FOUR Soweto men who were convicted of high treason in the Rand Supreme Court last week were yesterday sentenced to a total of 41 years in jail.

They are: Hamilton Mcedise Dubasi (28), Jongumuzi Sisulu (26), Lumkile Happy Mfeka (21) and Joseph Themba Maja (25).

They were found guilty by Mr Justice A M van Niekerk, sitting with two assessors, after they altered their pleas of not guilty to high treason, alternatively terrorism, to guilty of treason. They made certain admissions in terms of the Criminal Procedure Act.

The admissions included: Undergoing military training outside South Africa, sabotage acts, membership of the African National Congress and knowledge of arms caches.

Dubasi was sentenced to 12 years' imprisonment; Sisulu, five; Mfeka, 14; and Maja, 10. A fifth man, Mr David Matsose (24) also of Soweto, who originally appeared with the four, was found not guilty and discharged three weeks ago because of lack of evidence.

An application for leave to appeal on sentence will be heard at a date still to be arranged.

Before passing sentence, the judge told the four that he had taken into consideration the social and political backgrounds in which they were raised.

After sentence was passed a crowd of courtroom spectators marched towards Jeppe Post Office and police dispersed them. Further down, at a park near Rissik Street, police fired a tearsmoke cannister to disperse a group chanting slogans and singing freedom songs.

Arson sentence is set aside

Pietermaritzburg Bureau

SUPREME Court judges here yesterday set aside an effective three-year jail sentence and conviction of a Newcastle man on a charge of arson and possessing explosive material in connection with a petrol-bombing in the area

Mr Jabulani Mbhele, 29, of Madadeni had been found guilty of having petrol-bombed two huts, allegedly as a means of intimidating a worker at the African Explosive and Chemical Industries plant in Newcastle who had refused to participate in a strike According to evidence, Mr Mbhele was a shop steward for the union concerned

He was sentenced to six years' imprisonment, of which three years were conditionally suspended for five years

Mr Justice Didcott and Mr Justice Thirion found yesterday that the only evidence linking Mr Mbhele to the petrol-bombing was his finger print, found on a beer bottle used as a petrol bomb Mr Justice Didcott said Mr Mbhele had given a possible explanation for the print, saying he had handled many similar bottles not long before

N/M
23/5/86

Law in S A 'is regarded as tool of oppression'

African Affairs Correspondent

ULUNDI—The KwaZulu Minister of Justice, Mr Jeffrey Mthethwa, says discrimination has created disrespect for the law in South Africa

Delivering his policy speech in the KwaZulu Legislative Assembly yesterday, Mr Mthethwa said the law as it stood was regarded as a tool of oppression The application of the law in a differentiated way for the various race groups had created the violence which was escalating in the country

He said the law had been used to discriminate against black people, to oppress them and to deprive them of opportunities and privileges

This was the cause of the deterioration of moral standards which black society used to uphold

Mr Mthethwa said faction fighting had increased in the region He reported that 104 people had been killed in 47 faction fights in 1985, whereas in 1984 the number of such clashes was 13

The minister said he would be consulting the Legislative Assembly on the advisability of amending the code of Zulu law to make provision for a communal fine of R200 to be imposed on all adult male members of the conspiring factions

This provision was the only regulation which had proved effective in dealing with faction fights, he said

Mr Mthethwa said that when a person had killed or injured another, it was not always possible to identify him and bring him to book.

He said punitive measures might have a deterring effect, but experience had shown that this did not present a lasting solution

Mr Mthethwa maintained that a social problem would not be solved by applying punitive actions repeatedly

The cause of the conflict had to be investigated, treated and healed

(3) whether any member of the East Rand Development Board notified the residents of Silvertown in 1985 that a housing scheme for four-roomed houses was to be developed in Tsakane, if so, (a) when was this notice issued and (b) how many houses were to be provided,

(4) whether this housing scheme has been completed; if so, (a) when and (b) how many four-roomed houses were provided, if not, (i) why not and (ii) when is it anticipated that it will be completed,

(5) whether work has begun on this housing scheme, if not, (a) why not and (b) when is work due to begin; if so, (i) when and (ii) what progress has been made,

(6) whether the residents of Silvertown are to receive priority in the allocation of four-roomed houses in terms of this scheme, if not, (a) why not, (b) who will receive priority in the allocation of these houses and (c) who took the decision in this regard,

(7) whether the rentals for four-roomed houses built in terms of this scheme have been determined, if not, (a) when and (b) on what basis will they be determined, if so, (i) what are these rentals and (ii) on what basis were they determined;

(8) whether any residents of Silvertown moved into two-roomed houses on a temporary basis pending the completion of the four-roomed houses, if so, (a) what are the rentals for these houses and (b) on what basis were they determined,

(9) whether these persons will be allocated four-roomed houses when the housing scheme is completed, if not, (a) why not and (b) what provision will be made for these persons, if so, on what basis will these houses be allocated,

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

The MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING

(1) (a) During 1982.

(b) It was created as a transit area to accommodate the families who were to be rehoused from the old Brakpan Black township in Tsakane

(c) Temporary corrugated iron structures were provided Some residents erected additional rooms themselves

(d) Approximately 9 730

(2) Yes, the families who are still accommodated there

(a) Tsakane

(b) As soon as the houses of the final scheme which is presently under construction are completed

(3) Yes The Tsakane Ad-hoc Homeseekers Committee was interviewed on two occasions during 1985 by the Chief Director and senior officials of the East Rand Development Board during which meetings the Chief Director inter alia undertook to investigate problems which were identified

(a) During the discussions

(b) 272, for the remaining families.

(4) Not yet

(a) and (b) Fall away

(i) A site-and-service scheme was originally approved The scheme was, however, not acceptable to the residents of Silvertown and alternative arrangements for the provision of a housing scheme had to be made

(ii) Approximately 31 July 1986

HoA

(5) Yes

(a) and (b) Fall away

(i) During July 1985

(ii) 40 houses are 60% to 80% completed First allocations are expected to be made during May 1986

(6) Yes

(a), (b) and (c) Fall away

(7) No.

(a) The East Rand Development Board has been requested to apply for the approval of provisional rent based on the amount of the tender for which information is expected shortly

(b) On a differentiated basis as determined by the National Housing Commission

(i) and (ii) Fall away

(8) No, the families who moved into two-roomed houses did so voluntarily and on a permanent basis

(a) and (b) Fall away

(9) (a) and (b) No, unless the residents concerned who originally preferred to move into the two-roomed houses apply for alternative accommodation in which event applications will be considered on merit

(10) No

Legal aid

853. Mrs H SUZMAN asked the Minister of Justice

(1) Whether payments of legal aid funds for divorces were suspended in 1985, if not, what steps were taken in respect of such funds in that year, if so, (a) when, (b) why and (c) on whose instructions;

(2) whether the Legal Aid Board intends making funds available for divorces in future, if not, why not, if so, when,

(3) what (a) total amount was spent by the Legal Aid board on divorces in 1985 and (b) percentage of the total budget did this amount to;

(4) how many (a) men and (b) women were granted legal aid for divorces in 1985,

(5) whether any special provision has been made for the Director of the Legal Aid Board to grant legal aid for divorces during the above-mentioned suspension of payments; if not, why not, if so, (a) what special provision and (b) under what circumstances will legal aid be granted for divorces in terms of this special provision,

(6) whether any applications for legal aid for divorces in 1985 were refused prior to the suspension of payments; if so, (a) in respect of how many cases and (b) what were the reasons for the refusal in each case;

(7) in respect of how many cases was legal aid granted in 1985 for Supreme Court proceedings in terms of Rule 43;

(8) whether legal aid officers are permitted to negotiate with other attorneys on behalf of persons who approach them for legal aid; if not, why not?

The MINISTER OF JUSTICE:

(1) Yes

(a) 18 November 1985.

(b) There was a marked increase in applications for legal aid resulting in an indication that, despite an additional R1,5m over and

HoA

FIN MAIL 23/5/86

PEOPLE'S COURTS 252

Inherent dangers

A leading member of the South African legal fraternity has commented on the apparently growing phenomenon in our black townships of the so-called "people's court" (*Current affairs* May 16)

Warning that the situation threatens to bring the administration of justice into disrepute, Transvaal Law Society president Edward Southey says that in any civilised country the administration of justice must be carried out by the State The overriding maxim, he adds, must be "No person can take the law into his own hands," a view most, including the *FM*, would endorse

The police and the courts are obliged to enforce and administer laws passed by parliament — including those perceived by blacks to be oppressive A result is the growing lack of faith within black communities towards the official judicial institutions

Another factor contributing to this distrust is the alleged racial disparity in passing sentence, although Southey argues that in many cases the full facts — showing the unique circumstances of each case — have not been supplied

Finding a solution is obviously a lot more difficult than stating the problem Southey observes that normally, if a sufficiently wide section of a country's population dislike the way justice is being administered, the obvious redress is through the ballot box However, this is not an option for blacks in SA right now.

But, he says, "people must be educated to understand that the police and courts are there to help them to enforce their rights They must not be seen as instruments of oppression." It would obviously help, he adds, if "unduly repressive laws were repealed " But the existence of those laws "is not a licence to overturn the established system."

Although Southey accepts that in some areas these courts have shown a certain amount of restraint in the forms of justice meted out, he fears that if not checked it will lead to anarchy In the long term they are bound to become "kangaroo courts" — where political and personal enmities will become more dominant than the merits of the cases being assessed. ■

Disturbing trend in rising tide of violence

By SHIRLEY PRESSLY, Crime Reporter

IS South Africa locked on a new course of violence?

After the necklace killings and family slayings of recent months attacks have been made in the last two weeks on people associated with intended victims

Barely a day passes without newspaper reports of violence — sometimes from the lunatic right or sometimes from the extreme left as part of the so called liberation struggle

But a relatively new and disturbing trend has emerged with attacks on victims' friends

A recent example of this is an attack on a pregnant Johannesburg woman, the wife of a car dealer awaiting trial on a number of criminal charges, who was stabbed several times at her home

In Port Elizabeth last week a journalist was whipped in the parking lot at the back of her block of flats in Central by three men disguised with balaclavas

There was no apparent reason for this vicious whipping

The only possible motive could be her friendship with a young man involved in the End Conscription Campaign, of which she is not a member

Last year the "necklace" method of killing reared its head in South Africa and since then has spread to the quietest platteland dorps

Humansdorp experienced its first necklace death this week

But in nearby PE this method of killing has become so commonplace that a single necklace death hardly warrants more than a few paragraphs in the local newspapers

The "necklace" treatment has claimed 75 lives in the Eastern Cape since the first death of its type was reported

Only two people have lived to tell the tale after being given the "necklace"

Victims are usually first stabbed, axed or trussed up by their assailants like turkeys, doused in petrol or paraffin and set alight. The number of tyres used ranges from one to as many as eight

The most horrific necklace death took place in Soweto earlier this year when five men and youths were killed in a multiple "necklace" exercise

The crime files kept on necklace deaths tell a chilling tale

In some of the cases the victims were state witnesses in pending court cases They were summarily silenced by the "necklace"

Several had been sentenced to death by the so called "People's Courts"

Some were given the necklace when organisations to which they belonged discovered they also belonged to rival organisations and were spies

Some were informers for the security police, or had reported cases to the police

One hapless woman was the girlfriend of a prison warder She was pronounced a traitor, tyres were placed around her and she was set alight

One man was set alight after he had stoned the homes of organisers of a boycott of a certain beerhall He voiced his displeasure by stoning their homes, was doused in petrol and set alight

Some of the victims were first stoned and then set alight. Some were petrol bombed instead of being doused in petrol

Several of the victims were businessmen and/or members of the various community councils in the Eastern Cape.

One "necklace" victim reported a case of assault to the police He was caned by the "comrades" as punishment for reporting the assault. He reported the caning by the "comrades" and was subsequently, attacked, stabbed many times and given the necklace

One victim was formerly a member of the "comrades". He turned against them and took refuge with the police He was then attacked by the "comrades" and given the necklace

Last month two teenage boys were stoned and stabbed to death and a third badly injured when they were attacked by "comrades". They were attacked after a 13 year old was sexually assaulted and killed

People's Court: 3 jailed

Sowetan 26/5/86

SENTENCES of 12 months in jail handed down on Saturday to three men involved in "people's courts" illustrate the "serious view" South African courts took of such activities, police said yesterday.

In one of the first court cases arising from the activities of a "people's court," three men were sentenced on Friday by a Pretoria magistrate to 12 months' imprisonment

They were convicted on a charge of assault with intent.

Court acts to withhold identity of witness, even from accused

By CHRIS RENNIE

AN application was made to the Port Elizabeth Supreme Court today to withhold the identity of a State witness — even from the accused

Before the court were Mr Amos Belesi, 25, Mr Patapata Kelo, 20, Mr Kenny Kona, 26, Mr Mumzi Mayinja, 20, and Mr Sebenzile Kinikini, 35, who are charged with murdering Mr Willie Pram at Langa, Uitenhage, on April 6 last year with a tyre and petrol "necklace"

They have pleaded not guilty and deny they were present at the incident

Mr D Charteris, for the State, made application in terms of Section 135 of the Criminal Procedure Act to conceal the identity of a witness from all but the court

He said it was common knowledge that anyone suspected of being an informer was tried by a "peoples' court" and killed

As the witness could be identified by the accused, who were out on bail, there was a real threat to the witness's life

Mr Justice Jones asked whether he had evidence to support his application

Det W/O I Meiring, of the Uitenhage CID, said he had for the last year been investigating unrest cases in the Uitenhage area

He knew of 30 cases in Uitenhage in the last six months where "peoples' courts" had given persons suspected of being police informers the "necklace treatment"

Witnesses were unco-operative and would not make statements or testify

He said bystanders at a recent necklace incident were warned that if they gave information they would be killed

The victim, Mr Pram, had worked for Mr Jimmy Claasen, a Uitenhage businessman who had fallen foul of the "comrades" Mr Claasen's shops, properties and cars were burnt, and he had fled for his life

W/O Meiring said he understood the accused were trying to force Mr Pram to reveal Mr Claasen's whereabouts when they allegedly killed him

Lieut I Rautenbach said that, on the Attorney General's instructions, he had visited Mr Pram's mother to establish certain facts Although she was alone, she would not speak She was terrified and shook with fear A neighbour had to confirm she was Mr Pram's mother

(Proceeding)

Adapting our courts to a post-apartheid SA society . . .

RADFORD JORDAN

☐ JUSTICE MINISTER COETSEE . . . his Bill of Rights would not be a top priority for blacks

ACCORDING to a recent survey, 80% of blacks in SA perceive the capitalist system as one which does not benefit them It seems likely that a similar percentage have an unfavourable, or at least a negative, perception of our courts and that even very substantial changes in the administration of justice would not change this, at any rate in the short run

The Hoexter Commission, which made the most thoroughgoing investigation ever of the working of our courts, touched on their impact upon blacks at important points.

It could do no more than this because its terms of reference took no special account of blacks as such, they related to questions like those of reducing legal costs and making court proceedings quicker and more efficient

Change in these directions can hardly fail to benefit blacks and, indeed, the small claims courts which have come into existence in response to the Commission's recommendation will probably be of even greater advantage to them than to others

This is equally true of a number of other changes recommended by the Commission.

It drew attention to the need for basic reforms of the system of legal aid This should be controlled by the legal profession itself and not by public servants

The Commission noted that a very small proportion of those who obtained legal aid were Africans, and it clearly hoped that this would change if legal aid were no longer seen as linked with the state.

Here the Commission's thinking seems potentially to challenge the very idea that, what is termed in section 68 of our constitution, "the judicial authority" should form part of the state should not the business of judging be, if not privatised, at least professionalised in the sense that those who practise it should form a completely self-governing body, as do advocates and attorneys?

That the Commission was willing to go some way in this direction is shown by its recommendation that those magistrates who preside

degree of independence as judges of the Supreme Court

Unfortunately, the formal independence of those engaged in judging will not come across to the ordinary black until the judicial authority is given a law-making power to enable it to check police action to defeat the ends of justice

This is especially true as regards the treatment of persons in dentention

Here are some of the steps which a law-making judicial authority could take to safeguard detainees

☐ It could lay down a presumption that a detainee who dies or suffers injury in detention has not committed suicide or been self-injured,

☐ It could make rules which entitled it to appoint persons of suitable standing as visitors to detainees, with the same right of immediate access to them as the judges themselves now have; and

☐ It could give a similar right of immediate access to a lawyer or doctor selected by the detainee's next-of-kin

If these steps were taken and proven to be effective in protecting detainees, this would go a long way towards giving blacks a more fa- of the courts

rights, it is essential that the rights which they already possess in theory should be given effective protection in practice, from their point of view a Bill of Rights, such as Minister of Justice Kobus Coetsee is prepared to consider introducing, is not the top priority

The Victorian lawyer A V Dicey rightly pointed out that British freedoms were better secured by the citizen's right to obtain specific remedies from the courts than were the theoretical liberties enjoyed by Frenchmen under the Declaration of the Rights of Man and the Citizen of 1791

So far everything that has been said in this article relates to how blacks perceive the working of the courts, as if in the very nature of things blacks have a passive role in relation to these — that of receiving what the courts hand down to them

No less important is the making of provision for blacks to participate actively to an increasing extent in the work of the courts.

Here the Hoexter Commission's heart was clearly in the right

trates — the kind of magistrates who hear cases in court; moreover, it called, as has been noted above, for a more independent status to be given to all such magistrates.

In making this recommendation the Commission did not have as its aim a greater degree of black participation in the work of the courts as such, it simply argued that the white population did not produce enough people suitable for appointment as magistrates.

Moreover, the Commission stopped short of discussing the appointment of blacks as judges of the Supreme Court and opposed the promotion of magistrates, whether black or white, to judgeships.

There would in any case have to be a considerable relaxation of the tensions and conflicts that now rack SA society before any black of suitable qualifications and standing would be likely to accept a Supreme Court judgeship

The Hoexter Commission quoted at some length from a memorandum submitted to it by the Johannesburg Bar Association giving reasons why leading advocates had in the past refused offers of judgeships.

These advocates had felt misgiv-

sentences for certain offences and about the necessity to impose death sentences in certain cases.

They also felt misgivings about the reliability and efficiency of police investigations of crime and the preparation of cases and about legislation which made it difficult for a court to investigate matters of this kind effectively.

Last but not least, objections were felt to the existence of legislation considered basically offensive to Western nations — clearly a reference to statutory apartheid.

Every one of these sources of misgivings could hardly fail to stand in the way of acceptance of judicial office by a black of suitable standing

Can there be any clearer indication of how long and stony will be the road leading to full black participation in the work of the SA courts, such as is needed to bring about a radical change in black perceptions of these?

☐ *The author was formerly senior lecturer in public administration, Department of Politi[illegible] the Universit[illegible]*

New small claims court legislation

CHRIS CAIRNCROSS

NEW legislation has been tabled in Parliament which provides for the expansion of the small claims court in various districts.

The Small Claims Court Amendment Bill provides that where a need is perceived to exist for the establishment of such a court in a district where one does not exist, the Minister of Justice or a magistrate is authorised to set up such a court.

A further amendment provides that certain persons who do not have the capacity to institute or defend proceedings in a court of law unassisted, will no longer be required to be assisted by their parents, spouses or guardians.

To prevent repeated amendments to the Act to adjust monetary limits to the jurisdiction, provision is also made for the Minister to make the necessary adjustments from time to time by notice in the *Government Gazette*.

● See Page 7

Judge grants order after union rivalry

Court Reporter

A DURBAN judge yesterday granted a temporary interdict against four members of the Sweet, Food and Allied Workers' Union (SFAWU) employed by Clover Dairies from assaulting or interfering with members of a rival union, the United Workers' Union of South Africa (Uwusa).

Mr Justice Galgut heard an urgent application brought by Uwusa members Mr Ernest Ngema and Mr Marungwana Mhlongo against Mr Mzikayifani Gowabasa, Mr Mthembeni Msomi, Mr Ndodo Mkhize and Mr Sibusiso Zuma, who are members of SFAWU

All the men are employed at Clover Dairies

In an affidavit Mr Ngema said he was a canvasser for Uwusa and worked at Clover Dairies as a security officer.

He said that on May 20 he started canvassing for Uwusa and persuaded six of his co-workers to join the union.

The next day he received a telephone call from a Mr Enoch Mbhele who asked him to make more forms available for the enrolment of co-workers in Uwusa.

Later that day Mr Mbhele and eight other persons came to the compound where he lives

They did not see him, however, and he was later informed by Mr Mbhele that these men had come to demand all the completed enrolment forms from him in order to ascertain which members of SFAWU had changed their allegiance and joined Uwusa.

He said he was told these people were angry and wished to know who the sell-outs were who had betrayed their union

On May 22 he had gone to the offices of SFAWU and had spoken to a woman known to him as Rene Roux.

Aggressive mood

He had explained to her what had happened and asked her to warn the members of her union not to interfere with him

She told him she was aware that members of the Sweet and Food union were angry with him for having joined Uwusa

Later the first three respondents had come to his room in his compound and demanded the completed enrolment forms from him

He said they had been in an aggressive mood and the first and third respondents threatened him, saying they were sorry for his children because he would not return from the Congella factory alive if he went there again.

In another affidavit Mr Mhlongo said he was a member of Uwusa.

On May 23 he was approached by the fourth respondent at the dairy in Congella who had informed him that the workers did not want any Uwusa people on the shop floor of Clover Dairies and that they would 'necklace' any member of Uwusa.

Mr Justice Galgut ordered the respondents to show cause on June 27 why the order against them should not be made final

N/M 29/5/86 252

THE NATIONAL COUNCIL

Stumbling ahead

As a parallel initiative to the Commonwealth Eminent Persons Group's (EPG) peace plan, government is going ahead with its new National Council

A Bill published for comment last week by Constitutional Development and Planning Minister, Chris Heunis, proposes the establishment of a National Council which will be chaired by State President P W Botha It will include black leaders and other members deemed by Botha to be capable of contributing to the establishment of a new "constitutional dispensation" to give all South Africans a say in central government

The council will comprise the five "non-independent" homeland leaders or their nominees; 10 people nominated by interest groups; not more than 10 people deemed by the president to be able make a contribution to its deliberations, and a variable number of Cabinet ministers The president will have the final say in the appointments

Heunis said the council should be seen as the "starting point for power-sharing and the beginning of a government of more national unity than we have at present" He said, however, that it would not be the only forum for negotiation, and indicated that talks with, for example, the African National Congress (ANC), could be pursued simultaneously on other levels But he stressed that if the ANC wanted to negotiate, it had to first renounce violence as a political strategy

In reaction to publication of plans for the council, KwaZulu leader Mangosuthu Buthelezi said an "absolute prerequisite" for the council's success was the unconditional release of Nelson Mandela Without Mandela's release, other black leaders would be inhibited from participating in the council, he said Buthelezi is widely regarded as a key participant from government's point of view

However, Heunis said non-participation by particular people would not be regarded as insurmountable obstacles to the plan Buthelezi did not dismiss the plan out of hand (see page 46)

KaNgwane Chief Minister Enos Mabuza says "It will be difficult for me and other credible leaders to participate in this council in the absence of other political organisations and the leaders who remain banned, imprisoned and exiled Another major flaw of this council is the fact that it will be acting only in an advisory capacity"

Lebowa Chief Minister Cedric Phatudi has stated "I do not see any reason why blacks cannot help the State President by participating in the National Council It is the first direct step towards power-sharing."

The United Democratic Front (UDF) believes the National Council will suffer the same fate as other government-created structures for black people

Heunis hopes to have the National Council Bill passed by parliament during the short session starting in August ■

NEW 'UNREST' LAWS

Government has signalled its intention to tighten up even more on security laws by the publication of the Internal Security Amendment Bill, which widens police powers of arrest and detention

The Bill is in line with President P W Botha's commitment, when he lifted the State of Emergency earlier this year, to introduce legislation to effectively give the police the power to "maintain law and order."

The Bill follows on the Public Safety Amendment Bill published last month, which will give the Minister of Law and Order powers to declare "unrest areas" and allow them to be controlled as though they were under a State of Emergency.

The latest Bill allows a policeman of or above the rank of Warrant Officer to arrest a person without a warrant and hold him or her for up-to 48 hours if it is believed that the arrest will help stop, combat or prevent a public disturbance, disorder, riot or public violence.

The detention can be extended to 180 days on the orders of a policeman of or above the rank of Lieutenant Colonel

A memorandum published with the Bill states that the current 14-day detention provision in the Internal Security Act "is not effective in the combating of unrest of the nature and extent being experienced at present"

CROSSROADS

Behind the mayhem

The events at Crossroads over the past two weeks have been a lesson in how not to approach socio-political problems

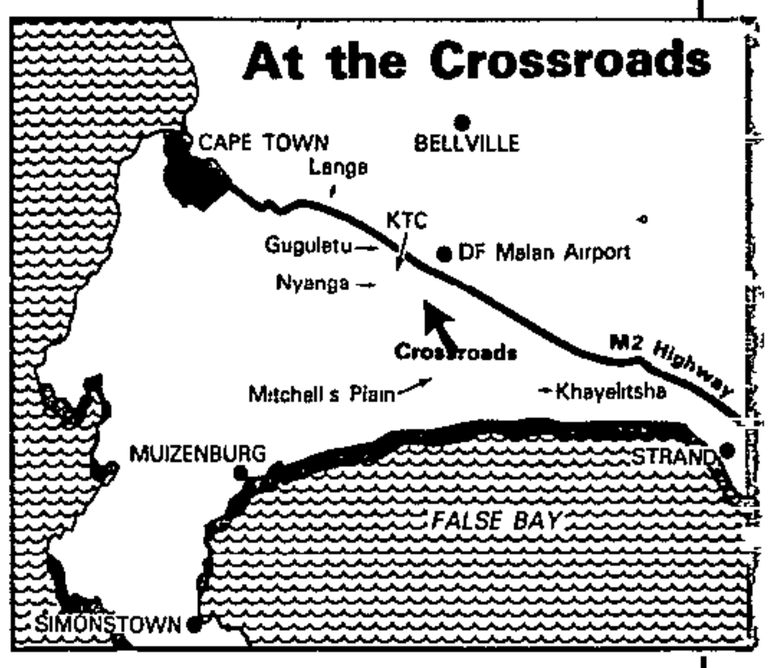
The immediate cost of the mayhem has been high, at least 35 dead and up to 30 000 homeless, and the first case of typhoid in the shambles was reported this week However, the long-term penalties, will be even stiffer and must be measured in increased polarisation between blacks and whites and within the squatter community itself

Although ostensibly "black-on-black" violence, it is now alleged that the Crossroads clashes have been far more than merely retaliation by "vigilantes" against alleged excesses by radical "comrades"

Startling claims of what has been happening in the vast squatter camp were made in the Cape Town Supreme Court this week when a temporary interdict was granted restraining police, soldiers and *witdoeke* (vigilantes) from participating in, or permitting unlawful attacks on people or property in the KTC squatter camp The application was brought by six squatter leaders, three who live in KTC and three who are former residents of the destroyed section of Crossroads

They claimed the destruction so far was part of a systematic plan and feared KTC would be attacked next Threats to destroy KTC had been made on three separate occasions and involved the SADF and police, they also claimed

It was alleged that police supplied *witdoeke* with arms and ammunition and actively participated in burning down shacks, and that the police and troops fired teargas at



squatters when residents resisted *witdoeke* attacks It was also alleged that a Warrant Officer Barnard played a significant and co-ordinating role in events at Crossroads

In response to the application, police said in a sworn statement handed into the court that an interdict could "limit and seriously hamper the activities of the security forces"

Josette Cole of the Surplus People Project in the western Cape, says the images of "black-on-black" violence should not be allowed to obscure some of the underlying reasons for the conflict The net result of the clashes has been to achieve, in less than a week, what the State could not do — remove the three most coherent and consistently resistant squatter communities in the Crossroads complex, she says

The conflict is also based on fierce rivalry for land and resources in the Crossroads area It is essential to move large numbers of squatters to Khayelitsha, further away from Cape Town, for government to fulfil its pledge to upgrade "Old Crossroads" where most of the *witdoeke* live

The people left homeless by the latest mass destruction of their shacks have little option but to go to Khayelitsha and — conveniently — the State only has to clear the debris from the site of the razed shacks to be able to start with upgrading

Cole says a "coincidence of interests" has emerged from the chaos of the past few days benefiting a Crossroads elite that is "desperate to maintain political and economic control over the area," as well as to have Old Crossroads upgraded, and benefiting the State on a number of different levels, including its "orderly urbanisation" strategy

"What we have witnessed this past week is essentially a removal of a very special kind . two-thirds of residents moved 'voluntarily' from Old Crossroads within one week," Cole says ■

and I think the hon member also knows the law on that aspect I can see no possibility that that part of the system will be changed. That is how it is done classically and it is also fair to do it in that way.

Chemical daminozide

*4 Dr M S BARNARD asked the Minister of Agricultural Economics.

(1) Whether, with reference to his reply to Question No 761 on 7 May 1986, a decision has been taken regarding the application to extend the use of the chemical daminozide in the Republic, if not, when is it anticipated that a decision will be taken, if so, what was the decision,

(2) whether any countries have (a) prohibited the use of this chemical and/or (b) found it to be harmful to human beings; if so, (i) which countries and (ii) when in each case;

(3) whether his Department took any steps to collect data on the effects of daminozide on human beings prior to purchasing this chemical for use in the Republic, if not, why not, if so, (a) what steps, (b) when and (c) with what result,

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

†The DEPUTY MINISTER OF AGRICULTURAL ECONOMICS

(1) No, the Interdepartmental Committee for the Safeguarding of Man against Poisonous Substances (INDAK) will have further discussions on this matter on 9 June 1986

(2) No

(3) The Department does not purchase the chemical The Registrar of Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies obtained all the relevant information before he granted the original registration of the chemical

(4) No

Chemical daminozide

*5. Dr M S BARNARD asked the Minister of National Health and Population Development·

(1) Whether this Department received a request from the Interdepartmental Committee for the Safeguarding of Man Against Poisonous Substances for a toxicological evaluation of the chemical daminozide; if so, (a) when and (b) what progress has been made in this evaluation,

(2) whether an evaluation report has been (a) completed and (b) made available to the above committee, if not, when is it anticipated that it will be completed; if so, (i) when in each case and (ii) what were the findings concerning this chemical,

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

The MINISTER OF NATIONAL HEALTH AND POPULATION DEVELOPMENT

(1) Yes

(a) 6 December 1985

(b) The chemical has now been evaluated after additional information was received from the Interdepartmental Committee on 23 April 1986

(2) (a) Yes

(b) Yes

(i) 23 April 1986 in each case.

(ii) The report is confidential and has a direct bearing on an application which has been made to the Registrar of Fertilizers Farm Feeds, Agricultural Remedies and Stock Remedies, and which is at present being considered by him.

I am not prepared to disclose any information which the Registrar is by law precluded from giving

(3) No

Small claims courts

*6. Mr P R C ROGERS asked the Minister of Justice

(1) (a) How many persons applied for cases to be heard in the small claims court in the magisterial district of Cape Town in the latest specified period of 12 months for which figures are available and (b) from which magisterial districts were these applications received,

(2) whether any applications were turned down, if so, (a) for what reasons and (b) which magisterial districts were involved,

(3) whether he intends establishing a small claims court in the magisterial district of Wynberg, if not, why not, if so, when?

The MINISTER OF JUSTICE

(1) The information which I furnish is for the period 1 February 1986, the date on which the Small Claims Court was established, to 30 April 1986

(a) 558 persons

(b) The Cape, Wynberg, Goodwood, Bellville, Simonstown, Somerset-West, Malmesbury, Stellenbosch and Kuils River

(2) Yes

(a) The applications were turned down as a result of the court not having jurisdiction

(b) Wynberg, Goodwood, Bellville, Simonstown, Somerset-West, Malmesbury, Stellenbosch and Kuils River

(3) No I recently introduced legislation to amend the Small Claims Courts Act, 1984 (Act 61 of 1984) so as to enable me to establish a court for more than one magisterial district After promulgation of the amendment it will be possible to extend the area of jurisdiction of the court at Cape Town to include amongst others the magisterial district of Wynberg It would also be possible to establish individual courts

Immaculata High School

*7 Mr P G SOAL asked the Minister of Defence·

(1) Whether any members of the South African Defence Force took any action at the Immaculata High School in Diepkloof, Soweto, on or about 14 May 1986, if so, (a) what action, (b) why, (c) who authorised this action and (d) what was the rank of the officer in command;

(2) whether any items were (a) damaged and (b) removed from the school during this action; if so, (i) what specified items and (ii) why,

(3) whether any teargas was fired on the school premises; if so, (a) where and (b) why,

(4) whether any persons were detained on this occasion, if so, (a) how many and (b) why,

(5) whether this was a joint operation with the South African Police; if so, (a) why and (b) what was the rank of the officer in command of the operation?

The DEPUTY MINISTER OF DEFENCE.

(1) Yes On two occasions

On 14 May 1986

(a) A combined SA Defence Force and SA Police cordon and

START

Grenade blasts: seven in court

252

Seven youths who were injured in grenade blasts in the East Rand townships of Duduza and Tsakane last June appeared briefly in the Pretoria Supreme Court on Monday. Their hearing was set for August 11.

By that time the youths — two of whom have lost the lower part of the right arm — will have spent nearly 14 months behind bars as incommunicado detainees and awaiting-trial prisoners

They are to be charged with attempted murder and terrorism

The courts have been prohibited from considering bail in terms of certificates issued by the Attorney-General under the Internal Security Act

The trialists are Mr Joseph Mazibuko (18), Mr John Mlangeni (21), Mr Samuel Lekhatsa (18), Mr Humphrey Tshabalala (18), and a minor, all of Duduza; and Mr Hosea Lengosane (19) and Mr Cedric Dladla (18) of Tsakane.

Seven other young people died in grenade blasts on the night the seven accused were hurt, and an eighth was blown up by a limpet mine.

Court views death video

HEATED legal argument preceeded the screening in the Rand Supreme Court yesterday of a video tape showing the mutilated bodies of two white policemen allegedly killed by striking Bekkersdal miners

The court was shown the video when advocate Jules Browde temporarily withdrew an objection on behalf of the Krugersdorp Residents Organisation (KRO)

The incident was screened before Mr Justice R Goldstone at the hearing of an application brought by the KRO seeking to restrain the SAP and SADF in Kagiso and Munsieville

Allegations by township residents of harassment and intimidation are denied by the Law and Order minister Louis Le Grange.

Pick 'n Pay to seek court ruling

HANNSH MONROE

PICK 'n Pay plans an urgent application for a Supreme Court hearing in Cape Town to have government's ban earlier this week on all forms of petrol discounting declared invalid.

Pick 'n Pay will be seeking re-confirmation of the legality of its coupon-linked petrol discount scheme, after a Supreme Court ruling in March allowed the supermarket chain to continue issuing coupons.

Lawyers for Pick 'n Pay yesterday studied the special Government Gazette for the first time since its issue on Monday.

A legal expert said the courts had over-riding power to determine whether an administrative edict was fairly applied. They will be asked to judge the validity of the delegated legislation, he said.

Pick 'n Pay is continuing with the issuing of petrol coupons at its 13 outlets.

Treason judge rejects videos

By TONY OOSTHUIZEN
Pietermaritzburg

THE Judge President of Natal ruled in the Pietermaritzburg treason trial yesterday that all the video and audio tape recordings the state sought to use as evidence against four trade unionists were inadmissible as evidence

Justice John Milne also ruled that the state may re-open its case in the trial within a trial only to lead further evidence to determine the admissibility in respect of three of the recordings in question

In a five-hour, 143-page judgement on the trial within a trial, Justice Milne said the evidence the state still sought to lead in this regard would not change the inadmissibility of any of the recordings and would apply only to the remaining three

Counsel for the state, Andre Oberholzer, told the court the judgement had far-reaching implications for the state's case and they needed time for consultations The trial was adjourned to Monday

The tape recordings are alleged to be of meetings addressed or attended by the four accused, Thozamile Gqweta, Sisa Njikelana, Samuel Kikine and Isaac Ngcobo

Court challenge likely on June 16 ban

WEEKLY MAIL REPORTER

THE blanket ban on June 16 commemorations will be challenged in the Supreme Court.

A number of opposition organisations — all of whom have expressed fears that the ban will increase tension and the potential for violence — were yesterday consulting legal advisers about the possibility of challenging the extraordinary ban.

UDF attorney, Krish Naidoo, said late yesterday that he would be asking the Supreme Court this morning for permission to proceed with a UDF meeting that police disrupted yesterday.

Naidoo also said that the ban itself would be challenged in the Rand Supreme Court early next week.

And Anglican Archbishop-elect, Desmond Tutu, yesterday instructed his clergy to organise church services on June 16 despite the ban. He said he hoped that other denominations would do the same.

"We have not yet reached the stage where we must ask for permission from a secular authority to worship God," he said.

Yesterday afternoon saw the first violence as a result of the banning. A group that gathered for a UDF "Unban the ANC" meeting in town — only to be told the meeting fell foul of the June 16 ban — clashed with police in central Johannesburg.

A wide range of organisations has warned that the banning will increase tensions and the potential for conflict.

The United Democratic Front issued a statement saying Le Grange's ban was "a clear message to the oppressed majority to 'go to hell'".

"This is certain to limit the options the people have to fight apartheid peacefully," the UDF said.

It added that it would be seeking ways to challenge "this draconian measure".

Saths Cooper, president of the Azanian Peoples Organisation, said his organisation and its legal advisors were looking very closely at the implications of the ban.

"The black community is not going to take this lying down," he said.

Tutu said the Minister of Law and Order seemed "bent on provoking blacks to defy his ill-advised ban to give policemen yet another excuse to get at black people".

He said he hoped the police would stay away from his June 16 services "and let us mourn in peace and with dignity".

Meanwhile, Chief Mangosuthu Buthelezi, leader of Inkatha, warned that there were some people who wanted to turn June 16 "into a political fiasco".

"We cannot pretend that June 17 is another June 16 and that June 18 is another June 16 and that June 19 is another June 16," he said.

The National Education Crisis Committee (NECC) this week changed its plans for a three-day commemoration. It will now only call for a one-day stayaway on June 16.

A joint statement by the NECC, the UDF and the Congress of SA Trade Unions said there had been unprecedent cooperation between them in planning June 16 commemorations.

"We call upon all freedom-loving masses of our land to commemorate June 16 in a manner befitting the occasion," the three organisations said.

It has called on everyone — excluding only nurses, doctors and journalists — to stay away from work and attend commemorative rallies. This call comes only six weeks after these organisations staged the biggest stayaway in the history of South Africa, on May 1.

Le Grange's banning order now throws all the plans into doubt. His order, issued on Wednesday, forbids any indoor meetings commemorating "any incident of public disturbance, disorder, riot or public violence which prevailed or occurred on June 16, 1976 or any time thereafter".

It also bans any meetings planned to commemorate the adoption of the Freedom Charter on June 26, 1955.

The ban holds until the end of the month.

There is already a ban on all outdoor gatherings.

The Transvaal Indian Congress this week wrote a letter to all state-owned Indian schools, asking principals to "show solidarity" and not victimise the many students and teachers who would be staying at home on June 16.

Court okays 'torture' search of cells

THE Cape Supreme Court has granted four alleged torture victims an order allowing them and their attorneys to search two Peninsula police stations for torture instruments

The judgement, handed down by a full bench of the Cape Division, is believed to set a legal precedent in South Africa

The four Cape Town men, Alfred Siphika, Mxolisi Howard Stofile, Zweltsha Malinge Mhluthwa and Alfred Moyishikile Dyantyi, applied for an Anton Piller" order allowing them to search the Guguletu and Bishop Lavis police stations without prior warning to the police

According to Stephan Raubenheimer, attorney for Siphika and Stofile, the "Anton Piller" order is often used in Britain in breaches of copyright and pirate video cases It entitles applicants to bring a secret application before a judge to search the premises of the opposing party without notification The order, if it is granted, is kept secret until the search has taken place

The application by the four men followed spells in detention during

By PIPPA GREEN
Cape Town

which they claimed they had been subjected to various forms of torture, including suffocation and electric shock treatment Siphika and Stofile applied for an order to search the Guguletu Police Station, where they had been held, while Mhluthwa and Dyantyi applied to search the Bishop Lavis Police Station where they had been detained

Siphika is the leader of the Nyanga Extension squatter camp and Mhlusthwa and Dyanti are from the Nyanga bush camp — both of which were destroyed in the recent Crossroads clashes Stofile is a New Crossroads youth

Advocate J J Gauntlett who represented Siphika and Stofile said in argument that the order was directed 'merely at the recording of the existence of evidence in substantiation of the applicants' cause" He added that the applicants intended instituting actions for damages against the Minister of Law and Order and needed independent observation of the existence of certain items allegedly used against them

The only other "Anton Piller" order sought in a civil rights case in South Africa was refused by the East Cape Local Division of the Supreme Court after Judge D Kannemeyer ruled there was enough medical and corroborative evidence to support the claims of six alleged torture victims in East London.

However in the Cape Town case evidence from medical doctors was that examinations of the alleged victims were inconclusive Furthermore, a pathologist testified that conclusive tests of electric shock treatment must be carried out within three or four days of the alleged assault.

Granting the order, on May 23, Judge President of the Cape, J P Munnik and Justices Leonara van den Heever and P Baker ordered that all facts pertaining to the application be kept secret until the police stations had been searched and an inventory of items found filed with the court The judges ruled that the applicants might search the rooms in which they had allegedly been tortured with the assistance of the sheriff of the Supreme Court, his assistants and their attorneys The attorneys and the sheriff were empowered to search other rooms in the police stations unless entry to a particular room conflicted with provisions in the Police Act In that case, the sheriff would be empowered to search the room

The court also ruled that the sheriff file an inventory of items found within three days of the searches This inventory cannot be disclosed until civil claims are instituted

The court made no finding about the truth of the allegations against the police which were contained in the applicants' affidavits

It ordered that unless a civil action against the Minister of Law and Order was instituted within 12 weeks, any items confiscated from the police stations would have to be returned

Siphika and Stofile were represented by Adv J J Gauntlett instructed by S Raubenheimer of C and A Friedlander, Mhluthwa and Dyantyi were represented by Adv J Whitehead instructed by J Murphy of Mallinick, Ress, Richman and Closenberg

Third Party: special court recommended

CHRIS CAIRNCROSS

SPECIAL courts should be established to handle Third Party (MVA) claims, the Parliamentary Standing Committee on Transport Affairs has recommended.

In a report tabled in Parliament yesterday, together with amended enabling legislation giving effect to the new Third Party arrangement, the committee says it believes these courts could provide the vehicle for eliminating the "indefensible delays" in settling MVA claims.

It requests that this recommendation be given urgent attention by Justice Minister Kobie Coetsee, and urges him to expedite and report no later than August 31 on the investigation into the costs and delays involving MVA claims.

The committee has proposed that Coetsee appoint a committee of at least three persons.

The committee believes a special

● To Page 2

Special court called for

● From Page 1

court is needed as:

☐ It will remove all matters relating to Third Party legislation from the already over-congested Supreme Court and magistrate's court rolls.

☐ The rules of such a court can be tailored to ensure accident victims will receive compensation sooner and as inexpensively as possible

☐ The early conference procedure which could be incorporated into the court rules will oblige the parties concerned to come together immediately after a claim has been lodged in a genuine endeavour to settle a claim in whole or part, thus limiting actions to be heard to an absolute minimum.

☐ The rules of such a court could also make provision for the payment of interim partial compensation of amounts no longer in dispute after the early conference.

Inquiry into 'Trojan Horse'

THE Attorney-General has decided that an inquest should be held into the "Trojan Horse" incident in which several people were shot from an SA Transport Services vehicle in Athlone last October.

Law and Order Minister Louis le Grange told parliament in reply to a question by Reuben Sive (PFP Bezuidenhout) this week that the decision had been taken on April 17 this year

Other steps would be considered after the inquest

In the incident – which shocked the world – cops hid in a Sats truck and drove along Thornton Road When the "decoy" was eventually stoned by youths, cops jumped out and started shooting

Michael Miranda, 11, Shaun Magmoed, 16, and Jonathan Klassen, 18, were killed

In a similar incident the next day, two infants were hit by shotgun pellets in their homes – Sapa

'How the blacks behave'

By MARTIN NTSOELENGOE

THERE were angry murmers from the Rand Supreme Court public gallery this week after a lawyer for Law and Order Minister Louis le Grange made remarks about the "behaviour of blacks"

In a case brought against Le Grange by the Krugersdorp Residents' Organisation, PA Hattingh applied to show a video of two white policemen being killed by mineworkers in Bekkersdal on January 21 this year – because he wanted to show the court "how blacks behave"

KRO lawyer Jules Browde objected saying the videos were irrelevent to the Krugersdorp case

"The death of the policemen is not relevant to this case Those were striking miners and not Krugersdorp people," said Browde.

When Hattingh announced his intention to show the videos, he said "I want to show the court how blacks behave"

Blacks in the public gallery became visibly angry, making several remarks while others left the court

Later many videos of houses – mostly those belonging to councillors and cops in Munsieville and Kagiso – being petrol-bombed were shown

Startling allegations of security force violence – including assaults on residents and detainees, disruption of peaceful meetings and funerals, wilful damage to property and the searching of homes without proper authority – have been made in 118 affidavits presented to the court

Political comment in this issue and posters by P Qoboza, headlines and sub-editing by D Niddrie and C Vick all of 204 Eloff Street, Ext, JHB

Martial law 'unlikely', say academics

Mercury Reporter

LEGAL academics said yesterday that it was highly unlikely the Government would declare martial law to deal with the unrest expected as Soweto Day approached, but might instead declare another state of emergency

Prof John Dugard, director of the Centre for Applied Legal Studies at the University of the Witwatersrand, said 'Martial law is so uncertain It's part of the common law and it is not clear what the rules are

'Declaring martial law would do the Government tremendous harm It would be psychologically very damaging and would suggest the country was at war with the ANC, which would have the effect of legitimising the organisation'

Regulations

It was for reasons like these that the Public Safety Act — under which a state of emergency may be declared — was enacted in the 1950s

'First, the term martial law suggests there is a war going on, and secondly the Government and the public need some specifics as to what rules would be applicable,' he said

To this end the Public Safety Act empowered the State President to proclaim regulations

During the last state of emergency, some of these regulations had the effect of limiting Press coverage of emergency areas and of providing a degree of indemnity from prosecution for members of the armed forces

Prof Dugard felt it would be possible for the Government to take still harsher action under the Public Safety Act and that there was no need for martial law

Prof Lawrence Boulle of the University of Natal said that under martial law, the armed forces would be able to try civilians by court martial, possibly imposing the harsh penalties provided in military codes of discipline

But under a state of emergency the jurisdiction of the civilian courts on actions by the security forces was curtailed but not entirely excluded

Academics pointed out that the common law on a state of martial law was not clear and that there were few cases on record to act as a guide

The Government appears to be pooh-poohing suggestions that martial law might be declared

The Deputy Minister of Information, Mr Louis Nel, criticised weekend reports which speculated that the Government might declare martial law

'It is a bit far-fetched to give such huge publicity to the most extreme hypothetical possibility,' he is reported to have said

■

Cheaper court actions

IT IS no longer compulsory for senior counsel to be assisted by juniors in court — paving the way for cheaper court actions.

By NKOPANE MAKOBANE

SOWCTMN 11/6/86

This announcement is made in the latest issue of *De Rebus*, journal of the Association of Law Societies (ALS), by Mr H P Viljoen, SC, chairman of the General Council of the Bar of South Africa

"In the light of discussions which have been held on the topic with the Minister of Justice and the Competition Board, the Bars concerned have decided that the public's needs would best be served by leaving it to the discretion of individual senior practitioners as to whether they should act alone or be assisted by junior counsel," says *De Rebus*.

"The compulsory two-counsel rule has layed an important role in the development of a strong, independent Bar and judiciary The fact that the rule is no longer compulsory will not, it is hoped, detract from the status and respect which the Bar and the Supreme Court Bench enjoy"

252

In the same issue of *De Rebus*, the president of the ALS, Mr Roger Cleaver, welcomes the relaxation of the rule as from last month

"For many years now, the association has urged that the rule should be abolished Although the association recognises the value of the two-counsel system in developing a strong Bar, it has in recent times questioned whether the retention of the rule was justified in a South African context

"Rising legal costs are as much of a problem in this country as they are in other Western societies

Man jailed for intimidation

Dispatch Reporter

EAST LONDON — A man was yesterday sentenced to an effective 15 months' imprisonment after he was found guilty in the regional court here of intimidation

Bhekikhaya Peter Makata, 24, of NU 9, Mdantsane, had pleaded not guilty to the charge at a previous hearing

It was found that he intimidated Mr Nkosinathi Shiyani and his wife, Nowetile, at the Oriental Plaza on March 8 and threatened them about the groceries which they had bought from shops in town

He was sentenced to 2 years' imprisonment, of which 9 months were conditionally suspended for four years

Mr P Campbell was on the bench The prosecutor was Mr R Esterhuyse and Advocate S Gyanda of Durban, instructed by Siwisa and Partners, appeared for the defence

SOWETAN reporter gets a subpoena

THE *Sowetan's* Pretoria staff reporter, Monk Nkomo, has been subpoenaed to reveal before a Pretoria magistrate the identities of people who gave him information about the alleged involvement of members of the South African Police in petrol bomb attacks on the homes of Atteridgeville activists.

The subpoena follows a report in the *Sowetan* on April 14, in which youths in Atteridgeville alleged they had recognised a black policeman as being among a group which attacked a home in Atteridgeville

The report said that a gang of men sped off after the home was attacked In one car, they said, they recognised a black policeman they knew and a number of whites and blacks.

Two people in the car wore balaclavas, they said

Mr Stanley Baloyi, whose home was also petrol-bombed, had told the *Sowetan* that their street committee was on patrol when they were allerted about two cars parked near his home

"A man alighted and went into the yard and threw petrol bombs into my parents' bedroom We all rushed out and approached the two cars which we recognised as police vehicles The occupants then started shooting at us as they drove off at high speed . " he said

Last month Major N J C Olivier of the Pretoria police informed the Editor of the *Sowetan,* Mr Joe Latakgomo, that they were investigating the allegations and wanted to "bring the culprits to book" if the allegations were proved correct.

The youths who made the allegations to Monk Nkomo pointed out that they were afraid to identify themselves as the only person whose name appeared in the article, Mr Baloyi, had been detained The *Sowetan* then advised Major Olivier that he could get whatever information he required from Baloyi as he should be able to trace him in detention.

Should Nkomo refuse to reveal any further information to the police, he could face a six month jail sentence, which is renewable if he still refuses to do so after the expiry of six months.

Reacting to the action against Mr Nkomo, Mr Latakgomo said that he condemned "in the strongest possible terms" efforts by police to turn reporters into police informers "This kind of harassment of journalists must stop The police have all the resources at their disposal to investigate cases, but the tendency to take the easy way out has become all too prevalent," Mr Latakgomo said

"Mr Baloyi was named in the article because it was his home that had been attacked If it is true that he has been detained, is it any wonder that the other witnesses are afraid to come forward?" he said

Mr Latakgomo said that they referred the matter to the newspaper's legal representatives "We will fight this matter to the highest level," he said

ROAD PERMITS

Family trouble

A legal tussle bound to renew passions on the State's privatisation and deregulation drives is scheduled to resume in the Cape Town Supreme Court on June 24

Sats, wearing its bus line hat, is the applicant in the case in which the Department of Transport's Road Transportation Board is the first respondent The second respondent is the privately-owned Interkaap bus service

Each of the competing bus lines maintained at a court appearance late last month that the other should not be allowed to operate its schedule in terms of permits granted by the Board

Caught in the middle is Transport Director-General Adriaan Eksteen, who, as national transport chairman, approved the certificates Other than confirming that both parties are going after the Board in court, he declines to comment

Sats is applying for an order setting aside a Board decision to issue temporary permits allowing Interkaap to change its Cape Town departure time for Port Elizabeth from 6 am to 7 am, the same time that the Sats buses leave, the court was told last month

Temporary permits allowing the later departure were sought by Interkaap after it had earlier succeeded in gaining permission to operate over the route That application, vigorously opposed by Sats, took 42 days to be granted — at no small cost. Yet within four days of the Interkaap approval Sats began operating virtually the same route

Sats maintains Interkaap's temporary permits for a regular service should never have been issued at all, and it is adamant that it should have been granted a hearing as an interested party when the decision was taken

Interkaap, which also has the bus service between Cape Town's D F Malan airport and the city centre, says it is seeking relief from Sats competition, which it alleges has been made possible by invalid permits.

Eksteen . . . man in the middle

PFP transport spokesman John Malcomess maintains the case is a reflection of the "totally crazy situation" arising from the State's role in the market

Sats is objecting to Interkaap being allowed to leave later than granted in its initial permit Interkaap's response is that the improved road on the route has cut more than an hour off its trip, and of course its previous 6 am departure time has obvious drawbacks on Sats's 7 am

Says Malcomess: "The State should not be involved in this type of activity at all It is wrong for it to use taxpayers' monies to compete against other taxpayers" ■

AG asked to end Pmb trial

252

By TONY OOSTHUIZEN
Pietermaritzburg

THE Attorney General of Natal, Michael Imber, is considering a request to abandon the prosecution of four trade unionists on trial for treason in the Pietermaritzburg Supreme Court.

Defence Advocate Ismail Mahommed, SC, told the court yesterday his team has made representations to Imber to halt prosecution following last week's judgement in which all the tape-recordings the state sought to use against the defendants were ruled inadmissible as evidence.

Mahommed, who has not been involved in the trial since 12 United Democratic Front leaders were acquitted in December last year, said at the brief sitting that Imber needed time to consider the matter. The trial was adjourned to June 23.

13/6/86

On trial are Thozamile Gqweta, Isaac Ngcobo, Sisa Njikelana and Samuel Kikine, all officials of the SA Allied Workers Union.

In a lengthy judgement, Justice John Milne said last Thursday that all the video and audio tape-recordings of meetings the state sought to use against the four trade unionists were inadmissible as evidence He also ruled that the state may only lead new evidence to prove the admissibility of three of the recordings in question.

Cost of legal assistance is set to drop

Mercury Reporter

THE cost of enlisting legal assistance is set to drop with the announcement that senior counsel no longer have to be assisted by junior counsel in court

Mr H P Viljoen, chairman of the General Council of the Bar of South Africa, said in a statement in the latest issue of De Rebus, official journal of the Association of Law Societies, that the compulsory two-counsel rule had been abolished from May 1

'In the light of discussions held on the topic with the Minister of Justice and the Competitions Board, the Bars concerned have decided the public's needs would be best served by leaving it to the discretion of individual senior practioners as to whether they should act alone or be assisted by junior counsel,' he said

The relaxation of the rule was welcomed by the president of the association, Mr Roger Cleaver, who said 'For many years now the association has urged that the rule should be abolished, for although it recognises the value of the two-counsel system in developing a strong Bar, it has in recent times questioned whether the retention of the rule was justified in a South African context'

He said rising legal costs were a problem and the question arose whether the public would be able to continue paying for the privilege of employing two counsel

Mr Cleaver also warned that senior counsel — who still had the option of being assisted by juniors — should be prepared to make sacrifices to serve the best needs of the community at a time when inflation was at its highest

Court win — then the Emergency

WEEKLY MAIL REPORTER, Durban

IN the last minutes before the State of Emergency was declared, two significant Supreme Court applications were granted in Durban.

Two meetings planned for June 16 by Azapo were declared legal.

Azapo had argued the content of the speeches to be given at the meetings would not "commemorate" June 16 in the dictionary definition of the word.

The application was not opposed by the Minister of Law and Order, but his reasons for not fighting it are now clear, since the meetings will be prohibited under Emergency regulations.

Later in the morning there was a nail-biting race to bring another application before the Emergency was officially announced.

Armoured vehicles with heavily-armed soldiers arrived at the Ecumenical Centre around 3am, joined later by dozens of Security Police. Tenants of the Centre, which houses a number of organisations such as the UDF, Diakonia and the Legal Resources Centre, were not allowed into their offices. LRC director Chris Nicholson and EC director Max Veeran hastily put together an application for a "spoliation" order, saying the tenants were being illegally barred.

Despite delays by the Minister's legal team, which meant the application was eventually heard at the same time as the Emergency announcement was made, the order was granted. Judge David Friedman said the SADF and SAP had to allow the tenants access to their building; the police action had been *prima facie* illegal and the Minister would need to show that a valid Emergency had been declared and that the Emergency permitted police to forbid tenants access. Until then, the tenants were to be allowed in.

When the Deputy Sheriff served the court order on the police, the officer in charge still refused access and the LRC team considered a contempt of court application. Some time afterwards the Minister's lawyers agreed to access.

Bringing the law into classrooms

By CARMEL RICKARD
Durban

THE three muggers closed in on their victim reading his evening newspaper in a corner seat of the compartment He glanced up and saw their pangas, but he was well prepared after being robbed three times recently He pulled out his revolver and killed all three

Was it murder?

The 30 Standard Nine pupils, faced with this legal problem, were intrigued. It was an introductory session on murder, part of a new course, entitled "Street Law"

The course is being run by the School of Law at the University of Natal, Durban, in conjunction with the Association of Law Societies

This year five Durban schools are taking part in a pilot scheme, but it is hoped that the project will soon be offered nationally.

At Isibonelo High School, in KwaMashu, only half the class attended last week because vigilante violence in the township kept many out of school However, among the fascinated participants were principal Themba Nhlapo — who said he did not want to miss anything as the course is so useful — and several teachers

Weekly Mail watched the Street Law programme in action at Isibonelo last week. Among other observers were Professor Lawrence Boulle from the law school and Justice Andrew Wilson of the Natal bench

Course leader Mandla Mchunu is an Isibonelo old boy now attached to the law school After explaining some basic definitions, he threw out a number of problems to test his audience

On the question of the muggers, many sympathised with the man who shot and killed all three attackers

"That's the only way — you must make sure they get your point and permanently," one pupil said

Another said that with the anti-student vigilante groups in KwaMashu, killing attackers was the only solution; wounding them was to invite another attack

Others were not so sure Maybe killing one mugger could be called self-defence, but not all three And, in any case, how would the police know it was really self-defence when the only live witness would be the accused?

The judge was consulted He explained that the courts would be able to call experts They could tell, even if there were no surviving independent witnesses to the shooting, how far away the attackers were, and therefore how much of a threat they posed.

The students listened intently to the answers Judge Wilson gave to another burning question asked by the class How do judges decide what sentence to pass once an accused has been convicted of murder?

As they left that afternoon the students discussed the controversial issues raised in the class, and they told Weekly Mail they found the class the most interesting in the whole school curriculum.

"It is also very useful for us," one said "I didn't know there was such a thing as culpable homicide before today. We thought killing was always murder."

For the teachers it is also a fascinating experience

Student responses to an earlier section on consumer law and rights showed vast differences in their awareness of legal rights. In the school serving a wealthy white community, students knew how to stand up for themselves and how their legal rights could be enforced Across town, in a poorer white school, pupils were as ignorant about their rights as those pupils from participating black schools

At the official launch in the Durban City Hall, law society official Graham Cox said that a similar project, widely used in the United States, has taught pupils their legal rights It had another side effect in the dramatic drop in juvenile crime rates

Guests at the launch watched a mock lesson given by Mchunu to a combined class with representatives of all five schools participating in the project.

The launch lesson ended in role play, a teaching method used in all Mchunu's Street Law classes This was a mock sitting of the Small Claims Court in which Phillip Fastbuck, owner of a second-hand car business, was challenged by Sipho Zuma to return his money because the car crashed the day he bought it due to faulty steering mechanism

The pupils were intrigued by the workings of the Small Claims Court, but they also found the mixed class a novel experience.

13/6/86.

MVA COURTS FIN MAIL

Simpler systems

252

The long, agonising, expensive process of claiming damages under Third Party insurance may soon be streamlined The establishment of special courts to handle Motor Vehicle Assurance (MVA) claims, as well as the introduction of simplified procedures and rules, is being considered by the authorities

The Standing Committee on Transport Affairs last week told parliament it is "unanimously in favour" of such courts and pointed out the advantages of various changes to the system The report has been referred to the Minister of Justice, who is to appoint a three-man committee, which will report to the Standing Committee by August 31 If accepted, it could result in simpler, swifter and cheaper proceedings

Removing MVA cases from what the report describes as "the already over-congested rolls of the Supreme Court and the magistrates' courts" would eliminate a major cause of delay. But almost as crucial is the suggestion that litigating parties be compelled to hold a conference early in the proceedings

Says Dudley Honey, chairman of the standing committee on MVA matters of the Association of Law Societies· "If you get the plaintiff and defendant around a table, informally, you can often settle there and then. If not, you may come to a partial settlement which would reduce points in dispute to a minimum and mean that interim partial payments could be made immediately regarding items no longer in dispute."

Under the present system, such conferences take place only days before the action is due in court — after heavy litigation costs have already been incurred

Nor is this the only weakness in the procedures

"They are extremely cumbersome," says Honey "Summonses are issued; a request for further particulars is filed by the defendant, the plaintiff has to file a reply, the defendant must then file a plea in which he sets out his defence. All this takes time, costs money, and is seldom necessary."

It is suggested in the report that "a properly designed claim form will stand as a summons and the time-consuming exchange of voluminous court pleadings will be scrapped."

A more controversial suggestion is that "elements of the informal inquisitorial system could be incorporated in the rules of the special court rather than the existing formal accusatorial system "

This would mean that cross-examination is abandoned and questions asked only by the presiding officer

There is a view that this would not be as effective as cross-examination in determining the truth

When the idea was mooted in April, advocate Henri Viljoen, of the General Council of the Bar, expressed reservations He felt that a system appropriate for the Small Claims Court, relating to claims of less than R1 000, would not be advisable when complex issues and large amounts are under consideration

Chairman of the Johannesburg Bar Council Ralph Zulman said the Bar welcomes moves designed to reduce costs and delays but pointed out. "Whether special courts will achieve these aims will depend very much on the composition of such courts, the rules governing claims procedures and the proceedings " ■

Nair assault policemen still employed by SAP

By CARMEL RICKARD

TWO Durban security policemen, convicted of assaulting Natal Indian Congress executive member Billy Nair two months ago, are still employed by the South African Police.

Warrant Officer Johannes de Wet and Sergeant Gary van Sluys were both found guilty in the Durban Regional Court on April 23 of punching and slapping Nair while he was detained under Section 29 of the Internal Security Act last year.

The two pleaded not guilty, saying that the perforated eardrum and eye injuries suffered by Nair as a result of the assault had been self-inflicted to bring the police into disrepute.

The magistrate found both policemen had lied. He said that while he took into consideration that the two men, and De Wet in particular, were likely to lose their jobs as a result of their conviction, he needed to impose a sentence which would "act as a deterrent" and show other members of the police that such actions could not be tolerated.

They were sentenced to R175 or 75 days and R50 or 25 days respectively.

This week the police public relations division in Pretoria refused to divulge the outcome of the disciplinary inquiry but confirmed the two are still in the force.

This was strongly condemned by Nic executive member Thumba Pillay, who said he was not surprised by the news because he know of several cases where convicted policemen continued to serve in the SAP.

"This is a particularly grave case however because Nair was completely at the mercy of the police in detention and cut off from any outside protection. The police breached the trust put in them.

"It is a matter for concern as the magistrate took into consideration that the two would probably lose their jobs, which did not happen. It also means that conviction by the courts is tending to lose its deterrent effect"

Nair has filed a claim of R50 000 for assault, damages and unlawful detention.

DD 13/6/86 (252)

Farmers lose court bid to shift resettled squatters

Dispatch Correspondent

PORT ELIZABETH — Kidd's Beach farmers yesterday lost a Supreme Court application which sought an order forcing the South African authorities to remove people they settled on land in the district

An application for leave to appeal was noted by the court in Grahamstown

The presiding judge, Mr Justice Kroon, ordered that the rules nisi previously granted by the court be discharged with costs

The respondents in the application are the Minister of Education and Development Aid, the Minister of Constitutional Development and Planning and the South African Development Trust

The applicants are the East London Western Districts Farmers' Association, Silverdale Farm (Proprietary) Limited, and T W Pienke and Sons

According to the evidence, approximately 8 000 people from the Kuni area in Ciskei have been resettled on the farm, Needs Camp, since their expulsion from Ciskei in January On the farm Good Hope, an unknown number of people have been settled

Both farms fall within the Kidd's Beach area

Mr Justice Kroon found that the settlement of people on Needs Camp had resulted in increased theft of stock and produce

These criminal activities had cognizably adversely affected the ability of the applicants and other farmers in the area to utilise their farms for farming purposes, and their enjoyment of their farms, the judge said

He added this had also given rise to a "justifiable" apprehension for the farmers' and their families' safety

The situation which developed, the judge said, had to be regarded as a public nuisance and as a direct result of the settlement of people at Needs Camp

It could not be found, he said, that the settlement of people from Mooiplaas/Kwelera on the farm Good Hope constituted a public nuisance

Mr Justice Kroon said the power granted to the South African Development Trust to settle the people involved in this case could not have been exercised without an interference with private rights in the form of the nuisance which had resulted

The respondents, he said, had discharged the onus resting on them of proving that this interference was justified and that the applicants "must suffer same"

Mr B Hoberman SC for the farmers was assisted by Mr John Whitehead and instructed by the Bax partnership of East London and Wheeldon Rushmere and Cole of Grahamstown Mr J L van der Merwe SC for the respondents was assisted by Mr J H Hugo and instructed by Mr I S Douglas of Whitesides

Winterveld lawyers walk-out in protest

By JO-ANN BEKKER

LAWYERS representing community organisations and the families of 11 people shot dead on March 26 by Bophuthatswana police at Winterveld have walked out of the official commission of inquiry into the incident

Advocate Bob Nugent, who spoke for the legal team, said this week they were withdrawing because their clients had lost confidence in the Bophuthatswana government's willingness to act on the commission's findings, after hearing that the two police officers in charge at the Winterveld shootings had since been promoted

Nugent said the promotions — which came at a time when the conduct of the police at Winterveld was one of the main areas under scrutiny at the enquiry — were "a slap in the face" to his clients, their grievances, and to the commission.

The commission, headed by Judge Edgar Smith, a former Attorney-General of white-ruled Rhodesia, was set up by Bophuthatswana President Lucas Mangope shortly after the killings at the Winterveld sports stadium

But, it emerged during the inquiry last week, less than a month after the incident Mangope, who is also Minister of Law and Order, promoted the man who gave the order to fire, Colonel Makanye Molope, to Brigadier. His second-in-command, Major Mobobyane, was made colonel

Brigadier Molope told the Commission he believed that President Mangope had publicly expressed his confidence in his (Molope's) actions on March 26 by promoting him. Molope also said there had been three other colonels in line for promotion — two were at the same level of seniority as himself, but one was his senior.

Nugent said his clients believed the events of March 26 were preceded "by a campaign of intimidation and violence by a section of the Bophuthatswana Police Force"

He said civic leaders had taken steps to curb this campaign by approaching the community council and bringing three urgent applications before the Supreme Court of Bophuthatswana

Without pre-empting the findings of the commission, Nugent said, it was possible Justice Smith would find that the conduct of the police on March 26 was unjustified, and that the incident itself was attributable to a course of unlawful conduct by the police

However, Nugent said, the people of Winterveld no longer had any confidence that the Bophuthatswana government would act on the commission's findings should they reflect badly on police actions and on the two men in-command

Nugent said he was not criticising the way the commission had been conducted, nor its impartiality

Justice Smith said he regretted the decision to withdraw the lawyers as it would make the commission's task more difficult.

The decision was partly speculative, he added "One of the matters I had intended to investigate in more detail was the promotion of Molope and the other policeman. The commission will still do this," he said

The withdrawal of Nugent and his attorneys means the commission will now hear evidence led by lawyers representing the Bophuthatswana Defence Force and Police, as well as a lawyer, HJ Fabricius, representing four Winterveld residents who face criminal charges arising from the shootings, including possible charges of treason. Fabricius said he understood Nugent's argument, but felt compelled to place his clients' version of the events before the commission as they had already been named by other witnesses

At a press conference after the walk-out the head of the Winterveld Crisis Committee, Chini Molondo, said the shootings at Winterveld should not be blamed merely on Mangope and his policemen, "but on his bosses who created Winterveld for us".

He added: "What happened at Winterveld happens each and every day on South Africa's soil. We know even if Molope was thrown out of the police force it would not stop the whole problem in South Africa."

15/6/86
CITY PR.
252

Seven killers get the noose

SEVEN murderers – including a killer who obtained a last-minute stay of execution in March – were hanged in Pretoria Central Prison this week.

The prisoner, Roy Victory, was sentenced to death by the Potchefstroom Circuit Court last July for stabbing and raping his girlfriend – apparently because she said she "preferred a white man". The woman later died of her injuries.

Victory was due to hang on March 5, but his execution was postponed while a petition was sent to President PW Botha asking that new evidence be heard.

The petition was refused, and Victory was hanged on Tuesday morning.

Those executed with him were:

- Ndunu Dlamini, convicted of murder by the Johannesburg Supreme Court last October.
- Andries Diale and Johannes Diale, sentenced to death two years ago when they were convicted of murder by the Schweizer-Reneke Circuit Court
- Piet Rankwe, given the death sentence in July 1984 after a Lydenburg Circuit Court judge found him guilty of murder.
- Dawid Tiemie and Johannes Tiemie, convicted of murder by the Cape Town Supreme Court last year. – Sapa

Court hears of cop torture

CP Correspondent

A COP who allegedly helped to torture Wartburg resident Dali Mhlongo this week gave details of how he "jobbed" his victims.

Constable Hans Brauer was giving evidence against colleagues Constable Goodwill Mngoma and Sergeant Francois Naude, who have both pleaded not guilty to murdering Mhlongo.

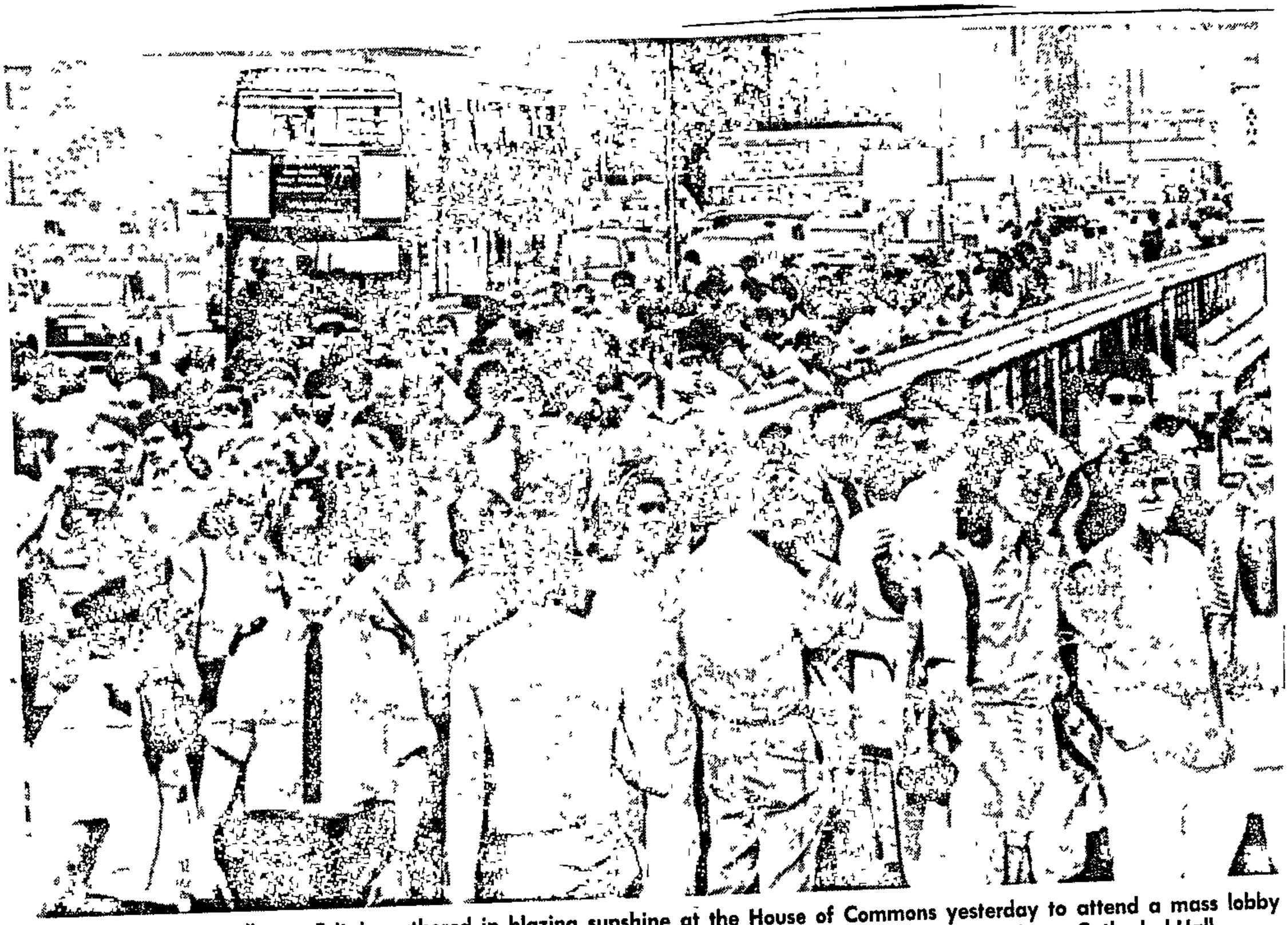
Brauer admitted that one of his victims had laid a charge against him, and that he had lied in court and was found not guilty.

In that case he covered the man's face with a tube and applied electric shocks to his genitals, he said.

He told the Maritzburg Supreme Court this week that he had used two methods to torture Mhlongo.

First he forced Mhlongo to strip outside on a mid-winter's night and then hosed him down with cold water. After this, he covered Mhlongo's face with tubing so his air supply was cut off and he couldn't breathe.

After repeated treatment of this kind, Mhlongo lost consciousness. Brauer said he and the two accused then drove around aimlessly, trying to decide what to do with Mhlongo's body. Eventually the body was kicked down a steep embankment.



Demonstrators from all over Britain gathered in blazing sunshine at the House of Commons yesterday to attend a mass lobby for sanctions against South Africa. A similar demonstration was held in nearby Victoria at Westminster Cathedral Hall.

Judge scolds Security Police in deportation-hearing disruption

STAR 18/6/86

A Rand Supreme Court judge ordered security policemen to either sit down or leave his court yesterday, and a man appealing to have his deportation order deferred was arrested in the corridors of the court building before the start of his case

In the first case the judge stopped the proceedings to reprimand the police Mr Justice A M van Niekerk was hearing an application by CBS cameraman Mr Wim de Vos to have his deportation order deferred The judge told told Security Police, who had arrived to arrest Mr de Vos, to either leave the court or attend the proceedings without interrupting Mr de Vos' application was dismissed with costs.

And shortly before his urgent application against the Minister of Home Affairs was heard in the Supreme Court, German school teacher Mr Eckhard Krallmann was arrested outside the court

Judgment is expected tomorrow in the urgent application to defer the deportation of Mr Krallman, one of four German nationals ordered out of South Africa yesterday

The court heard that Mr Krallmann was taken to the transit lounge at Jan Smuts Airport but was told that he would not be deported pending the decision of the court

Mr Krallmann was one of several people arrested on June 15 before a Johannesburg Democratic Action Committee meeting, according to court papers.

Mr Krallmann was resident in South Africa from 1984 and had a temporary residence permit

He was given a telex which said he was to leave the country before midnight last night.

Earlier, Mr R D Levin SC, for Mr de Vos, told the Rand Supreme Court that although the Minister of Home Affairs, Mr Stoffel Botha, had given Mr de Vos the opportunity to object to the order, he had not given *bona fide* consideration to Mr de Vos's representation.

The judge said the section of the law under consideration — section 45 of the Admission of Persons to the Republic Regulation Act — specifically excluded the jurisdiction of the courts.

According to this section of the Act the Minister was empowered to deport any foreign national if he considered this to be in the public interest

The judge said that while Mr de Vos's personal circumstances — he is married to a South African citizen and has three children — would make it appear to be a "harsh decision", he nevertheless had to dismiss the application

● See Page 6.

18/6/86 BUSDAY

CBS cameraman: court drama

252

● From Page 1

did not act in the public interest.

The judge asked security policemen, whom he believed had entered the court to arrest De Vos, to leave if they were going to disturb the proceedings He later allowed them to remain, but added that an arrest could not be made while the court was in session

In further government moves against the media yesterday

☐ The State President has, by a notice in the *Goverment Gazette*, widened the news black-out on the actions of the security forces to include those of the "self-governing territories"

The notice, retroactive to June 12, extends the meaning of the term "Force" to include the police forces of the "self-governing territories" and the SA Police operating in these territories.

☐ Home Affairs officials have started compiling lists of foreign journalists working in newspaper offices around the country, a spokesman for Home Affairs Minister Stoffel Botha confirmed in Cape Town last night

He could not say why the lists were being compiled but similar lists had also been demanded from 374 other companies in SA

☐ Bureau for Information head David Steward said yesterday charges against the *Weekly Mail* and the *Sowetan* were being investigated

A spokesman for the *Sowetan* said its Editor, Joe Latakgomo, and owners and publishers the Argus Printing and Publishing Company, might appear in court to face charges for contravening provisions of the emergency regulations.

☐ Co-editor of the *Weekly Mail*, Anton Harber, said he expected security police to return on Thursday before the newspaper went to press

☐ All live satellite transmissions from SA by foreign television companies have been banned for the duration of the emergency Director of news at the SABC, Sakkie Burger, said this was not an SABC decision, but a directive from the Bureau for Information.

☐ A spokesman for the bureau, Brigadier Leon Mellet, said an investigation was under way to establish if reports that Winnie Mandela had been put under house arrest were violations of the emergency regulations

(Business Day is satisfied that its publication of the news was within the terms of the regulations — Editor.)

CBS man in court drama

252

543 DAY

SIANNA GAMES, SOPHIE TEMA and Sapa

A TRANSVAAL Supreme Court judge yesterday threatened to order security policemen from his courtroom for disturbing the proceedings

He believed they intended to arrest CBS cameraman Wim de Vos.

De Vos was due last night to leave SA after his last-minute application failed in ordering that his deportation warrant, issued on Friday, be set aside until further legal proceedings could take place

After four hours of legal argument, Mr Justice A J Van Niekerk said he could not find that the Minister of Home Affairs, who signed the deportation order

18/6/86

● To Page 2

Firearm charge: bail is refused

By DEBBIE BOOYSEN

A FORMER SADF officer was refused bail when he appeared in the Port Elizabeth Magistrate's Court yesterday on a charge of stealing four pistols from the army

Before Mr D van Wyk was Mr Nilian Cedric Jonkers, 29, of Richview Close, Brackenfell, Cape Town

It is alleged that between June 19 and July 18 last year, at EP Command, he stole four pistols in the rightful possession of Sgt Elroy Coetzee and the property of the SADF He pleaded not guilty

Miss H Shelver, for the State, opposed a bail application by Mr T Hitzeroth, for the defence

The investigating officer, Sgt D J Visser, of the military police, said police had searched for Mr Jonkers since last July

They had unsuccessfully investigated 10 addresses in the Cape, and Mr Jonkers's parents, who live in Uitenhage, were unable to say where their son was

Mr Jonkers was arrested at a roadblock at Kinkelbos last month

Sgt Visser said it would defeat the purpose of the investigation if Mr Jonkers made contact with witnesses in Uitenhage

Sgt Visser said Mr Jonkers appeared to be fleeing from the police

Even if he had changed addresses in a bid to establish himself elsewhere after leaving the army, he should have notified the army within 14 days of any change of address, Sgt Visser said

An address at the army camp at Eersterivier (where Mr Jonkers says he lived for two months) was checked, but Mr Jonkers was not known there

Only one of the four missing firearms has been recovered

Mr Jonkers told the court he would stand trial if granted bail and, even though he had no fixed address in Port Elizabeth, he would live with his parents at Uitenhage

He would not be able to interfere with witnesses because he did not know who they were

He said that the senior information officer at EP Command, a Commandant Van Rooyen, had told him in Sgt Visser's presence that he had been monitoring Mr Jonkers daily since he left the army last June

He said he was not in frequent contact with his parents, which was why they did not know his of whereabouts

When he visited his former wife in Grahamstown on his way to Port Elizabeth, she told him the police were looking for him, but he had not gone to the police to find out why — "because I had no case with them'

The magistrate refused bail because Mr Jonkers had frequently changed addresses and had no contact with his parents while he had been away

The case was referred to the Regional Court for trial on July 15

Judges agree to visit detainees

CAPE TOWN All Judges-President of the Provincial Divisions have indicated their willingness to release judges periodically in order to visit detainees in prison under Emergency regulations, Minister of Justice Kobie Coetsee said yesterday.

In a statement he said that at the request of State President PW Botha, and after consultation with the Minister of Law and Order, Louis le Grange, he had requested Judges-President of the Provincial Divisions of the Supreme Court to release judges specially from time to time to visit detainees.

The visits to detainees held under Emergency regulations were in order to ascertain on a continual basis the circumstances surrounding their detention in prison and to submit the usual reports on their findings, as is normally the case with all prisoners in general.

All Judges-President have indicated their willingness to give effect to this request, Coetsee said.

— Sapa

Families snub Langa inquest

THE inquest into the 20 people shot dead in Uitenhage's Langa township last March 21 began and ended on Monday, June 16 — without the families of the victims.

The inquest — which took no evidence, relying exclusively on evidence given to last year's Kannemeyer commission — waited 90 minutes for evidence from the families, then endorsed the commission finding by ruling that no crime or act of negligence by anyone was responsible for the deaths. Relatives of 20 victims of the Maduna Road police shooting "snubbed" the inquest court, sitting to determine what happened during those fateful moments before Lieutenant John Fouche ordered his men to open fire on a group of mourners. A spokesman for the victim's families told *City Press* the families met and decided not to attend the inquest, believing it would serve no purpose. Some felt bitter, he said, about the Kannemeyer commission's findings, and believed the inquest magistrate would reach the same conclusion.

The families, he said, also felt unable to attend because of the date of the inquest sitting — June 16.

Transkei bank robber to hang

Own Correspondent

UMTATA — Nkululeko Kubukeli (27), of Umtata, who carried a semi-automatic rifle loaded with 48 rounds of ammunition when he led a gang in robbing the Bank of Transkei, was sentenced to death in the Umtata Supreme Court yesterday.

Mr Justice D J Lombard found that Kubukeli was the mastermind and leader of the gang which robbed the bank of R350 000 last March

Malunga Poswa (23) was sentenced to 20 years' imprisonment for his part

The court also found that there were aggravating circumstances on the part of Kubukeli and that he would not have hesitated to shoot if bank staff had resisted.

The court heard that, of the money taken from the bank, R57 000 was still missing The rest of the money was found in the chimney of Kubukeli's home.

CAPE TIMES 26/6/81

Whippings 'sensitive'

Political Reporter

THE number of people who have been whipped for public-violence charges are so many that the government is sensitive about disclosing the figures, Mr Helen Suzman (PFP Houghton) said yesterday.

She was commenting in an interview after the Minister of Justice, Mr Kobie Coetsee, said in reply to her question in the House of Assembly that information on the number of persons whipped was not readily available

"It can only be obtained by examining the court records of all courts country-wide, which is not economically feasible," he said

Mrs Suzman said she concluded that the number of people being whipped was so high the government realized it was sensitive to disclose the information.

She said earlier this year figures on whippings were made available after Mr Dave Dalling (PFP Sandton) tabled a question.

tions, President P W Bo- have "come from the gency with the more se- "unrest area" and for *dent*

HOUSING DISPUTE TAKES NEW TURN

Sowetan 27/6/86

Families pay rent but no homes

MEMBERS of the Dobsonville Town Council have allocated some of the houses presently in dispute to new tenants.

Five families have informed the *Sowetan* that they were allocated houses — only to find that these houses were already occupied by families involved in a case which is before the Rand Supreme Court

By MANDLA NDLAZI

Three council members have allegedly allocated the houses Asked to comment on this, the mayor, Mr Steve Nkatlo, said the council had decided not to allocate houses until the matter had been settled in court

The council's application to evict the families who occupied the houses on their own was dismissed with costs by Mr Justice J C Kriegler in the Rand Supreme Court about two weeks ago

Mr Justice Kriegler said his judgment in the case did not concern the legality of occupation of the houses but the way the application to evict the families was made

Mrs Christina Nyenyane (30), a mother of two children, said she and her husband applied for a house two years ago They were given keys to house No 8103 on June 4, this year by a councillor, she said

They have already paid rent for this month, but when she got to the house, she found it was occupied by another family.

Mrs Cynthia Lolwane (33), a mother of two children, said she was given keys for house No 7999 on June 4 by a councillor

They have paid this month's rent, she said, but cannot move in because the house is occupied by another family "I am waiting to see what the council will do about this," said Mrs Lolwane

Mr Jeremiah Sebola (36), said he was given keys for house No by a councillor

He found the house occupied by another family He said he was waiting to see how the council and the Dobsonville Civic Association would solve the issue

Mrs CHRISTINE Nyenyane holding keys for house No. 8103 already occupied by a family involved in the court case.

Mrs CYNTHIA Lolwane holding the keys for house No. 799 that is already occupied by a family involved in the court case

By NKOPANE MAKOPANE

TWO Tumahole, Parys, pensioners are to bring an urgent court application against the Orange-Vaal Development Board after their families were evicted from their homes on Wednesday.

The two are Mr Nathaniel Legoale of 1109 Moopeloa Street and Mr Kaiser Moosana of 580 Letsaba Street.

They were evicted for not paying rent since March 1985 when Tumahole residents started a rent boycott.

A spokesman for a law firm in Johannesburg said yesterday the applications would either be heard today or early next week in the Bloemfontein Supreme Court

Occupy

He said the application will seek that the families be allowed to occupy their houses, pending another application for recession against the default judgment into the incident.

He also said the applicants would fight their eviction on the grounds that they were never issued with summonses warning them to pay.

In both cases, they were only issued with warrants of eviction by a court messenger on the day their houses were locked.

Furthermore, he said, it is the applicants' contention that Tumahole residents have been paying far more than the legal rentals.

Miss PAULINE Legoale, daughter of one of the Tumahole pensioners whose house was locked up. She and her family spent a night next to a brazier after being evicted from their home
PIC. MOFFAT ZUNGU

Shocking provisions in new rules on detainees

By Jules Browde SC
National Chairman,
Lawyers for Human Rights

There is grave danger that the administration of justice in South Africa may come into disrepute as a result of the provisions of some of the rules made by the Minister of Justice and published in Government Gazette No 1196 on June 12 1986

The Notice creates some 20 "disciplinary contraventions" relating to the conduct of detainees while in prison They include insolence or disrespect towards a member of the force, using improper language, conversing or making contact with any other detainee when or where it is not permissible for a detainee to do so, singing, whistling or making unnecessary noise, or being a nuisance.

Upon conviction of any such contravention an officer in the Prison Service or the magistrate of the district where the prison is situated may impose sanctions which include solitary confinement, the deprivation of one or more meals on any one day and corporal punishment not exceeding six strokes if the detainee is a male apparently under the age of 40

The regulations governing detainees provide that they shall be tried for such offences under the provisions of the Prisons Act 1959, which empower prison officers or magistrates to try prisoners for breaches of prison regulations.

In terms of that Act, the prisoner has the right to be assisted in such circumstances by a legal representative, but the regulations governing detention as they have now been promulgated specifically provide that no detainee shall be entitled to such legal representation "except with the permission of the Minister of Law and Order or the Commissioner of the South African Police".

In terms of other regulations detainees may be held incommunicado. They are not entitled in those circumstances to access to legal representatives without the permission of the Minister or the Commissioner of Police and there is a grave danger that detainees (including juveniles) held in social isolation may be brought before "courts" within the prison itself without knowledge of their rights, may be convicted without the assistance of legal representation and may be sentenced.

The nature of the punishments which can be imposed for the apparently trivial misdemeanours defended invoke a sense of shock. Whipping for singing, whistling or being a nuisance (whatever that may mean) is completely unacceptable in any civilised legal system

Justice Minister Kobie Coetsee —"no whistling" order

The erstwhile Chief Justice, Mr Justice Rumpff, described whipping as "a method or form of punishment that is contrary to accepted present-day norms of humane treatment of offenders".

Other judges have described it as intrinsically brutal, as constituting a severe assault not only upon the person but also upon his dignity as a human being They have stated that nothing is achieved by its imposition but revenge, that society's standards suffer thereby and that it may be equated to the same sort of barbarism as that which society condemns Mr Justice Didcott of Natal said of whipping in 1984

> "When an adult is flogged especially when he is flogged not in lieu of but in addition to being sent to jail, nothing is achieved but revenge Such is gained at a cost, what is more Society's standards suffer It stoops to the level of the criminal whom it punishes It behaves with the same sort of barbarism as that which it condemned in him
>
> "It has thus come to be accepted nowadays that corporal punishment for adults, if justifiable at all, must be reserved for the exceptional case in which the crime was so brutal, so cruel, that nothing less will suffice to express society's sense of outrage, to meet its demand for retribution, for the criminal to get his just deserts
>
> "Any attempt to widen the class of case in which the punishment is imposed beyond that rare type must, in my view, be resisted by all who care for the reputation of our legal system, who are eager for it to be thought humane and civilised This is no time for putting the clock back."

In 1938 the acting Judge President of the Orange Free State Provincial Division found it necessary to express himself in the following strong language

> "Now, solitary confinement and spare diet means being locked up in a specially constructed cell, usually with cement or stone floor, with a slit of an iron-barred window which admits a glimmer of light and a minimum of air and no sun and with an atmosphere which, due to the sanitary arrangements, very soon becomes fetid and unhealthy
>
> "The prisoner is allowed about an hour's exercise a day and at night is lucky if he sees any light at all Mentally there is stagnation and physically there is semi-starvation And this is the sentence that the magistrate in the above circumstances imposed on the accused and which we are in all seriousness asked to confirm.
>
> "Recently a public agitation has been set on foot here for the more humane treatment of caged wild animals, which are admittedly well-fed and properly cared for but confined in a limited space
>
> "Undoubtedly, cruelty to dumb animals should be drastically dealt with. In view, however, of what an isolation cell is, and what the nature of other antiquated punishments are, and what their psychological effect must be, the time is long overdue for the public conscience to be roused and for some consideration to be given also to the treatment of our 'caged human beings' "

Judge Steyn of the Cape Provincial Division found it necessary to repeat these words in April 1974

Removing a person from social isolation into solitary confinement and depriving him of food may be construed as acts of revenge, even for serious crimes To impose such retribution on detainees who find themselves in prison not because they have been charged in and convicted by any court but because a policeman or other authorised officer considers that they should be detained, whose "offence" was to sing, whistle, or be a "nuisance", will arouse universal condemnation against those who administer such punishments and those who can do something to stop them but do not do so.

Bid to free King lawyers postponed

Dispatch Reporter

EAST LONDON — The Grahamstown Supreme Court yesterday postponed the hearing of an urgent application to free two detained civil rights lawyers from King William's Town.

Papers were filed before Mr Justice Jones seeking the release of Mr John Smith and Mr Dudley van Heerden, both of a firm of attorneys in King William's Town.

The application for the men, who were detained by the security police in Breidbach on June 14, were brought by their wives, Mrs Nobomi Josephine Smith and Mrs Ingrid Illona van Heerden

The respondents are the Minister of Law and Order, the Commissioner of Police, the Minister of Justice, the head of the South African Security Police, the head of the security police in King William's Town and the Commissioner of Prisons

By an agreement between the counsels for both parties, the matter was postponed to July 14 to allow the respondents to file opposing affidavits.

The cost of the application was reserved.

Advocate D. Pillay appeared for the applicants and advocate J Froneman for the respondents.

New face of the 'Comrades'

252 EVE POST 3/7/86.

SWEEPING changes have been made to the "justice" handed out by Comrades in the townships

The self-appointed Comrades (amabutho) now make their victims sweep a street.

Recently two men caught removing a fence from a school were made to sweep a street.

They were warned if they again broke "township laws" the sentence would be more serious.

Residents believe that new forms of punishment will replace the dreaded "necklace" treatment which was condemned by organisations and civic leaders

The Archbishop-elect of Cape Town, Bishop Desmond Tutu, who once threatened to leave South Africa if deaths by the necklace continued, yesterday said problems could not be solved by violence

Earlier this year street and area committees were formed in the townships to stop criminal elements from exploiting the situation.

Many believed that "necklace" punishments were often the work of those wishing to discredit progressive organisations

Now some youths openly oppose necklacing — and are gaining support

A youth, who did not want to be named, said they favoured making culprits embark on community projects like keeping streets and playgrounds clean and making open areas more attractive by planting trees and flowers

Those made to do the work were allowed home and, if necessary, had to return the next day

Amabutho members have also been known to recover stolen goods and trace arsonists, whose names were then given to the leaders of their organisations

65 hanged in SA this year

Sixty-five people have been hanged in South Africa this year.

Yesterday at the Pretoria Central Prison seven men, all of them convicted murderers, were executed.

They were Henry Dirk Visser and Piet Jacobs, who were sentenced to death on May 13 last year in the Upington Circuit Court; Mandla Majola and Absolom Makhehla Shangase, who were sentenced to death in the Durban Supreme Court on June 14 last year, Menzelelelı Rwexu, who was sentenced to death on November 22 in the East London Supreme Court, Makhehlana Abram Malemela and Sello Enoch William Seabe, who were sentenced to death in the Pretoria Supreme Court on July 26 last year. — Pretoria Bureau.

Judges' salaries increased

JUDGES' salaries have been increased.

The Judges' Remuneration Amendment Act — to amend the Judges' Remuneration Act of 1978 to increase the salaries of judges of the Supreme Court — was gazetted yesterday.

The Act, effective from April 1, provides for an increase from R81 000 to R98 000 a year for the Chief Justice. A judge of appeal will earn R88 000 (R73 000), a judge-president R86 500 (R71 500), a deputy judge-president R83 000 (R68 000) and a judge R81 000 (R66 000) — Sapa

DAILY DIS NEWS 252

Orders precluding bail ruled invalid

DURBAN — A full bench of three judges ruled in the Durban Supreme Court yesterday, that orders made by the Attorney-General of Natal, precluding 10 people facing charges under the Internal Security Act and the Arms and Ammunition Act from obtaining bail, were invalid

However, it was stressed by the judges that they were not dealing with an application for bail

The 10 people are Mrs Duduzile Charity Baby Buthelezi, 32, Dr Sibongiseni Dhlomo, 26, Dr Vejeynand Indurjith Ramlakan, 28, Mr Sibusifo Robert Ndlanzi, 29, Mr Jude Francis, 21, Mr Ordway Qonda Msomi, 20, Mr Sipho Stanley Bhila, 31, Mr Phumezo Nxiweni, 20, Mr M Apiki Dlomo, 32 and Mr Bafo Bawana Nguqu, 30

They are facing 20 charges arising from explosions in the Durban area including the Amanzimtoti bomb blast, between September 1983 and January this year

The application for the orders to be set aside was presented by Mr I Mahomed, SC

Mr Mohamed said it was common cause the 10 accused had not received a hearing

Giving judgment, Mr Justice Kumleben said "The court has reached a unanimous decision in this application

"The Attorney-General of Natal has issued in respect of each of the applicants, being arrested persons detained in custody, orders in terms of section 30 of the Internal Security Act of 1982, that they shall not be released on bail or warning"

He said the applicants had applied to have the order reversed on two counts

"Firstly, for the reason that the 'audi alteram partem' (hear the other side) rule applied in respect of his decision to issue such orders in terms of the said section, it being common cause that the requirements of this rule were not observed

"Secondly, on the ground that an objective jurisdictional pre-requisite to the issue of such an order, namely, an arrest upon a charge of having committed an offence referred to in Schedule 3 of the Internal Security Act was absent

"The second ground was abandoned during the course of applicants' argument

"The first we consider to be well founded"– Sapa

STAR 8/7/80 252

Judges overrule ban on bail bids

DURBAN — The Supreme Court here has ruled that orders precluding 10 people facing charges under the Internal Security Act and the Arms and Ammunition Act from seeking bail are invalid

Mr Justice M E Kumleben, Mr Justice J M Didcott and Mr Justice D B Friedman made the ruling yesterday

Before the court were two doctors, a pregnant woman and seven others

They are facing 20 charges arising from explosions in the Durban area, including the Amanzimtoti bomb blast They are also alleged to have possessed arms and been involved in several more abortive bombings.

COMMON CAUSE

Mr I Mahomed, SC, applying for the orders to be set aside, said it was common cause the 10 had not received a hearing

He said this impinged on the court function of granting bail

Giving judgment, Mr Justice Kumleben said "The court has reached a unanimous decision and its reasons will be furnished in due course

"For the sake of clarity, the following observations need to be made

"The Attorney-General of Natal has issued orders in terms of section 30 of the Internal Security Act of 1982 that they shall not be released on bail or warning

"The effect is to preclude the applicants from applying to court for their release on bail and thus to preclude the court from deciding whether bail be granted or refused

"This is stressed to remove any misconception that what we have before us is an application for bail"

The validity of the orders was challenged on two grounds

Firstly that the 'audi alteram partem' (hear the other side) rule applied and it was common cause this rule had not been observed

Secondly, that an objective jurisdictional prerequisite to the orders' issue, an arrest on a charge of having committed an offence referred to in Schedule 3 of the Internal Security Act, was absent But this second argument was abandoned

Mr Justice Kumleben added "The first we consider well founded and the following order is accordingly made

"The orders made by the Attorney-General of Natal in respect of each of the respondents are declared to be invalid and are set aside"

The 10 are Mrs Duduzile Charity Baby Buthelezi, Dr Sibongiseni Dhlomo, Dr Vejeynand Indurjith Ramlakan, Mr Sibusifo Robert Ndlanzi, Mr Jude Francis, Mr Ordway Qonda Msomi, Mr Sipho Stanley Bhila, Mr Phumezo Nxiweni, Mr M Apiki Dlomo and Mr Bafo Bawana Nguqu. — Sapa

Tevis and Michelle (Nee [illegible] Minna passed away

TV man celebrates freedom

By Motlatsiwa Moroke

Champagne flowed at the offices of Worldwide Television News yesterday after soundman, Mr Theophilus Spokes Mashiyane (26), was released from detention

After the welcome, colleagues treated Mr Mashiyane and his fiancee, Miss Khosi Radebe, to lunch

The lunch was attended by Mrs Winnie Mandela, wife of the imprisoned leader of the African National Congress (ANC), and Mr Mashiyane's legal representatives and friends

Mr Mashiyane's release from Diepkloof Prison was ordered by Rand Supreme Court judge Mr Justice R J Goldstone yesterday

Mr Mashiyane said. "I am very happy to be released. It was unexpected It's a real pleasure to be outside with people again"

A beaming Mr Theophilus Spokes Mashiyani, WTN sound man, is congratulated by Mr Denis Kuny SC Mr Godofredo Guedes, WTN's bureau chief, looks on Picture Herbert Mabuza

Court orders detainee released from prison

By Janine Simon

The arrest and detention under emergency regulations of Worldwide Television News soundman, Mr Theolopolus Mashiyani, was — in what is seen as a significant ruling — declared unlawful yesterday by a Rand Supreme Court judge, who ordered Mr Mashiyani be released from Diepkloof Prison

Legal sources believe this to be the first time an application of an unlawful arrest has succeeded under present emergency regulations and say the application reiterates the right of the court to consider whether an order or action is lawful

Mr Mashiyani was arrested in the early hours of June 15 at the University of the Witwatersrand's Glyn Thomas residence.

On June 22 the Minister of Law and Order authorised his detention to be extended to the end of the emergency

BONA FIDE OPINION

Mr Justice R G Goldstone ruled that the arrest, made under Section 3 (1), was unlawful as the arresting officer, Warrant Officer F C Zeelie, had not formed a bona fide opinion that it was necessary

The extension of the detention, ordered in terms of the arrest, was also found to be unlawful.

Under section 3(1) a person may be arrested if, in the opinion of the officer, he is a threat to the maintenance of public order, to public safety, to the end of the emergency regulations or as a measure to protect the individual

Mr Justice Goldstone said the probability was that Warrant Officer Zeelie did not properly apply his mind to the section and that the section, wide as it was, still placed limits on the discretion of the arresting officer

'It is wholesome and desirable that he should be made aware of the limitations and that he may be summoned before the ordinary courts of the land to explain his action," he said.

The events of June 15 were described in an affidavit by social work student Miss Khosi Radebe, who brought the application for Mr Mashiyani's release against the Minister of Law and Order and the Minister of Justice.

Neither respondent replied to the facts set out in her affadavit.

Mr Justice Goldstone said W O Zeelie could not have thought the arrest neccessary as he had told the court he never knew Mr Mashiyani before he went to the residence and that police were not looking for Mr Mashiyani

"How could the presence of this one cassette tape with recordings of singing at a funeral, found at a university residence at 3 am, be constituted a threat as set out in the regulation?" Mr Justice Goldstone said

Appearances Mr D Kuny SC appeared for Miss Radebe Mr R Kruger SC appeared for the Minister of Law and Order and Mr J P Coetzee appeared for the Minister of Justice.

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Mawu's emergency application against govt adjourned

AN URGENT application brought by the Metal and Allied Workers' Union (Mawu) against State President P W Botha and the government was adjourned until July 14 in the Durban Supreme Court yesterday

The application sought an order declaring the state of emergency and its regulations to be of no force and effect, and the continued detention of people under its regulations unlawful

Heard before Mr Justice Didcott, the application was brought by Mawu and the wife of one of its detained members, Dudu Doreen Mchunu

Own Correspondent

When the application is next heard, it will be before a full bench of three judges

Mawu wants an order declaring the state of emergency to be without cause and effect from June 26, as well as the release of everyone detained under the emergency regulations, including six union members

An order is also being sought declaring the paragraph in the emergency regulations containing a definition of a subversive statement as of no cause and effect in law

Mawu national organiser Bernard Lewis Fanaroff said it was submitted that the regulations had ceased to be of any force or effect because Parliament had at all times been in ordinary session since June 12, and the three houses of Parliament had been adjourned to August 18

The emergency regulations have, however, not been laid on the tables of the three houses as required in terms of Section 3(5) of the Public Safety Act of 1953

Faranoff submitted that on the expiry of the 14-day period after the promulgation of the emergency regulations on June 12, they ceased to be of any force or effect.

He added the regulations had been void from the outset because in terms of Section 3 of the Act, the State President could only make regulations once a state of emergency had been declared

He said the continued exercising of emergency powers by the Minister of Law and Order and the Minister of Justice and men under their command interfered with the lawful activities of his union

Employers afraid by trade union numbers str

Employers, officials confused by lack of clarity

Major unions set to challenge govt ban

THREE major unions hit by government's ban on indoor gatherings in the Johannesburg and Roodepoort area are to challenge the order in the Supreme Court

The legal firm Cheadle, Thompson and Haysom has been instructed by the Metal and Allied Workers' Union (Mawu), the Commercial, Catering and Allied Workers' Union (Ccawusa) and the National Union of Mineworkers' (NUM) to bring proceedings to the Supreme Court to challenge prohibitions on union meetings

CLAIRE PICKARD-CAMBRIDGE

Proceedings are expected to be launched today and it may take a day or two before the application is heard

There was confusion among both employers and unions yesterday regarding the exact implications of the ban Lawyers were also divided in their opinions

However, most unions proceeded with normal business yesterday Council of Unions of SA (Cusa) general secretary Piroshaw Camay said unions had gone ahead with their normal activities

Government was not prepared yesterday to provide more clarity, particularly as regards the definition of a gathering The Bureau for Information told *Business Day* to consult its lawyers as it could not give advice on regulations. The police were also not prepared to comment.

One prominent labour lawyer, who did not wish to be named, said a previous court ruling had indicated that a gathering constituted more than one person He said the "amorphousness" of the definition of a gathering offered no protection, but "extended the net"

● COMMENT: Page 8

Labour lawyer Rod Harper said employers and unionists had been placed in a difficult position because of the lack of clarity It appeared that even meetings arranged to negotiate wage agreements could not take place without police permission.

Police were not necessarily familiar with procedures in collective bargaining and could see meetings from a perspective which failed to take into account particular circumstances between employer and employee, he said

Some lawyers believed meetings between union officials and employers would not be affected. They said it would be impossible for police to monitor every meeting

Others felt the ban would have a disastrous effect on industrial relations be-

● To Page 2

Unions to challenge ban

● From Page 1

cause it prevented unions arranging lawful strikes or meeting bosses at shop floor, conciliation board or industrial council level

They added that unions would not legally be able to consult members or obtain mandates for action Apart from using telephones, there was little organising they could do

□ Two more mines have been hit by industrial action in protest against the detention of NUM leaders This increased the number of workers involved in protest action to more than 18 000.

More than 500 employees at De Beers' Finsch diamond mine north-west of Kimberley refused to start work yesterday, while 1 750 workers at Gencor's Matla colliery near Witbank staged brief underground sit-ins on Monday night and yesterday morning.

Gencor said workers who were working half-shifts at Gencor's Grootvlei mine near Springs and Marievale mine near Nigel were working normal shifts yesterday

De Beers said about 1 300 workers at De Beers' four Kimberley mines were still on strike

Both the number four and seven shafts at the Free State Geduld mine near Welkom have been closed until employees undertake to return to work normally, an Anglo American spokesman said yesterday He said about 5 500 workers had been involved in a go-slow

About 1 000 workers were still working half-shifts at Amcoal's Kriel colliery yesterday Num could not be contacted for comment

CHALLENGE

Emergency not valid - union

THE Metal and Allied Workers' Union yesterday challenged the state of emergency and the State President in an urgent court action.

The urgent application, in the Durban Supreme Court, has been brought by the union together with the wife of one of its detained members, Mrs Dudu Doreen Mchunu, against the State President, Mr P W Botha

Mr Justice Didcott adjourned the application by consent until July 14 when it will be heard by a Full Bench

The union is seeking an order declaring the state of emergency to be invalid from June 26 It is also seeking the release of everyone detained in terms of the emergency regulations, including six of its own members

Mawu is also seeking an order declaring that the paragraph in the emergency regulations purporting to contain a definition of a "subversive statement" is of no cause and effect in law

The national organiser of Mawu, Mr Bernard Lewis Fanaroff said the union submitted that the regulations had ceased to be of any force or effect because

- Parliament had at all times since June 12 this year been in ordinary session,
- The three Houses of Parliament had been adjourned to August 18 But Parliament had, however, not been officially discontinued and was still accordingly in ordinary session

He said the business of Parliament to be dwelt with in the current session would be resumed on August 18

The emergency regulations have, however, not been laid on the tables of the three Houses as required in terms of Section 3 (5) of the Public Safety Act of 1953

Mr Faranoff said they accordingly submitted that on the expiry of the 14-day period after the promulgation of the emergency regulations on June 12 this year they ceased to be of any force or effect

Void

He said that the regulations had been void from the outset because in terms of Section 3 of the Public Safety Act of 1953 the State President could only make regulations once a state of emergency had been declared

The state of emergency therefore had to precede the making of any regulations

He said in this instance however the State President had simultaneously purported to declare a state of emergency and make regulations

He said the continued exercising of emergency powers by the Minister of Law and Order and the Minister of Justice and men under their command interfere with the lawful activities f Mawu

He said the union contended that the definition of "subversive statement" in the regulations was void because of its vagueness

Mr Faranoff said six of the union's office bearers, Mr Jeffrey Vilane, Mr Willies Thembinkosi Mchunu, Mr Vincent Mkhomza, Mr Micahel Mabuyakhulu, Mr Joseph Hlalanathi Miya and Mr Freddie Mtshali Blackie had been detained at Empangeni

He said he believed they were being held under the emergency regulations

To Page 2

PRESIDENT Botha challenged in court

Dr BRAAM Fourie

Mr JAAP Strydom

DET security plan begins on Monday

By MONK NKOMO

SECURITY, disciplinary and other measures, including the introduction of identity cards for black pupils will be officially implemented at all schools from next Monday, the Department of Education and Training announced in Pretoria yesterday

Mr Jaap Strydom, deputy director general of DET, also announced at a Press conference that parents and pupils had not been consulted when these decisions were made

The suggestions to implement these measures, he added, followed recommendations from the majority of the 7 000 principals throughout the country.

Mr Strydom confirmed that the National Education Crisis Committee was not involved when the measures were discussed

He described as "absurd" a newspaper report that the new security measures could turn schools into virtual prisons

The security measures, Mr Strydom said, will not cause resentment among parents and pupils if properly tabled before the students by the principals

Mr Strydom also rejected claims by Soweto teachers that they got a "dressing down" from regional director, Mr Gunther Merbold at a recent meeting

Claims

Mr Strydom referred reporters to Mr Merbold on claims that these teachers were not allowed to question the new plans

Dr A B Fourie, director of DET, stressed that the measures were being implemented to ensure that meaningful education was reinstituted and that no further disruption of classes took place during the rest of the year

Unrest stories

THIS issue of the *Sowetan* has been produced under conditions that amount to censorship ALL stories that relate to unrest, the state of emergency and the activities of the security forces were supplied by the Bureau for Information established by the Government

Additional facts or information which we may have had relating to unrest had to be approved by the bureau or cannot be published

Tutu to meet Botha – Page 2

Free State court move on clamps

By Jo-Anne Collinge

Another legal attack on the emergency regulations is due to be launched today – this time before a Full Bench of the Bloemfontein Supreme Court

As in the application made earlier this week in Durban, the court will be asked to grant an order declaring that the emergency regulations ceased to be of force and effect after June 26

The case centres on the detention of a Kroonstad couple, leading United Democratic Front member Mr Dennis Bloem and his wife, Edith. It has been brought by members of their families

The court will also be asked for an order declaring that the arrest and detention of the Bloems was wrongful and unlawful and directing their release from custody

It will be asked to prohibit and restrain the Minister of Law and Order and certain police officers from "taking any steps to perpetuate the detention" of Mr and Mrs Bloem

The Durban application, brought earlier this week before Mr Justice Didcott, was postponed by consent to allow for a hearing by a full Natal Bench on Monday

It sought to nullify the emergency regulations on the ground that there had been a failure to comply with the Public Safety Act requirement that the regulations be laid on the table of all three Houses of Parliament within 14 days of promulgation

Judge orders nun's release

Dispatch Reporter

CAPE TOWN — The immediate release of detainee Sister Clare Harkin was ordered by the Supreme Court yesterday after Mr Justice Robin Marais found that the police captain who ordered her arrest had "a somewhat less than clear mind".

Sister Clare was arrested and detained on June 23 in Terminus Road, New Crossroads, as police dispersed mourners after a funeral

Police alleged in papers before court that Sister Clare assaulted Constable Marius Nel, swore obscenely at him and hindered him in the course of his duties.

Papers filed by the Acting Regional Superior of the Dominican Order, Sister Therese, alleged that Sister Clare stood between the policeman and a young man he was beating up and pleaded with the policeman to "please have mercy on the boy"

Drawing the legal parameters within which the facts of the application brought by Sister Therese had to be considered, Mr Justice Marais said that the power given by emergency regulations to members of a force to arrest and detain without warrant were not unfettered.

The precondition for the exercise of this power was that an opinion had to be held that the arrest and detention was "necessary for the maintenance of public order, or the safety of the public or that person himself, or for the termination of the state of emergency"

The judge said he wished to emphasise that a member of a force should apply his mind not to whether such an arrest was desirable but to whether it was necessary for the purposes set out in the regulations

Noting that there was a substantial conflict of fact in the papers before him, he said it was not possible to say with sufficient certainty where the truth lay

Mr Justice Marais ruled that Sister Clare's arrest and detention was unlawful and should be set aside but granted the respondents — the Minister of Law and Order, the Minister of Justice, the Commissioner of Police and the Officer Commanding Pollsmoor Prison —leave to appeal to the Appellate Division

A courtroom challenge to the unchallengeable

The Emergency regulations attempt to bar the courts from adjudicating on any action by the Security Forces. But several attempts have been made to challenge them nonetheless. And on Monday the Natal bench will hear the most sweeping challenge of all, reports CARMEL RICKARD

First man to win in court WTN television soundman Theophilus Mashiane celebrates his release from detention by a Johannesburg judge this week Toasting him are colleagues Rapitso Montsho and Khosi Radebe

TENSIONS between the state and judiciary over the government's policy of usurping the powers of the courts could escalate if this week's application to have the State of Emergency declared invalid succeeds.

The 70 000 strong Metal and Allied Workers Union (Mawu) is bringing an urgent application in the Durban Supreme Court against the State President, the government and the Ministers of Law and Order and of Justice

This is not the first case to challenge the Emergency regulations, but it is the most sweeping in its implications

Other cases have been limited to such issues as applications for detainees to be freed, challenges to deportation orders, and interdicts following alleged police assaults on detainees But the Mawu application goes to the heart of the matter and tries to cancel the Emergency itself

If Ismail Mahomed SC — who is appearing for Mawu — manages to persuade the Natal judges to declare the Emergency unlawful, the issue will undoubtedly be taken by the state to the Appeal Court

If this were to happen, the effect of the Natal judgement would be suspended, pending the decision of the Appellate Division, unless a special order were granted by the Natal judges, putting their ruling into operation immediately — and making the Emergency no longer apply in the province

When the application came to court on Tuesday, Justice Didcott said the matter was obviously one of great urgency He adjourned the case to Monday for a full bench of the Supreme Court to hear argument on the issues involved

Second applicant in the case is Dudu Mchunu, wife of detained Mawu official Willies Mchunu

The applicants contend the Emergency became invalid after June 26, alternatively, that it was never lawful They also ask for six Mawu leaders from Northern Natal to be released immediately from detention

Mawu has also put forward a set of alternative orders for the judges to consider.

They have asked for a declaration that the definition of a "subversive statement" contained in the Emergency regulations is invalid, that a statement prepared by Mawu for publication in its newspaper is not unlawful, and that regulations barring detainees from being visited by their legal representatives be declared unlawful Alternatively they ask the judges to direct that Mawu detainees should be allowed access to lawyers "for the purpose of obtaining instructions from them to launch any legal proceedings on their behalf"

The scope of the application has given Mawu the opportunity to outline some of the effects of the Emergency on the union, to "name" various Northern Natal officials in detention and to express its frustration with government officials who persistently refuse to give guidelines on whether certain union statements are "subversive" or breaking Emergency regulations

In his founding affidavit, Mawu national organiser and secretary, Bernard Fanaroff, said the Emergency regulations were not tabled in any of the three houses of parliament as required in terms of the Public Safety Act This should have been done within two weeks of the declaration of the State of Emergency

Therefore, Mawu contends, the regulations became unlawful after June 26

Fanaroff also claims the regulations were never valid because the State President acted *ultra vires* when he made the regulations at the same time as declaring the Emergency, instead of declaring the Emergency first and then promulgating regulations

Fanaroff said the regulations interfered with the work of Mawu

The union also suffered because the definition of a "subversive statement" was confusing, and Fanaroff claimed this provision was "void for vagueness"

Fanaroff then lists six Mawu officials in Northern Natal detained and held at Empangeni by the SAP

- Jeffrey Vilane, Mawu's vice president, detained during the night of 11/12 June,
- Willies Mchunu, secretary of the Northern Natal branch of Mawu, detained on the same night,
- Vincent Mkhonza, an acting offical of Mawu, detained on or shortly after June 12,
- Michael Mabuyakhulu, also a Mawu official, living at Esikhaweni township, detained at the Empangeni offices of Mawu on June 15,
- Joseph Miya, who was similarly detained at the Empangeni offices on June 15,
- Freddie Blackie who lives at Madadeni

Fanaroff says the detainees themselves cannot bring an application for their release as they are denied access to court, to their lawyers or their next of kin

Their relatives cannot bring such applications either, as they are denied access to and information about the detainees On the other hand, Mawu has a special interest in the detainees, in that the union's constitution enjoins Mawu to "protect and further the interests of its members and office bearers"

Fanaroff then outlines a number of difficulties experienced by Mawu in trying to understand the exact implications and meaning of the Emergency regulations' definition of a "subversive statement"

Both the police and the Bureau of Information refused to declare whether a statement on the Emergency, prepared by Mawu, was unlawful Nor would either indicate what should be done to avoid any contravention

Fanaroff asks whether certain actions — which he outlines — would be defined as "subversive"

He gives the example of the government booklet "Talking with the ANC" and says this illustrates the "dilemma of a citizen faced with the vague definitions" of a "subversive statement"

"Would possession of this document offend the respondents because it might have the effect of promoting the object of an unlawful organisation," he asks, "or because it might aggravate feelings of hostility by a section of the public to the ANC? The union does not know what to advise its members who may be interested in acquiring this booklet

"In order for the union to function effectively, to discharge its duties towards its members, and to promote without hindrance its proper aims and objects, it must know urgently just what it is allowed to say or not say"

In his statement, Mawu lawyer Peter Harris said he had been unable to advise his client on whether its press statement on the Emergency would contravene the regulations He and an advocate asked the police but were referred to a Mr Bosman at the Bureau of Information

He in turn referred Harris to "Mr Mellet and Miss Henning, both of whom I had previously seen on television as being authoritative spokesmen on behalf of the South African government, giving guidance to the media all over the world as to what could or could not be said during the Emergency

"I eventually managed to speak to Miss Henning and tried to explain my problem She had no difficulty in saying that she could not help me

"In the result I concluded that my clients had no other avenue open for relief but to approach the Supreme Court."

On the question of access by lawyers to Mawu detainees, Fanaroff says their applications for such visits were refused They needed access to the Mawu officials to acquire, amongst other things, powers of attorney and instructions to enable the affairs of the detainees concerned to be administered in their absence

Mawu is represented by Ismail Mahomed SC, assisted by Leonard Gering, instructed by Peter Harris of Cheadle, Haysom and Thompson (Johannesburg) and Chris Albertyn of Chennels, Albertyn (Durban)

Counsel for the state is JH Combrink SC, assisted by R Hiemstra

®Extracts from the Mawu statement on the State of Emergency which is at the centre of the Supreme Court application

"Mawu calls upons its members and metal workers through South Africa to make known their opposition to the continuing State of Emergency

"The union expresses its deep distress and opposition to the arrest and detention of large numbers of citizens including trade unionists generally and our vice president, our general secretary, officials and members

"The answer (to increased unrest) cannot lie in even more (government) power This has failed The Emergency itself and the power now acquired will themselves be the cause for more unrest Peace and reconciliation must lie in another direction It must lie in dealing with the causes of the unrest It must lie in the abandonment and obliteration of apartheid and the creation of a democratic, equal and just society

"Accordingly the union expresses its opposition to

the increasing use of powers which avoid the courts and make in roads into the rule of law

continuing haemorrhaging of the useful energies and manpower of the nation by compulsory military conscription into the Defence Force, which expands its resources and its energies by occupying townships inside the country

"We call upon our friends inside and outside South Africa to raise their voices against the declaration of the State of Emergency and the policies of the government, which have created the crisis in this country, and given to the country an unprecedented image of callousness and notoriety abroad"

Weekly M. 11/7/86.

A double blow for regulations

252

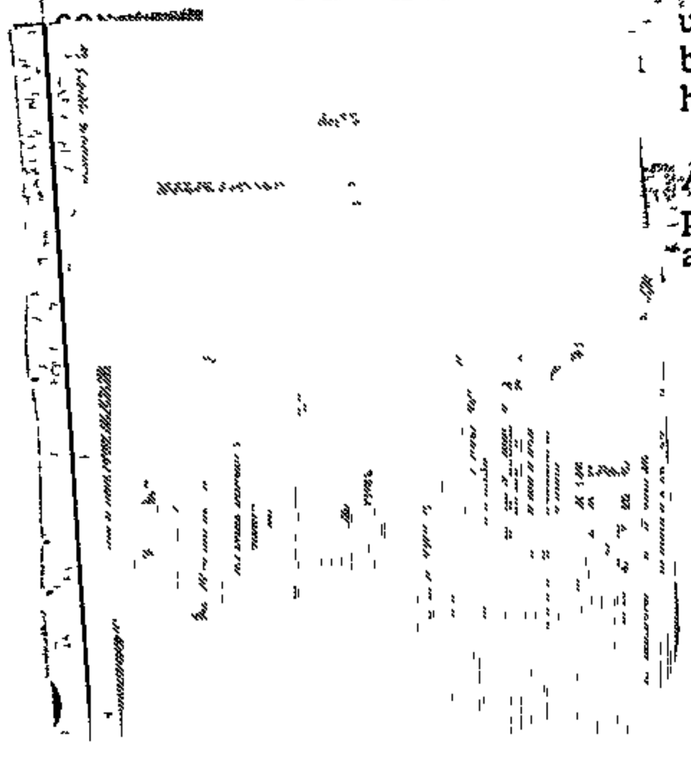
By JO-ANN BEKKER, JEAN LE MAY and FRANZ KRUGER

THE courts struck a significant blow this week against the Security Forces' sweeping powers of arbitrary detention under the State of Emergency by declaring the incarceration of two detainees illegal and ordering their immediate release

And on two occasions the government has appeared to back down in the face of pending court hearings — withdrawing bans on union meetings in the Johannesburg-Roodepoort area on the day four unions filed challenges to the restrictions, and releasing Cape Town photographer Dave Hartman an hour before an application contesting his detention

The release of Worldwide Television News soundman Spokes Mashiyami on Monday and of Catholic nun Sister Clare Harkin on Wednesday, after rulings by the Johannesburg and Cape Town Supreme Courts respectively, has been hailed as a significant victory for a return to the rule of law by Progressive Federal Party parliamentarian Helen Suzman.

Jules Browde, national chairman of Lawyers for Human Rights, said it was "extremely gratifyi



In replying affidavits, the police denied this They said Sister Clare had grabbed a quirt from a policeman and sworn obscenely at him.

Marais said he found it difficult to appreciate why the policeman had persisted in beating the man. "It is not surprising that Sister Clare took exception to what appeared to her as a gratuitous assault," he said

The police's powers of arrest and detention under the Emergency were not unfettered, Marais ruled

The government's surprise decision to amend an order banning trade union meetings was welcomed by various businessmen as a sign the authorities were adopting a more sensitive approach to industrial relations

The Bureau for Information announced the amendment on Wednesday by saying the original Government Gazette detailing the restrictions "contained certain errors". Only the townships of Soweto, Meadowlands, Diepkloof and Dobsonville were affected by the order, which originally applied to 33 union and political organisations, the bureau said. Trade unions should not have been on the list, it added

The application for the release of Agence France Presse and Afrapix photographer Hartman, which fell away following his release on Tuesday, alleged that Hartman had been detained because he was a key witness in a Supreme Court application to be brought by residents of Cape Town's KTC township against attacks by the conservative "Witdoeke" vigilantes

Meanwhile several similar court hearings are pending:

● An application for the release of a leading member of the Orange Free State United Democratic Front, Dennis Bloem and his wife, Edith, began in the Bloemfontein Supreme Court yesterday

The order is similar to an application brought by the Metal and Allied Workers Union in Durban this week in that it asks the court to find that the Emergency regulations ceased to be effective after June 26, as they were never tabled in Parliament

● The UDF will bring an application to the Port Elizabeth Supreme Court on Monday challenging a series of orders signed by divisional commissioners of police imposing curfews on townships and banning certain organisations from holding meetings.

Johannesburg lawyer Krish Naidoo, the instructing attorney, said lawyers would argue that a UDF meeting planned for Tuesday in Port Elizabeth did not contravene the Emergency regulations.

"The purpose of the meeting is to inform the community of the emergency's effect on the UDF and its affiliates The UDF sees it as its duty to report to its members," Naidoo said

The power to seize publications would also be challenged, Naidoo added

● The detention of two King William's Town lawyers will be challenged in the Grahamstown Supreme Court on Monday The wives of John Smith and Dudley van Heerden are asking for their detention to be declared illegal

The application will also challenge the regulations made to govern detentions Naomi Smith and Ingrid van Heerden have submitted in legal papers that the Enabling Act does not allow for regulations which limit a detainee's access to legal representation, or for "rules which constitute such a fundamental inroad into the rights of a detainee"

Naomi Smith alleges the head of the town's Security Police, listed as a respondent with the Minister of Law and Order and Justice and the Commissioner of Police, previously threatened her husband and his partners with detention because of his annoyance at "constantly having to funish details about detainees to his firm".

● An application for the release of a Cape Town doctor, Hassan Mahomed, who was detained on June 16 while taking a gas stove to Crossroads refugees, has been postponed for oral evidence.

Three orders against assaults

11/7/86 WEEKLY M. 252

By CARMEL RICKARD, DURBAN

THREE urgent applications restraining police from assaulting teenagers being held under Emergency regulations have been granted over the last week by the Durban Supreme Court

At the first of the three applications, Justice John Didcott said if police assaulted a detainee it could never be held they acted in good faith. Therefore in spite of the indemnity clause in the Emergency regulations, the court was entitled to hear such applications

Didcott said he or one of the other Natal judges would visit the detainee involved in the application and take from him a sworn statement about what happened.

He said judges were already visiting detainees following a request by the Minister of Justice that they should do so and he saw no reason why during such a visit an affidavit should not be taken.

This decision by the judge will raise a new legal point, as Didcott asked to hear argument on the return date on the principle of whether the statement should become part of the record.

He said counsel for the Minister would have to argue on the issue without beforehand knowing the content of the statement

The applications were all brought by the Durban Legal Resources Centre In all three cases a district surgeon is to visit the detainee and perform a detailed medical examination. The report on this examination is to become part of the court record

Linda Mkhize brought two applications, one for each of his two teenage sons

He told the court when he visited them in Westville Prison the older boy, Madoda, was weeping and seemed very afraid

Madoda allegedly told his father he had been severely assaulted when he refused to "admit" to having made and thrown petrol bombs.

Mkhize said the worst form of assault described by his son was that police attached a gas mask to his head, completely cutting off his air supply He said this treatment made him feel he was dying, and was repeated "on many occasions"

His other son Hamilton claimed he was slapped repeatedly by police.

The third application was brought by Elizabeth Mkame on behalf of her 16-year-old schoolgirl granddaughter, Smyley

Mkame said when she visited Smyley in Westville Prison she found her underweight, crying and distraught She told Mkame she had been "severely beaten" by the police on the first two days of her detention and she feared for her future well-being

In each case a police officer was alleged to have been nearby during the visit, but appeared unconcerned by the allegations made by the detainees

Court battle over detained UDF couple

Own Correspondent

BLOEMFONTEIN — Two prominent members of the UDF in Kroonstad, detained since June 12, were this week at the centre of a legal attack on the state of emergency before a Full Bench of the Supreme Court here.

Legal counsel argued that Mr Denis Victor Bloem and his wife Edith, should be freed or at least entitled to have access to legal representation.

Counsel contended that the regulations issued by the State President on June 12 lapsed on June 26 because they had not been tabled in Parliament before the prescribed period of 14 days.

The application was brought by Mr Adam Hercules Bloem, Mr Denis Bloem's father, and Mrs Johanna Januarie, Mrs Bloem's mother.

HUMAN RIGHTS 'CURBED'

Cape Town advocate Mr H P Viljoen, appearing for the applicants, argued that it was a fundamental right that a detained person should have access to legal advice.

He said human rights were further curbed by the failure to table the regulations before Parliament as members could therefore not object to the measures.

Mr Viljoen also contended that the State President's power under the regulations was too wide.

Statements before the court said the couple, of Magerman Street, Brent Park, Kroonstad, had been detained shortly after midnight on June 12.

The couple have two children, Herculene (9) and Sammy (5) and rely on a shop they run in the area for their income.

The hearing is continuing before Mr Justice M T Steyn; Mr Justice J W Edeling and Mr Justice G A Hattingh.

11.7.86 Sowetan 252.

Court bid to have couple freed

ANOTHER application challenging state of emergency regulations was made in the Orange Free State Supreme Court yesterday in Bloemfontein.

The application was made by Mr Adam Hercules Bloem and Mrs Johanna Januarie Bloem, of Kroonstad, for the release of their son and daughter-in-law, Mr Dennis Victor Bloem and Mrs Edith Bloem, who were detained, purportedly in terms of section 3 (1) of the emergency regulations on June 12 and 13 respectively.

The application is being heard by Mr Justice M T Steyn, sitting with Mr Justice J W Edeling and Mr Justice G A Hattingh.

The respondents are the State President, the Government of the Republic of South Africa, the Minister of Law and Order, the Commissioner of Police, the Minister of Justice, the Officer Commanding Heuningspruit Police Station and the Commissioner of Prisons.

Mr and Mrs Bloem have applied for the release of their son and daughter-in-law from custody, alternatively, that the access to the detainees should not be limited and that they should be allowed to see their legal representatives, or that consideration should at least be given to applications for their legal representatives to see them. — Sapa.

Detainee parents ask for release in court

ABOUT 245 trade union leaders and officials are known to be in detention, says the Labour Monitoring Group (LMG).

Unionists accounted for about 10% of those known to be detained It said 2 324 workers and unionists had been detained since June 12 — Sapa.

ALTHOUGH the emergency regulations could not be attacked on the basis of unreasonableness, it could be done should the person or body exercising the power have acted in a non-bona fide manner

That was told to the Free State Supreme Court yesterday in an application for the release from detention of Dennis Victor Bloem and his wife Edith

The application was brougnt by Bloem's father, Adam Hercules Bloem, and Edith Bloem's mother, Johanna Januarie

H P Viljoen SC said an "unreasonableness" claim was not possible because of the extraordinarily wide powers conferred on the State President, but that a regulation was capable of being attacked on the non-bona fide basis, or that the legislature could never have contemplated that such a measure be contemplated

The application asks for the release of the Bloem couple, who were detained on June 12 and 13 respectively

Alternatively, it asks that they be allowed to see their legal representatives, or that consideration should at least be given to applications for their legal representatives to see them.

The matter is being heard by Mr Justice M T Steyn, Mr Justice J W Edeling and Mr Justice G A Hattingh

Viljoen, with C R Mailer, submitted that the failure to comply with Section 3(5) of the Public Safety Act in not tabling June 12's emergency regulations within 14 days in all three Houses of Parliament was fatal to the continued validity of the regulations — Sapa

sunrise news

Star 12/7/86

Urgent bid to have UDF couple freed fails in supreme court

BLOEMFONTEIN — Legal efforts to secure the release of a United Democratic Front detainee and his wife, by showing that the emergency regulations had lost their validity, failed here yesterday

Attempts to gain legal access to Mr Dennis Victor Bloem and his wife, Edith, also failed when judgment was reserved by the Free State Supreme Court after an urgent application was brought for the release of the couple who were detained a month ago

The application was brought by Mr Bloem's father, Mr Adam Hercules Bloem and Mrs Bloem's mother, Mrs Johanna Januarie

Defence advocate Mr H P Viljoen submitted that the emergency regulations had lost their validity because they were not tabled in all three Houses of Parliament within 14 days of promulgation as required by the Public Safety Act

The bureaucratic "sending from pillar to post" that the applicants had received at the hands of bureaucracy showed clearly that granting of legal access to detainees should not be at the discretion of functionaries, Mr Viljoen said

As long as access depended on the discretion of officials, the right to legal representation was being cut out

He said the applicants were correct in their submission that the regulations exceeded the powers given to the State President

Mr S A Celliers, SC, for the respondents, said the emergency regulations did not lapse if it was not possible to table them within 14 days

The announcement of a state of emergency without regulations to supplement or replace the country's law was meaningless

On the question of access to legal representatives, Mr Celliers said the background to the state of emergency indicated that limitations should be placed on the normal rights of legal representation

Legal representation was only limited and not excluded

He said Mr Dennis Bloem's case had been considered and refusal to allow access at present was reasonable and was communicated

In Mrs Bloem's case, there had not been a specific letter refusing access, but in papers before the court it was contended that the refusal was reasonable

Mr Celliers said the urgent application had been brought on principle for wide legal help on the regulations' validity The individual case was brought only to create locus standi and the facts of the case did not justify the legal aid being sought

sunrise news Star 12/7/86

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252

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13/7/80 CITYPR

Some stories on this page have been edited to comply with restrictions imposed by the state of emergency.

252

Bill of rights for KwaNatal?

CP Correspondent

THE Natal/KwaZulu "indaba" met yesterday to discuss a bill of rights to be included in the proposed new constitution for the area.

A number of earlier draft bills have already been discussed by the "indaba", said chairman Professor Desmond Clarence He said this was the fourth presentation of the issue and it was hoped this version would be accepted by everyone.

Natal PFP leader Ray Swart, whose party is supports the "indaba", said such a bill would be a real step forward in the proposed consitution for the area

He said many constitutions world wide had a similar bill of rights which he described as "pivotal to ensure the rights of individuals".

"It is a pity that South Africa has not had a bill of rights in all these years," he said.

It is believed that the issue over which there has been most disagreement so far, is the question of minority rights – which were to be entrenched in the bill of rights.

Police a meeting a

Arrest warrant issued for demonstrator

A Randburg magistrate yesterday issued an immediate warrant of arrest for Mr Neil Morrison, the publicity secretary of the Johannesburg Democratic Action Committee (Jodac).

Mr Morrison (30), of Muller Street, Yeoville, Johannesburg, failed to appear before the magistrate, Mr J W Marais He has been charged with entering a black area without a permit

The charge arises from Mr Morrison's arrest when 300 whites visited Alexandra on May 18 this year as part of the UDF's "Call to Whites" campaign He was served with a written notice preventing him from entering the township.

In calling for a warrant for Mr Morrison's arrest the prosecutor, Miss B Roodt, said she had been informed by the police that Mr Morrison had not complied with his bail conditions He had been reporting irregularly to Hillbrow police station and was supposed to report every day.

Mr Morrison's bail of R500 was provisionally estreated by Mr Marais

Three court bids to challenge emergency

By MONO BADELA

THREE separate court challenges have been made to have the state of emergency declared invalid.

The latest, involving the biggest non-parliamentary opposition movement in the country, the United Democratic Front, is taking State President P W Botha to the Port Elizabeth Supreme Court on Monday

In the application, which was filed yesterday, the UDF was cited as the first applicant and UDF secretary Mohammed Valli Moosa was cited as the second applicant

They seek to declare invalid and of no force and effect regulations 7 and 11 of the regulations promulgated in terms of the Public Safety Act 3 of 1953 – as contained in the Government Gazette of June 12, this year

They will also seek to declare invalid and of no force and effect orders made by the divisional commissioner of the Eastern Cape police, cited as the second respondent

The papers were served on Mr Botha, Eastern Cape divisional commisioner Brigadier Snetler, commissioner of the South African Police General Johan Coetzee, who is third respondent, and on Law and Order Minister Louis le Grange, cited as the fourth respondent

Earlier in the week, a top trade union, the Metal and Allied Workers' Union (Mawu) brought an application before the Durban Supreme Court for an order declaring the state of emergency null and void. The matter will now come before the full bench of the Natal division of the Supreme Court

In a separate development, three major unions, M[illegible]ercial, Catering and Allied [illegible]n of South Africa (CCAWUSA) and the giant National Union of Mineworkers (NUM) announced they would challenge in the Supreme Court government's ban on indoor meetings in the Johannesburg and Rodeport area

Lawyers of the Media Workers' Association of South Africa (MWASA) were preparing an applicaton to challenge the ban

The application seeks to declare that Brigadier Snetler is not entitled to make any orders, rules or by-laws, in terms of the Public Safety Act, or by the regulations framed by the State President

The application also seeks to declare that a meeting to be held by the UDF in the Rio Cinema, New Brighton on Tuesday next week is not a gathering prohibited by emergency regulations in force at present

The application was filed to the registrar of the Port Elizabeth Supreme Court and to the state attorney by the Johannesburg-based civil rights lawyer, Krish Naidoo

The divisional commissioner of police in the Eastern Cape, amongst other things, prohibited in the area the movement of persons and any gathering of the UDF on June 19 and July 1 On July 4 he turned down an application by a UDF lawyer to hold the planned meeting

Mr Moosa in his application contends that Regulation 7 is invalid in that it does not specify, or specifies inadequately, the persons to whom the emergency powers were delegated to

Mr Moosa also contends that regulation 11 was invalid and of no force and effect"

Triple challenge to wide police powers

By ALAN DUGGAN and DAVID JACKSON

THE Government's use of its state of emergency powers and the actions of the security forces have been challenged in three separate Supreme Court actions.

In Durban, a full bench of the Natal Supreme Court will tomorrow hear a resumed application by the Metal and Allied Workers' Union.

It seeks to nullify the emergency regulations on the grounds that there had been a failure to comply with the Public Safety Act requirement that the regulations be laid on the table of all three Houses of Parliament within 14 days of promulgation.

All actions taken by the security forces in terms of the emergency proclamation, the applicants argue, are thus null and void

And in Cape Town a crucial Supreme Court hearing begins on August 8 which may determine the truth behind allegations that security forces actively assisted the "witdoek" faction during the recent squatter battles near Cape Town.

Attacks

Legal sources in Cape Town say the result of the "Crossroads" trial could have far-reaching implications. Both sides are expected to call many witnesses.

The focus of the hearing is a temporary interdict granted on May 26 in the Supreme Court, Cape Town, restraining police, soldiers and witdoeke from participating in or permitting unlawful attacks on people or property in the KTC squatter camp.

A week earlier, the Nyanga Bush, Nyanga Extension and Portlands Cement squatter camps had been attacked and razed, leaving many dead and tens of thousands homeless

Working through the Legal Resources Centre in Cape Town, squatter leaders from the KTC community and three neighbouring camps applied for an urgent interdict on the grounds that the police and other security personnel had failed to prevent witdoek attacks or actively assisted the witdoeke — by attacking residents, burning their shacks and firing on people who attempted to fight back.

The six applicants filed 45 affidavits in support of their claim that both the police and Defence Force were involved in the destruction of the three camps — and that KTC was the next target.

Attorneys representing the squatter leaders presented evidence to support their claims

Objecting to the application, a sworn statement handed in on behalf of the respondents said an interdict would limit and seriously hamper the activities of the security forces.

The statement — by Colonel M G Mans of the SAP — stated that such an interdict could lead to the withdrawal of all security forces from the area. This, he asserted, would result in the collapse of law and order.

Failed

The judge found that sufficient evidence had been presented to justify the granting of an interim order. Acknowledging that the respondents had not had time to reply in full, he set a return date two weeks hence.

But in Bloemfontein, a bid to release a UDF detainee and his wife failed when judgment was reserved by the Free State Supreme Court.

An urgent application was brought for the release of Mr Dennis Bloem, and his wife Edith, on the grounds that the emergency regulations were not valid

The rights and wrongs of a Bill of Rights

By LAURENCE BOULLE

Deputy Dean of the School of Law, University of Natal, Durban, examines the Kwanatal Bill of Rights

BILLS of Rights, commonplace in modern Western constitutions, are now the centre part of the debate on the restructuring of the South African State

Although Bills of Rights usually entail legal control of the state and an active role for the courts in government, the emphasis on legality cannot disguise their *political* nature

All the historical Bills of Rights have emerged out of specific social and economic contexts which have determined their content and purpose

Thus a Bill of Rights must be understood and evaluated in the context not only of the social and economic conditions in which it operates but also the policy-making and administrative processes of government of which it is an instrinsic part

Partner

For if the judiciary can invalidate statutes and acts of government, then it becomes a partner, although a limited one, in policy-making and administration

The Bill of Rights and the courts limit the powers and competences of the political branches, assuming a necessary evil theory of government

While the constitution giveth, the Bill of Rights taketh away

Although Bills of Rights are common phenomena in the constitutions of the world, they have very different contents and consequences

They are also the subject of much criticism for placing more on offer than they can provide, for having the adverse consequences of legalism such as adversarial procedures and high costs of enforcement, and as serving to legitimise highly unequal social and economic orders

These differences of perspective (but also several similarities) are apparent in the Freedom Charter and the FCI's Business Charter

In the South African constitutional tradition the absence of a Bill of Rights has facilitated the State's monopolisation of power and the extensive deprivations of human rights which characterises the political, social and economic systems

The current human rights debate, in which academics, students, judges, political and community leaders have participated, takes place at probably the lowest point of human freedom in recent history

Yet, to the surprise of those who see political liberation coming about through a gradual accretion of civil rights, there is much opposition in this debate to the very notion of a Bill of Rights, at least for the present

Settlement

It is argued that in the light of the present discriminatory Statute Book a contemporary Bill would be so qualified as to have little real significance and that, in any case, because of its political nature, it should only be negotiated on simultaneously with broader constitutional deliberations and only be introduced once a political settlement has been reached

There is also an energetic debate about the content of a Bill of Rights and its best method of enforcement, namely through the regular courts, a constitutional court or a special tribunal

Thus while there is common concern about the parlous state of human rights in South Africa, there are widely differing views on ways to improve it

The Bill produced by the Natal/KwaZulu Indaba embodies many of the core principles found in contemporary Western constitutions

It provides for the equal protection of all before the law, due process in the criminal courts, protection from inhuman or degrading punishment, the right to life, bodily integrity and privacy, freedom of movement

It also provides for the right of free association, free expression and free assembly, the right to form and join trade unions, equal access to educational institutions, and the right to do non-military national service on the grounds of conscience

Norms

There are other non-enforceable norms, such as the principle that all human beings are born free and equal, that the widest protection and assistance should be afforded to the family, and that everyone should be able to practise her own religion and use his own language and participate in cultural activities

While most of these provisions place negative restrictions on the arms of the state there are innovative others designed positively to promote good government

All public authorities and officials in the province must follow rules of fundamental fairness in coming to their decisions and furnish reasons for their actions (This is an attempt to codify the standards which the courts impose on the administration, but only when statute allows, and then in a somewhat inconsistent fashion)

It is also provided that public meetings and records will be open to the public, subject to the needs of confidentially or security

All these rights and freedoms are made binding on the provincial authorities, and the courts can enforce them by striking down offending legislation, setting aside unconstitutional administrative action and making other appropriate orders

Against the background of South Africa's human rights record the enforcement of these rights and liberties would profoundly transform the lives of the majority of inhabitants in the province

But its real relevance will be determined by its legitimacy, the central government's treatment of the matter, and the actual ability of a KwaNatal to make good the Bill's promises

If the Bill of Rights had been drafted by a constitutional lawyer on the hill it would obviously have no direct significance for the political process

The fact that it was discussed and approved at a forum comprising representatives of different interest groups clearly enhances its process value

Advantages

Indeed, the fact that some conservative interests agreed to its terms shows the advantages of reasoned debate in the political process

However the fact that, inter alia, the two major forces in national politics, the National Party and ANC, were not full participants in the Indaba, deprives the Bill by definition of the legitimacy which it requires to be potentially significant

One of the stark realities of our constitutional politics is that piecemeal reforms at this critical stage can become a basis of conflict and not consensus

As far as Pretoria's attitude is concerned it will first have to permit full policy-making to take place at the regional level, a remote prospect if measured only by recent trends

However, the full flowering of the Bill would require further Government connivance For example, criminal justice is one of the matters over which the province would have no jurisdiction

And as so many of the personal, political and even social rights are related to this matter it would at least be necessary for central government officials in the province to be subject to the local constitution

Again, given the State's customary wide margin of safety in security matters, this prospect does not appear highly feasible

The provincial government's ability to deliver the goods will depend to a large degree on the legislative and executive processes, which have yet to be agreed on

However, the political nature of the Bill, referred to above, already has implications for future policy-making and administration

Here, given the predations caused in the past by the Land Acts and Group Areas Act, as well as the gross inequalities in wealth and services between blacks and whites, attention will inevitably be given to the property clause

Questions

It is provided that everyone has the right to own property in the province and cannot be deprived thereof without due process of law and fair compensation

Furthermore, "land and natural resources shall not be expropriated except for the common good and in accordance with laws providing for equitable compensation".

Similar provisions are to be found in the constitutions of many Western countries The question, however, is whether they are realistic in the context of the social and economic conditions of KwaNatal

Will the new government have the resources to implement reforms needed to meet the equality challenges in its Bill of Rights, or are these to be just paper rhetoric?

Will the government be able to meet the needs of its constituency, and if not how viable will the constitutional system be? In other words are Western property rights appropriate for an African Bill of Rights?

Many of the norms contained in the Indaba Bill may be incorporated in the constitutional settlement which succeeds the eventual negotiations in this country

However, they may have a different hue and complexion, they will be supplemented and balanced by other basic norms, and they will be inextricably related to the wider political process

A huge hug and a bottle of champagne for Beauty Buthelezi outside court this week after her release on bail – to meet a delighted aunt Ernet Gumby

THE EMERGENCY: A CHALLENGE

'Free our men'

CP Correspondent

THE detention of two King William's Town lawyers under the emergency regulations will be challenged in the Grahamstown Supreme Court on Monday

The application is being brought on behalf of attorneys John Smith and Dudley van Heerden, partners in the firm Smith, Tabata and Van Heerden

It is being brought by their wives, Naomi Smith and Ingrid van Heerden, who are asking that their detention be declared unlawful – alternatively that they be given access to their lawyers

The respondents include Law and Order Minister Louis le Grange, Justice Minister Kobie Coetsee and the Commissioners of Police and Prisons.

In affidavits, Smith said the regulation authorising the detention was proclaimed when the state of emergency was not yet in existence

Smith also details what she calls the "personal animosity" of the head of the King William's Town security police towards the firm

She alleges that the head of the security police – listed as the third respondent – threatened her husband and his partners with detention in February because of his annoyance at "constantly having to furnish details of detainees to the firm"

"The hostile attitude of the third respondent – consistent with the threat made to John – has been evident in the consistent refusal of the third respondent and his juniors to help in the most elementary enquiry concerning the fate of John and Dudley after their intial arrest on June 14 1986"

Smith also says that no member of the force can be of the opinion that the detention of the two men was necessary for the maintenance of public order, as is required by the provisions

Rather, she could only conclude that they had been detained because of their professional involvement as representatives of detainees and others being held by the police, she said This was supported by what she knew of "their strong commitment against violence, and their religious and academic backgrounds"

The application was made on July 2, but was postponed to Monday by consent to allow the respondents to file their affidavits

THE EMERGENCY: A CHALLENGE

Two get court's protection

CP Correspondent

IN LESS than a week, two teenage detainees in Durban have been given protection by the Supreme Court against the police

They are Madoda Mkhize and Barbara Smyley Mkame

Although the emergency regulations make it difficult to bring any action against any member of the security forces – Justice Didcott made it quite clear during the hearing of the first interdict last Friday, that when police commit an act such as assault, they cannot try to claim indemnity and the court may intervene

The cases were brought by Durban's Legal Resources Centre and in each case a doctor has been asked to visit the teenager in question, make a detailed physical examination and then submit a report back to the court

On Tuesday Diakonia worker Elizabeth Mkame brought an application for the police not to assault or unlawfully interrogate her grandaughter, 16-year-old schoolgirl Smyley Mkame

Mkame said she was told by a lawyer there was nothing she could do to protect her child "because of the emergency" but then she read in *City Press* about the application brought last Friday by the father of two detainees

Linda Phineas Mkhize applied for protection for his son Madoda last Friday, and on Wednesday this week for similar protection for his son Hamilton

He told the judge that he saw his two sons together when he visited them at Westville Prison

Madoda complained that the police severely assaulted him when he refused to admit to having stored, made and thrown petrol bombs He said they put a gas mask on his face and completely cut off his supply of air He said he felt he was going to die each time this happened

This week Mkhize told the judge that his other son Hamilton complained of police assaults, saying he had been slapped repeatedly by the police

Last week Didcott granted the order for Madoda, but said there was no evidence that Hamilton had been assaulted

Didcott had ruled that a judge should take a statement from Madoda

He granted a temporary order barring police from assaulting or unlawfully interrogating Madoda

And he also asked a district surgeon to examine Madoda thoroughly and report back to the court on July 16

★ Didcott has directed lawyers for the Mkhize family to argue the principle, on Wednesday, of whether Madoda's statement should be added to the record

★ See Page 7

Evening Post 14/7/86

200 await their fate on SA's death row

Post Correspondent

JOHANNESBURG — Sixty-seven male convicts have been executed in Pretoria Central Prison this year while about 200 others are waiting execution

This makes a monthly average of about nine people executed for the first seven months of 1986

According to a spokesman for the Department of Justice, 49 of them were black, 15 coloured, two white and one an Indian

On June 11, the number of executions stood at 44 By June 24 this year, the number of executed people was increased by seven to 58 Before the end of the year the total is likely to be more than last year's 137

The 193 men now awaiting death comprise 128 blacks, 53 coloureds, 12 whites and of the six women, three are Asians and two coloured and one black

A spokesman for the Department of Justice, asked how many prisoners were expected to be executed shortly, said her department was unable to furnish particulars of this nature

This puts SA — in terms of its population and in relation with most Western nations which still have capital punishment — at a very high execution rate, but lower than some Third World countries

According to Amnesty International, 1 125 documented executions were recorded worldwide in 1985, but they were "only part of a larger unknown total" It said countries still executing people in 1985 included SA, with 137 confirmed executions for the year, 22 people more than the previous year

However the Minister of Law and Order, Mr louis Le Grange, was reported as saying in Parliament that 136 people were hanged in the country last year They comprised 96 blacks, 35 coloureds and five whites

Full bench will hear UDF emergency plea

By CHRIS RENNIE
Court Reporter

THE United Democratic Front made an urgent application to the Port Elizabeth Supreme Court today asking that certain emergency regulations be declared invalid and that a UDF meeting scheduled for tomorrow in the Rio Cinema be allowed

The matter was transferred to Grahamstown where it will be heard as a matter of urgency by a full bench

The UDF also asked that the police and security forces be interdicted from making the meeting inaccessible to the public, interfering with its holding or prosecuting anyone who attended.

Mr Justice Jones said it was policy in this division for such matters to be heard by the full bench

He pointed out that the "sting in the tail" of the urgency had also been removed because it would be impossible to hold the meeting tomorrow night as the UDF required at least five days to organise it

He granted a request for the case to be heard by a full bench in Grahamstown

The original application was brought by UDF secretary Mr Mohammed Moosa, against the State President, the Divisional Commissioner of Police in the Eastern Cape, the Commissioner of Police and the Minister of Law and Order

It submitted that the UDF was a legal organisation, a front to which a number of civic, student, womens and youth organisations were affiliated

On June 30 an executive meeting of the UDF in Johannesburg decided to hold a meeting in PE to inform the community of the effects of the state of emergency on the UDF and its afilliates

Attention was drawn to a regulation framed under the Public Safety Act and in particular to regulations promulgated under notice R109 in the Government Gazette on June 12, and orders issued by the Divisional Commissioner, East Cape on June 19 and July 1 perporting *inter alia* to "prohibit the movement of people and any gathering of the UDF"

Mr Moosa wrote to the Commissioner and Divisional Commissioner of Police for permission to hold a meting This was refused

He submitted that Regulation 7 in Proclamation R109 was invalid because the Act empowered the State President to make regulations necessary for public safety, maintaining public order or ending an emergency

Section 7 provided for the commissioner or any person authorised by him to issue orders He argued the section was invalid because it did not specify the person to whom the powers might be delegated.

He asked for a declarity order to enable the UDF to exercise its lawful right of assembly

The Divisional Commissioner, East Cape, Brigadier E S Schnetler, denied in a replying affidavit that the regulations were invalid

He said the State President's competency to authorise persons to act for him was not restricted by the Act

He pointed out that Section 5 (b) of the Act stipulated that no court was competent to inquire into or pronounce judgment on the validity of any regulation issued by the State President under the Act

The police regarded the meeting as illegal and had a duty to enforce the regulations

Mr J Browde, SC, and Mr A M Omar, instructed by K Naidoo and Co, appeared for the UDF Mr J H Conradie, SC, and Mr L E Leach, instructed by the Deputy State Attorney, appeared for the respondents

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'Jumble of words' confuses judge

DURBAN — A Natal judge yesterday said he could not make "head or tail" of the regulations governing the state of emergency

Mr Justice J M Didcott was speaking in the Supreme Court at an urgent application for the state of emergency, imposed on June 12, to be declared invalid and for the emergency regulations to be lifted and all emergency detainees freed.

The application, being heard by a full bench, has been brought against the State President, Mr P W Botha, and the Government by the Metal and Allied Workers' Union with the wife of one of its detained members, Mrs Dudu Mchunu.

Mr Ismail Mahomed SC, for the union, told a packed courtroom that because the emergency announcement had not been tabled in all three Houses of Parliament within 14 days, as required by the Public Safety Act of 1953, it had become invalid from June 26

He said the State President was empowered to promulgate emergency regulations only after a state of emergency had been declared

But Mr Botha had simultaneously declared the emergency and promulgated the emergency regulations with effect from midnight on June 11, and had thus acted ultra vires

On the wording of the regulations, Mr Mahomed said much of it, particularly that relating to "subversive" activities, was so vague as to be "meaningless"

Mr Justice Didcott agreed, saying he had tried in vain to understand the "jumble of words" in the regulations

"I cannot make head or tail of the regulations," he said Whoever formulated them had written "a lot of nonsense"

Mr Justice Didcott asked whether a Jehovah Witness minister would be committing an offence if he told his congregation not to perform military service

8 unrest accused fail to appear

Eight Alexandra youngsters — of a group of 12 charged with public violence — failed to appear in the Johannesburg Magistrate's Court yesterday

The other four — Mr Maphala Tsepo (18) and three 16-year-olds — attended.

The 18 were arrested on December 23 in connection with a charge of public violence and alternative charges of arson, theft and damage to property

The charges relate to the stoning of the Alexandra Information Centre, siphoning diesel and petrol out of vehicles and the stoning and burning of Mr Edward Moikonyane's home.

DETENTIONS

Their legal representative, Mr P M Kennedy, asked the magistrate, Mr S Fryer, to postpone the warrants of arrest for the eight who did not appear.

"The investigating officer has confirmed that many of the accused have been detained in terms of the emergency regulations, but he could not say who. Up to now we, as their legal representatives, could not ascertain where they were," said Mr Kennedy.

The warrants were held over provisionally

The four accused who came to court were warned to appear again on August 29.

The three youths were released into the custody of their parents

NM. 2 15/7/86

1986

Emergency Day 33

Because of the emergency regulations, the free flow of information relating to unrest is severely restricted. This newspaper will do its utmost to keep readers informed.

Order invalid, Court is told

Court Reporter

AN URGENT application by the Metal and Allied Workers' Union seeking an order declaring the state of emergency and the emergency regulations of no force and effect and the continued detention of people under the regulations unlawful, began in the Supreme Court, Durban, yesterday before a Full Bench of three judges.

The application has been bought against the State President, Mr P W Botha and the Government.

It is being heard by Mr Justice Kumleben, Mr Justice Didcott and Mr Justice Thirion

The application has been bought by the union together with the wife of one of its detained members Mrs Dudu Doreen Mchunu

The union is seeking an order declaring the state of emergency to be without cause and effect from June 26 and it is also seeking the release of everyone detained in terms of the emergency regulations

The union also seeks an order declaring that the paragraph in the emergency regulations purporting to contain a definition of a 'subversive statement' is of no cause and effect in law

Mr I Mahomed S C, appearing for the union, argued that in terms of the Public Safety Act the emergency announcement should have been tabled in all three Houses of Parliament within 14 days of June 11

He claimed it had become invalid from June 26

The hearing continues today

DV youth acquitted of public violence

Dispatch Reporter

EAST LONDON — A 17-year-old Duncan Village youth was acquitted on a charge of public violence when he appeared in the regional court here yesterday.

The youth, who pleaded not guilty, was alleged to have stoned a South African Police bus which was patrolling in the C Section area of Duncan Village on May 4 last year.

The youth told the court he had not stoned any vehicle, and was arrested and assaulted by police after he was taken from the front of the house in which he was staying.

He said he had been helping his mother cut meat, when they heard people screaming outside, so he went to have a look and saw police firing teargas into a crowd.

When he turned around to go into the house, he was grabbed by a policeman.

Sergeant A Strydom said he saw the youth hurling stones at the bus. There were about 30 people standing near the road

He said he ran after the youth for about 60 paces before he grabbed him by the collar.

A cut above the youth's eye was the result of a scuffle during which the youth tried to stab him with a broken bottle, Sergeant Strydom said.

When asked by the magistrate, Mr A Kotze, how he recognised the youth, Sergeant Strydom said he recognised him by the clothes he was wearing at the time — a yellow T-shirt and brown trousers

He could not say for sure that the youth he saw on that day and the one before court were the same person, Sergeant Strydom said.

Mr Kotze, acquitting the youth, said the state had not been able to prove the identity of the youth beyond reasonable doubt

Mr R Esterhuyse was the prosecutor

Police barred from beating detainee

A DURBAN judge yesterday granted a temporary interdict restraining the police from assaulting or unlawfully interrogating a fifteen-year-old girl who was allegedly detained after she was found wearing a June 16 T-shirt.

Mr Justice Didcott granted the interim interdict after an urgent application by the girl's grandmother and guardian Mrs Elizabeth Mkame

The Minister of Law and Order, the Commissioner of Police in Durban and the Commanding Officer of Westville Prison must show cause on August 5 why they should not be interdicted and restrained from assaulting Miss Barbara Smyley Mkame or interrogating her in any way other than that prescribed and permitted by law

Affidavit

Mr Chris Nicholson of the Legal Resources Centre who appeared for Mrs Mkame said while the respondents were not consenting to the order they did not oppose it

In her affidavit, Mrs Mkame said that she and her granddaughter had attended a church service in Claremont on June 16 After the service she had gone home and her grand-daughter left with some school friends

About ten minutes after she got home some of her grand-daughter's friends had rushed in to tell her that Barbara had been detained

She said they told her that members of the South African Defence Force had asked her to open up her jacket to see what T-shirt she was wearing

Mrs Mkame said her grand-daughter had been wearing a June 16 T-shirt.

She had been allowed to visit her on July 1 at the prison where she had spoken to her through a glass screen in the company of police women.

"Smyley was very distressed, upset and was crying when I saw her

"She said she was asked where she had got the T-shirt from and whether she was a member of "comrades" She said that in two days of her detention she had been severely beaten. She said these experiences had been very painful "

Mrs Mkame said she was too concerned for her grand-daughter's safety to question her about the beating in the presence of the policewomen

Bus. DAY 15/7/86

Emergency application

AN URGENT application asking that the state of emergency be nullified began before a full bench in the Supreme Court, Durban, yesterday.

The Metal and Allied Workers' Union, and the wife of one of its detained members, Dudu Mchunu, brought the application against President P W Botha and government.

The union is seeking an order declaring the state of emergency, imposed from midnight on June 11, to be without cause and effect from June 26 on the grounds that the emergency announcement was irregular.

The union is also seeking the release of everyone detained in terms of the emergency regulations, including six of its own members.

Ismail Mahomed, SC, appearing for Mawu, argued yesterday before a packed courtroom that in terms of the Public Safety Act of 1953 the emergency announcement should have been tabled in all three houses of Parliament within 14 days of June 11.

It had therefore become invalid from June 26

He also argued that the relevant legislation empowered the State President to promulgate emergency regulations only after a state of emergency had been declared.

Mahomed said that because the state of emergency and the security regulations pertaining to the emergency had been announced simultaneously, the regulations had been void from the outset

One of the three judges hearing the application, Mr Justice J M Didcott, asked Mahomed what the courts could do if the order were granted and the State President reimposed the state of emergency

Mahomed said he would deal with the question at a later stage

The application is being heard by Mr Justice M E Kumleben, Judge Didcott and Mr Justice P W Thirion. — Sapa

CHALLENGE TO STATE OF EMERGENCY

AN urgent application asking that the state of emergency be nullified began before a Full Bench in the Supreme Court in Durban yesterday.

SOWETAN Reporter

The Metal and Allied Workers' Union (Mawu), together with the wife of one of its detained members, Mrs Dudu Mchunu, has brought the application against the State President, Mr P W Botha, and the Government

The union is seeking an order declaring the state of emergency, imposed from midnight on June 11, to be without cause and effect from June 26 on the grounds that the emergency announcement was irregular

The union is also seeking the release of everyone detained in terms of the emergency regulations, including six of its own members.

Mr Ismail Mahomed SC, appearing for Mawu, argued today before a packed courtroom that in terms of the Public Safety Act of 1953 the emergency announcement should have been tabled in all three Houses of Parliament within 14 days of June 11 It had therefore become invalid from June 26.

Void

He also argued that the relevant legislation empowered the State President to promulgate emergency regulations only after a state of emergency had been declared

Mr Mahomed said that because the state of emergency and the security regulations pertaining to the emergency had been announced simultaneously, the regulations had been void from the outset

One of the three judges hearing the application, Mr Justice Didcott, asked Mr Mahomed what the courts could do if the order were granted and the State President re-imposed the state of emergency

Mr Mahomed said he would deal with the question at a later stage

The application is being heard by Mr Justice N E Kumleben, Mr Justice Didcott and Mr Justice P W Thirion

Emergency laws nonsense, says judge

15/7/86. B27 252

Own Correspondent

DURBAN — A Supreme Court judge said yesterday that he could not make "head nor tail" of the regulations relating to the present state of emergency.

Mr Justice Didcott was speaking in the Supreme Court during the hearing of an urgent application for the state of emergency, imposed on June 12, to be declared invalid and for the emergency regulations to be lifted and all emergency detainees freed

The application, which is being heard by a Full Bench, has been brought against the State President, Mr Botha, and the Government by the Metal and Allied Workers' Union (Mawu) together with the wife of one of its detained members, Mrs Dudu Mchunu

INVALID FROM JUNE 26

Mr Ismail Mahomed SC, appearing for the union, argued before a packed courtroom that because the emergency announcement had not been tabled in all three Houses of Parliament within 14 days, as required by the Public Safety Act of 1953, it had become invalid from June 26

He also argued that the State President was empowered to promulgate emergency regulations only after a state of emergency had been declared

President Botha had simultaneously declared the emergency and promulgated the emergency regulations with effect from midnight on June 11 and had therefore acted *ultra vires.*

Turning to the wording of the regulations, Mr Mahomed said much of it, particularly that relating to "subversive" activities, was so vague as to be meaningless.

'JUMBLE OF WORDS'

Mr Justice Didcott agreed, saying he had tried in vain to understand the "jumble of words" contained in the regulations

"I cannot make head nor tail of the regulations," he said Whoever had formulated them had written a lot of nonsense

During legal argument on the clauses outlawing incitement to civil disobedience, Mr Justice Didcott asked whether a Jehovah's Witness minister would be committing an offence if he told his congregation not to perform military service

"Can this be regarded as incitement to undermine morale?

"Nobody can be sure any more when he is committing an offence and when he is not"

The hearing continues today.

Mr Mahomed is assisted by Mr L Gering. Mr J Combrink SC is appearing for the State The application is being heard by Mr Justice Didcott, Mr Justice Kumleben and Mr Justice Thirion

Full bench to hear UDF application

Dispatch Correspondent

PORT ELIZABETH — An application to the Port Elizabeth Supreme Court to set aside emergency regulations banning meetings of various organisations was transferred yesterday to the Grahamstown Supreme Court for a full bench hearing

The orders, which are being contested by the United Democratic Front (UDF), are applicable in various magisterial districts

Yesterday's application was brought by a UDF secretary, Mr Mohammed Valli Moosa, and cited the respondents as the State President, Mr P W Botha, the Divisional Commissioner of Police in the Eastern Cape, Brigadier Ernest Stephen Schnetler, the Commissioner of Police, General Johan Coetzee, and the Minster of Law and Order, Mr Louis le Grange.

The urgent application,heard by Mr Justice J Jones, referred to a meeting the UDF had planned to hold in New Brighton tonight

Mr Moosa said on July 4, he had sought written permission from Brig Schnetler and Mr Le Grange to hold the meeting The same day Brig Schnetler had refused his request and he was still awaiting a reply from Mr Le Grange

According to the papers before the court, the applicants sought

The declaration of two regulations promulgated in terms of the Public Safety Act as being invalid;

To have orders made by Brig Schnetler on June 19 and July 1 prohibiting the movement of people and any gathering of the UDF, invalidated,

That Brig Schnetler was not entitled to make any orders in terms of the Public Safety Act or regulations framed by the State President under Proclamation R109 of the Act;

An order that the meeting was not prohibited by any valid orders presently in force, and

An order interdicting any member of the South African Police from rendering the meeting inaccessible to anyone.

Mr Moosa challenged the validity of Regulation 7 in Proclamation R109 of 1986, on the grounds that it did not specify the persons to whom the powers might be delegated

In a replying affidavit, Brig Schnetler said he was properly authorised to issue the orders as was clear from an affidavit by General Coetzee

He said the State President's competency to authorise persons to act for him was not curtailed by the Act

No date was given for the Grahamstown hearing

Mawu seeks order on state of emergency

DD 15/7/86

252

Dispatch Correspondent

DURBAN — An urgent application by the Metal and Allied Workers' Union (Mawu) seeking an order declaring the state of emergency and the emergency regulations of no force and effect and the continued detention of people under the regulations unlawful began in the Supreme Court here yesterday.

The application has been bought against the State President, Mr P. W Botha and the government

It is being heard by Mr Justice Kumleben, Mr Justice Didcott and Mr Justice Thirion

The application has been bought by the union together with the wife of one of its detained members, Mrs Dudu Doreen Mchunu

The union is seeking an order declaring the state of emergency to be without cause and effect from June 26 and it is also seeking the release of everyone detained in terms of the emergency regulations including six of its own members

The union also seeks an order declaring that the paragraph in the emergency regulations purporting to contain a definition of a "subversive statement" is of no cause and effect in law

The court was packed when proceedings began.

Mr I Mahomed SC appearing for the union argued that in terms of the Public Safety Act the emergency announcement should have been tabled in all three Houses of Parliament within 14 days of June 11

He claimed it had become invalid from June 26

Mr Mahomed also said that the relevant legislation empowered the State President to promulgate emergency regulations only after a state of emergency had been declared

He added that because the state of emergency and the security regulations pertaining to the emergency had been announced simultaneously, the regulations had been void from the outset

The hearing continues today.

'Jumble of words' confuses judge

DURBAN — A Natal judge yesterday said he could not make "head or tail" of the regulations governing the state of emergency

Mr Justice J M Didcott was speaking in the Supreme Court at an urgent application for the state of emergency, imposed on June 12, to be declared invalid and for the emergency regulations to be lifted and all emergency detainees freed

The application, being heard by a full bench, has been brought against the State President, Mr P W Botha, and the Government by the Metal and Allied Workers' Union with the wife of one of its detained members, Mrs Dudu Mchunu

Mr Ismail Mahomed SC, for the union, told a packed courtroom that because the emergency announcement had not been tabled in all three Houses of Parliament within 14 days, as required by the Public Safety Act of 1953, it had become invalid from June 26

He said the State President was empowered to promulgate emergency regulations only after a state of emergency had been declared

But Mr Botha had simultaneously declared the emergency and promulgated the emergency regulations with effect from midnight on June 11, and had thus acted ultra vires

On the wording of the regulations, Mr Mahomed said much of it, particularly that relating to "subversive" activities, was so vague as to be "meaningless"

Mr Justice Didcott agreed, saying he had tried in vain to understand the "jumble of words" in the regulations

"I cannot make head or tail of the regulations," he said Whoever formulated them had written "a lot of nonsense"

Mr Justice Didcott asked whether a Jehovah Witness minister would be committing an offence if he told his congregation not to perform military service

No defect in emergency, court told

16/7/86 STAR

252

Own Correspondent

DURBAN — The State denied in the Durban Supreme Court yesterday that there had been any irregularity in the way in which regulations relating to the present state of emergency were announced

The Metal and Allied Workers' Union (Mawu) has launched an urgent application against President Botha and the Government asking that the state of emergency be nullified, that the emergency regulations be declared invalid, and that all emergency detainees be freed

Mr Ismail Mahomed, SC, for the union, has argued that the law requires the State President to declare a state of emergency before any emergency regulations may be promulagated

He has submitted to a Full Bench that the State President acted "ultra vires" by simultaneously announcing the emergency and promulgating emergency regulations, both with effect from midnight on June 11

Mr Jan Combrink, SC, for the State, argued yesterday that while both the emergency and the regulations had appeared in the same Government Gazette, the order of the items in the Gazette indicated that the emergency announcement had come first

Precedence 'obvious'

Mr Justice Kumleben asked how one could tell which item took precedence

Mr Combrink replied that it was obvious from the numerical order of the items

Turning to the union's argument that the state of emergency had become invalid on June 26 as the announcement had not been tabled in all three Houses of Parliament within 14 days, he said Paliament's adjournment until August 18 meant the announcement could be tabled when Parliament reconvened

Mr Justice Didcott suggested the Government's Bureau for Information might itself breach the emergency regulations if an item in its briefings prompted anyone outside South Africa to disinvest.

Political report

The judge said during legal argument that the vagueness of the emergency regulations effectively curtailed "just about any political description or political report on South Africa".

On the clauses outlawing the publication of statements that could lead to sanctions and disinvestment, he said the Bureau for Information could be regarded as having breached the measures if any of its reports on "what's the buzzword . unrest-related incidents?" caused someone overseas to say "That's the last straw," and disinvest

Mr Mahomed said that under the emergency "nobody knows exactly what he can do and what he can't do."

On the clauses outlawing incitement to boycott action, Mr Mahomed said a person who, for example, encouraged others not to buy cigarettes on health grounds could be considered to be acting unlawfully

Judgment is expected today

Judge criticises emergency 'jumble'

Court Reporter

A DURBAN judge has described the state of emergency regulations as a 'jumble of words' and has said that whoever formulated them wrote a 'lot of nonsense'.

Mr Justice Didcott made the comments during the hearing of an urgent application bought by the Metal and Allied Workers' Union (Mawu) against President Botha and the Government for an order declaring the state of emergency and emergency regulations of no force and effect and the continued detention of people under the regulations unlawful.

Judgment is expected to be given by a Full Bench in the Supreme Court, Durban, this afternoon.

The application is being heard by Mr Justice Kumleben, Mr Justice Didcott and Mr Justice Thirion.

The hearing of the application started on Monday and has involved lengthy legal argument by Mr I Mahomed SC, for the applicants, and Mr J Combrink SC, for the State President.

'Vague'

While listening to Mr Mahomed's argument, Mr Justice Didcott said he was unable to make 'head or tail' of the regulations concerning the emergency.

Speaking on the wording of the regulations, Mr Mahomed said much of it, particularly the wording relating to subversive activities, was so vague as to be meaningless.

Mr Justice Didcott agreed. He added that he had tried in vain to understand the 'jumble of words' in the regulations.

He said that whoever had formulated them had written 'a lot of nonsense'.

Mr Justice Didcott also asked whether a Jehovah's Witness minister would be committing an offence if he told his congregation not to do military service.

He posed the question of whether this could be regarded as an incitement to undermine morale.

'Nobody can be sure any more when he is committing an offence and when he is not.'

The Judge also said a Cabinet minister had argued recently that the country was prepared for sanctions and that the sooner they were imposed, the better.

He asked what would happen to a Left-winger who made a similar statement.

The courtroom has been crowded with spectators and Press benches have overflowed.

The application has been brought by the union together with Mrs Dudu Doreen Mchunu, the wife of one of its detained members.

The union is also seeking the release of everyone detained in terms of the emergency regulations, including six of its own members.

It is also seeking an order declaring that the paragraph in the emergency regulations purporting to contain a definition of a 'subversive statement' is of no cause and effect in law.

Order

Yesterday, Mr Combrink told the Court there had been no irregularity in the way regulations relating to the state of emergency had been announced.

Mr Combrink said that while the emergency proclamation and the regulations had appeared in the same Government Gazette, the order of the items in the gazette showed the emergency announcement had come first.

Replying to an argument by the applicants that the state of emergency had become invalid on June 26 as the announcement had not been tabled in all three Houses of Parliament within 14 days, Mr Combrink said the adjournment of Parliament to August 18 meant the announcement could be tabled when Parliament reconvened.

Mr Mahomed has said the State President was empowered to promulgate emergency regulations only after a state of emergency had been declared.

He said the President had simultaneously declared the emergency and promulgated the emergency regulations with effect from midnight on June 11, and because of this, he had acted ultra vires.

CLAMPS QUERIED

Can't make head or tail of them — judge

Sowetan 16/07/86

SOWETAN Correspondent

A SUPREME Court judge yesterday said that he could not make "head or tail" of the regulations relating to the present state of emergency.

Mr Justice Didcott was speaking in the Supreme Court in Durban, during the hearing of an urgent application for the state of emergency, imposed on June 12, to be declared invalid and for the emergency regulations to be lifted and all emergency detainees freed

The application, which is being heard by a Full Bench, has been brought against the State President, Mr P W Botha, and the Government by the Metal and Allied Workers' Union (Mawu), together with the wife of one of its detained members, Mrs Dudu Mchunu

Mr Ismail Mahomed, appearing for Mawu, has argued that the State President acted *ultra vires* by announcing the state of emergency and simultaneously promulgating emergency regulations, both with effect from June 11 The regulations should therefore be declared invalid, Mr Mohamed has argued

Yesterday the State denied in the court that there had been any irregularity in the way in which regulations relating to the present state of emergency were announced

Argued

Mr Jan Combrink SC, appearing for the State, argued yesterday before a packed courtroom that while both the emergency and the regulations had appeared in the same *Government Gazette,* the order of the items in the *Gazette* indicated that the emergency announcement had come first

Mr Justice Kumleben asked how one could tell which item took precedence

Mr Combrink replied that it was "obvious" from the numerical order of the item.

Turning to the union's argument that the state of emergency had become invalid on June 26 as the announcement had not been tabled in all three Houses of Parliament within 12 days, he said Parliament's adjournment until August

To Page ➤

Bomb accused wins landmark ruling

WEEKLY MAIL REPORTER, Durban

THE only woman among 10 alleged Durban bombers was freed on bail this week after a landmark judgement setting aside certificates issued by Natal's Attorney General prohibiting bail.

Dudu Buthelezi, who is due to have her first child later this month, was freed on bail of R6 000.

Among conditions consented to by the prosecution and defence, she has to surrender any travel documents and report twice daily at the Umlazi police station She may not leave her home betwen 9pm and 6am, and she may not have any contact with the African National Congress, the United Democratic Front or the Medical School Students' Representative Council at Natal University where she was employed as a secretary.

Buthelezi faces charges of terrorism and possession of banned literature. The state alleges she received "elementary" military training on three occasions and gave transport and accommodation to ANC members.

The other accused face charges under the Arms and Ammunition Act as well as the Internal Security Act.

They are alleged to have been involved in 13 bomb blasts in and around Durban over the past few years, including explosions at the home of House of Delegates leader Amichand Rajbansi and at a Bluff Girls' High School.

The application for the Attorney General's certificates to be declared unlawful was argued before a full bench of the Supreme Court by Ismail Mahomed SC, who said they were issued without permitting the 10 to make representations if they wished to do so, setting out their objections to the certificates and stating both their circumstances and reasons for wanting bail.

During argument for the state, prosecutor Barry Schonefeldt said there were conflicting judgements on the question of the certificates and a clear ruling on the matter would be welcomed.

Justice John Didcott, one of the three judges who heard the matter, asked Schonefeldt whether he did not think it "very bold of the Attorney General to issue certificates when the Judge President of Natal had already said there could be no occasion on which their use could be justified?"

Schonefeldt conceded the principle of allowing the other side to put its point of view was "sacred" and added it was "the duty of the courts to safeguard this right".

Didcott referred to a decision by the Attorney General in Natal last year when certificates were issued prohibiting the court from hearing bail applications on behalf of 16 treason trialists. After these certificates had been set aside the security of the state had not suffered when bail was ultimately allowed; the state had not even opposed bail.

In the event, the trial had not even run its full course when the prosecution had been stopped by the state.

The senior judge, Justice Kumleben, said reasons for the decision to throw out the certificates would be given later. He emphasised the judges were not ruling on the question of bail; they were only concerned with the validity of the certificates.

The implication of the judgement cleared the way for bail applications to be heard in court, should the defence wish to bring such applications.

Lawyers appearing for the 10 said they were still taking instruction on whether to apply for bail for the other nine accused.

Judgment hailed as victory for the rule of law

Court rejects key emergency clauses

252

BUS DAY 17/7/86

THE rejection by the Durban Supreme Court yesterday of certain key clauses in the state of emergency regulations has been hailed as a victory for the rule of law.

A blow was also struck for the rights of detainees when Mr Justice Didcott found the clause denying them access to lawyers "improper"

In a precedent ruling, he and Mr Justices Thirion and Kumbledon described the clauses thrown out as "unintelligible" and "hopelessly uncertain".

Progressive Federal Party (PFP) spokesman Helen Suzman slammed the government's incompetence, saying it

Business Day Reporters

was to be hoped that "any self-respecting minister whose regulations have been shown to be so lacking in validity would resign

"It's just too bad that the media have had to labour under these restrictions, that have now been declared null and void, over all these weeks."

Suzman added that the ruling affected one of the basic civil rights — the public's right to know.

Lawyers said the judgment was a substantial step forward for media freedom and a reaffirmation of the public's right to criticise government despite the emergency.

The judges declared void all or parts of five of the six definitions of "subversive statements" on grounds of vagueness.

However, they rejected the application by the Metal and Allied Workers Union (Mawu) for the entire state of emergency to be declared illegal on procedural grounds.

Mr Justice Didcott accepted the State's argument that Parliament had recessed before the 14 days in which the

● To Page 2

BUS DAY 17/7/86

Victory for the rule of law

● From Page 1

regulations should have been tabled and that they could be presented when the session resumes on August 18.

Emergency powers still in force are detention without charge, curfews, sealing off of areas and the power to shut down publications

He said only one of the six definitions was precise enough to be considered lawful — the one forbidding incitement of people to participate in unlawful strikes, boycotts, processions, civil disobedience or to oppose compulsory military service

Mr Justice Didcott said the clause barring any statement advancing the object of any unlawful organisation was found to be "hopelessly uncertain", while the one banning statements engendering hostility between one person or group and another was considered "unintelligible"

He also ruled against a clause prohibiting statements that would tend to weaken public confidence in government's ability to maintain the public order or end the emergency

Mr Justice Didcott found fault with certain phrases in other clauses

On the provision forbidding statements calling for disinvestment, sanctions or foreign action against SA, he said disinvestment and sanctions were reasonably clear but "I do not know what 'foreign action' is What is action, what is foreign? The words 'foreign action' must go"

The judges approved the clause against inciting people to resist or oppose government in connection with the emergency, but ordered the removal of a clause about incitement against "the administration of justice".

A spokesman for the State President, P W Botha, said last night he had "no comment", while Bureau for Information chief Leon Mellet said the bureau had taken "note" of it

Mellet said "The bureau is advising the media to study the judgment carefully, particularly with regard to its implications for reporting during the state of emergency

Landmark court ruling on emergency

Lawyers will push to see 700 detainees

17/7/86 STAR

Staff Reporters

In the wake of the landmark ruling by the Natal Supreme Court yesterday, applications will be made within the next few days to visit at least 700 of the thousands of people believed to be detained under the emergency laws.

The panel of three judges rejected important clauses in the emergency regulations.

This has been welcomed by lawyers, opposition politicians and human rights groups as an important victory for the rule of law

Attorney Mr Peter Harris of Johannesburg, whose firm instructed counsel in the application, said it was acting for 400 detainees

"Telexes will be sent to Pretoria today applying for attorneys to visit all of them"

Another prominant human rights lawyer, Mrs Priscilla Jana, said she would take similar steps later this week to secure visits to about 300 detainees represented by her firm

She said a fresh challenge to the emergency regulations was likely to be launched in the Transvaal this week, centring on the detained editor of *The New Nation*, Mr Zwelakhe Sisulu

A Johannesburg lawyer said the court's findings would give the media some degree of certainty, but that "it would be foolhardy to believe the tight control of the media has been loosened"

He welcomed the court's decision to uphold the right of detainees to have acces to legal representation

Spokesmen for the Metal and Allied Workers' Union (Mawu), which brought the case to court, and the Congress of SA Trade Unions (Cosatu), one of the chief targets of emergency actions, were not available for comment this morning

Mr John Allen, national organiser for the Southern African Society of Journalists (SASJ), said the judgment should be a clear indication to the Government that attempts to suppress basic democratic freedoms would be hopeless in the long term

The national chairman of Lawyers for Human Rights, Mr Jules Browde, said the judgment had removed important obstacles for the media — newspapers had a clearer idea of what they could publish because several "unintelligible" defintions of the term subversive had been rejected by the court

Mr Browde said the court's ruling applied particularly to Natal, but similar actions could be brought in other provinces

The Natal decision would be "strongly persuasive" in other courts.

A spokesman for the Detainees' Parents Support Committee welcomed the decision and said

3

the judgment was "a sad reflection on our law-makers"

A spokesman for Law and Order Minister Mr Louis le Grange said the Minister was "grateful that a Full Bench of the Natal Supreme Court has ruled so completely in the Government's favour"

The Minister had, however, "taken note of those faults which have been scrapped by the Bench"

"We will decide later whether to appeal against the scrapping of these clauses or to reformulate them," he said

The Bureau for Information said it had "taken note" of the judgment It warned the media to study the judgment carefully before reporting anything under the emergency

Mr Harris highlighted the fact that although the court had ruled as valid a clause against inciting people to resist or oppose the Government, Mr Justice Didcott had qualified this by saying opposition should not be read as mere criticism, but as resistance.

"Mr Justice Didcott reaffirmed 'the right of the public to vehemently criticise the Government in spite of the state of emergency'," said Mr Harris.

A professor of Constitutional Law at Unisa, Professor Marinus Wiechers, said the court had effectively upheld the principle of the rule of law

"It has said that the courts can never accept that there is an existing state of affairs where normal laws do not apply," he said

● See Page 4

Law expert hails Natal judgment

17/7/86 Star

252

By Hannes de Wet

The Natal Supreme Court's rejection yesterday of key clauses in state of emergency regulations was a "remarkable activist judgment", an expert in constitutional law said today

"It confirmed that the judiciary in South Africa is prepared to lean backwards to look after individual rights — despite the fact that we have no Bill of Rights," Professor Dion Basson, an expert in constitutional law at the University of Pretoria, told *The Star*

Professor Basson said not even English courts would go to such lengths to meet the rights of the individual.

The three judges on the Natal Bench upheld the legality of the state of emergency, but rejected several clauses concerning subversive statements and detainees' rights of access to lawyers.

Professor Basson said: "The Government will now probably simply replace them with new, clearer clauses which cannot be rejected by the court on the basis that they are too vague.

"Had the Durban Bench ruled that the state of emergency was illegal, the Government could simply have issued new regulations this morning. The only condition would have been that these regulations be ratified by Parliament at the next session."

The constitution did not allow the juduciary to rule on the content of any law There were only technical loopholes — on procedural matters and the clarity of clauses in the law.

"The series of judgments on state of emergency clauses we had in the past few weeks indicate that the courts were going all-out to apply these loopholes.

"Similar court actions on the emergency regulations and judgments in favour of the individual, where possible, can be expected in the future," Professor Basson said

'Vague' definitions in emergency regulations are scrapped

PW acted beyond his powers, judges rule

17/7/86 STAR 252

Own Correspondent

DURBAN — President Botha had acted beyond his power in denying emergency detainees access to lawyers, a Full Bench of the Supreme Court ruled yesterday.

In a marathon two-hour sitting before a jam-packed courtroom, the judges ruled that parts of the emergency regulations forbidding "subversive statements" and legal access to detainees were invalid.

An urgent application had been made by the Metal and Allied Workers' Union (Mawu) and the wife of one of its members, Mrs Dudu Mchunu, to have the state of emergency nullified, the emergency regulations lifted and detainees freed.

Mr Justice Didcott, Mr Justice Kumleben and Mr Justice Thirion upheld the validity of the state of emergency.

However, they ruled that six clauses or parts of clauses in the regulations were invalid, either for being too vague or because President Botha had acted beyond his power.

Mr Justice Didcott said regulation 1.8 (a), which forbade statements promoting "any object of any organisation which has been declared to be an unlawful organisation" was "hopelessly uncertain" and had no ascertainable meaning.

On regulation 1.8 (c), which outlawed statements inciting anyone to oppose the Government or any of its officials "in connection with any measure adopted in terms of any of these regulations or in connection with any other measure relating to the safety of the public or the maintenance of public order or in connection with the administration of justice", the judge said President Botha was not empowered to make regulations relating to the administration of justice.

"If I say to someone: 'Don't obey that sub-poena', am I not inciting that person to resist the official serving it?"

Another example was that of a man telling his wife not to allow a police officer without a search warrant into their house. The man could be regarded as having incited another to oppose a Government official in connection with the administration of justice.

It was ruled that the words "... or in the administration of justice" be deleted.

On regulation 1.8 (d), which forbade statements "engendering or aggravating feelings of hostility in the public or any section of the public or any person or category of persons towards any section of the public or person or category of persons", the judge said the clause was "unintelligible" as it stood.

"It is quite imperative to sever the clause," he said.

Remain in force

On regulation 1.8 (e), the judge said the part of the clause that outlawed statements "weakening or undermining the confidence of the public or any section of the public in the termination of the state of emergency" was too vague.

"I have no idea what it means."

The rest of the clause, about endangering public safety, remained in force.

On regulation 1.8 (f), which outlawed statements "encouraging or promoting disinvestment or the application of sanctions or foreign action against the Republic", the judge said he knew what disinvestment and sanctions meant.

"But I don't know what 'foreign action against the Republic' means."

Those words "must go", he said.

On regulation 3.10 (a) and (b), which forbade anyone except a Government official from having access to or information about emergency detainees without ministerial permission, the judge asked "Is the State President empowered to say a detainee may not see a lawyer about any matter?

A detainee's legal representative might need to see him urgently about, for example, paying his child's school fees or any other matter unconnected with the state of emergency or the maintenance of public order.

It was ruled that President Botha had acted ultra vires.

The right to be allowed access to a lawyer had been recognised by the Appellate Division in the case of Mandela v Minister of Prisons 1983.

The State President had no power to go beyond this, the judge said.

He rejected the union's argument that the emergency regulations as a whole were invalid.

Mr Ismail Mahomed SC, for the union, had argued that the law required a state of emergency to be declared before emergency regulations were promulgated.

Mr Justice Didcott said the Bench was prepared to assume in favour of the applicants that the emergency declaration and the promulgation of regulations occurred simultaneously.

The judge said. "To my mind, when two things are done simultaneously, one has been done when the other is done."

On the union's argument that the state of emergency was without effect from June 26 as the announcement had not been tabled in all three chambers of Parliament within 14 days, he said the crux of the matter was whether or not Parliament could be considered to be in "ordinary session" during the adjournment between sittings.

The Bench was willing to assume that the required procedure had not been complied with.

The judge said his view was that this procedure had been conceived of and was enforceable by "no one but Members of Parliament".

President Botha and the Government, represented by Mr Jan Combrink SC, were ordered to pay half of the costs incurred by the union and Mrs Mchunu in bringing the application.

Judgment 'binding only in Natal'

Post Reporter

YESTERDAY'S Durban Supreme Court judgment declaring void sections of the emergency regulations, is not binding on other areas, says the head of the Department of Public Law at the University of Port Elizabeth, Professor Andries Cilliers.

He pointed out that judgments handed down in a particular law division were not binding on the rest of the country, even if made by a full Bench.

He said "The only judgment that is applicable to all law courts at all levels throughout South Africa, is one handed down by the Appeal Court"

Prof Cilliers was reinforcing the view expressed by Professor Dennis Davis, associate professor of law at the University of Cape Town, who said that the judgment would have "persuasive authority" in provinces other than Natal, but not the force of law.

Professor Davis said that because most definitions of "subversive statements" had been declared invalid in Natal, this meant that newspapers and organisations were freer there to make and publish statements than elsewhere in the country.

Although Prof Davis had no doubt that the definitions of "subversive statements" were too vague to be valid in law, the Cape Supreme Court was not bound by the Natal judgment

Had the court declared the emergency declaration invalid, the Government would probably have declared another state of emergency

It was now up to the Appeal Court or Government to clarify the matter countrywide

● The Leader of the Opposition, Mr Colin Eglin, has welcomed the court's view on the right of detainees to see their lawyers

He said although the ruling did not appear to change the substance of the emergency regulations, it pointed to "administrative bungling" by a Government "eager to grab power".

The Bureau for Information announced that it had taken note of the judgment, but advised the media to study it carefully A spokesman for the State President, Mr P W Botha, said in Pretoria last night he had no comment — Sapa

EMERGENCY JUDGMENT

252

Legality of emergency upheld

DURBAN — A three-judge panel yesterday upheld the legality of the month-old national state of emergency, although it voided some clauses that contained vague definitions of banned subversive statements.

However, the Natal Supreme Court rejected an argument by the Metal and Allied Workers Union (Mawu) that the entire state of emergency was illegal on procedural grounds.

Mr Justice John Didcott read his opinion to a packed courtroom for two hours, leaving most aspects of the decree in force.

Emergency powers still in effect are detention without charge, curfews, sealing off areas and the shutting down of publications that violate the now-limited ban on printing "subversive statements."

The clauses the court objected to became void immediately. But both sides can appeal.

The mostly-black Metal and Allied Workers Union of 30 000 members contended that the emergency regulations were void because the State President, P W Botha, announced them simultaneously with the emergency decree, rather than proclaiming the decree first.

The government contended that the decree was issued first because it appeared first in order in the Government Gazette, even though the regulations appeared in the same issue.

Precise

Mr Justice Didcott said that just one of the six clauses defining a subversive statement was precise enough to be considered lawful.

That clause forbids incitement of people to participate in unlawful strikes, boycotts, processions, civil disobedience or to oppose compulsory military service.

He said two of the clauses were far too broad to be understandable.

One bars any statement that advances the object of any unlawful organisation.

"I consider that paragraph (a) is hopelessly uncertain, and that no ascertainable meaning can be derived from it."

The other provision considered too broad prohibited any statement that engenders hostility between one person or group and another. "It is unintelligible," he said.

In the three other clauses the judge found fault with certain phrases.

Must go

On the provision forbidding statements calling for disinvestment, sanctions or foreign action against South Africa, Mr Justice Didcott said disinvestment and sanctions were reasonably clear but "I do not know what 'foreign action' is. What is action, what is foreign? The words 'foreign action' must go."

He also ruled against a clause prohibiting statements that would tend to weaken public confidence in the government's ability to maintain the public order or end the emergency.

Finally, he approved the clause against inciting people to resist or oppose the government in connection with the emergency, but ordered a clause about incitement against "the administration of justice" to be removed.

Mr Justice Didcott also said a ban on detainees' access to lawyers was improper and that such access must be granted.

Independent groups have estimated that 3 000 people have been detained under the emergency. The government has given no figures, but has said more than 700 will be charged.

Mawu had also contended that the emergency was illegal because Parliament was not informed within 14 days of the June 12 proclamation.

The jude accepted the state's argument that Parliament had recessed before the 14 days were up and that the regulations could still be presented to the chambers when the session resumes on August 18.

He noted that the court had no authority to rule against Acts of Parliament but did have the power to decide whether regulations issued under those Acts were specific and reasonable.

Government has said the emergency decree and its prohibitions against "subversive" statements, outdoor gatherings, and reporting of police and army actions, has been a success, cutting down the numbers of incidents, people killed and damage done in the past four weeks.

□ The Bureau for Information in Pretoria was unable to say yesterday whether any official statement would be released in reaction to the judgment.

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Definitions of subversion declared void

Court upholds state of emergency

Dispatch Correspondent

DURBAN — The Supreme Court has rejected an application by the Metal and Allied Workers Union (Mawu) that the state of emergency be declared illegal.

However, a full bench of the court declared void, on the grounds of vagueness all — or sec tions of — five of the six definitions of "subversive statements" banned under the state of emer gency

Mr Justice Didcott said only one of the six clauses defining a sub versive statement was precise enough to be considered lawful

That clause forbids incitement of people to participate in unlawful strikes, boycotts, processions, civil disobedience or to oppose compulsory military service

He said two of the clauses were too broad to be understandable.

One clause bars any statement that advances the object of any unlawful organisation

"I consider that para graph (a) is hopelessly uncertain, and that no ascertainable meaning can be derived from it," Mr Justice Didcott said

The other provision prohibited any state ment that engendered hostility between one person or group and another

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In the provision forbidding statements call ing for disinvestment, sanctions or foreign ac tion against South Africa, Mr Justice Did cott said disinvestment and sanctions were reasonably clear, but 'What is action, what is foreign? The words 'foreign action' must go"

The union had con tended that the emergency was illegal because Parliament was not informed within 14 days of the proclamation

Mr Justice Didcott accepted the state's argument that Parliament had recessed before the 14 days were up and that the regulations could still be presented to the chambers when the session resumes

He ruled against a clause prohibiting statements that would weaken public confi dence in the govern ment's ability to main tain public order or end the emergency

Mr Justice Didcott approved the clause against inciting people to resist or oppose the government, but ordered a clause about incitement against "the administration of jus tice" to be removed

The judge said that a ban on detainees' access to lawyers was im proper, and that such access must be granted on a blanket basis

Refused by the court was a claim that the proclamation which de fined the terms of the regulations be set aside

It turned down an application for the release of six of the union's members held under emergency regulations

Referring to the section dealing with the creation of hostility, Mr Justice Discott said this went beyond the State President s authority be cause he had no power to punish people for creating ordinary feelings of hostility

Referring to the clause regarding the promotion of any object of any organisation which had been de clared an unlawful orga nisation, the judge said if it was meant to have no limit then it had strayed beyond the State President's power

The full bench con sisted of Mr Justice Kumleben, Mr Justice Didcott and Mr Justice Thirion

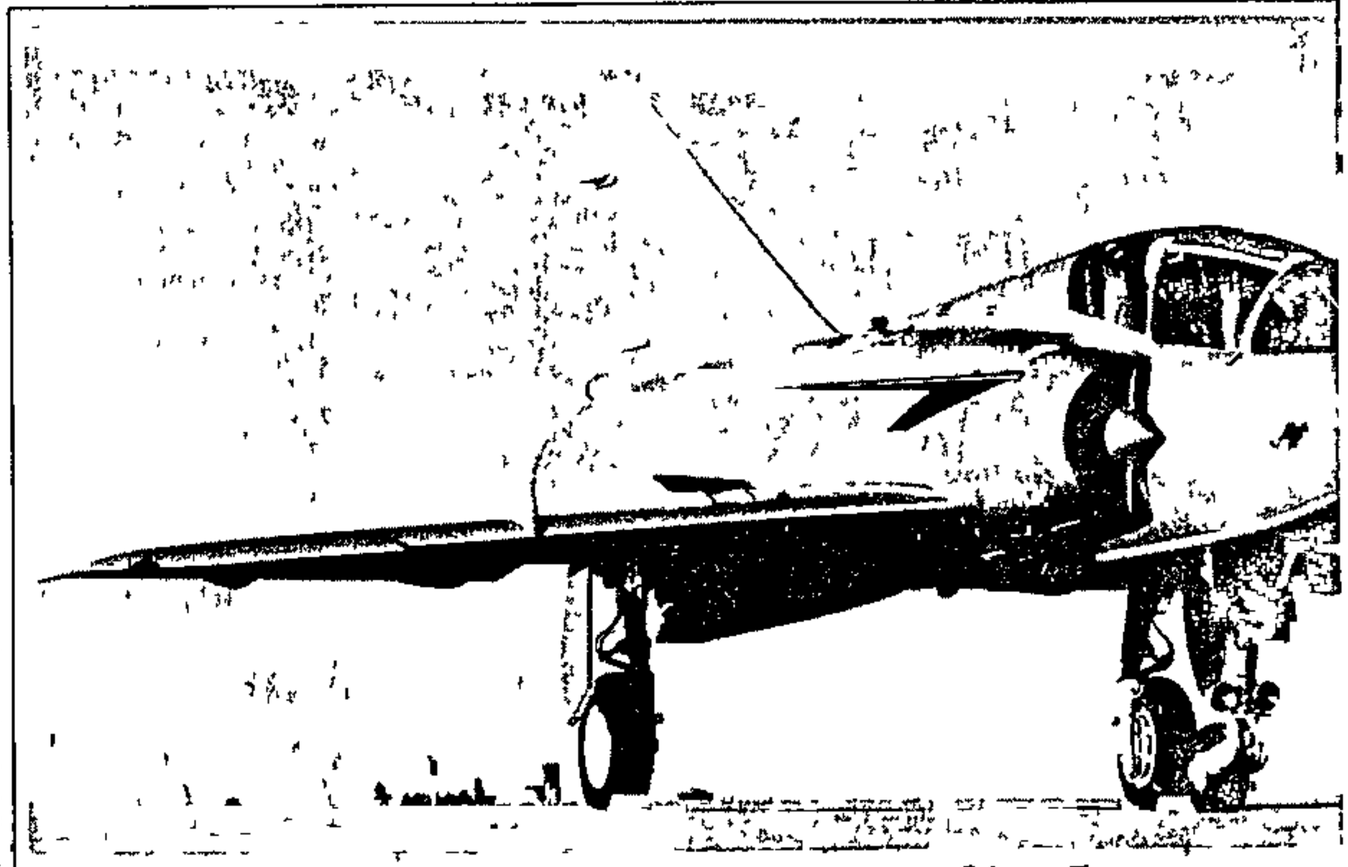
The respondents were ordered to pay half of Mawu's costs

● The office of the Minister of Law and Order, Mr Louis le Grange, said in a statement after the judgment "The minister is grateful the court decided so overwhelmingly in favour of the state"

A spokesman in the office of the State President declined to com ment

The director of Internal Media, Mr Leon Mellet, said "The Bureau (for Information) is ad vising the media to study the judgment care fully particularly with regard to its implications for reporting during the emergency"

The Leader of the Opposition, Mr Colin Eglin, said the ruling did not change the substance of the emergency regu lations but it pointed to "administrative bungling" by a "power hungry government"



Earp: SA's new fighter a match for MiGs

By ANDRE JORDAAN
Daily Dispatch Military Correspondent

EAST LONDON — South Africa has transformed the air force's ageing Mirage 3 aircraft into a sophisticated fighter which the Minister of Defence, General Mag nus Malan, describes as being "at the forefront of technology

The new fighter, to be known as the Cheetah, would be a match for sophisticated Soviet MiG 23 aircraft in Angola, the chief of the air force, Lieutenant Gen eral D J Earp, told mili tary correspondents at the Atlas Aircraft Cor poration, where the Cheetah was developed

Its handling and all-South African weaponry could in, many respects, be compared to the best in the world

Extensive changes meant the aircraft could no longer be regarded as a Mirage 3, General Earp said "As part of the Atlas modernisation programme, consider able changes have been made to the airframe and avionics systems The result is that the SAAF will have at its disposal another very formidable fighter air craft"

Obvious changes from the French-made Mirage 3, which was first taken into service in 1963, are a longer nose, to accom modate more avionics, and canards — addit ional small wings mounted high on the fu selage to improve the aerodynamic character istics

Atlas says the Cheetah programme includes new performance levels, the replacement of many structural compo nents and the upgrading of the on-board flight systems About 50 per cent of the original air craft is reconstructed and equipped with "the latest navigational and weapon systems"

The general manager of Atlas, Mr G Ward, said test flying had al most been completed The development had taken a number of years and Atlas had found that, since the 1977 arms embargo, South African expertise in areas such as electronics and com puters had been able to keep abreast of the air force's aviation needs

General Earp said it would take a few months before the Cheetah had gone through air force commissioning pro cedures to become fully operational It had a likely operational life of 10 to 15 years but further upgrades might be poss ible in the future

He described the two seater aircraft s role as essentially a fighter aircraft — with all that implies It has other capabilities beyond air to air, but I would not like to be more specific"

The second seat could be used, "among other things", for training pur poses General Earp said

Asked to what degree South Africa was now self sufficient in its fighter aircraft needs, he said a considerable amount of the Cheetah's content was local

Referring to other re cent developments like the Alpha prototype combat helicopter, an advanced gas turbine engine and remote con trolled reconnaissance aircraft, he said "Every time we do a little more, we learn a little more Atlas is now reaching the point where its only restrictions are time and money"

General Earp would not give an indication of the cost of the Cheetah programme "But like all modern aviation it does cost a great deal of money

General Malan said the Cheetah heralded a new era of self suffi ciency and enhanced op erational capacity for the air force "It is in deed a modern sophis ticated and highly effec tive trump card in our military arsenal," he said

It was well known that there had been a build up of weapons on South Africa s borders "All South Africans must agree that this jump in our defensive capability can only add to a greater peace of mind and a warmer sense of security"

South Africa had em barked on the Cheetah project primarily for its own defence "We do not seek confrontation with anyone But in choosing to defend ourselves we have to do it with the best means at our dis posal"

The upgrading project made good business sense, as had been proved elsewhere 'A modern day fighter air craft costs more than R70 million The conver sion of existing aircraft therefore remains the most cost effective ap proach," General Malan said

More reports page 9

DD 11/7/86 (252)

Another judge, more staff for E Cape courts

Dispatch Correspondent

PORT ELIZABETH — Another judge and additional staff are to be alloted to courts in the Eastern Cape following a dramatic increase in their workload, the Minister of Justice, Mr Kobie Coetsee, said yesterday

The expansion is to be on a short-term basis

The announcement followed a meeting between the minister, senior officials of the Department of Justice in Pretoria and senior officials, top management and executives involved with the administration of justice in the Eastern Cape

Similiar discussions with the head of the East Cape Division of the Supreme Court, Mr Justice D Cloete, are expected to take place soon

Apart from an assurance of immediate staff increases and the appointment of Advocate Marius de Klerk to the bench of the East Cape Division from September, Mr Coetsee said it was hoped further short-term additions to both the Supreme and lower courts could be made

He said the "extraordinary circumstances" the country was experiencing had placed a particularly heavy load on the courts

In the Eastern Cape's regional and magistrate's courts the workload was reported to have increased by a third

A good percentage of this work fell into the hands of the Supreme Court and its work load had also increased drastically, he said, but felt the increase had not reached "crisis proportions"

Mr Coetsee said "the short-term arrangements" would last for as long as there was political upheaval in the country

He could not say how many people would be alloted as a result of the expansion in the East Cape Division

Senior administration of justice officials in the Eastern Cape had for some time been pushing for general reforms in the courts, Mr Coetsee said

The present politicial unrest had prompted further cries for assistance

According to the Attorney-General of the Eastern Cape, Dr J. A. van S d'Oliviera, who attended yesterday's meeting, the main problem in keeping up with the number of prepared cases, particularly unrest-related cases, was the shortage of courts and lack of people involved in the legal profession, particularly judges and advocates

Mr Coetsee said a further purpose of the meeting was to emphasise the Department of Justice's independence regarding other law enforcing bodies

He said law enforcement and the dispensing of justice had not been discussed

ity of the emergency regulations themselves is in dispute, have made SA's courtrooms a central arena for challenges to the State of Emergency

Last week's Rand Supreme Court order for the release from emergency detention of TV sound man Theophilus Mashiani (*Current affairs* July 11) was followed within days by another in the Cape Supreme Court, which resulted in the release of Sister Clare Harkin, a nun of the Dominican Order

In both cases it was found that the arresting officer had insufficient grounds for believing the detentions were "necessary for the maintenance of public order, or the safety of the public or that person himself, or for the termination of the State of Emergency."

In the Cape Supreme Court, Mr Justice Robin Marais said that the power given by emergency regulations to members of a force to arrest and detain without warrant were "not unfettered" He said he wished to emphasise that a member of a force should apply his mind not to whether an arrest was *desirable* but to whether it was *necessary* for the purposes set out in the regulations

Meanwhile, the Free State Supreme Court last week reserved judgment after an application for the release of alleged Kroonstad United Democratic Front activists Dennis Bloem and his wife Edith

Court argument

In this case the grounds for the application were more far-reaching Counsel for the applicants' — parents of the detainees — argued that the emergency regulations had lost their validity when they had not been tabled in all three houses of parliament within 14 days of their promulgation, as was required by the Public Safety Act

Counsel for the respondents — who include the State President and government of SA, the Minister of Law and Order, the Commissioner of Police, the Minister of Justice, the Officer Commanding Heunings-pruit Police Station, and the Commissioner of Prisons — disputed this contention

As the *FM* went to press, a similar case was being argued before a full bench of the Natal Supreme Court The Metal and Allied Workers' Union (Mawu) has applied for an order declaring the State of Emergency and the emergency regulations of no force and effect, and the continued detention of people under the regulations, unlawful The application has been brought against the State President and the government

One aspect of the applicants' argument is the same as that used in the Bloemfontein case Counsel for the applicants has also said the relevant legislation empowered the State President to promulgate emergency regulations only *after* a State of Emergency had been declared Because the State of Emergency and the regulations pertaining to it had been announced simultaneously, the regulations had been void from the outset, he argued Mawu also seeks an order declaring that the paragraph in the emergency regulations purporting to contain a definition of a "subversive statement" is vague and of no cause and effect in law.

☐ In the week to Tuesday, the Bureau for Information reported 17 deaths, taking the total number of fatalities since the emergency was declared to 132 And Police Commissioner Johann Coetzee announced the arrest of five alleged African National Congress "members and collaborators" ■

STATE OF EMERGENCY 252

The courts ponder

Two separate Supreme Court orders for the release of emergency detainees last week, and two more pending cases where the legal-

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18/7/86 · STAR

Govt unmoved by court's decision on emergency

By Sue Leeman and Kym Hamilton,
Pretoria Bureau

The Government has weathered a week in which the onslaught against its emergency powers reached a peak — but it remains convinced that it has chosen the right course for South Africa.

"The status quo remains" is the message from government sources after a major challenge in the Natal Supreme Court which altered certain definitions in the emergency regulations and entrenched the right of detainees to see their lawyers

Government spokesmen say the state of emergency could continue for many months despite repeated assertions by the authorities that law and order have been restored

The Natal court's refusal to overturn the emergency has been hailed by the Government as a victory

The Bureau for Information has been particularly firm on the matter with bureau chief Mr Dave Steward saying the judgment did not "really have much of a practical effect".

When a transcription of the oral judgment had been received the authorities would decide if any action should be taken, Mr Steward said yesterday. But he refused to be drawn on whether the definition of a subversive statement would be rewritten.

He conceded that the court had changed the definition but warned that speculation in the media up to now had been precipitate and misleading

"The main elements of the definition were left intact," he said

Mr Steward said the Government did not regard the decisions as a "landmark" or as an example that the country was returning to the rule of law.

"Our courts have always been independent," he said.

The bureau has maintained repeatedly that the security forces have everything well in hand and that the number of daily unrest incidents has been sharply reduced.

But the number of unrest deaths rose by 19 to 157 this week and there were several outbreaks of violence in areas such as kwaNdebele.

A spokesman for the Minister of Law and Order, Mr Louis le Grange, said the Minister was delighted that the Natal Bench "has ruled so completely in the Government's favour".

But he made little reference to the fact that five of the six definitions of "subversive" in the emergency regulations were thrown out on the grounds of vagueness It appears that the Government will not appeal this point — although it may reword the rejected definitions

Nevertheless, the ruling by the Natal triumvirate of judges opened some doors for those most deeply affected by the state of emergency

After the judges' decision that detainees must be allowed access to lawyers, applications are flooding in for attorneys to visit their clients

This, according to legal experts, has entrenched an important principle

Several detainees were released this week, among them prominent Pretoria medical practitioner and soccer boss Dr David Itsweng

There are now plans to try to secure the court's release of the editor of the *New Nation* newspaper, Mr Zwelakhe Sisulu, at the same time again challenging the emergency.

In another significant move, the courts have restrained police from assaulting a 15-year-old girl in detention in Natal She was allegedly picked up for wearing a June 16 T-shirt

The challenge to the state of emergency in the Natal Supreme Court was launched by the Metal and Allied Workers' Union (Mawu) which contended that the emergency was illegal because it was not tabled in all three Houses of Parliament Other procedural objections were also raised

Unlawful to detain him under emergency — wife claims

SET DOCTOR FREE COURT

18/07/86 Sowetan 327 252

RULES

A PRETORIA Supreme Court judge on Wednesday night ruled that the detention of Mamelodi medical practitioner, Dr David Motsiri Itsweng, held under emergency regulations, was unlawful.

Mr Acting Justice Roux ordered the respondent, Mr Louis le Grange, Minister of Law and Order and the officer commanding at the Moot police station, to immediately release Dr Itsweng (40) following a successful urgent application brought by his wife on Wednesday Both respon-

SOWETAN Reporter

dents challenged the application

Mrs Pamela Sibongile Itsweng, a teacher at Lehlabile High School in Mamelodi, submitted in affidavits that her husband was initially held under the Internal Security Act and that it was now unlawful to detain him under the emergency regulations

"I have never seen or been told of any notice from the first respondent authorising the extension of the detention of David beyond the original 14-day period," Mrs Itsweng said

She also submitted that her husband, who is also director of Sundowns Football Club "is presently subject to incarceration and deprivation of his liberty and can never be afforded redress at a later stage for the grave and continuing damage he is obviously suffering"

The court heard that the couple were awakened by a loud knock on the door at about 2am on June 12 Mrs Itsweng said she opened the door while her husband stood near by

She added "a plain clothes policeman informed me that he was Captain Brand of the security branch At this stage, David was already next to me at the door

"Brand informed us that he had come to arrest David under Section 50 of the Internal Security

To Page 2

Doctor must be freed'

From Page 1

Act I inquired why he was arresting David, to which he replied simply that it was for public violence. I asked what use the circumstances relating to the public violence were to whch the policeman simply said 'your husband knows all about this'."

Mrs Itsweng submitted that although her husband opposed the policy of apartheid "as enacted and carried out in South Africa," he was not affiliated to any political organisations

Mr Acting Justice Roux declared that the detention of Dr Itsweng was unlawful and ordered that he be released forthwith. The judge also ordered Mr le Grange to pay the costs

Mr M C Goldblood SC, assisted by Mr John Suttner appeared for Mrs Itsweng.

July 18, 1986 Soweten

Despite ruling on state of emergency

GOVT STILL HAS LOTS OF POWER

THE Government still retains enormous powers in the current state of emergency despite significant amendments made by a Natal court on Wednesday.

Despite the ruling which gives lawyers access to detainees and narrows the widesweeping definition of a subversive act, the Government, at this stage, is not intending to bring further regulations to overrule the court.

The powers to prevent the large scale detentions and reporting on police action in the emergency and incidents of unrest, were never individually considered by the court and remain firmly in force.

But in terms of the ruling people will be able to criticise the Government more freely and the Press will be able to report the criticism.

The court ruling has been welcomed by the Progressive Federal Party law and order spokesman, Mrs Helen Suzman, as yet "another pointer to the incompetence of the Government and a considerable triumph for the rule of law"

SOWETAN Correspondent

Legal opinion was that criticism of the state of emergency, which appeared to have been ruled out by the wide definition of a subversive statement, was now clearly legal

Claims by Minister of Law and Order, Mr Louis le Grange, that the court had ruled "overwhelmingly in favour of the State" were rejected by legal spokesmen yesterday

Content

The court had not been asked to rule on the content of the regulations but on the procedure in implementing the regulations

The court had not been asked to endorse the regulations and had not done so

Legal men, who could not be named for professional reasons, were of the opinion that the case had been built up beyond the questions that had been before the court

The Government was misinterpreting the position to incorrectly claim a victory.

Mr Dave Steward, director of the Bureau for Information, yesterday said: "I am not aware of any move by the Government at this stage to bring out any further regulations or amendments in connection with the state of emergency"

Government spokesmen were claiming yesterday that the emergency powers had not been limited in any real way

"Only the definition and not regulations have been altered"

Dealing with the five of the six clauses in the definition of a "subversive act" which were either materially altered or scrapped by the full bench of the court they claimed

- The first section of the definition thrown out by the court which dealt with the promotion of an unlawful organisation was covered by the Internal Security Act

This was accepted by legal sources but they pointed out that the law was more narrowly and clearly defined;

- Section B of the definition which prevented incitement to strike, support a boycott, take part in an unlawful demonstration, take part in an act of civil disobedience or undermine compulsory military service remained,

Clearer

- Section C they agreed had been more clearly defined as to what incitement against the state of emergency and criticism of the Government entailed. They claimed they were in favour of this significant, clearer definition;
- The scrapping of Part D which prevents anyone "engendering or aggravating feelings of hostility" drew no specific comment from Government sources but was covered by the general statement that greater definition was now available,
- Amendments to Part E scrapping a clause that appeared to prevent criticism of the state of emergency they claimed was not necessary; and
- The amendment of Part F removing the encouragement of "foreign action" they claimed made no material difference to the prohibition on encouraging sanctions

Detainees' application dismissed

BLOEMFONTEIN — The Free State Supreme Court today found the emergency regulations were not invalidated by the fact that they had not been tabled in the three Houses of Parliament within 14 days of their promulgation.

The court dismissed, with costs, an application for the release of Mr Dennis Victor Bloem and his wife, Edith, of Kroonstad, who were detained under the emergency regulations on June 12 and 13 respectively

The judgment was delivered by Mr Justice M T Steyn, with the concurrence of Mr Justice J W Edeling and Mr Justice G A Hattingh. — Sapa

3 emergency detainees released in Durban

Three people in Natal have been released from emergency detention and lawyers have visited several others in the wake of the Supreme Court ruling given in Durban this week

Durban detainees Miss Sarah Hills, Mr Jeremy Routledge and Miss Marie Odendaal were set free yesterday

As the effects of the Durban judgment are beginning to be felt the United Democratic Front is set to appeal to the courts over restrictions placed on its meetings and those of its affiliates in the Eastern Cape

The UDF application will seek to invalidate the emergency regulation empowering "any person authorised" by the Commissioner of Police to issue wide-ranging orders, such as that which banned the meetings

The matter was raised briefly in the Port Elizabeth Supreme Court on Monday before Mr Justice Jones and was postponed until next week for a full Bench to hear it in Grahamstown.

Two further applications centring on emergency detainees are likely to be brought within the next week in the Rand Supreme Court and will seek to underscore the Durban judgment which has allowed lawyers access to detainees

The applications concern the detained editor of *The New Nation*, Mr Zwelakhe Sisulu, and a prominant churchman, who may not be named as his detention has not been officially confirmed

IN 1978 Anton Mostert, then judge, felt compelled to disclose the Info scandal. Then Judge King and others began expressing their revulsion at influx control and the Group Areas Act. And now we are experiencing a series of tough judgments striking at such Ministerial actions as detentions and proclamations. From this approach, after this week's historic Natal decision on the terms of the emergency regulations, there can be no return . . . .

The courts and the executive

By BRIAN BAMFORD SC, MP.

IT would be easy, but wrong, to underplay this week's judgment of the Natal Supreme Court on the emergency regulations. True, it did not nullify the proclamation but, in striking out major portions of the definition of a "subversive statement", it raised three issues which lie at the heart of the public weal.

The first is the notion that in some way the Government (i e the Executive or the Cabinet) is "above the law" or "superior" to Parliament Nothing, as the Natal case shows, could be further from the truth Parliament makes the law, the Government administers it.

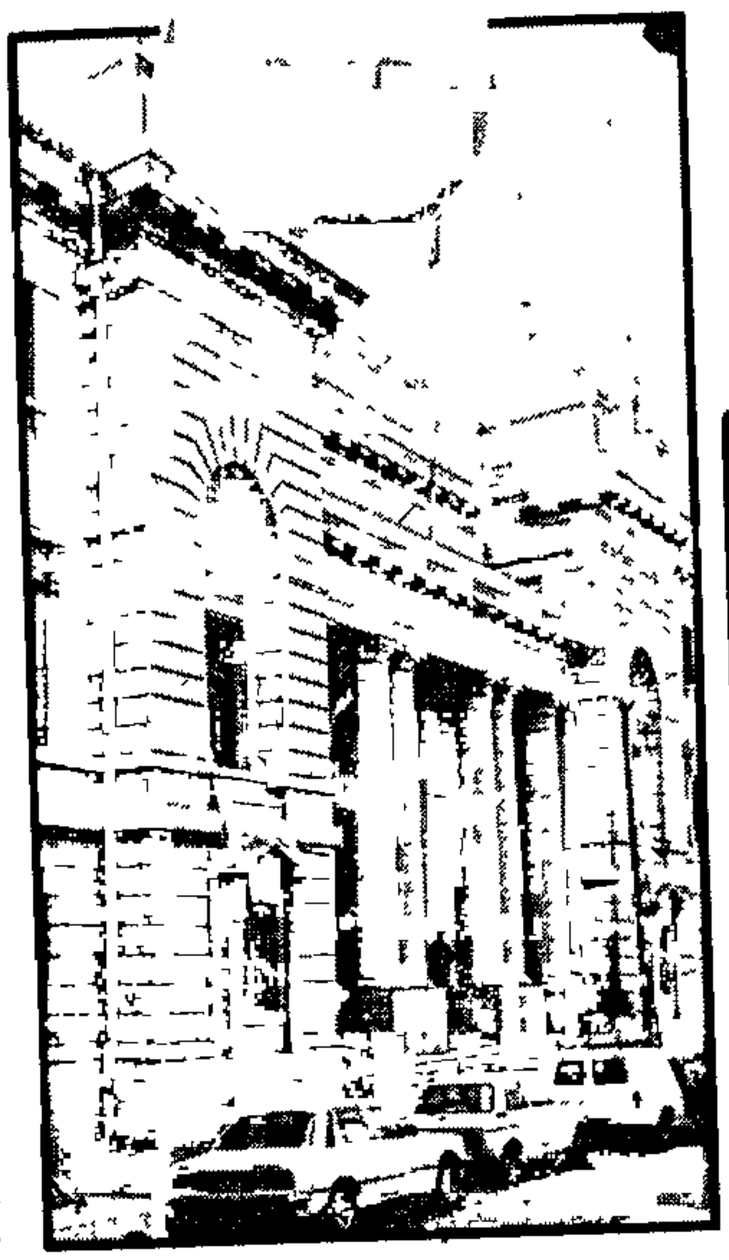
This principle applies from the State President to the lowliest village management board In the present case, Parliament gave the State President (i e in effect the Minister of Law and Order) the power, in the Public Safety Act, to issue regulations under the state of emergency But this power is subject to two constraints, both enforceable by the Supreme Court — the Minister may not go beyond the power granted him, and his regulations must not be vague.

This concept of the Government being subject to the law, like every ordinary citizen, was dramatically restated in 1981 in the Groote Schuur case The Government started to build houses for six deputy ministers on land to which the public, in terms of a 1910 Act of Parliament, had access The Cape Supreme Court had no difficulty in ordering the Government to demolish them

The second issue raised by the Natal judgment is that we have been living through what can be described only as a judicial revolution — quiet and orderly, one hastens to add — as it may be

IN South Africa, as in most countries, there have always been two schools of thought as to the proper role of judges The conservatives believe that a judge's task (in the context of Government action) is merely to implement its will as expressed in its legislation

I believe the conservatives are wrong. For two reasons First, they are denying their — our — inheritance, Roman-Dutch law That law, which we received by a quirk of history, was distilled and purified by the two greatest groups of lawyers the world has ever known — the Romans of the 1st and the Dutch of the 18th century



Justice — 'Now we are experiencing a series of tough judgements striking at such Ministerial actions as detentions and proclamations . . .". ABOVE: The Cape Town Supreme Court . . . "There has been some idle talk that the Natal judgment "applies" only to that province. I do not see it so. "

Mr Justice Centlivres

gan expressing their revulsion at influx control and the Group Areas Act

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Roman-Dutch law is perfectly explicit There shall be no discrimination — e g on grounds of race — and the power of the State must be held constantly in check

Let me give one example of the strength and, if you like, the "liberalism" of the Roman-Dutch law

We are often told that we should return to the rule of law and *habeas corpus* But the latter is the English concept We have a better remedy a thousand years older — the Roman interdict *de libero homine exhibendo*, literally "concerning the showing of a Free man"

The second reason the conservatives are wrong is that they fail to understand that every government should at all times be treated with the deepest suspicion

EVERY government ducks and weaves, prevaricates, flouts the public's right to know, betrays confidences, tells lies Every government would like to suppress a hostile newspaper or detain a dissident (all this of course in the national interest, which happens to equate with the need to maintain power)

If this is so, then the other schools are correct. They believe that the Supreme Court, so far from being an instrument of government will, is the ultimate protection of human rights, of the Roman-Dutch ethos, and in this sense stands adversary to the government Not only should it so stand, but it should proclaim it, and take pride in it

This was in fact the position, suitably muted, during the 50 years of Union, culminating in the peerless court of Centlivres, Greenberg, Schreiner, van der Heever, Hoexter and Fagan

But then disaster struck The Government, determined to remove coloured men from the common roll in the Cape, and by so doing to prevent a possible United Party victory in the following general election, packed the Appeal Court with five new appointees, none of whom by any stretch of the most benevolent imagination could have aspired to such high office.

The next 20 years saw the Appeal Court heavily Government-orientated in its attitudes to discriminatory legislation and executive action The breakthrough came in 1978 when Anton Mostert, then judge, felt compelled to disclose the Info scandal, and when Judge King and others began expressing their revulsion at influx control and the Group Areas Act

Justice — 'Now we are experiencing a series of tough judgements striking at such Ministerial actions as detentions and proclamations . . .". ABOVE: The Cape Town Supreme Court . . . "There has been some idle talk that the Natal judgment "applies" only to that province. I do not see it so. "

Le Grange . . .did not resign.

Mr Justice Didcott, of the Natal Bench of the Supreme Court- . . . striking out major portions of a "subversive statement".

Mr Justice Centlivres

And now we are experiencing a series of tough judgments striking at such Ministerial actions as detentions and proclamations From this approach, after the Natal decision, there can be no return.

The third issue raised by the case is Ministerial responsiblity The meaninglessness of the definitions of a "subversive statement" were a monumental blunder in the Department of Law and Order. Not only that. In the light of the awesome penalties prescribed, the definitions, now mercifully struck down, imposed a rigorous self-censorship on all our newspapers It is a real wonder that in the past few weeks we have read a single word of criticism of South Africa.

In any other country such a blunder would have cost the Minister his head

IT must be remembered that the doctrine of Ministerial responsibility does not require that the Minister be personally at fault — a British Agriculture Minister resigned because a form had gathered dust in his department, a West German Defence Minister when an air force fighter crashed, a Japanese Aviation Minister when a passenger jet's tail-fin sheared off owing to faulty repairs The point is, a Minister voluntarily seeks the salary and perks of his high office, and just as he may claim the kudos of a department well run, so must he pay the price when mistakes are made

In Mr le Grange's case, this is not the first episode It was he who believed that the Seychelles mercenaries were only running around in the bush shooting out of a few windows "Now you tell me what law they contravened" — as if the perpetrators of the forcible deviation of an Air India jet from Mahe to Durban were fortunate to land in a country which knew not the crime of hijacking And when convictions ensued, still he did not resign

Mr le Grange it was, also, who gave an account to Parliament last year of the Uitenhage shootings which was later shown (however unwittingly) to have been false And still the Minister did not resign

Finally, there has been some idle talk that the Natal judgment "applies" only to that province I do not see it so

It would be a brave Attorney-General indeed who would indict an editor for a "subversive statement", the definition of which had been struck down by three judges, unanimously and in the strongest language, and with no appeal being noted. I would not like to be that Attorney-General when he rises before his Judge-President to lead the case for the prosecution

Eglin: emergency chaotic

Dispatch Correspondent

CAPE TOWN — The government's emergency regulations were "a complete shambles" and should be repealed, the leader of the Progressive Federal Party (PFP), Mr Colin Eglin, said last night.

He was reacting to the decision by a Full Bench of the Natal Supreme Court to invalidate, in whole or in part, five of the six definitions of "subversive statements" banned under the state of emergency.

The Bureau of Information has refused to interpret how the latest ruling has changed newspapers' ability to report under the emergency but legal experts have pointed out that the judgment will only have force of law in Natal, although it will be persuasive beyond that province.

Mr Eglin said "The situation is chaotic. Nobody knows just what their legal rights are and this puts a people at the mercy of the executive and the police

"Under present circumstances the government seems unable to draft clear regulations and appears unwilling to clarify them The sooner the regulations and the emergency itself are scrapped, the better"

Mr Eglin said he was not in favour of the government merely clarifying the regulations "so that newspapers are able to practice self-censorship more efficiently".

The PFP's Mrs Helen Suzman said it was "laughable" the government considered the court ruling to be a victory.

Because such tabling had to be done in accordance with that procedure, and by virtue of the inability of a court of law to pronounce effectively on the validity thereof and of the facts according to the domestic parliamentary procedure, there was one day still available for such tabling

As that day had not yet arrived, the conclusion was that the tabling of the regulations on August 18 would, in parliamentary terms, not be out of time even if they were so in terms of the relevant statute — Sapa

Regulations valid — court

BLOEMFONTEIN — The Free State Supreme Court yesterday found that the emergency regulations were not invalidated by the fact that they had not been tabled in the three houses of Parliament within 14 days of their promulgation

The court dismissed, with costs, an application for the release of Mr Dennis Victor Bloem and his wife, Edith, of Kroonstad, who were detained under the emergency regulations on June 12 and 13 respectively

The judgment was delivered by Mr Justice M T Steyn, with the concurrence of Mr Justice J W, Edeling and Mr Justice G A. Hattingh.

Mr Justice Steyn found that the court was not ousted by the new section 5B of the Public Safety Act, as amended by Act 67 of 1986, from entertaining the question whether the failure to "table" the regulations in Parliament within 14 days, as required by section 5 of the Public Safety Act (either in its original or amended form) read with section 17 of the Interpretation Act, had caused their validity to lapse

What the court was prevented from doing was to stay or set aside the regulations or to inquire into or give judgment on their validity but that was not what the court had been asked to do in this case

The applicants — Mr Adam Hercules Bloem and Mrs Johanna Januarie, the parents of Mr and Mrs Bloem respectively — merely asked that it be found that the regulations lapsed on June 26 1986 and they had not denied their (the regulations') initial validity

The court was free, therefore, to consider the question that arose from the non-tabling of the emergency regulations, the court said

It said Parliament was to be kept informed of executive measures by the tabling of them, obviously so as to enable it to exercise some measure of control over such action

The laying on the table of Parliament, inter alia for the purpose of such information and control, was undoubtedly the purpose of section 5 of the Act, both in its form prior and subsequent to amendment

Nowhere in the limited time at their disposal could counsel or the judge find that the procedure of effecting such "laying upon the table" was laid down or prescribed in any Act.

The court found that section 17 of the Interpretation Act had to be construed in consonance with the procedure of Parliament

Therefore period of 14 days mentioned had to be interpreted to mean 14 days upon which the required tabling could be effected in Parliament

On that construction and computing the period of 14 days in accordance with the method prescribed, there was still one "tabling day" available for compliance with the statutory injunctions

This was because on that computation the 14-day period would have expired on June 26 but, as Parliament had adjourned on June 24 and 25, June 26 was not a Parliamentary "tabling day" The last such day would then, in terms of the section, be the first "sitting day" of Parliament after its adjourned session — August 18

On the basis that this interpretation was wrong, Mr Justice Steyn said that taking into account the actualities of the present situation the days upon which tabling of the emergency regulations could in fact be effected [illegible]

Mercury 9/07/86

252

Free State Court rules on detainees

BLOEMFONTEIN—The Free State Supreme Court yesterday found that the emergency regulations were not invalidated by the fact that they had not been tabled in the three Houses of Parliament within 14 days of their promulgation

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The judgment was delivered by Mr Justice Steyn, with the concurrence of Mr Justice Edeling and Mr Justice Hattingh

Mr Justice Steyn said the days upon which tabling of the emergency regulations could, in fact, be effected fell to be determined by the procedure of Parliament

Because such tabling had to be done in accordance with that procedure and by virtue of the inability of a court of law to pronounce effectively on the validity thereof, there was one day still available for such tabling.

As that day had not yet arrived, the conclusion must be that the tabling of the regulations on August 18 will, in parliamentary terms, not be out of time even if they may be so in terms of the relevant statute.

On the rights of access to detainees — an alternative plea to the application — the Judge said it was common cause between the parties that up to the present all requests made by the applicants on behalf of Mr and Mrs Bloem that legal representatives be allowed to see them, had been refused, and that no access to the detainees by any legal representatives acting on their behalf had, thus far, been permitted

The Judge was satisfied that regulations 3 (10) and 5 did, in fact, restrict access to detainees by lawyers and that the refusal thus far to grant permission for such access to Mr and Mrs Bloem was not in any way legally improper.

Requests

He was equally satisfied that access without permission to detainees by lawyers after the extension of their period of detention under regulation 3 (3) was likewise prohibited

The Judge said, however, that it took the police 11 days to answer requests made on behalf of Mr Dennis Bloem, but the final demand of June 27 for such access was left unanswered Letters of June 23 and 27 relating to Mrs Edith Bloem were left unanswered.

The necessary reaction was eventually forthcoming in the replies by the respondents in their affidavits that opposed the application to the Supreme Court.

This was, however, not good enough, said the Judge

'It should be evident to everyone concerned that severe distress to their families and relatives is in the overwhelming majority of instances occasioned by the arrests and detentions of persons under the conditions of the security regulations

'And although administrative difficulties are certain to be encountered by those whose task it is to deal with requests relating to detainees, it is nevertheless imperative to deal with such requests as expeditiously as possible In this case that was unfortunately not done,' said the Judge

The respondents were the State President and Government of the Republic of South Africa, the Minister of Law and Order, the Commissioner of Police, the Minister of Justice, the Officer Commanding Heuningspruit Police Station and the Commissioner of Prisons — (Sapa)

UDF TAKES EMERGENCY TO COURT AGAIN

By MONO BADELA
& CP Correspondent

THE Government's five-week-old state of emergency, which this week survived – with major changes – the Metal and Allied Workers' Union supreme court challenge, faces a new challenge next week from the United Democratic Front.

A full bench of the Eastern Cape supreme court sits on Tuesday to hear a UDF application to end the emergency, and to overrule regulations – including curfews – introduced locally.

Although the Durban judgment is not biding on courts outside Natal, legal experts say it has "persuasive authority but not the force of law" – in other words the East Cape judges will take account of it when they decide next week

The Mawu application to the full bench of the Natal supreme court failed in its major aim – to end the emergency – but Judges John Didcott, ME Kumleben and PW Thiron threw out several important sections of the regulations

Mawu held the emergency was invalid because it was not tabled in all three houses of parliament within 14 days, as it should have been

In their ruling the three judges said this did not mean the emergency itself was invalid They said the practice of "tabling" was for the benefit of members of parliament, and it could be enforced only by them There was no suggestion that not tabling a declaration of emergency should lead to nullification

However, the three judges dealt severely with the section defining a "subversive statement"

Only one of the six clauses of this section of the regulations was passed without all or part being declared null and void

See adjoining story and Page 2

● In its first major statement since the start of the emergency, the UDF has issued a "message to the people of South Africa"

The statement called on all South Africans to unite "together as workers, youth, students, parents – we must speak with one voice"

The government, it said, had failed to take account of "the demands of the people" to govern themselves

The UDF asked students to continue to strive for a people's education so that "out of this the seeds of a new and better society will emerge" It asks the students to continue with the formation of student representative councils

The UDF, the statement said, had opposed councillors and members of the tricameral parliament "as Botha's pawns in his reform game The activities of vigilantes and death squads have increased, under conditions of total secrecy"

Addressing itself to the white community, the UDF said "The time for you to shed your prejudices and selfishness is now," and urged whites not to return to the "laager" It urged them to join other white democrats and "be part of our struggle for the creation of a greater South Africanism, where race or colour shall not be a criterion for judging a person's worth".

The UDF also addressed various calls to MPS, councillors, churches, workers, international community, business and the people in general It ended by saying:

● Our people are simply demanding the democratic transfer of power to the people as a whole

● The birth of a new South Africa can only begin with the unconditional release of Nelson Mandela and all other political prisoners and detainees

● The ANC and other organisations should be unbanned

● Security legislation should be repealed

● Conditions should be created for a democratic exercise of our rights to free speech, assembly and organisation and the dismantling of apartheid laws

What the court threw out

The three-judge panel cut out in full the section defining a subversive statement as something which contains anything which is likely to have the effect "of promoting and object of any organisation which has, under any law, been declared to be and unlawful organisation

Also cut out in full was the definition that a subversive statement was likely to have the effect "of engendering or aggravating feelings of hostility in the public or any section of the public or any person or category of persons towards any section of the public or person or category of persons".

The words "or in connection with the administration of justice" were cut out of the section which defined what "incitement" was in terms of the emergency regulations

In the section defing what undermine the state of emergency was, the words "of weakening or undermining the confidence of the public or any section of the public in the termination of the state of emergency" were cut out

In the section defining who will be guilty of the making , possession or dissemination of subversive statements, the words "possesses any subversive statement" were deleted

Also deleted were the paragraphs relating to the distributing, circulating, displaying or causing to played – by means of any apparatus – any subversive statement.

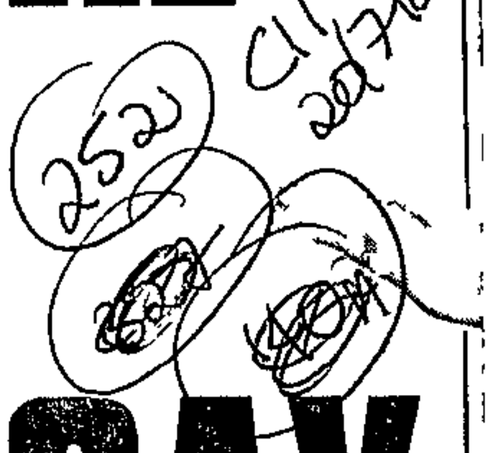
The judges said the State President did not have the power to rule that detainees should get special permission from the Minister before they could see their lawyers.

It was an established common law right, they said for detainees to have access to lawyers and while parliament could make laws to prohibit these visits 'subordinate legislation' such as emergency regulations could not contain such infringements.

THE EMERGENCY

Mawu challenges the emergency:

WHAT THE JUDGES HAD TO SAY



A THREE-JUDGE panel this week declared void all or parts of five of the six definitions of "subversive statements" banned under the emergency regulations – saying they were "vague"

However, the Natal Supreme Court rejected the Metal and Allied Workers' Union argument that the entire state of emergency was illegal

Judge John Didcott told a crowded courtroom several aspects of the definitions were "hopelessly uncertain"

In his two-hour opinion on the case brought by the union, Didcott said just one of the six clauses defining a subversive statement was precise enough to be considered lawful in its entirety

That clause forbids incitement of people to participate in unlawful strikes, boycotts, processions or civil disobedience, or to oppose compulsory military service

He said two of the clauses were far too broad to be understandable One barred any statement that advanced the object of any unlawful organisation The second prohibited any statement that "engendered hostility" between one person and group and another

Didcott found fault with certain phrases in the three other clauses

- On the provision forbidding statements calling for disinvestment, sanctions or foreign action against South Africa, he said disinvestment and sanctions were reasonably clear but "I do not know what 'foreign action' is What is action, what is foreign? The words 'foreign action' must go"

- He also ruled against a clause prohibiting statements that would tend to weaken public confidence in the government's ability to maintain the public order or end the emergency

- Finally, Didcott approved the clause against inciting people to resist or oppose the government in connection with the emergency – but ordered the removal of a phrase in the clause about incitement against "the administration of justice"

The judge further said a ban on detainees' access to lawyers was improper and said such access must be granted

The ruling means, however, that most aspects of the decree remain in force

The union had contended that the regulations were void because State President PW Botha announced them simultaneously with the emergency decree, rather than proclaiming the decree first

Emergency powers still in force are detention without charge, curfews, sealing off areas and shutting down publications

The union had also contended the emergency was illegal because parliament was not informed within 14 days of the June 12 proclamation Judge Didcott accepted the State's argument that parliament had recessed before the 14 days were up and that the regulations could still be presented when the session resumed on August 18

With the court's decision, the clauses it objected to became void immediately Both sides can appeal

Didcott noted the court had no authority to rule against Acts of parliament but did have the power to decide whether regulations issued under those Acts were specific and reasonable – Sapa

"THE VITAL VIEWPOINT"

Legal pressure continues to mount against state of emergency

DIANNA GAMES, LIAM EGAN and SOPHIE TEMA

LEGAL pressure against the state of emergency has been mounting around the country

And it was given further impetus last week after lawyers were told they could visit detainees held under emergency regulations

Transvaal lawyers said the ruling, which flows from a Durban Supreme Court decision last week, was confirmed by security police regional chief Brigadier Gerrit Erasmus

In Natal, lawyers began making visits on Friday while lawyers elsewhere said applications to visit certain detainees had not been refused

Since the court ruling — four detainees, *New Nation* editor Zwelakhe Sisulu, art student Sarah Hills, science teacher Jeremy Routledge and career advisor Marie Odendaal have been set free

Johannesburg lawyer Peter Harris said lawyers had sent letters to police on Thursday demanding previously denied access to clients among the emergency detainees

The letters had cited Wednesday's ruling softening certain emergency regulations including that denying detainees access to their families or lawyers

Harris said lawyers would not be allowed to see Moses Mayekiso, president of the Metal and Allied Workers' Union (Mawu) which brought last week's application in the Durban Supreme Court challenging the state of emergency

Mayekiso was last week transferred from detention under emergency rule to detention without charge under permanent security legislation

The United Democratic Front (UDF) intends challenging curfew regulations in the Cape tomorrow while in Natal lawyers are considering challenging the wide powers granted to the security forces under the emergency

And aspects of the emergency regulations affecting the freedom of the media will be challenged by a joint South African Associated Newspapers/Argus court action next month

In other developments in the courts, a Rand Supreme Court application by a Roman Catholic priest to have the arrest and detention of a fellow priest declared unlawful will be decided today

Father Carel Peter Spruyt of the Springs parish is bringing the urgent application on behalf of Father James Arthur Hartop (57) of the Kwa-Thema parish who was arrested on June 17

And an appeal for the release of Grahamstown teacher has been made to President P W Botha, by Senator Edward Kennedy, in a letter from the U

● See also Page 2

252

COURT 'DISCRIMINATION' IN KWANDEBELE

BLACK magistrates in KwaNdebele are not allowed to preside over cases where the accused are white, the *Sowetan* was informed this week.

This practice, according to our sources, has been in force since black magistrates were introduced in the area

By MZIKAYISE EDOM

A spokesman for the homeland's Department of Justice, Mr G Kruger, this week denied that KwaNdebele was practicing any racial discrimination in its judicial system.

He said "The KwaNdebele Minister of Justice is the only person who has power in the homeland to decide who should preside over any case.

"Usually, the black magistrates preside in cases involving people staying outside the homeland This practice has been going on for sometime now," Mr Kruger said

He added that this structure may be changed when the homeland gets independence in December. "but only the KwaNdebele Government will have to decide whether to change the present policy or not"

An East Rand attorney and member of the Transvaal Law Society and Black Lawyers Association disagreed with Mr Kruger's statement

He said presently there was a case in which the accused — five whites and two blacks — were appearing on a charge of assault and theft. He said all seven are members of the police force

The presiding magistrate in the policemen's case was Mr M Laka, who has been informed by the KwaNdebele Department of Justice that another magistrate, a Mr Stader, will now preside over the case.

Ali summons 'Jo-Jones'

MUHAMMAD Ali's number one fan, Mr Phillip "Jo-Jones" Dlamini was in London with the former world heavyweight champion for the Tim Witherspoon and Frank Bruno fight on Saturday night.

Mr Dlamini, a Soweto taxi driver who has watched a few of Ali's fights overseas, said he received Ali's telephone call last Sunday night inviting him to come to Wembley for the heavyweight championship fight

"Ali and I are like

New Nation editor freed

DIANNA GAMES

THE editor of the *New Nation* newspaper, Zwelakhe Sisulu, was released from solitary confinement at John Vorster Square, Johannesburg, on Friday

His attorney, Priscilla Jana, said an application had been lodged for his release on Thursday.

Jana said she was told on Friday that the State attorney would not oppose the action Later, she was was told that the Law and Order Minister had given his permission for a legal consultation with Sisulu

She was informed of Sisulu's release when she went to visit him on Friday afternoon

Sisulu said he had been told that his newspaper was to be closed and was surprised to find that it had not

He was detained after he was "abducted" from his home by four unidentified men on June 26

Court rules against Tshabalala

LIAM EGAN

THE Rand Supreme Court has granted an application by the Soweto City Council against suspended Soweto mayor Ephraim Tshabalala, interdicting him from permitting, allowing or encouraging persons to squat on the Mofolo Golf Course

Tshabalala was also interdicted by Mr Justice J Leveson from collecting any money from any person squatting, dwelling or remaining on three erfs constituting the golf course leased by him on a 99-year leasehold basis from the council

Mr Justice Leveson, in his judgmen on Friday, said he was satisfied from th evidence that Tshabalala allowed squat ting on the golf course and also collecte rents from the squatters

He was also satisfied that council hac a "clear right" in its case against Tsha balala in view of the terms of the Pre vention of Squatting Act and the Blacl Local Authorities Act

AA takes guard for R30m blow

in terms of credibility and loss of members

● From Page 1

Whatever these losses may amount to, Elliott is certain the AA will have to push up its membership fees, although he does not know yet the extent of the increase

"There are three levers we have to pull now," he says. "We must start selling more — we have a strategy for introducing new membership packages We have to increase membership fees and

Already the AA has retrenched abou 70 of its staff, a move which will save i R1m a year, and it has closed dowr certain offices and rationalised others.

"We are getting as lean and mean as we possibly can without cutting back or service We are expanding the AA's roac patrol force and its tow-truck fleet tc ensure that service does not suffer as a

1986

Merc 22/07/86 (52)

Jailed ex-envoy in bid for bail

PRETORIA—A former American diplomat who is awaiting expatriation to the United States failed yesterday in the Pretoria Supreme Court to obtain an order declaring that a magistrate could consider his application for bail

It is likely, however, that Mr John Robert Graham, 57, former first secretary of the American Embassy, will shortly launch a bail application in the Pretoria Supreme Court

If extradited to America, Mr Graham may face a charge relating to the alleged theft of R700 worth of tools

Mr Graham was imprisoned 10 days ago after the U S Government obtained an extradition order against him, and although the former diplomat applied for bail, the magistrate ruled he was not empowered to hear such an application

Mr Graham then brought an urgent application to the Pretoria Supreme Court last week asking for an order declaring that the magistrate had the legal power to consider an application for bail

Yesterday Mr Justice Harms ruled that although a magistrate could not hear an application for bail, it would cause 'grave injustices' if, as in Mr Graham's case, a higher court was not allowed to hear such an application

He said the possibility existed that if Mr Graham was extradited, he would be granted bail in the United States

There was also the possibility that if Mr Graham was convicted for his alleged crime, his sentence could be shorter than the time he had spent waiting in prison to be extradited

Mr Justice Harms said if a bail application were to be brought in the Pretoria Supreme Court, it was necessary that the Minister of Justice and the United States Government be included as parties in the action

In an affidavit, Mr Graham said he became part of the United States Foreign Service in 1955 and 'I remained in that service until my retirement in December 1980 I retired with a clean record'

He said he was posted to South Africa in 1969, and was then transferred back to Washington in 1971 'During our stay in Pretoria my wife and I decided, mainly for the sake of my wife's health, to settle in South Africa after retirement'

Mr Graham was sent back to Pretoria in 1977

'In January, 1986, I was arrested on a charge relating to the alleged theft of plumbing tools from the United States Embassy to the value of R693,66 during September-October 1979'

Mr Graham was released on bail until July 11 when a Pretoria magistrate ruled that he could be extradited to the United States

The former diplomat said he did not possess a passport although he hoped to become a South African citizen, and 'I have no intention to flee to another country in the event of bail being granted to me'

He also said most of his assets were in South Africa

The family doctor, Dr Menelaous Menelaou, said in an affidavit that Mr Graham's detention 'prejudices his health condition'

Dr Menelaou listed the former diplomat's medical complaints over the past two months, which included an emergency appendectomy and acute bouts of pleurisy and asthmatic bronchitis

'Mr Graham often requires oxygen inhalations due to his respiratory problems (he apparently suffered thermal damage to his lungs as a boy, when inhaling hot fumes)'.—(Sapa)

DD 24/7/86 (208)

Pass offences discredited legal system

252

Govt official tells of 17m influx arrests

Dispatch Correspondent

JOHANNESBURG — More than 17 million black people were arrested for pass law offences between 1916 and 1981 and many were not legally represented in court

This emerged in an interview with the chief director of legal administration of the Department of Constitutional Development and Planning, Dr J C Bekker, in the latest issue of De Rebus, the journal of the Association of Law Societies

Dr Bekker concedes that lawyers were concerned about the way these laws brought the whole legal system into discredit

"Apart from the fact that the laws were discriminatory, they were enforced by a special court system, the commissioners' courts, until August 31, 1984," he says

An editorial in the same issue of De Rebus says the association, which represents 6 000 attorneys in South Africa, has welcomed the appointment of witnesses' friends

The intention behind this move, it says, is to prevent the loss of manpower, financial inconvenience and bad impressions that often arise when people are called on to testify in criminal cases

The service of witnesses' friends has been introduced by the Department of Justice on a trial basis in Johannesburg, Durban, Bloemfontein, Cape Town, Port Elizabeth and Wynberg

The editorial says a witness in a criminal case generally has no personal or financial interest in the matter and has been subpoenaed to give evidence in order that justice may be done

Very often the witness is unwilling to be, or become involved, in the case, particularly because his circumstances and convenience are not taken into consideration, it says

"Lack of courtesy and a disregard for the circumstances of witnesses by prosecutors and attorneys create disrespect for, and a negative attitude on the part of the witness towards the law and the administration of justice," the article said

"The appointment of witnesses' friends to liaise with prosecutors and witnesses will no doubt alleviate this problem and improve communication between witnesses, the state and legal representatives"

A flurry of challenges to the Emergency

WEEKLY MAIL 25/7/86 252

Last week's Natal challenge to the Emergency regulations has set off a flood of similar court applications throughout the country. CARMEL RICKARD reports

LEGAL challenges to the State of Emergency regulations have begun to snowball following the important Metal and Allied Workers Union case in the Durban Supreme Court last week

Today an application by detained Pietermartizburg church worker, Peter Kerchoff, will be heard by a full bench of the Natal Supreme Court

Kerchoff and his wife Joan are asking for his release, alternatively, that he no longer be held in solitary confinement as his mental health is suffering

Next week another full bench of the Natal Supreme Court will hear an application for the release of the United Democratic Front's Natal publicity secretary, Lechesa Tsenoli His application hinges on a challenge to the validity of the sections of the Emergency regulations which allow arrest and detention

In addition, a number of detainees have been released, many of them soon after or before visits by their lawyers, and in some cases shortly before applications for their release were filed in court

Durban's Detainees Support Committee and the Legal Resources Centre are co-ordinating a meeting of lawyers who are acting for clients affected by the emergency regulations An LRC staffer said it was hoped that this would help lawyers co-ordinate their work.

In one Durban case, lawyers acting for detained schoolgirl Smyley Mkame were preparing papers applying for her release when she was freed on Wednesday morning

Mkame, held since June 16, was recently at the centre of an urgent application brought by her grandmother who claimed the girl told her during a prison visit that she was assaulted by police

Lawyers from Durban's Legal Resources Centre, who were involved in the case, said they would press for the interim order to be confirmed on August 5, the return date, and that they would be claiming damages on her behalf from the Minister of Law and Order for the alleged assaults

Mkame appeared briefly in court after her release in connection with an allegation of attending an illegal gathering on June 16 She was granted R100 bail

LRC alone are preparing for five applications for release of detainees which could be heard early next week and other legal firms are involved in similar preparations

In Tsenoli's application, his legal team will argue that the State President acted *ultra vires* in that [illegible] Safety Act the State member of the Force "to enable them to determine the circumstances in which the (State President) regarded the summary arrest and detention of people to be necessary".

In Kerchoff's application the police have given some reasons for continuing to hold him

Kerchoff, his wife claims, is totally opposed to violence and has "no connection with any unlawful organisation". They say there are no grounds on which any one would reasonably or *bone fide* form the opinion that Kerchoff's detention was necessary

Replying, the head of Pietermaritzburg's Security Police, Brigadier Barend Beukes, said that during an overseas visit in 1985, Kerchoff "had contact with a member of the ANC".

Kerchoff says this is incorrect At a social function in Germnay, he was introduced to "Tony Seedat, apparently a member of the ANC"

He said the meeting was "purely fortuitous We met and talked as any South Africans meeting in a foreign country would do" They then parted and neither saw nor were in touch with each other again

Beukes also claims Kerchoff was involved in organising marches and rallies by black youth for June 16 and 26 Kerchoff says his only role was to help set up a June 16 commemorative church service

On the question of the conditions of Kerchoff's detention, a security policeman said he had requested the detainees transfer to a single cell on June 24 as "he incited other detainees not to co-operate with interrogators", a claim strongly denied by Kerchoff

Following a request by Kerchoff to see a psychiatrist, the police had a specialist examine him In his report, the doctor said Kerchoff had to be moved from solitary as it was injurious to his mental health

Beukes said in the light of this report arrangements were being made for his immediate removal to a centre where he could be held with others

MOIRA LEVY reports from Cape Town that the sudden release from detention this week of End Conscription Campaign chairman Mike Evans suggests an important legal precedent has been set in the Western Cape, which will enable laywers to visit their clients

Attorney Andy Durbach had served [illegible] and the

being applied in the Western Cape It seems a directive was issued that it was not applicable in the region, and lawyers were not given access to their clients Following our application, I have heard of a lawyer getting permission to visit a detainee who is being held at Victor Verster prison. The process is slow, but access is coming through now"

The respondents — the Minister of Law and Order, the Minister of Justice and the State President — are to pay costs

FRANZ KRUGER reports from East London that the Grahamstown Supreme Court will today hear an application for the release of two detained priests, Father Graham Cornelius of the Catholic Church and the Rev Eddie Leeuw of the NG Sendingkerk

On Wednesday, the court rejected an application for the release of two detained King William's Town lawyers, John Smith and Dudley van Heerden.

And in a third case, an application for the release of three Ciskei detainees was withdrawn in the Bisho Supreme Court when the respondents agreed to release or charge them within two weeks

The three were Albert Whittles, a field worker for the Border Council of Churches, Smuts Ngonyama and Avril Fritz

The application on behalf of the two priests is being brought by the Catholic bishop of Port Elizabeth, Bishop Michael Coleman, within whose diocese Cornelius's parish falls, and Leeuw's wife, Lizzie.

In papers, Coleman cites Cornelius's work "in projects aimed at the upliftment of the poor, 'needy and oppressed", and says no member of the Force can have formed a bona fide opinion that the priest's detention is necessary for the maintenance of law and order.

Rejecting the application of the two lawyers on Wednesday, Mr Justice Zietsman said he was not persuaded that the policeman who ordered the detention was acting in bad faith.

The judge accepted if the detention was based on an arrest under section 50 of the Internal Security Act, it was irregular and unlawful But, he said, the applicants had no factual basis for alleging that this was the case

The balance of probabilities pointed to the detention having been effected under the Emergency regulations, the judge found An application for leave to appeal was noted

Also in Grahamstown, the Supreme Court reserved judgement this week on an application by the UDF for an order setting aside Emergency regulations banning meetings of

white municipality who was appointed administrator of Kwanobuhle following the resignation and murder people of Uitenhage for organising themselves into groups to help each other in times of trouble.

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In Tsenoli's application, his legal team will argue that the State President acted *ultra vires* in that under the Public Safety Act the State President must determine under what circumstances the summary arrest and detention of any individual is necessary

In the regulations, he has not done this nor has he delegated that power to anyone else

There are no guidelines for the member of the Force "to enable them to determine the circumstances in which the (State President) regarded the summary arrest and detention of people to be necessary".

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MOIRA LEVY reports from Cape Town that the sudden release from detention this week of End Conscription Campaign chairman Mike Evans suggests an important legal precedent has been set in the Western Cape, which will enable laywers to visit their clients

Attorney Andy Durbach had served papers on the State Attorney and the State President demanding access to Evans on the grounds that he wanted to make representations to the Minister of Law and Order demanding his release and needed her legal assistance.

"The Mawu judgement was not being applied in the Western Cape It seems a directive was issued that it was not applicable in the region, and lawyers were not given access to their clients Following our application, I have heard of a lawyer getting permission to visit a detainee who is being held at Victor Verster prison. The process is slow, but access is coming through now"

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Also in Grahamstown, the Supreme Court reserved judgement this week on an application by the UDF for an order setting aside Emergency regulations banning meetings of various organisations

Jules Browde, SC, for the UDF, argued that the police order was so wide it was either void for vagueness or unreasonableness It also made fundamental inroads into the liberty of the individual

OTHER PEOPLE

The rebel behind that smiling postcard face

That Moses Mayekiso is in detention now is hardly surprising — he's been in and out of prison ever since he was a youngster What makes this spell inside diffferent is a massive postcard campaign calling for his release

ANY day now thousands of picture postcards showing a smiling man in a Metal and Allied Workers Union (Mawu) T-shirt will cascade onto the desk of President PW Botha in the Union Buildings

The message Botha will read on the back of these picture postcards says "I demand the release of Moses Mayekiso, general secretary of the Metal and Allied Workers Union, and all the trade unionists and other political prisoners in South Africa"

They have been posted by trade union members around the world and come in six languages They protest the detention of a man whose history of union and community activism has made him a bulls-eye target for imprisonment and harassment since his schooldays in the Transkei

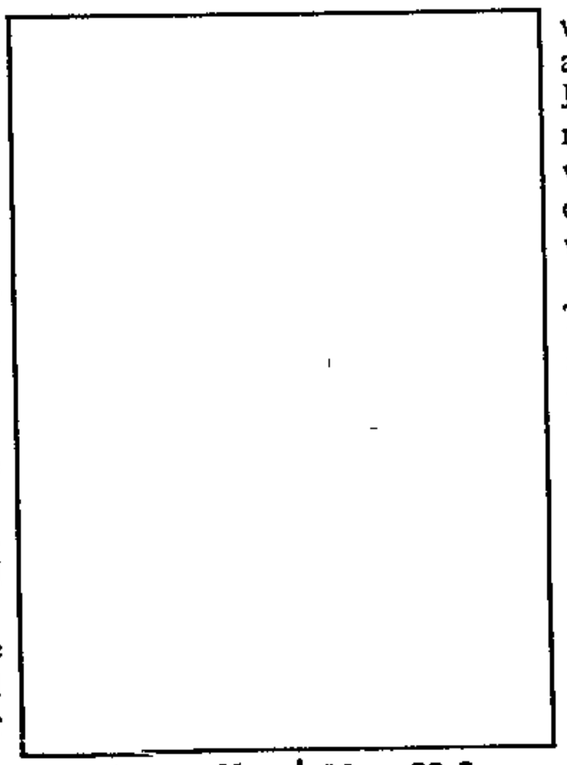
Mayekiso's current detention under section 29 of the Internal Security Act came hours after his return to South Africa from an overseas trip last month He was aware that his arrest was something of a foregone conclusion, but he came anyway, carrying the credentials he needed for entry through the prison gates political unionism, community resistance and the cause of international condemnation

Mayekiso arrived in Johannesburg in 1974 unable to speak the Transvaal languages and with only vague connections in Alexandra Twelve years later he is a key figure, not only in the township but in the struggle against apartheid

Mayekiso's resistance to this system goes right back to his childhood in Cala, Transkei Born in 1948 of extremely poor parents who battled to finance his schooling, he began to protest authoritarian methods of control in the schools Subsequently expelled for being a "ring-leader" of those who opposed this condition, he managed to complete his matric only after working for a year

In 1960 when Mayekiso was twelve, the resistance of black workers in the Cape spilled into the rural areas Thousands came home to fight state authority in the homelands — the resultant local rebellions and subsequent repression that affected his area left a deep impression on the young boy

His first job was as a miner in Welkom earning 80 cents a day Mayekiso stayed only long enough to witness the effects of underground



Moses Mayekiso as a detainee, his photograph may not be published

working conditions which often resulted in death or maiming, before moving on to Johannesburg where he found work as a building labourer for R15 a week

At the start of 1976 he started working for Toyota and it was here that he began to realise the arbitrary power of the foreman to dismiss and punish at will This awareness at work coincided with his feelings about what he saw daily in the townships during the 1976 uprisings

Mayekiso joined Mawu and while still with Toyota was elected a shop steward and, finally, Mawu's national treasurer

A turning point of sorts came in 1979 when he played a leading role in a series of strikes at Toyota over union recognition and the scrapping of management controlled liaison committees The workers were dismissed and selectively re-hired Mayekiso found himself out of a job

Mawu then employed him as a full-time organiser Working on the East Rand and trying to cope with the widespread worker interest in trade unions, Mayekiso helped introduce the concept of shop steward councils These councils brought together workers from all the organised factories to discuss common problems Today they have become the basis of the union movement

Rapid organisation of the East Rand working class culminated in two dramatic strike waves in 1981 and 1982 Between July and November 1981 there were more than 50 strikes involving about 25 000 workers With the shop steward councils at the heart of the action, workers demanded an end to the arbitrary powers of management the unfair dismissal of workers, racist actions of foremen and increased work-loads Between January and May 1982, there were 32 recorded strikes involving 14 000 workers These were mostly over the demand for a R2 an hour "living wage"

A year later Mayekiso was Mawu's Transvaal organiser and began to play an increasingly important role in the unity talks that led to the formation of the Congress of South African Trade Unions (Cosatu)

He next hit the headlines as one of the leaders of the 1984 November stayaway in the Transvaal For Mayekiso this was an important moment because he was clearly breaking from the early cautious position the Federation of South African Trade Unions (Fosatu) had pursued on alliances with community organisations

Working with top United Democratic Front and Congress of South African Students (Cosas) leaders in the Transvaal regional stayaway committee, Mayekiso was moving into a new kind of politics, one based on working relationships between worker organisations and their mass-based community counterparts Soon after the stayaway he was detained and charged with "economic sabotage" in terms of the Internal Security Act But after his co-accused fled into exile, charges against him were dropped

He continued his involvement in community politics in Alexandra Last year he was instrumental in the establishment of grassroots organisational structures in the township — yard committees, block committees and the street committees that send delegates to the Alexandra Action Committee In a recent inverview Mayekiso said that what had been established in Alexandra was part of a nation-wide movement in an attempt to build up "community-based organs of people's power"

There has been an international outcry from major trade union federations to Mayekiso's latest detention The International Metal Workers' Federation has pointed out that Mayekiso is a "good friend" of trade union leaders in Britain, the United States, West Europe and Japan and has asked its affiliates to pressurise companies operating in this country to protest the detention of all trade unionists The IMF has also launched the international postcard protest campaign, the small cardboard results of which will soon be causing more than the wood of PW Botha's desk to groan

search,' said Mr Piet Botha, 'search'

Former addict sentenced for cheque frauds

252

28/11/86

KM

Court Reporter

A 41-YEAR-OLD former drug addict who stole a cheque book to support his habit before going on a R8 000 spending spree, was convicted in the Durban Regional Court yesterday of theft and fraud

Allan John Marcus was cautioned and discharged on a charge of stealing a cheque book from Mr Martinus Janse van Vuuren on February 12 last year

He was sentenced to 18 months' imprisonment suspended for five years for presenting a fraudulent cheque for R1 000 to the Standard Bank on February 14, 1985

A further fine of R300 (or three months), suspended for three years, was imposed after Marcus was found guilty of eight counts of fraud.

Marcus told the Court he had spent all the money on supporting his drug habit

According to a probation officer's report, Marcus had become unemployed after losing his job as a navigator on a yacht during the Cape to Uruguay race

He had stolen a drug merchant's motor vehicle and the cheque book before spending R8 000 in three weeks on drugs

The report stated that Marcus, originally from an affluent Jewish family, had had a long history of chronic drug abuse but since converting to the Christian faith had been off drugs for a year

During a lucid stage, Marcus had realised what he was doing and had gone to the Kwasizabantu Mission where he had given himself up to the police

Mr D Botha appeared for the State

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PFP calls on Government to end emergency

Court ruling makes police orders invalid

29/7/86 STAR

252

Legal experts say that because of a ruling by the Rand Supreme Court yesterday, all orders and bans on meetings made in terms of the state of emergency by anyone below the rank of Commissioner of Police are invalid.

The ruling was made by the Full Bench of the court after an application by the United Democratic Front (UDF) It is a precedent which could affect emergency regulations orders countrywide.

Today the Progressive Federal Party urged the Government to abandon the state of emergency because of the judgment

Yesterday the court declared invalid an order made by the Divisional Commissioner of Police (Soweto) prohibiting meetings of 26 organisations in specific areas

Deputy Judge President Mr Justice G A Coetzee, with Mr Justice H J Preiss and Mr Justice E H Stafford, ruled that the order was invalid because the Commissioner of Police was not empowered in terms of the emergency regulations to delegate the authority to make such an order

Mr Justice Coetzee said the State President, in terms of the Public Safety Act, could delegate legislative powers — the power to make orders — to the Commissioner, but the Commissioner could not redelegate that power

The court deleted a phrase in Emergency Regulation 7 allowing the delegation to a third party

A Johnnesburg legal academic said the effect of the ruling was to invalidate all orders made by Divisional Commissioners under the state of emergency

He said yesterday's decision was the only one made on this point till now

"As such, it is the law," he added.

He explained that although a court in another province could make a different finding, the Transvaal one would be authorative even outside the province until a Bench of three judges overturned it elsewhere

Many orders published in various Government Gazettes could be affected by the ruling

On June 13 on the East Rand, West Rand and Witwatersrand, various Divisional Commissioners issued orders banning outdoor funerals for people who had died from unnatural causes

Prohibition on meetings by 26 bodies set aside

By Lesley Cowling and Jenni Tennant

A full Bench of the Rand Supreme Court yesterday declared invalid an order made by the Divisional Commissioner of Police (Soweto) prohibiting meetings of 26 organisations in specific areas

The Deputy Judge President, Mr Justice G A Coetzee, with Mr Justice H J Preiss and Mr Justice E H Stafford concurring, also deleted a clause from one of the emergency regulations

The urgent application was sought by the United Democratic Front — one of the organisations affected by the ban. It was awarded costs

The UDF sought an order declaring emergency regulations 7 and 11 and the police order prohibiting meetings invalid

Mr Justice Coetzee ordered that a phrase in regulation 7 be deleted and the order by the Divisional Commissioner of Police, Soweto Division, prohibiting gatherings of 26 organisations in Soweto, Diepkloof, Meadowlands and Dobsonville, was declared invalid

Regulation 7 stated that the Commissioner of Police or any person authorised by him could make certain orders. The phrase

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No banners

These included that only an ordained minister could speak during a funeral ceremony, mourners could travel only by vehicle from the place of service to the cemetery, and the Commissioner would decide the route to be followed

Flags, banners, pamphlets and posters were banned, and no public address system was to be used

No more than 200 people were to attend a ceremony, and it was limited to four hours

On June 19 the Divisional Commissioner of the Western Transvaal issued similiar restrictions

On June 21 further orders restricting funerals were published In terms of these, they were banned during weekends and public holidays on the East Rand and in the Western Transvaal

Further orders relating to the control of movement of non-residents, possession of petrol, and school boycotts were published

On June 25 the Witwatersrand Divisional Commissioner issued an order preventing pupils from being on school permises in Alexandra during the school holidays

On July 1 the East Rand Commissoner banned gatherings of various organisations, including the UDF

On July 7 the Soweto Commissioner banned all gatherings in the Johannesburg and Roodepoort areas of meetings of 34 organisations, including several trade unions But on July 10 this order was amended and the ban on gatherings was limited to Soweto, Diepkloof, Meadowlands and Dobsonville Trade unions were also no longer affected The order was finally repealed on July 11

The State President, Minister of Law and Order, and the Commissioner of Police were ordered to pay the UDF's costs

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Regulation 7 stated that the Commissioner of Police or any person authorised by him could make certain orders The phrase "or any person authorised thereto by him" was deleted

The ban on meetings was not valid because it depended on this phrase — having been made by the Divisional Commissioner

In terms of the Public Safety Act, legislative power delegated by the State President could not be passed on to a third party

It was not necessary to set aside the whole of regulation 7

Regulation 11 — which deals with the seizure of publications — was not changed No legislative power was being delegated in terms of the regulation

Mr Jules Browde SC assisted by Mr Gilbert Marcus instructed by Krish Naidoo, appeared for the UDF. Mr Johan Conradie SC for the State President Mr Rene Kruger SC assisted by Mr N van der Walt for the Divisional Commissioner of the South African Police (Soweto Division), the Commissioner of the South African Police and the Minister of Law and Order

Whites 'sitting ducks' for misinformation

Mercury 29/7/86 p8

CITY PRESS said in an editorial that it had published a 'severely distorted' story on South Africa's schools. 'Something is happening in some of those schools, but under the stringent emergency regulations we are not allowed to tell you what it is — although a government department has confirmed our facts.

'The refusal of a second government department to confirm or deny our facts has rendered us powerless to tell our readers what is really happening

'The whole thing is ridiculous If there was any logic at all to the process of controlling the flow of information then at least one could begin to untangle the jigzaw puzzle of government thinking

'But there is no logic — all black communities already know what is happening in schools, because they are affected Their children and teachers give daily accounts of these happenings Our reporters encounter these events almost daily

'So if our people know what is happening what is the point of clamping down on that information?

'It is to enable the bulk of the white community to float through life with an Alice-in-Wonderland self-delusion that everything is under control — leaving them sitting ducks for the misinformation handed out daily by the SABC

'And the international community is being told of the success the new security clamp-downs have achieved

'We do not believe this contributes in any way to a solution to the crisis facing this land. Honest and intelligent evaluation of our problems is essential if we are to formulate intelligent responses

'We cannot even begin to do that when we do not have information — the correct information — available to us

'Does it surprise anybody that so many white people, especially employers, are privately welcoming the state of emergency? They do this because there is no information reaching them This circle of ignorance poses the greatest problem for this country's future

'Any pretence that newspapers are free to publish what is happening in the country bears no credibility in the light of our experiences. The less the Government and its Bureau for Information trumpet their claims that the Press is free, the better for all concerned

'We are not free,' City Press editor, Percy Qoboza, said in the signed editorial.

□ □ □

THE Natal Supreme Court judgment that certain sections of the emergency regulations were void was 'a major victory for the rule of law', the Sowetan said.

The Black Press
by Barry Streek

THE Natal Post said the proposal by the KwaZulu/Natal Indaba for a Bill of Rights, which balanced individual liberty against wider political interests, had 'shown a commitment by the participants to contribute to a non-racial democracy for South Africa

'Unlike the three-tier constitution which was foisted on to the majority, the Indaba is an attempt to formulate an acceptable arrangement, based on the will of the people. Herein lies part of our solution.

'The involvement of the majority in shaping South Africa's future is pivotal to the move towards the society sought by apartheid's opponents. A Bill of Rights helps to plot the contours of the new order.

'The Indaba is a seminal initiative in this direction,' Post said

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IN ITS reaction to the Indaba, Ilanga said: 'The government of Mr P W Botha has squandered so many opportunities for peaceful change that we have actually lost count.

'South Africans of courage and good will and representing various shades of political opinion have come up with a host of options, ideas and initiatives, all designed to get the country out of the quagmire of unjust policies.

'They have been slapped down and dismissed in cavalier fashion as meddlesome trouble-makers.'

With the Bill of Rights, the Indaba had come up with an idea that appears to all intents and puposes to be flawless'.

'Will the Government give its stamp of approval for this option which is born out of a commonly felt desire by a cross-section of the people of Natal/KwaZulu for peaceful change leading to a new and just society?

'Or will the Government,

'The fact that the state of emergency itself stays is not a victory for the Government. Indeed, this judgment must be viewed as a serious indictment of the Government itself.

'One wonders how lawmakers in this country could possibly have put together such a regulation, variously described as 'nonsense' and 'unintelligble' by Mr Justice Didcott. He said one section was 'hopelessly uncertain, and that no ascertainable meaning can be derived from it'.

'We would have told the Government just that right at the onset. But we were prohibited by these same regulations from saying it. Does this perhaps explain why there has been a prohibition on criticising the state of emergency?

'Clearly, what we have in these regulations is an attempt by an overzealous group of bureaucrats desperately trying to implement the every whim of politicians whose legal knowledge is at best dangerous.

'The lesson the Government hopefully will have learnt from this is that repression has never solved problems,' the Sowetan said.

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ILANGA said readers wondering how newspapers were coping with the regulations would, hopefully, have gained insight from the judgment.

The decision of the three judges was historic, it said.

'The landmark ruling virtually drilled holes into the 40-day-old state of emergency. It must have given the decision-makers some anxious moments, although one of them, the Minister of Law and Order, Mr Louis le Grange, tried to put a brave face to it.

'His interpretation was that the court finding had left the regulations virtually intact. Hmmm . . . we wonder about that.

'There is still an awful lot that we do not understand about these regulations. It makes the business of editing this newspaper more delicate and more dicey than it has ever been. It also means, as far as we can tell, that certain liberties which traditionally have been regarded as sacrosanct can no longer be taken for granted. One of these liberties is Press freedom,' Ilanga said.

In typical fashion, Ilanga applauded the courage and farsightedness of all who are involved with the Indaba. These people are saying 'Hamba Apartheid', 'Woza Non-Racial Society'. Will the Government join in the happy chorus?

'Unhappily, we see very little evidence of the Government's willingness to change unless it is expressly in its own sweet time.

'We support this Bill of Rights. We see it not only as reasonable but most essential as part of the foundation upon which to build a new South Africa. If the Government, which must ultimately take the final decision, should reject it, it will stand accused by future generations of having refused to give peace a chance,' Ilanga said.

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CITY PRESS said that although Zwelakhe Sisulu, the editor of New Nation, had been released from detention there were 'some very disturbing aspects about the way he was arrested'.

'At the time of his arrest this newspaper, and indeed the entire Press, described how four men — two of them allegedly clad in balaclavas — burst into his house.'

After his release Mr Sisulu had repeated the allegation: 'The stories of balaclavas are a disturbing feature which have been with us for months now. We believe Law and Order Minister Louis le Grange owes the country an explanation: Why must members of the police force use balaclavas.

'Respect for the forces concerned with the maintenance of law and order can only come about if those forces conduct themselves, at all times, with respect and dignity.

'Wearing balaclavas, as the Sisulus allege, is hardly the type of thing that will encourage that respect.

'Balaclavas are the sole trademark of bank-robbers, bandits and people involved in anti-social behaviour.

'Certainly not respectable members of a police force — and this is why we are waiting for an explanation,' City Press said.

All political comment in this issue is the responsibility of J O McMillan; headlines and contents bills, J Barker, cartoons by Paul Lessing — all of 12 Devonshire Place, Durban

MERCURY
29/7/86
252

Ban ruling sets wide precedent

We Post 29/7/86

252

JOHANNESBURG — Orders and bans on meetings made in terms of the state of emergency by any one below the rank of the Commissioner of Police are invalid because of a ruling yesterday by a full Bench of the Rand Supreme Court, legal experts said today.

The ruling has set a precedent which could affect orders made countrywide in terms of the emergency regulations.

After the UDF had challenged it, the court yesterday declared invalid an order by the Divisional Commissioner of Police (Soweto) prohibiting meetings of 26 organisations in specific areas.

The effect of the order was to invalidate all orders made by divisional commissioners under the state of emergency, a Johannesburg legal academic said.

He explained that, although a court in another province could make a different finding, the Transvaal ruling would be authorative even outside the Transvaal until a Bench of three judges overturned it elsewhere.

A large number of orders published in Government Gazettes could be affected by the ruling.

On June 13 on the East Rand, West Rand and Witwatersrand, various divisional commissioners issued orders banning outdoor funerals of people who had died from unnatural causes, and imposing various restrictions.

On June 19, the Divisional Commissioner of the Western Transvaal issued similiar funeral restrictions.

On June 21, further orders restricting funerals were published.

On June 25, the Witwatersrand Divisional Commissioner issued an order preventing pupils from being on school premises in Alexandra during the school holidays.

On June 26, the Northern Transvaal Commissioner issued funeral restrictions andon July 1, the East Rand Commissioner banned gatherings of organisations.

On July 1, various divisional commissioners, including the one in the Eastern Cape, banned indoor gatherings of organisations, including the UDF. Outdoor gatherings were previously prohibited

On July 2, in the Western Transvaal, the ban on entering school premises was extended and, on July 7, the Soweto Commissioner banned gatherings in the Johannesburg and Roodepoort areas of 34 organisations.

On July 11, orders relating to the control of school boycotts were published by the Commissioner for the Eastern Transvaal

UDF move curbs powers of police

THE Rand Supreme Court yesterday declared it unlawful for divisional commissioners of police to issue orders in terms of the emergency regulations

The immediate effect of this ruling was to set aside a ban by the Soweto Divisional Commissioner on a United Democratic Front (UDF) meeting which was to have taken place last Saturday.

But numerous other orders by divisional commissioners will now be invalidated by the court's rulings These include

☐ Gagging orders on 119 organisations including the UDF and the Congress of SA Trade Unions in six Cape magisterial districts, issued on June 21, by Brig Chris Swart, the Western Province divisional commissioner,

☐ The orders prohibiting students from entering school grounds in five areas for a limited period, given on July 4 by Western Province divisional commissioner Brig Chris Swart, and Witwatersrand divisional commissioner Johannes Renier Petrus Bekker, on June 26,

☐ Curfew orders issued by Northern Free State and Northern Transvaal divisional commissioners affecting 11 areas,

☐ Orders prohibiting funerals during weekends and public holidays in numerous areas

LIAM EGAN

This is the second setback for government's emergency regulations after a recent ruling in the Natal Supreme Court which, among other things, allowed lawyers access to detainees.

In yesterday's judgment, Justice G Coetzee ruled against emergency regulations which empowered the Commissioner of the SAP to allow divisional commissioners to issue orders in terms of the regulations

The court accepted that only the State

To Page 2

Court ruling curbs police

President had the authority, in terms of the Public Safety Act, to delegate this power and not the Commissioner of Police

Advocate J Browde argued successfully that the effect of the divisional commissioner's order was "tantamount to banning the UDF as a lawful organisation".

An attempt to have a section of the emergency regulations which deals with the powers of the designated authorities to confiscate "subversive" literature found invalid was successful in part only

A Bureau for Information spokesman said it had not received any information concerning the court decision and would not be releasing the statement

From Page

Ban ruling sets wide precedent

Eve Post 29/7/86

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BID TO FREE DETAINEES

AN URGENT application for the release from detention of 26 people, including the general secretary of the Southern African Catholic Bishops' Conference, is to be heard tomorrow in the Pretoria Supreme Court.

SOWETAN Correspondent

Court to decide fate of 26

The application has been brought by relatives of 17 of the detainees, and attorney Mr Brian Neville Currin, who is acting on behalf of the remaining nine prisoners.

The attorney has asked that "in the extraordinary circumstances that have arisen, and particularly where the liberty of the person is at stake" he be granted the *locus standi* (legal right) to approach the court on behalf of the detainees

Mr Currin is acting on behalf of Mr R Mamoepa, Mrs J Ndou, Mr C Sibishi, Mr L Detsego, Mr S Ngwezi, Mr P Zondo, Mr C Simango, Mr T Masuku and Mr D Mokete

The other detainees include the Rev Smangaliso Mkhatshwa, the general secretary of the Southern African Catholic Bishops' Conference, and his nephew Mr Augustine Zwane, a Swazi citizen

Mr Zwane was allegedly visiting his uncle to obtain advice about future studies when he was detained In an affidavit, Mr Zwane's mother, Mrs Violet Cecelia Zwane, said she believed her son was only arrested because he was staying with Mr Mkhatshwa at the time.

Police

"I am certain that the members of the police force who visited the premises that night for the purpose of detaining my brother had not even known of the presence or existence of my son and they could have had no reason to have detained him other than the fact that he happened to be present on the premises at the time"

The remaining detainees are Dr Abraham Nkomo, Mr Jacob Masemola, brothers Mr Ramano Dau and Mr Khorombi Dau, Mr Titus Mafolo, Mr Post Molepo, Mrs Rosina Mphahlele, Mr Arthur Mkhwanazi, and Mr Nathaniel Lekgoro, all of whom were arrested in Atteridgeville

Those arrested in Soshanguve were Mr Hans Hlalethwa and his son Mr Theo Hlalethwa, Mr Jack Phahlamohlaka, Mr Alexander Mahlatjie, and Mr Sydney Manthata The Rev Lucas Mabusela was arrested in Mamelodi

Court refuses release request

Court Reporter

AN application for an order declaring the detention of Mrs Patricia Tobeka Malgas, of New Brighton, unlawful and for her release, was dismissed with costs in the Port Elizabeth Supreme Court today.

The application was brought by her mother, Mrs Lilian Misewe Mini.

Mrs Mini said she knew of no reason for her daughter's arrest on June 16 and alleged that she was not affiliated to any organisation, cultural, political or religious.

She described her daughter as a law-abiding, quiet-living, responsible mother.

The application was opposed by the Minister of Law and Order.

In an affidavit by Major C J Roelofse of the security police, it was alleged that Mrs Malgas was a member of the Port Elizabeth Women's Organisation — a militant organisation that incited people to unrest and violence at political funerals.

It alleged that she was married to Ernest Malgas, a trained terrorist, who had been convicted of sabotage in 1963 and served 14 years. Mr Malgas had continued his underground political activities and was an executive member of Pebco.

According to information, Mr Malgas had on several occasions given orders that people be killed by the barbaric "necklace" method.

Major Roelofse alleged that he also had information that Mrs Malgas was involved in intimidation and had acted as a messenger and link between the African National Congress and her husband.

When the application came before the court today, Mr Justice Kroon was asked to dismiss it with costs by consent in light of the replaying affidavits.

Mr J D Pickering, instructed by the Legal Resources Centre, appeared for Mrs Mini. Mr P J de Bruyn, instructed by the Deputy State Attorney, appeared for the Minister.

Court orders release of PE businessman

Eastern Post 29/7/81 252

Court Reporter

AN order for the release from prison of a PE businessman, Mr Zaid Seedat, was granted by the PE Supreme Court today

In an affidavit supporting his application, Mr Seedat, of Eugimia Street, Malabar, stated that he was at present serving 460 days imprisonment at the North End jail, PE.

He had been detained since July 7 as a result of warrants for his arrest, executed by his creditors.

On July 22 his estate was provisionally sequestrated and Mr Seedat submitted that because of this and in terms of Section 20(1)2 of the Insolvency Act of 1936 he was entitled to apply for his release from prison.

It was further submitted that his imprisonment was to the detriment of himself and his creditors and served no real purpose because his estate had already been provisionally sequestrated.

His only income was derived from his trading as a general dealer at Schauder Supplies, Highfield Road, Korsten, and the Spice Den, Rink Street, Central.

He submitted that his release from prison would enable him to actively participate in his businesses to the advantage of his creditors.

The application was not opposed and was granted by Mr Justice Kroon

Mr N L J Van Rensburg (instructed by Ward Able and Son) acted for Mr Seedat

Another court rules against orders

BUSDAY 30/7/86 252

IN WHAT has been hailed as a far-reaching decision, a full Bench of the Grahamstown Supreme Court ruled yesterday that only the State President, Mr P W Botha, or delegates "specifically" named by him, could issue orders in terms of the state of emergency regulations.

The judgment went further to say that orders could only be issued "for any of the purposes for which the State President is authorised by the section to make regulations".

These are: providing for the safety of the public; maintenance of public order;

Business Day Correspondents

making adequate provision for terminating the emergency; and dealing with any circumstances which have arisen or are likely to arise as a result of the emergency.

The three judges, Judges Jones, Cloete and Kroon, ruled that insofar as Regulations 7 and 11 (promulgated in terms of the Public Safety Act No 3 of 1953) purported to grant the Commissioner of Police or the Minister of Law and Order the authority to delegate the power entrusted to them by the State President further, they were invalid.

Accordingly, the Divisional Commissioner may not "make any orders, rules or by-laws" in terms of the Public Safety Act by virtue of Regulations 7 and 11.

This ruling effectively invalidates all orders made by the Divisional Commissioner of Police, Brigadier Ernest Schnetler, including the prohibition of meetings, restrictions placed on funerals in the Eastern Cape and curfews.

The judgment goes further than the

● To Page 3

Cape court goes even further

30/7/86 252 BUSDAY

● From Page 1

Transvaal judgment, which was handed down recently, in that it states only the Minister of Law and Order may, in terms of Regulation 11, authorise the seizure of publications

The application, which successfully sought to have regulations banning meetings of various organisations set aside, was brought by the United Democratic Front (UDF) and its secretary, Mr Mohammed Valli Moosa

The regulations were applicable in several magisterial districts

Other urgent applications to challenge the State of Emergency are to be brought in the Durban and Cape Supreme Courts later this week.

Tomorrow, a key official of the United Democratic Front, Solomon Lechesa Tsenoli, who is detained at present, will argue that his arrest and continued detention were unlawful because, at the time of his arest on June 12, the state of emergency had not been declared or the regulations promulgated.

On Friday, the Western Cape Teachers' Union (Wectu) and the UDF will challenge the State President's power to delegate authority to make regulations.

Wectu and the UDF will argue that the State President does not have the power to delegate this authority as widely as he did in the emergency regulations. Specifically, they will argue that he does not have the power to delegate the power of delegation to the Commissioner of Police

Cosatu challenge is settled out of court

CAPE TOWN — The Congress of South African Trade Unions' action seeking to have a banning order declared invalid was settled out of court today and the hearing was postponed *sine die* for a ruling on costs.

Terms of the settlement were not immediately known.

The challenge, in the Supreme Court, concerned an order on June 21 by the Divisional Commissioner of Police in the Western Cape, Brigadier C A Swart, gagging 119 organisations and banning their meetings.

Cosatu sought a court order declaring the order invalid on the grounds that President P W Botha did not have the authority to allow the Commissioner of Police to delegate to Brigadier Swart power to make orders in terms of emergency regulations.

The respondents are President Botha, Law and Order Minister Mr Louis le Grange, the Commissioner of Police, General Johan Coetzee and Brigadier Swart.

In papers, Cosatu regional secretary Mr Nicholas Paul Henwood said that in terms of the Public Safety Act Mr Botha could make regulations relating to a state of emergency but could not make regulations in conflict with the Labour Relations Act.

He said Mr Botha had declared a state of emergency on June 12 and made regulations.

"On June 21, 1986, purportedly acting in terms of Regulation 7 of these regulations, Brig Swart made an order prohibiting Cosatu from holding meetings."

The Western Cape region of Cosatu had to hold meetings in the immediate future "to transact its business and conduct its affairs", said Mr Henwood.

A regional executive committee meeting had to be held at least once a month in terms of the constitution.

"The last monthly meeting was held on June 8, 1986. The next monthly meeting had, therefore, to be held by July 31, 1986 and it will be held in Cape Town."

Mr Henwood said the July regional meeting was planned for July 7, but was postponed.

Judgment invalidates Schnetler's orders

Post Reporter

THE judgment handed down in the Grahamstown Supreme Court yesterday in favour of the United Democratic Front effectively invalidates all orders made by the Divisional Commissioner of Police in the Eastern Cape, Brigadier Ernest Schnetler, in terms of the state of emergency regulations

A full Bench ruled that only the State President, Mr P W Botha, or delegates "specifically" named by him, could issue orders

Unless new orders are issued by Mr Botha or his delegates, the curfew introduced by Brig Schnetler on June 19, the restrictions on funerals which he imposed on June 13 and the ban on indoor meetings by 52 organisations in 13 magisterial districts, will become invalid

The UDF made an urgent application to the Port Elizabeth Supreme Court on July 14 asking that certain emergency regulations be declared invalid and that a UDF meeting scheduled to be held the next day, be allowed

Mr Justice Jones said it was court policy for such matters to be heard by the full Bench, and granted a request for the case to be heard in Grahamstown

The original application was brought by UDF secretary Mr Mohammed Moosa against the State President, the Divisional Commissioner of Police in the Eastern Cape, the Commissioner of Police and the Minister of Law and Order

On June 30, an executive meeting of the UDF in Johannesburg decided to hold a meeting in Port Elizabeth to inform the community of the effects of the state of emergency on the UDF and its affiliates

Mr Moosa's application to the Divisional Commissioner to hold the meeting at the Rio Cinema was refused

In an affidavit replying to Mr Moosa s application for a declaration to enable the UDF to exercise its lawful authority, Brig Schnetler denied that Regulation 7 in Proclamation R109 was invalid and said the State President s competency to authorise persons to act for him was not restricted by the Act

On June 19, an order published in the Government Gazette barred people from streets and public places in townships in 13 Eastern Cape magisterial districts between the hours of 9pm and 4am, barred non residents from townships and prohibited the possession of T shirts bearing the names of about 47 action committees students' movements and councils and other organisations

The orders also restricted the movement of pupils at schools and barred non pupils and non employees from school premises in townships falling within the magisterial districts of Port Elizabeth, Uitenhage, Fort Beaufort Albany, Humansdorp, Hankey Kirkwood Somerset East, Bedford Adelaide, Alexandria, Cradock and Bathurst

They effectively extended restrictions placed on funerals in four magisterial districts on June 13 to townships in these 13 districts

Brig Schnetler s orders banned public address systems and banners from being used at funerals and prohibited anyone but ordained ministers from acting as speakers at funeral services

On July 1, the Government Gazette published orders from Brig Schnetler prohibiting 52 political organisations from holding indoor meetings in 13 magisterial districts under his control

They were also prohibited from advertising gatherings and people were prohibited from attending them

Yesterday, Judges Jones Cloete and Kroon ruled that insofar as Regulations seven and 11 (promulgated in terms of the Public Safety Act No 3 of 1953) purported to grant the Commissioner of Police or the Minister of Law and Order the authority to further delegate the power entrusted to them by the State President they were invalid

SCHOOL ACTION

Botha warns on sanctions

Court challenge for DET

AN URGENT application to challenge the compulsory registration of black pupils is to be heard in the Rand Supreme Court tomorrow.

The application is being brought by the National Education Crisis Committee (NECC) and two parents, Mrs Maggie Mmaphiose Sole of Dobsonville and Mr Peter Mabaso of Moroka, Soweto, on behalf of their children

The respondents are the State President, Mr P W Botha, and the Minister of Education and Training, Dr Gerrit Viljoen

According to affidavits filed on Monday, the court will be asked to declare Proclamation R131 promulgated by the State President on July 13, 1986, in terms of the Public Safety Act 3 of 1953 to be invalid and of no effect in law

Alternatively, the applicants seek that Regulation 2 and/or 3 and/or 4 of the same proclamation be declared invalid

In his capacity as secretary of the NECC, the Rev Molefe Samuel Tsele, said the proclamation creates a system of compulsory registration of black pupils

He also said the Director-General of Education and Training or any officer authorised by him has the power to refuse admission to any pupil

A school principal is required to place pupils in a class according to scholastic achievement Pupils who refuse to accept a placement, Mr Tsele said, are "deemed to have left the school voluntarily"

He submitted that the entire proclamation or the individual regulations are invalid in law for a variety of reasons

Among these are that the proclamation applies to black children only, and as a result they have been singled out for unequal and unjust treatment

• Black educationists yesterday warned of "dire consequences" if education officials continued to delay a meeting between them and the NECC

← From Page 1

Programme Trust, said the authorities should speak to NECC

"If the officials do not respond immediately to the request, the situation will deteriorate and the blame will be put squarely on DET's shoulders," he said.

Mr John Samuel, director of the South African Committee for Higher Education (Sached), said the meeting between the two parties was "absolutely critical

"The whole matter has gone beyond a crisis educational disaster," he said

Meanwhile more than 20 state of emergency orders issued in various parts of South Africa were invalidated on Monday when the Rand Supreme Court ruled that the Commissioner of Police was not entitled to delegate authority to divisional commissioners to issue such orders

According to Johannesburg attorney, Mr P Jenkins, the effect of the court ruling, after an application by the United Democratic Front, was that any order by any divisional commissioner, promulgated under Regulation 7(1), had now been effectively invalidated as the regulation no longer empowered divisional commissioners to issue orders

"The practice arose when the Commissioner of Police authorised divisional commissioners to issue orders The court found on Monday, that the delegation of authority by the Commissioner went beyond the powers which the State President was entitled to confer upon the

By NKOPANE MAKOBANE and SAPA

Mr T W Kambule, a lecturer at the University of the Witwatersrand said it was imperative that the authorities meet with NECC He said it appeared the DET was misreading events

"The problem with DET is that it does not comprehend the seriousness of the schooling problem If they want to come to grips with the schools crisis, they have to be realistic and stop their insensitivity

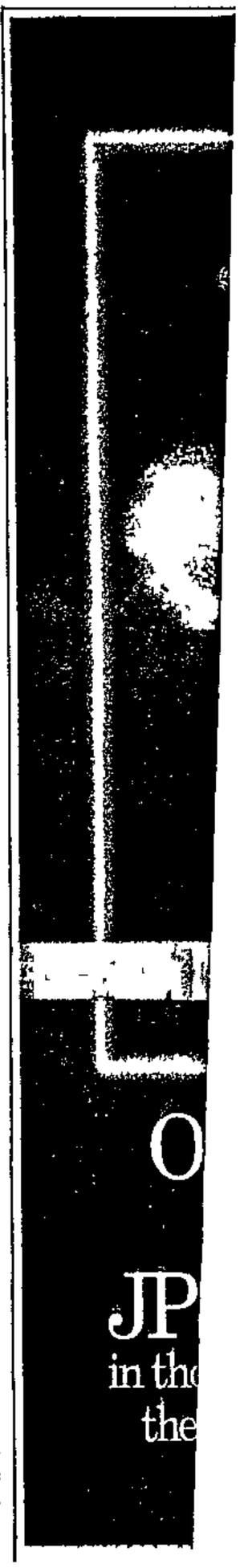
Political

"We want to tell the Government that what makes this meeting more urgent is that the whole black education system is a political issue

"We would like to suggest to the Minister that he should not be like Nero who fiddled while Rome was burning The consequences would be disastrous and the Minister is the only man who could help to defuse the situation," he said

Mr Fanyana Mazibuko director of the University Preparation

To Page 12 →



Now Grahamstown court invalidates police orders

The Grahamstown Supreme Court has invalidated the curfews and bans on public meetings and funerals ordered by the Divisional Commissioner of Police in the Eastern Cape

The court ruled that only President Botha, or delegates specifically named by him, could issue orders in terms of the state of emergency regulations

The Full Bench — Mr Justice Jones, Mr Justice Cloete and Mr Justice Kroon — ruled that regulations 7 and 11, promulgated in terms of the Public Safety Act, were invalid because they purported to grant the Commissioner of Police or the Minister of Law and Order authority to further delegate the power entrusted upon them by the President

Accordingly, the Divisional Commissioner might not make "any orders, rules or by-laws" in terms of the Public Safety Act by virtue of regulations 7 and 11

The judgment, on an application by the United Democratic Front and its secretary, Mr Mohammed Valli Moosa, also ruled that orders could not be issued only "for any of the purposes for which the State President is authorised by the section to make regulations"

PUBLIC ORDER

These were providing for the safety of the public, maintenance of public order, making adequate provisions for terminating the emergency, and dealing with any circumstances which had arisen or were likely to arise as a result of the emergency.

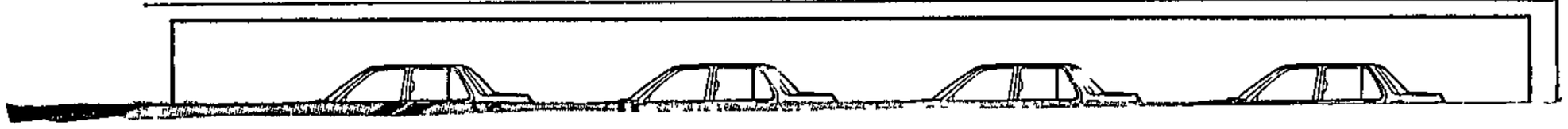
This ruling effectively invalidates all orders made by the Divisional Commissioner for the Eastern Cape, Brigadier Ernest Schnetler, including the prohibition of meetings, restrictions on funerals in the Eastern Cape, and curfews in townships

The respondents were ordered to pay costs of the application.

Mr Jules Brown, SC, appeared for the UDF, and Mr J H Conradie, SC, for the respondents

● Regulation 7 empowers "the Commissioner of the South African Police or any person authorised thereto by him" to issue orders relating to the emergency "without furnishing reasons and without hearing any person"

● Regulation 11 empowers "the Minister, or a person authorised thereto by him", to authorise "the seizure of one or more or all copies of any publications specified in the order which in his opinion contain a subversive statement or any other information which is, or maybe, detrimental to the safety of the public, the maintenance of the public order or the termination of the state of emergency"



Sowefa - 31/7/86

252

COURT BID FAILS

By MONK NKOMO

THE Full Bench of the Pretoria Supreme Court yesterday dismissed an application by two Johannesburg men, who included an executive member of the United Democratic Front, to nullify their detention under the state of emergency regulations.

Mr Raymond Sorrel Suttner, a senior law lecturer at Wits University and UDF official, and Mr Sipho Kubheka, an official of the Paper, Wood and Allied Workers' Union, sought an order directing the Government to either release them or give reasons for their detention.

Government

The respondents were the State President, Mr P W Botha, the South African Government, Mr Louis le Grange, the Minister of Law and Order, and the officer commanding at John Vorster Square Prison.

The applicants were represented by Mr L Goldblatt, SC, and Mr R Sutherland, instructed by Mr Peter Harris of Cheadle, Thompson and Haysom.

Mr J D M Swart, SC, appeared for the respondents.

Mr Justice Preiss with Mr Justice Harms and Mr Acting Justice Myburgh concurring, dismissed the application with costs and said reasons for their decision will be issued soon.

In their affidavits both applicants said they were arrested at their homes in Alexandra and Johannesburg on June 12 in terms of Section 50 of the Internal Security Act. Their detention was extended and were both now being held under the emergency regulations

SOWETAN, Thursday, July 31, 1986

UDF to study court moves

THE United Democratic Front is looking at other legal challenges pertaining to the state of emergency following court rulings in its favour this week, writes NKOPANE MAKOBANE.

The Witwatersrand and Grahamstown Supreme Courts on Monday and Tuesday respectively invalidated orders by the divisional commissioners of Soweto and the Eastern Cape prohibiting among other things public meetings

Mr Azhar Cachalia, the UDF national treasurer, said yesterday that they welcomed the decisions and view them as "victory" for those affected by them These decisions, he said, were important and the organisation was considering further applications in other broad aspects of the state of emergency

He added that the decisions still do not ease the immense problem the UDF has in operating as an open democratic organisation It was almost impossible for them to meet, notwithstanding the court decisions, he said.

On Tuesday a Full Bench of the Grahamstown Supreme Court invalidated the curfews and bans on public meetings and funerals ordered by the Divisional Commissioner of Police in the Eastern Cape.

The court ruled that only the State President, Mr P W Botha, or delegates "specifically named by him", could issue orders in terms of the state of emergency regulations.

Cosatu challenges gag in W Cape

THE Congress of South African Trade Unions yesterday challenged in the Supreme Court an order by the Divisional Commissioner of Police in the Western Cape, Brigadier C Swart, on June 21 gagging 118 organisations and banning their meetings.

Cosatu is seeking a court order declaring the order invalid on the grounds that State President P W Botha did not have the authority to allow the Commissioner of Police to delegate to Brig Swart power to make orders in terms of emergency regulations.

Meanwhile the English newspaper groups in South Africa have joined forces to challenge emergency regulations affecting newspapers.

An application is to be brought before a Full Bench of the Natal Supreme Court in Maritzburg on August 11, by the Argus Printing and Publishing Company Ltd, South African Associated Newspapers Ltd, Natal Newspapers (Pty) Ltd and Natal Witness (Pty) Ltd.

Six regulations — numbers seven to 12 — are to be challenged, along with police orders issued in terms of Regulation 7. — Sapa.

Court rules out detainees' release

Pretoria Bureau

A Full Bench of the Pretoria Supreme Court yesterday dismissed an application for the release from detention of Mr Raymond Suttner and Mr Siphosa Kubheka.

The two men had asked the court to declare their detentions in terms of the emergency regulations unlawful.

Delivering the brief decision yesterday, Mr Justice H J Preiss said reasons would be given later.

It was decided to make known their decision immediately because the two men were in detention, many other detainees were possibly waiting for the outcome, and the matter was of considerable public importance, said Mr Justice Preiss.

The applicants were also ordered to pay the costs.

Mr Justice L Harms and Mr Justice A P Myburgh concurred.

Cases involving at least 29 other detainees were stood down until today and tomorrow.

Mr Suttner is a senior law lecturer at the University of the Witwatersrand.

He has been in detention since June 12 — the day the national state of emergency was declared — and was originally told he was being held under the Internal Security Act.

He was later told an emergency had been declared and he was being held in terms of the emergency regulations. However, he was given no reasons for his detention.

Mr Kubheka is a member of the Paper and Allied Workers Union. He was also detained on June 12 under the Internal Security Act. The court heard he had been given no reasons for his detention, but was at one stage informed he was being held under the emergency regulations.

Three other urgent applications lodged with the court yesterday sought orders for the release of 29 men and women and that their detention in terms of section 3 (1) of the emergency regulations, be declared unlawful.

In one application, the court was to be asked to order the release from detention of 26 people, including the general secretary of the South African Catholic Bishops' Conference, Father Smangaliso Mkhatshwa, and his nephew, Mr Augustine Zwane.

The application has been brought by the relatives of 17 of the detainees and a Pretoria attorney, Mr Brian Currin, who will ask for locus standi to act on behalf of the other nine.

They are: Mr R Mamoepa, Mrs J Ndou, Mr C Sibishi, Mr L Detsego, Mr S Ngwezi, Mr P Zondo, Mr C Simango, Mr T Masuku and Mr D Mokete.

Mr Currin said in an affidavit he had orginally received instructions to act for the detainees from the Detainees Support Committee (Descom). However, meetings of Descom had been banned under the emergency regulations, many of its members had been detained and to the best of his knowledge, Descom had ceased to function.

The court will be asked to release the men on the grounds that they were originally arrested under the Internal Security Act. They are now being held under the emergency regulations without having been formally re-arrested.

Human rights 'are deteriorating in SA'

By Claire Robertson

In the past few months there had been a deterioration in human rights in South Africa with "very serious problems" arising from the state of emergency, Mr James Montgomery, United States Deputy Assistant Secretary of State for Human Rights and Humanitarian Affairs, said yesterday.

At the end of a nine-day visit to South Africa, Mr Montgomery told a Press conference in Johannesburg it was clear that "very serious problems would stem from the emergency, detention without trial, the abuse of prisoners — and accountability on the part of the police force".

He had "frank and open" talks with the departments of Foreign Affairs and Justice and met representatives of the police.

"I certainly discussed with them the effect of problem areas here on the ongoing debate in the US ... it makes policy-making for us very difficult."

Mr Montgomery met several detainees after their release. "A very unpleasant experience," he said but declined to give details of what he had heard of their treatment in detention.

"I was struck by the role of courts ... how important they are to everyone. People do go to the courts, and they do get relief."

He said he had visited South Africa to look at the human rights programme maintained by the US in South Africa — "one of the largest such programmes".

"I will recommend the continuation of our programme and, in some cases, I might consider recommending modest increases," he said.

Deputy Mayor in court

Vereeniging Bureau

The Deputy Mayor of Vereeniging, Mr Samuel Jacob Gross, appeared in the Vereeniging Regional Court on Tuesday on a charge of illicit diamond dealing.

Mr Gross (65), of Brandmuller Drive, Three Rivers, appeared with Mr Johannes David Burger (37), of Heidelberg Flats, Berea, and Mr Anthony Mosivoa Tchabi (48), of Beech Street, Three Rivers.

They were not asked to plead and no evidence was led.

The men allegedly were caught on Monday dealing in seven uncut diamonds with a mass of 13,54 carats and valued at about R5 700.

Business Day

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"THE VITAL VIEWPOINT"

31/7/86 BUSDAY

State of emergency regulations face a legal onslaught

STATE of emergency powers are under a barrage of attack in the courts as a flood of applications challenge the regulations on many fronts

Five cases either challenging the emergency regulations, or detentions of individuals, were heard in the Rand, Pretoria, and Cape Town Supreme Courts yesterday, with several more cases due in the next few days

The onslaught against the regulations has led to a number of detainees being

Business Day Reporters

freed, and many of the restrictions on the media being lifted

While a list of provisions restricted the media at the start of the emergency, seven weeks later only two major contraints remain — the reporting on actions of the security forces, and certain restrictions on taking and publishing photographs

Legal opinion has led newspapers to begin publishing the names of detainees, another area previously restricted

Prominent people said to be in detention include UDF leader Frank Chikane, Nusas president Claire Wright, Carole Vale, wife of prominent social scientist Peter Vale of Grahamstown University; Mawu vice-president Jeffery Vilane, Cosatu Pretoria regional secretary Donsie Khumalo and Oscar Malgas, a senior Ccawusa official

Separate lists of detainees kept by monitoring groups such as the Detainees Parents' Support Committee (DPSC) and the PFP's Missing Persons Bureau have vastly different versions of the numbers in detention

This has led for calls for the authorities to disclose an official list of detainees, to establish who is in detention, and who is missing

PFP spokesman Harry Schwarz said such an official list should be issued as a matter of public importance

Schwarz said although the PFP had kept a list of those detained, the task of keeping public records should not have been left to different organisations

The Bureau for Information said it was not aware of plans by police to issue an official list of those detained

☐ In Cape Town, Cosatu challenged the Western Cape divisional commissioner of police's ruling gagging 119 organi-

● To Page 2

Onslaught on emergency laws

● From Page 1

sations and banning their meetings. The matter was settled out of court

☐ The Necc and two others brought an application against the President and the Minister of Education and Development Aid in the Rand Supreme Court asking that that court invalidate regulations barring unregistered pupils from attending school. The case will be heard on August 5

☐ In a case which went against the applicants, a full Bench of the Pretoria Supreme Court yesterday dismissed with costs an urgent application for the release of Raymond Suttner, a Witwatersrand University lecturer, and Sipho Kubeko of the Paper Wood and Allied Workers Union Reasons for the dismissal of the application were not given and will only be furnished at a later stage

☐ Today UDF official Solomon Tsenoli, now in detention, will argue in Durban that his arrest and continued detention is unlawful.

☐ Tomorrow action brought by the UDF and the Western Cape Teachers' Union will challenge the President's authority to make regulations and his power to delegate to the Commissioner of Police.

PUBLIC SECTOR

GOVERNMENT

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KWANATAL INDABA

Pointing a way

By publishing a bill of rights in advance of its proposed constitution, the Natal Indaba whetted the public appetite for what it is trying to achieve constitutionally

Since discussions began behind closed doors three months ago, there has been much talk of how compromise, and even agreement, can flow from cross-racial contact and negotiation The bill of rights (*Current Affairs* July 18), redrafted five times before it was accepted, is a case in point

But a burning question is can the Indaba come up with a constitution that is both practicable at the regional level, and has some relevance on a national scale? Or is it merely a regional red herring, diverting attention from the pressing issue of national black-white power sharing — even if only through the State President's mooted National Council

Indaba chairman Professor Desmond Clarence claims the bill of rights is a valuable pointer to the kind of constitution that will eventually emerge At this stage, though, it appears the constitution he has in mind is no more than a skeletal framework

Constrained as he is from discussing the substance of the Indaba's *in camera* proceedings, Unisa law professor and Indaba consultant Marinus Wiechers confirms that the bill of rights, which would have the force of law, will be the key mechanism protecting both individual and group rights in any future constitution

He tells the *FM* that representation on the proposed multiracial legislative assembly for Natal-KwaZulu will more than likely be by *voluntary association* — not along racial lines in a "group" context as favoured by Pretoria

This implies that interest groups may combine freely into non-racial political parties for collective representation A consequence could be a multi-party legislature along the lines of the Namibian system

Again, if there is to be proportional representation, it would operate not in terms of race, but for special party-political or cultural interest groups, any of which could be guaranteed a minimum representation in the multiracial assembly Explains Wiechers "What we have in mind is something more akin to a coalition-type government than the winner-take-all approach"

Major points of difference include the electoral system should assembly members be elected on a common voters' roll, a separate voters' roll, or through an electoral college? And should there be a right of veto? If so, how should it operate?

At this point, members of the Indaba constitutional committee agree that maximum devolution of power to the third tier of government would be crucial to the success of the new system They foresee multiracial local authorities — which would have complete autonomy and wide-ranging powers, and would fall within the ambit of a multiracial regional executive — as depoliticising decision-making at the centre

Says Wiechers "The division of power and control from central to the lowest level of government, combined with a constitution offering normal checks and balances, should enable us to arrive at a workable solution"

Consequently the model of the Swiss canton system has been repeatedly cited in debates The Free Market Foundation's Leon Louw, who propounds the cantonisation of SA in his book *South Africa The Solution,* addressed the Indaba on several occasions

But delegates privately admit it is difficult to see how the canton system, which works well in sophisticated Switzerland, can be adapted to what is essentially Third World Africa They feel something more homegrown, perhaps incorporating elements of other constitutional models, is required

On the issue of devolution, Unisa's Professor Dawid van Wyk points out that since the National Convention of 1909, SA's political thrust has been towards the centralisation of political power in spite of government lip service to devolution This trend was illustrated by the recent appointment of provincial executives accountable to parliament, a system which last month replaced elected provincial councils

Van Wyk argues that if Pretoria is to endorse whatever emanates from the Indaba, then what is needed from government beyond all else at this point is a change of heart So far there is little sign of that ■

FCN MWL 11/8/86.

STATE OF EMERGENCY — 1

More court work

The flurry of Supreme Court cases challenging various aspects of the emergency regulations, and detentions carried out in terms of them, continues.

In the latest development, the Rand Supreme Court ruled that it is unlawful for divisional police commissioners to issue emergency regulations It found that the Commissioner of Police may not delegate these powers to his subordinates. Only the State President may do so, said the court

The judgment followed an application by the United Democratic Front (UDF) to set aside a ban by the Soweto Divisional Commissioner on a meeting it had called. Lawyers, however, believe it effectively nullifies a number of decrees issued by divisional commissioners around the country

252

Lawyers say, for example, that a regulation prohibiting the publication in the western Cape of "utterances" of 119 organisations — including the UDF, the Congress of SA Trade Unions (Cosatu) and the Azanian Peoples' Organisation (Azapo) — no longer appears to have the force of law The same set of regulations outlawed the wearing of T-shirts with slogans proclaiming support for these groups This apparel can apparently now be taken out of mothballs.

Similarly affected are regulations issued by the divisional commissioners of the East Rand, Eastern Province, South Western Districts and the northern Free State prohibiting scores of political, student and community organisations from holding indoor meetings in a number of magisterial districts.

Curfews in several Free State, eastern Cape and northern Transvaal townships are also believed to have become inoperative; as are widespread restrictions on the conduct of speakers and mourners at funerals

The UDF case represents the second successful judicial challenge to the emergency regulations Two weeks ago, the Metal and Allied Workers' Union (Mawu) succeeded in having significant portions of the definition of a "subversive statement" declared null and void The judgment, given in the Natal Supreme Court, also opened the way for visits by lawyers to detained clients

Lawyers are now waiting to see whether the authorities in other judicial areas will decide to adhere to the Rand Supreme Court's judgment. Their concern arises from the fact that, despite the Mawu judgment, some lawyers have had difficulties in gaining access to detainees held outside Natal

The effect of the UDF case should not, however, be overestimated Theoretically, divisional commissioners' regulations can be reinstated if the Police Commissioner himself re-issues them

Another case, due to be heard in the Natal Supreme Court early in August, could, however, change even that The commissioner's right to issue certain regulations is one of many issues that will be challenged in an application brought jointly by South African Associated Newspapers, the Argus group, *The Natal Witness* and Natal Newspapers.

The application will argue that:

- ☐ The power of delegation given to the commissioner is, in terms of the Public Safety Act (PSA), beyond the powers given to the State President;
- ☐ The extent of the orders which the police may issue goes further than the power given to the State President by the PSA;
- ☐ The prohibition on the taking and publication of photographs is too vague to be intelligible; and
- ☐ The power authorising the Minister of Law and Order to seize publications is too wide, and the wording too vague, to be intelligible

Meanwhile, applications for the release of numerous detainees are to be brought to court in the coming week. Some of the better known names on whose behalf the applications are being brought are: Southern African Catholic Bishops Conference secretary general, Father Smangaliso Mkhatswa; Paper Wood and Allied Workers' Union Transvaal branch secretary, Sipho Kubheka; UDF leader, Raymond Suttner, and Klerksdorp-based Anglican Bishop Sigisbert Ndwandwe.

Mail civil claim

THE Weekly Mail is planning to sue the Minister of Law and Order, Louis le Grange, for wrongfully confiscating an edition of the newspaper.

Thousands of copies of the Weekly Mail were confiscated on the first day of the Emergency, June 13.

Following a Grahamstown Supreme Court decision this week, which found that the Minister had improperly delegated the power to confiscate, Weekly Mail lawyers have begun preparing papers for a civil action for damages.

252

IT STARTED IN NATAL, BUT THIS WEEK IT SWEPT THE ENTIRE COUNTRY. A

'Consult your lawyers,' said the Bureau. S

How has it happened that after some thirty years of court-rulings favouring the state, we now seem to be witnessing a judicial shift in the other direction, in favour of the individual?

By CARMEL RICKARD in Durban

AT the start of the State of Emergency it seemed unlikely that the courts would be able to intervene to modify the effects of the legislation

Not only did the regulations appear to exclude the right of the court to adjudicate, but the courts themselves — given the evidence of the last 30 years — have not tended to favour individual rights when faced with a choice between those interests and the interests of the executive

Yet the courts have done just that in recent weeks In several cases they decided they were entitled to question executive action and have gone on to order that detainees be released, and in the Metal and Allied Workers Union (Mawu) case, to throw out as "unlawful" several sections of the regulations

And this week again the Rand Supreme Court upheld a United Democratic Front challenge to restrictions on meetings

These decisions were remarkable because of the existence in the Emergency provisions of an "ouster clause", a clause explicitly stipulating that no court could challenge the regulations The "ouster" was watertight, according to laywers, but the courts, determined to establish their jurisdiction, found a way around them

Even more striking is to view these decisions against the record of the courts as described in several major works by legal academics

Over the years, these authors point out, a series of cases has established that in South Africa, Parliament is supreme The courts cannot check Parliament, regardless of whether the laws they pass are "just", "fair" or even "reasonable"

On this issue, Professor John Dugard, director of the University of the Witwatersrand's Centre for Applied Legal Studies, comments "In South Africa few holds are barred as far as Parliament is concerned Parliamentary sovereignty has been taken to its logical and brutal conclusion at the expense of human rights"

It was not always so The courts put up a tough battle in the early 1950s against Parliament's efforts to remove coloureds from the voters' roll

Parliament ultimately triumphed on this issue after packing the Senate and the Appellate Division of the Supreme Court with special appointees, and, the academics claim, this started a shift in Appellate Division decisions on many key human rights cases

In a number of cases when Appellate Division judges had the freedom to decide either way — in favour of or against the rights of the individual — they tended to favour the executive (Parliament) against the individual

For example in 1964 a Cape Town advocate, Albie Sachs, was held under the 90 day detention law He asked for reading and writing material, the law did not say whether detainees could have books or not, so it was up to the judges to decide.

The Appellate Division ruled that Sachs could not have the books They held that since the purpose of the 90 day law was to get detainees to talk, this purpose might be frustrated if detainees were allowed to read or write

In a similar case the following year, another detainee's wife made an application for the police to be stopped fron unlawfully interrogating her husband, she alleged they were questioning him for days at a stretch The police denied the claim and the woman asked the judge to order that her husband, the detainee, be brought from detention to the court so that he could give evidence about the allegations himself

Louis le Grange

Five crucial areas the courts set aside

By ANTON HARBER

IN the first few weeks of the Emergency, almost three pages of regulations were published daily In the last two weeks, however, the courts have been throwing them out almost as fast the Government Printer can churn them out

The result is confusion Nobody seems to know which regulations still hold, and how much of the Emergency still stands

An analysis of these events shows that although these court actions have eroded most of the key areas of the regulations, the Security Forces still hold substantial and extraordinary powers

At the beginning of the Emergency, there were five key elements in the regulations

● An "ouster clause", which prevented the courts from setting aside Emergency measures The government made it clear it regarded the regulations as being beyond the reach of the courts

● Unchecked powers of arrest and indefinite detention

● Massive media curbs coupled with a power to confiscate "subversive publications"

● Restrictions on almost all the activities of resistance organisations such as the UDF, Cosatu and Azapo The restrictions were prescribed by regulations issued by divisional commissioners of police, delegated the power to make regulations and orders in specific areas

● Indemnity for Security Forces acting "in good faith" under the regulations

All five areas have been dented, to some extent

● **The "ouster clause":** The courts gave this clause short shrift, finding that they could still rule on unlawful acts or provisions

The full bench of the Natal Supreme Court went around the "ouster" in the Public Safety Act, holding that the courts could never be ousted from inquiring into the lawfulness of Security Force actions

This opened the way for a wave of court applications, attacking many provisions in the regulations

● **Powers of arrest and detention** Judge R Goldstone of the Rand Supreme Court found the Security Forces had to comply strictly with the grounds for detention set out in the regulations (" necessary for the maintenance of public order, or the safety of the public, or the person himself, or for the termination of the State of Emergency") when he ordered the release of cameraman Theophilas Mashiane

The Natal court cast aside the restriction on the detainee's access to lawyers

The Mashiane case established the principle that the court could free detainees, the Natal court gave lawyers the means to bring the circumstances of the detainees' arrest and detention before the courts The combined effect was to allow for the wave of court applications now being heard daily in courts throughout the country

The courts' approach permeated down to the kind of advice lawyers were giving For example, the prohibition on the publication of detainees' names was circumvented when a senior advocate advised that once a person's family had been informed of his or her detention, this constituted official disclosure and the name could be published.

On the other hand, Security Forces still have wide powers of arrest and detention No warrants are required, the detainee does not have to be brought to court and the process of freeing detainees is slow and not always successful

This was shown this week by the failure of the application to release UDF executive member Raymond Suttner and trade unionist Sipho Kubheka

● **Media restrictions** Not only did the Natal court throw out aspects of the definition of a "subversive statement", it also gave a restricted interpretation to those elements of the definition that remained

Gone was the ban on promoting any object of any unlawful organisation and the prohibition on engendering feelings of hostility among sections of the public, and a restricted meaning was given to the prohibition on resisting or opposing the government

Mere criticism was held to be permissable

Nevertheless, the prohibition on "subversive statements" still affects the press on a daily basis because newspapers are at risk of being seized if, in the Minister's opinion, the publication is deemed to be subversive

Reports on the conduct of Security Forces and photographs of unrest and Security Force conduct are still prohibited Journalists are not permitted to be present at the scene of unrest

● **Activities of resistance groups** Divisional commissioners of police churned out pages of regulations relating to the holding of gatherings, the quoting of office-bearers, the wearing of T-shirts and conduct at commemorative meetings and funerals

The Grahamstown and Rand supreme courts have dismissed the rights of divisional commissioners of police to make law Hence their reams of regulations preventing all these activities fell away

The Commissioner of Police might re enact these regulations to re-establish their validity, although this might in turn bring about court challenges Moreover, organisations are already severely crippled by the detention of leaders and the threat of further arrests

● **Indemnity** Although the indemnity has not been specifically attacked, the courts have shown a willingness to investigate each act of the Security Forces in order to establish whether or not it has been committed in good faith The indemnity falls away if the police have acted in bad faith, and actions on this basis are expected

Although many key areas of the regulations have been whittled away, the state still has a vast armoury of powers under the Public Safety Act

On the other hand, the regulations are being attacked on a daily basis in the courts The next major challenge will undoubtedly be the application by the newspaper companies, Argus and Saan, in Natal to overthrow most of the remaining media curbs, in particular the power to seize publications

● This article has been written with the assistance of an expert in press law who cannot be named for professional reasons

Interpreting regulations is like balancing on barbed-wire

West Cape bans on 119 groups lifted

By PIPPA GREEN and JEAN LE MAY

A BAN in the Western Cape on all activities of 119 trade unions and extra-parliamentary organisations was lifted this week, hours after the government settled out of court with the Congress of South African Trade Unions (Cosatu), which had challenged the ban

Other orders lifted by the Western Province Divisional Commissioner of Police, Brigadier Chris Swart, had placed prohibitions on school pupils and funerals and prohibited entry into black townships

The orders had been proclaimed by Swart in terms of Emergency Regulation 7 His June 21 notice, challenged by Cosatu, banned all meetings by virtually all major extra-parliamentary organisations, including — as well as Cosatu — the United Democratic Front, National Education Crisis Committee, Azanian People's Organisation, and the End Conscription Campaign

In terms of the order, they were not allowed to arrange, attend or promote indoor gatherings Office bearers or officers of these organisations could not be quoted, and the groups were not allowed to publish pamphlets, handbills or posters

Government spokesmen had been dismissing the importance of successful applications challenging the Emergency regulations, saying the applications succeeded because of the technicalities in administering the law

More than one official had claimed that "all it needs to restore the legality of the situation is another signature at the bottom of the paper"

Cosatu took a new line In papers before the Supreme Court, its Western Cape regional secretary, Nicholas Henwood, repeated the formula used successfully in similar cases — that the State President had no power to delegate — but also said that in terms of the Public Safety Act, the State President could not make regulations in conflict with the Labour Relations Act

Alternatively, he claimed the order was invalid for reasons of vagueness and uncertainty

Professor Denis Davis, law professor at the University of Cape Town, said the cumulative weight of judgements against the state could have been responsible for the out-of-court settlement

"Even if 'another signature' is appended, the arguments about vagueness and conflict of laws are good in law and very telling," he said

"You can't blame the draftsmen — I believe the vagueness was deliberate policy so that everybody would censor themselves But the courts have obviously decided that people's freedom can't be restricted in such vague terms

According to Cape Town attorney Andy Durbach, who represented Cosatu, the respondents have agreed to pay the costs of the case until Wednesday, the day it was brought to court The respondents were named as the State President, the Minister of Law and Order, the Commissioner of Police, and the Brigadier Chris Swart.

In a supporting affidavit, Henwood said the order had made it impossible for Cosatu to carry out its legitimate functions in a region where it had nine affiliates and 50 000 members "The order has so far-reaching an effect that I fear that even if I were to discuss mundane and routine matters affecting the daily administration of the Cape Town office with a fellow worker in the office, I would be contravening the provisions of the order"

Commenting after the settlement, Henwood said it "gave Cosatu a breathing space" but that the federation was "still heavily hamstrung by the Emergency". At least 37 members and officials of Cosatu affiliates in the area are in detention

Swart's lifting of restrictions on school pupils and funerals, also published in terms of Emergency Regulation 7, came a day and a half before the UDF and the Western Cape Teachers Union were due to challenge those restrictions in a Supreme Court application

The organisations are also challenging Emergency Regulation 11, which empowers the Minister of Law and Order or a person authorised by him to seize publications if they are deemed to carry "subversive statements".

SPATE OF COURT APPLICATIONS CHALLENGED THE EMERGENCY REGULATIONS

1. So they did. And with some effect ...

Once again the law did not specify whether or not the detainee could be brought to court, so it was up to the judges Once again, in what has proved a key human rights case, they decided against the detainee and ruled that he could not be brought to court to give his own version of what happened

Several prominent academics claim these judgements were indicative of a trend for the Appellate Division to decide against human rights and in favour of the executive In fact the judges virtually said so themselves, as in Sach's case, where one judge said, "Parliament may make any encroachment it chooses upon the life, liberty or property of any individual subject to its sway and it is the function of the court of law to enforce its (Parliament's) will

Generally speaking — and with few exceptions — this appeared to be the attitude of the courts for about 30 years from the early 1950s In the last few years, however, an increasing number of cases have gone the other way

In 1983, for example, the Appellate Division upheld the decision in the Rikhoto case, affecting the rights of migrant workers to live in a "white" area. Two years later the Appellate Division took an important civil liberties decision when it ruled in the case of UDF president Archie Gumede and others that detention orders issued by the Minister of Law and Order under Section 28 of the Internal Security Act were invalid

If, as seems increasingly clear, these are not isolated examples but indications of a growing tendency, what has caused the change?

An explanation often given is that judges have been increasingly exposed to the judicial systems of other countries, particularly to those in England and America In both these countries, there has been a growing tendency among judges to have a greater regard for human rights

"The activist bench in America is of course made possible by the Constitution in that country," one senior member of the legal profession said

"But when judges visit the USA they discover that there is far more room to manoeuvre in South African circumstances than they had thought They also come to realise that to speak of a judge as 'activist' is not necessarily a disparaging comment"

He said that as trends and decisions of the English and American judiciary are more understood here, their influence has spread

Another cause of change is that younger judges have come from South African law schools with a more progressive attitude This attitude is now showing itself in their rulings "Many universities have been teaching that law must be measured by moral standards, that it is not fixed," said security law expert Professor Tony Mathews of the University of Natal

Several members of the judiciary interviewed recently also spoke of the important role played by academics, such as Dugard and Mathews, whose writings have created a supportive intellectual atmosphere and have played a part in making known what has been accepted as customary international law

Other observers claimed that judges, sensing the dramatic times through which South Africa is passing, did not want to be seen to be tied to the government, to be simply another executive arm Faced with the same pressures as any other South African at this particular time, they have grown increasingly reluctant to rubber stamp apartheid laws When they assert their independence in judgements which favour the individual over the executive, judges have given many people new hope in the rule of law

"The courts have become alarmed at the consequences of the slow abandonment of the rule of law," said Mathews "They have seen that one result has been an increase in lawlessness which is beginning to react even into the white community

"They see we are now paying the price of lawlessness in many ways, not the least in the international consequences"

But however much the judges themselves might change their own perceptions, they can do nothing until cases are brought before them. In this respect many observers have paid tribute to a number of human rights attorneys and advocates and, in particular to the Legal Resources Centres (LRC) around the country

"The LRCs have had the time and energy to take up these issues," said one colleague "They have constantly challenged the judiciary with their well argued cases

"Cases testing abuses by public servants, for example, in administering pensions were not brought by conventional legal firms because clients would not be able to afford fees But the Durban LRC has made great progress on this issue Another example is the far-reaching Rikhoto case, brought by the Johannesburg LRC

"The LRCs have provided their staff with the time to research important issues and bring this knowledge to the courts through their cases"

Commenting on these tendencies, slowly becoming clearer in the courts, Mathews says this could be one explanation why so many more legal challenges are being made to the Emergency provisions than during the last Emergency, the judicial trend has become more pronounced and lawyers and their detained clients are trying to use it to gain rights for detainees and others at the receiving end of Emergency regulations

During the 1960 Emergency the court judgements — particularly in Natal — were very discouraging People had the impression that the courts could not help at all, but more recently the rulings of some judges have shown there might be hope

"It may be also that people are getting desperate During last year's Emergency it was believed it would not last long, so there was not the same pressure for relief

"Cabinet Ministers have made it clear that this Emergency is not going to be lifted soon, so people are trying to wring what they can from the courts

"Those who drew up the regulations acted like demented law makers, making the regulations themselves so far over the top that they positively invite challenge"

Lawyers are realising the necessity to provide judges with sufficient information to make rulings and are becoming far more conscious of the possibility of testing this kind of subordinate legislation in the courts against the standards of our common law and of customary international law

And when clamps on the media are so tight that unions and political organisations cannot express their opinion of current developments, the courts are also providing a crucial source of information

The Mawu case, for example, allowed the union to express its own attitude to the Emergency, through an official statement annexed to the court papers It also allowed for the publication, for the first time, of the names of detained unionists who were listed in the court papers

In some ways, the government invited the string of court challenges, through the stock response of the Bureau for Information and the police, when asked for clarification on the regulations and other Emergency issues "Consult your lawyers," organisations and the press alike were told

They did, to some effect Their lawyers, who now scrutinise each edition before going to press, have become familiar with the wide-ranging provisions and increasingly critical of them.

This has in turn helped suggest to them new ways of attacking the rules

The courts and those feared late night visits

Are Security Forces allowed to raid houses at midnight and question people at random? No, says a Johannesburg attorney, and the courts have made it clear they will stop such action

"I consider it most desirable that if members of 'a Force' act beyond their already vast powers under the Emergency regulations, or if they do not use them in a legitimate and bone fide *manner, that they should be brought to account by the courts*

"It is wholesome and desirable that they should be made aware of the nature and limits of their powers and that they should know that if they abuse them, or use them unlawfully, that there are the ordinary courts of the land before which they will be summoned to explain and answer for their actions"

THESE were the words of Judge R Goldstone of the Rand Supreme Court when he ordered the release from detention of Theofilus Mashinyane earlier this month

In the Cape Supreme Court, Judge Marais ordered the immediate release of a nun, Sister Harkin, and in his judgement he states that "of particular importance is the fact that there was no suggestion that Sister Harkin was known to Captain Oosthuizen (the arresting officer), or anyone else for that matter, as a political activist or someone likely to foster public unrest"

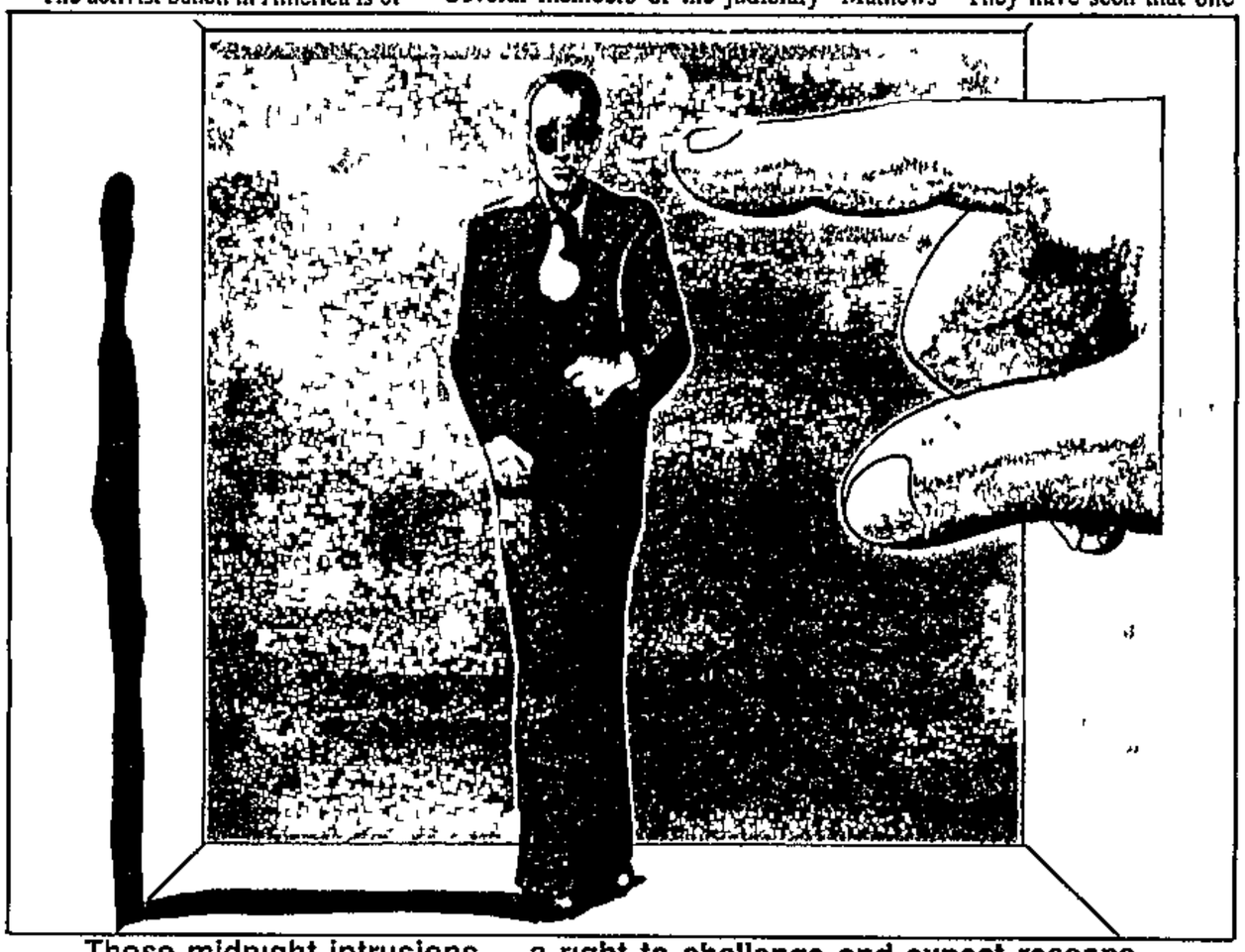
In both these matters, and in several others since then, the courts have held that the authorities from the State President downwards have exceeded their powers given to them by the Public Safety Act and the Emergency regulations

The result has been the release from detention of several persons after they have spent two to three weeks of their lives wrongfully imprisoned

The process of calling authorities to account in court for acting beyond the scope of what Judge Goldstone called "their already vast powers" is a lengthy, relatively slow and expensive process

Meanwhile, reports have been reaching lawyers, aid and advice centres of Security Forces acting beyond the scope of their powers in a large variety of circumstances

One such circumstance causing concern is the dreaded late night and early morning knock on the door from a member of the Force Lawyers are in possession of statements which indicate a vast increase in the numbers of such visits in recent weeks



Those midnight intrusions ... a right to challenge and expect reasons

Clients in Soweto, Alexandra, Lenasia and Yeoville, for example, have told their lawyers of men arriving armed, of these men intimidating them, of the police asking for a particular person and, despite the fact that that person is not present, proceeding to question whoever is in the house

Questions have related to car licence numbers, passport entries, bank account numbers and statements and personal details Sometimes also, the Security Force members take photographs of everyone in the house and draw floor plans of the building

In the light of these developments, the statement of Judge Goldstone that members of the Security Force ought to "be made aware of the nature and limits of their powers" is essential Members of the public need to know when they can tell a member of the Forces to stop and do no more as he or she is exceeding their powers

The recent Supreme Court decisions show that the Emergency powers can only be used in such situations where they are lawfully applicable

How and for what can these powers be used?

● A member of the Forces can order a person to move to another place or stop acting in a particular way if that person's presence or conduct is such that the Force member is of the opinion that "it endangers or may endanger the safety of the public or the maintenance of public order, or exposes or may expose life or property to danger" (Clause two of the regulations)

● Once a member of the Forces is of the opinion that the arrest and detention of a person is "necessary for the maintenance of public order or the safety of the public or that person himself, or the termination of the State of Emergency" he can detain that person and only that person for up to 14 days At the end of that period, the Minister of Law and Order has to approve further detention (Clause three)

● The members of a Force are entitled to enter, search and seize articles and to take "such steps as such member may deem necessary", but again this is subject to the proviso that in their opinion such steps are necessary for the maintenance of public order or the safety of the public or the termination of the State of Emergency" While this is a wide power, it is clearly restricted by the proviso (Clause five)

These are the only relevant powers available to the Security Forces in terms of the regulations Thus it is difficult to understand how a police officer can deem it necessary to visit people extremely late at night and then to search and photograph them.

This is especially true when it involves people who that Security Force officer did not even know lived there A police officer who argues that he is acting in terms of the Emergency in such a situation, clearly does not understand the limit of the powers granted to him.

Confronted with such a visit, the unfortunate victim is in law only obliged to furnish the member of the Force with his or her full name and address

If the member of the Force wishes to go further than this, then the victim should ask the reasons for this and on what basis the Force member believes such actions are lawful and valid in terms of the Emergency

Ordinary members of the public who are generally interested in their country's political future appear to have far more being demanded of them by the police than the law entitles the police to demand

In brief, it appears that the regulations provide that prior to any arrest, there is no need for anyone to give a member of the Forces anything more than a name and address and possibly a Book of Life, reference book or passport to prove their identity

There is also no need to allow them to search your premises or car unless such a search is taking place in terms of the regulations or some other statutory provision of which those searching must inform you

This, unfortunately, is theoretical Faced with several armed persons in you home, late and night and aware than innocent persons have recently been wrongfully detained for lengthy periods in effectively solitary confinement, it is difficult to resist such flagrant intrusions into one's privacy

Nonetheless, members of the public are the only ones in the long run that will be able to ensure that their now very limited rights remain protected, and it is suggested that when that late-night knock at the door does come, the police courteously be challenged to justify their intrusion and that a careful note be taken of all that is said and done in the name of the law

If they do not behave in terms of the regulations, then "they should and can be brought to account by the courts"

● This article was written by a Johannesburg attorney who cannot be named for reasons of professional ethics

UDF man applies to have emergency invalidated

DURBAN — The Full Bench of the Durban Supreme Court reserved judgment yesterday in the application by a United Democratic Front member to have the emergency regulations declared invalid

The application was made by Mr Solomon Tsenoli, publicity secretary of the UDF, who is being detained at Westville prison

Mr M Wallis, for Mr Tsenoli, submitted that the powers of arrest and detention in terms of the state of emergency were wide

"A policeman not understanding the act might use these powers for purposes other than those intended by the State President," he said, adding that the regulations might have been sufficient if the State President had spelled out the nature of the events that made him decide the regulations were necessary.

The applicant also submitted to the Full Bench several judgments in applications handed down by judges in other parts of the country

Zulu Courts circumvented in regulations to give police powers back

ANC lifts ban on Mass Democratic Movement

By Kym Hamilton
and Own Correspondents

President Botha yesterday delegated powers to Divisional Commissioners of Police to enforce emergency restrictions — thereby circumventing decisions by Supreme Courts which invalidated them.

More than 100 orders, issued by Divisional Commissioners round the country since June 12 in terms of the Public Safety Act are again in force.

These include restrictions on funerals, curfews, controls on the movement of people, and bans on various organisations.

Reaction to Mr Botha's move, made by publishing an Extraordinary *Government Gazette* late yesterday, has been swift and sharp.

Incompetent, stupid, disgraceful ... This verbal thrashing for the Government came from the Official Opposition.

Mrs Helen Suzman, the Progressive Federal Party's spokesman on law and order, was furious.

She said the new measure not only amounted to a total admission of incompetence by the Government, but also represented disrespect for South Africa's courts of law.

"This is the sort of disgraceful behaviour we have become used to from the Nationalist government — they change the rules to suit themselves," she said. "How more intelligent it would have been to have called off the emergency entirely.

"All these regulations, which are not only ridiculous, but actually invite civil disobedience, should be scrapped.

"Particularly now, when we are hovering on the brink of punitive sanctions, this is the type of action which will clinch it."

Mrs Suzman said the Government's move could only "rouse the disgust of the civilised world".

A Full Bench of the Rand Supreme Court ruled on Monday that the State President, in terms of the Public Safety Act, could delegate legislative powers to the Commissioner of Police, but the commissioner could not redelegate that power.

Mr Botha has now amended the wording of the regulation on which the court decision was based — and has circumvented the court decision by making the new regulations retrospective to June 12.

The power to issue orders — which have severely curtailed the activities of more than 100 anti-apartheid organisations — was contained in Regulation 7 of the emergency regulations published on June 12.

A fifth sub-regulation has been added to Regulation 7 and been made retrospective to June 12.

Where the regulations provided for a power to be redelegated by either the Minister of Law and Order or the Commissioner of Police, they have been brought in line with the court decision.

The words "or any person authorised thereto by him" have been, excised from the regulations.

Changes to other aspects of the regulations which delegate power were also made, and these words have either been deleted or altered to read "a member of a force who serves as a commissioned officer in that force".

More than 17 *Government Gazettes* containing orders issued in terms of the Public Safety Act by various local commissioners of police around the country have been printed since June 12.

■ To Page 2

STAR 2/8/86 p 23

PW has given police back their powers

■ From Page 1

These orders have all come back into effect
They are...

● The first was on June 13 when funerals restrictions were enforced in parts of the Transvaal and the Eastern Cape The orders relating to the burial of anyone who died of an unnatural cause confined funerals to indoors, said only an ordained minister could speak, made it obligatory for mourners to travel from the service to the cemetry by vehicle, banned the display of banners, placards, pamphlets or posters and the use of a public address system, limited the number of mourners to 200 and imposed a four-hour time limit on the ceremony

● On June 19, the divisional commissioner of the Western Transvaal issued similiar funeral restrictions

● On June 21 funerals were banned during weekends and public holidays on the East Rand and in the Western Transvaal Further orders relating to the control of movement of non-residents, the possession of petrol and school boycotss were published

● On June 25, the Witwatersrand Divisional Commissioner issued an order preventing pupils from being on school permises in Alexandra during school holidays

● On June 26 the Northern Transvaal Commissioner issued funeral restrictions similiar to those in other parts of the country

● On July 1 the East Rand Commissoner banned gatherings of various organisations including the UDF

● On July 2 in the Western Transvaal the ban on entering school premises was extended to coincide with the late opening of schools

● On July 7 the Soweto Commissioner banned all gatherings in the Johannesburg and Roodepoort areas of 34 organisations, including several trade unions On July 10 this order was amended and the ban on gatherings limited to Soweto, Diepkloof, Meadowlands and Dobsonville Trade unions were also no longer affected by the ban These orders were finally repealed in full on July 11

● On July 11 orders relating to the control of school boycotts were published by the Commissioner for the Eastern Transvaal

Orders applicable in other provinces include

● On June 13 funeral restrictions were enforced in parts of the Transvaal and Eastern Cape similar to those imposed on June 13

On June 19 the Divisional Commissioner of the Eastern Cape banned non-residents from various townships in the area, imposed a 9 pm to 4 am curfew and issued orders relating to the control of school boycotts and the possesion of certain objects, including banners, T-shirts, uniforms or badges of about 42 organisations, including the UDF

The Boland Divisional Commissioner issued several order on June 21 relating to the control of non-residents of an area, restrictions of funerals and a ban on gatherings of about 35 organisations

On the same date, orders relating to the control of school boycotts, funeral restrictions and a wide-ranging ban on the activities of a number of organisations were issued in the Western Cape More than 121 organisations were affected by the ban which prohibited meetings, publications and statements by office bearers

bidding Nyanga residents to return to
to rebuild their burnt out homes in the
nent were issued by the Western Prov-
on June 25
curfew was imposed on townships
Free State on June 26 At the same
ment of non-residents was restricted,
restrictd and the possesion of objects
ers, T-shirts and other badges of various organisations were prohibited

On July 1 gatherings of hundreds of organisations in the Northern Free State, Western Province and the Eastern Cape were banned by local police commissioners

On July 2 funeral restrictions were imposed in the Western Province Funerals were banned on weekends and public holidays and written notice of funerals had to be submitted to local police station commanders

Funeral restrictions were extended to the Northern Cape on July 7

On July 11 the commissioner for Northern Natal issued orders relating to the control of school boycotts, control on possession of petrol and the banning of emblems, banners, T-shirts and other badges of about 12 organisations

Anger over PW's shock move on emergency

CONFUSION still surrounds the effect of President Botha's shock validation of the powers of police divisional commissioners to impose wide-ranging orders in terms of the emergency proclamation.

The Government Gazette extraordinary, published on Friday, amends the emergency proclamation to retro-actively validate all orders issued by the divisional commissioners since June 12.

The move — condemned by the PFP — effectively sidesteps a string of court decisions ruling that the Minister of Law and Order and the Commissioner of Police could not sub-delegate the powers given to them by the President

Legal advisers indicate that those orders, which have been lifted in five magisterial districts by divisional commissioners themselves during the course of the week are no longer valid.

But Eastern Cape police spokesmen warn that the order lifted by Brigadier Ernst Schnetler on Wednesday is indeed validated by the President's intervention.

And at the same time yet another divisional commissioner has lifted one of his orders Brigadier E E Oosthuizen announced the order promulgated by him on June 26 had been revoked.

Sunday Times Reporter

The amendments, as far as can be established, narrow but strengthen the Minister's powers to seize publications deemed to be "subversive" but do not alter the vital Natal Supreme Court judgement qualifying the meaning of the word "subversive".

Original measures appeared to give delegated powers to any member of the force to seize publications, but this has now been restricted to the Minister.

On the downside, however, is a proviso that the Minister can seize publications without hearing any objections

Response from the PFP to the move has been heated

The PFP's alternate law and order spokesman, Mr Tian van der Merwe, said the amendments were "a high-handed and cynical step" which had several implications

" It clearly shows Mr Botha's preference for police rule and disregard for the courts

"He should have the honesty to stop bleating about democracy because he clearly does not believe in it or understand it at all," Mr van der Merwe said.

Police abuse emergency, court is told

STARTLING allegations that the police have used emergency powers to detain common criminals emerged in papers before the Durban Supreme Court this week

Applicants claimed that the police had seized a number of youths allegedly connected with gang violence in a coloured suburb, and held them in terms of the emergency proclamations.

Released

But the Bureau for Information insists that, although some detainees might originally have been held for unrest-related incidents like stone-throwing, investigations during their detention led to further criminal charges

Some of the youths have since been released.

In this week's cases families of detainees claimed they had been told by police that the men were being held under the emergency regulations while they investigated

Sunday Times Reporters

gang fights in the Austerville suburb.

Mr Peter Rutsch of the Durban Legal Resources Centre said some of the men were released on Tuesday, shortly before applications were brought in the Durban Supreme Court challenging their detention.

Five applications were brought by relatives of the men The hearings were adjourned to later this month when argument on the legality of the detentions will be heard

In one of the applications, an Austerville mother, Mrs Maggie Maria Walstrom, said her son, Daniel, 18, failed to return home on June 26

Inquiries were made at several police stations Eventually she was told at the Wentworth charge office that Daniel had been arrested and taken to Westville prison.

"On June 30 our priest, the Rev J Fourie, took us to the C R Swart Square police station where it was confirmed that my son had been arrested in terms of the emergency regulations," said Mrs Walstrom.

Activities

She had been told later that many of the youngsters arrested in the Merewent and Wentworth areas on June 26 had been accused of taking part in gang activities

Daniel Walstrom told the court that he was leaving the Methodist church on the evening of June 26 after a choir practice when he was arrested by a Sergeant Sam Fynn

In another application a widow, Mrs Cornelia Dwarika, said her son, Gabriel, 25, was arrested by Wentworth police on June 26

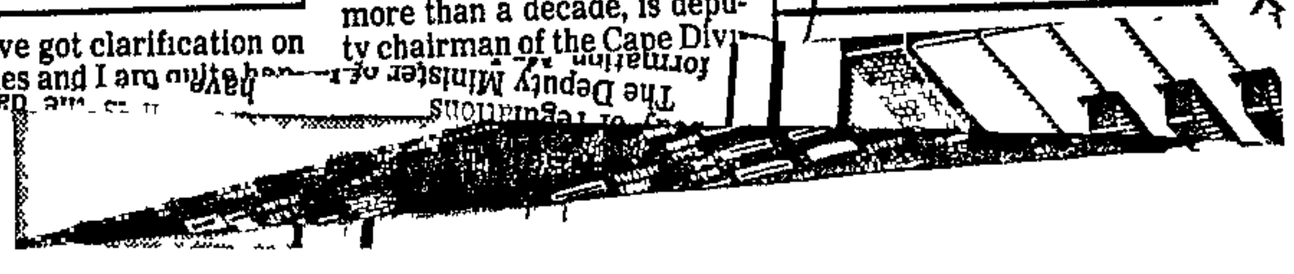
She said a Captain Reddy told her that Gabriel was being held under the emergency regulations and that his detention was related to gang fights in the Austerville area.

ajor opponent

Political Correspondent

"I have got clarification on

Mr Walsh, 42, has been an active PFP member for more than a decade, is deputy chairman of the Cape Div



NO FREEDOM

Six more families thrown out

By SELLO SEKOPE

AS THE going got tough for rent defaulters countrywide this week, six more residents of Dobsonville's "stolen township" were evicted from the newly built houses they occupied in April

The six families were evicted on Tuesday And on Wednesday residents "stayed away" from work in an apparent bid to stop being kicked out.

A Dobsonville Civic Association spokesman said that they will brief lawyers to challenge the evictions

Dobsonville town clerk AM Conn confirmed that the six were evicted because they were "illegally" occupying the houses

Charges have been laid against the families for alleged break-in and entry into the houses, he said.

● Three families were earlier evicted after the Rand Supreme court ruled in the ocal council's favour to remove the "illegals"

They are begging shelter rom friends in the area who could also be evicted

★ See Page 6

By SOL MORATHI

Unionist and UDF man lose their court battles

TWO emergency detainees tried in vain to challenge their detention orders this week.

Judges Preiss, Harmes and Myburgh turned down the applications by Wits law lecturer and UDF member Raymond Suttner and Paper and Allied Workers' Union official Sipho Kubheka

Reasons for their decision will be furnished later, the Pretoria Supreme Court judges said

Suttner and Kubheka sought an order directing the government and Law and Order Minister Louis le Grange to either release them or give them reasons for their detention

The applicants also asked to be allowed to consult their legal advisors so they could make representations to Le Grange for their release

They also wanted to be provided with proper sleeping facilities, including beds and enough blankets while in detention

Suttner said in an affidavit that he was arrested in Johannesburg on June 12 and Kubheka said he was picked up at his Alexandra home on the same day

In their affidavits, they said they were arrested in terms of Section 50 of the Internal Security Act

Their detention was extended and both are now being held in terms of the emergency regulations.

The respondents were PW Botha, the government, the Law and Order Minister and the commanding officer at John Vorster Square

Thumbs down from Heunis

CP Correspondent

EAST London City Council this week failed in its bid to win official recognition for the Duncan Village Residents' Association and to have township administration restored to municipal authority

Constitutional Development and Planning Minister Chris Heunis gave the thumbs down after meeting a council delegation on Tuesday

At stake were R10-million set aside for the upgrading of the severely depressed Duncan Village township

The council wanted permission to administer the money, and had declared its intention to do so in consultation with the DVRA – with which it has been holding discussions

Delegation leader Donald Card said he had been instructed to say that "certain moves" with regard to the upgrading of the township were in the process of being worked out, and steps would be taken with regard to the political situation too

Although he would not go further, it was clear the government remained committed to the community council, and wishes to hand any credibility from the upgrading project to them

The community council has practically ceased to exist. its members live "in exile" in a city hotel

The delegation had hoped to be able to point to the precedent of Oudtshoorn, where the city council has since November last year administered Bongolethu township It is believed to be the only case in which a municipality runs a township, as was the case before the establishment of the administration boards

Oudtshoorn's deputy town clerk, Johan Meiring, said the government was approached after community leaders had asked the town council to take back the administration from the development board

In the 13 years that administration had been in the hands of the administration board, later renamed the development board, nothing had been done, he said

On November 1, the council was declared a development board, a legal device to enable them to take over administration of the township with a population of 6 500

New challenge

252

3/8/86

for Appeal Court

CITY PR.

CP Correspondent

THE system of emergency detentions will be challenged in the Appeal Court in Bloemfontein

This follows the decision by Judge Zietsman in the Grahamstown Supreme Court to grant leave to appeal against a decision upholding the detentions of King William's Town lawyers John Smith and Dudley van Heerden

Zietsman said he accepted the argument of Ian Farlam, for the applicants, that there were conflicting decisions in the different divisions of the Supreme Court and that it was important for the Appellate Division to make an authorative ruling

It is believed that it is the first time emergency detentions are being challenged in the Appeal Court A ruling by the Appeal Court, the highest court in the land, will have binding powers throughout the country

A date for the hearing still has to be set

● In another development, five detainees held in and around King William's Town were released this week shortly after they had been seen by their lawyer.

Gordon Smith, Japie Pitt, Pieter Vass, Pieter Swartz and Dickson Matika were released as lawyers were preparing to challenge their detention in court

Further applications are now expected in the wake of visits to other detainees

● Three men – detained in terms of Section 26 of Ciskei's National Security Act – were also released on Tuesday An application for their release in the Bisho Supreme Court had been withdrawn when the State agreed to charge or release the three within two weeks

Border Council of Churches fieldworker Albert Whittles, Smuts Ngonyama and Avril Fritz were released without being charged

'You can't hold people forever'

252 524 3/3/86

CP Correspondent

THE detention of a Cape Town businessman was illegal after June 17 because the policeman who arrested him was only concerned with possible violence on June 16

This was the reason given by Judge H Berman in the Cape Town Supreme Court this week for ordering the release last Friday of Retreat businessman Adam Jaffer

Berman said last Friday that Jaffer's continued detention was unlawful and ordered his immediate release He said he would give reasons for his decision this week

Jaffer was detained on June 14 by Warrant Officer Jacobus Stipp, who felt Jaffer had been "instrumental in putting up June 16 stayaway posters" at his Wynberg garage and butchery

Berman said Stipp did not "apply his mind" to whether Jaffer should be held after that day

Jaffer was an "apolitical person" concerned with business, he said

He knew nothing of posters or pamphlets found at his garage on June 14 but, despite protestations, he was taken to the police station and then to the Victor Verster Prison in Paarl

His detention was extended on June 25 by Law and Order Minister Louis le Grange for "an indefinite and indeterminate time"

Berman said the observations recently made by Judge Robin Marais when he ordered the release of a detained nun could be usefully repeated – that the power of arrest and detention conferred by the emergency regulations "is not an unfettered power which may be capriciously or arbitrarily exercised"

He ordered Le Grange to pay the costs

Opposition grows to emergency powers

Cracks in emergency

THE CRACKS are beginning to show in the government's emergency powers.

This week saw a barrage of applications challenging the regulations, testing in court the right to hold meetings and the detention of people under emergency regulations

As a result of the applications, several detainees have been freed, some restrictions on the media have been lifted, and restrictions on funerals and meetings have been lifted

Five cases have already been heard – in Durban, Johannesburg, Pretoria and Cape Town – and several more are due next week

Tomorrow, for instance, the full bench of the Pretoria Supreme Court will hear an application by the SC Bishops' Conference for the release of 26 detainees, including secretary-general Father Smangaliso Mkhatshwa

And in Durban, an application for the release of Natal United Democratic Front publicity secretary Lechesa Tsenoli was still pending at the time of going to press

This week's court setbacks for the State include

● The Congress of SA Trade Unions won the right to hold meetings again in the Western Cape – not only for itself, but for 118 other organisations

They can also issue statements through the media

Cosatu went to court to challenge divisional police commissioner Brigadier CH Swart's right to gag the organisations The case was never heard, as an out-of-court settlement was reached – and hours later, Swart announced that the gags had been lifted

The Western Cape UDF said it was pushing ahead with its own court application against the gags – but only to resolve the question of costs

An advocate acting for the UDF said the anomaly of Swart'sa announcement after the Cosatu case was that he had repealed restrictions which had been invalid from the start

"In the UDF's opinion, the lifting of the restrictions means the State has conceded defeat," he said

● Earlier in the week, the UDF in the Transvaal won what it called "an important victory for the masses" with a similar application to the Johannesburg Supreme Court

The UDF contested the local divisional police commissioner's right to ban its meetings – and won

UDF national treasurer Azhar Cachalia said the organisation would not rush to hold meetings, but was studying the emergency regulations with a view to testing the very validity of its imposition

● A full bench of the Grahamstown Supreme Court took the matter one step further on Tuesday, ruling that only State President PW Botha or "delegates" specially named by him could issue orders in terms of the emergency

The immediate effect of the Grahamstown Supreme Court decision is that people in the Eastern Cape can now hold indoor meetings and mass funerals, and curfews have been scrapped.

★ See Pages 2 and 5

Minister ordered to give grounds for cleric's detention

By Jenni Tennant

A Rand Supreme Court judge yesterday ordered the Minister of Law and Order to furnish the grounds for the continued detention of the Rev Jean-Francois Bill.

Mr Justice G Leveson said that, as an emergency detainee, Mr Bill had the right to make representations to the Minister and, in order to do so, was entitled to know the grounds for his continued detention

In his judgment Mr Justice Leveson said that for the purpose of making representations to the Minister the detainee had the right to consult his lawyer to obtain advice.

DURBAN JUDGMENT

The judge referred to a judgment by the Full Bench in the Durban Supreme Court last month and said he followed that judgment.

He took the view that the enactment by the State President in rule 3 (10)(a) of the regulations and the Minister of Justice in rule 5 (1) — both of which concerned access to detainees — were both ultra vires

In the present case, the detainee's right of access to legal advisers had not been abolished but had been restricted, he said

It appeared, according to the authorities, that the person affected was entitled only to such information as would enable him to know why he was detained, without which he would not be adequately armed to make representations

Mr Justice Leveson was giving judgment on an urgent application brought by Mrs Mary Cameron Bill, wife of Mr Bill The application was for the reasons for the continued detention of the churchman to be revealed so that he could make representations for his release

It was brought against the State President, the Government of the Republic of South Africa and the Minister of Law and Order.

Mr Bill, who is the moderator of the Evangelical Presbyterian Church of South Africa, was arrested on June 20 and detained in terms of regulation 3(1) The period of detention was extended by the Minister of Law and Order in terms of regulation 3(3)

The Minister of Law and Order was ordered to furnish Mr Bill, in writing, with the grounds for his continued detention

The judge ruled that the detainee was entitled to consult his lawyer, who was to have access to him in terms of and in accordance with the Prisons Act and the regulations promulgated thereunder, for the purposes of advising him with regard to making representations

It was also ordered that the detainee be supplied with writing materials.

The respondents were ordered to pay the costs of the application.

Courts 'ready to ease harsh laws'

The Rand Supreme Court judgment yesterday concerning the Rev Jean-Francois Bill showed that the courts were still prepared to step in where they could to ease "draconian measures", Mr Jules Browde, SC, chairman of Lawyers for Human Rights, said last night.

The Minister of Law and Order, Mr Louis Le Grange, was ordered by Mr Justice G Leveson to furnish grounds for Mr Bill's continued detention.

Mr Justice Leveson said Mr Bill had the right to make representations to the Minister, and to do so was entitled to know the grounds for his continued detention and to consult his lawyer.

"It is also important that the Minister of Law and Order is told he is obliged to give reasons for detentions when called on to do so, because it enables detainees to test the good faith of the police who arrest them," he said.

August 7 1986

STAR 7/8/86

Proclamation on registration of pupils challenged

252

By Jenni Tennant

An urgent application challenging the validity of a proclamation by the State President concerning regulations for the registration of black pupils at public schools is being argued in the Rand Supreme Court

It was brought by the National Education Crisis Committee (NECC) and by two parents, Mrs Maggie Mmaphiose Sole and Mr Peter Mabaso, against the State President and the Minister of Education and Training

Yesterday Mr D A Kuny, SC, for the NECC and parents, submitted that:

● The proclamation was unreasonable in that it was "racially discriminatory, partial and unequal" and could not have been contemplated by Parliament

NOT EMPOWERED

● The State President was not empowered to make the regulations in terms of the Public Safety Act

The NECC is seeking an order declaring the proclamation made by the State President on July 13 — in terms of which black pupils had to register to attend school — to be invalid and of no force or effect in law

Alternatively, the NECC is asking that three individual regulations be declared invalid

One of the terms of the registration regulations was that the director-general of education and training, or any officer authorised by him, had the power to refuse a pupil admission or set conditions of admission

The school principal was required to place pupils in standards according to scholastic achievement and this was subject to alteration by an officer in charge of a region or an officer authorised by him

A pupil who refused or did not accept the placement was deemed to have left voluntarily

Black school children were subjected to arbitary placement and replacement and denied a hearing, it was argued

It was also argued that

● The court had the jurisdiction to hear the application and to pronounce on the validity of the proclamation or any portion of it

● The NECC and Mrs Sole were entitled to come to court to challenge the regulations

Mr J H Coetzee SC, for the State President and the Minister, argued that the court was not entitled to consider the application and that the parties did not have authority to bring the application

It was submitted the applicants did not have a direct interest in the case

Mr Coetzee said the power given to the State President in the enabling legislation was almost unlimited, and it permitted him to make different regulations for different people

The hearing continues

Appearances The Deputy Judge President, Mr Justice G A Coetzee, is on the Bench Mr D A Kuny, SC, assisted by Mr Gilbert Marcus, appeared for the NECC and the parents Mr J H Coetzee, SC, assisted by Mr B W Burman, appeared for the State President and the Minister

Appeal on detention of wife rejected

An urgent application in the Rand Supreme Court yesterday failed to have the arrest and detention under the emergency regulations of Mrs Joanna Mashaba (48) declared unlawful.

The application was brought by her husband, Mr Daniel Mashaba of Tembisa.

Mrs Mashaba, a cleaning and tea worker for the Eastleigh post office in Edenvale, was arrested at her home on June 27 after returning from a family funeral in the north-eastern Transvaal.

Mr Justice S W McCreath said that Captain Ueckermann of the South African Police at Tembisa had acted on information given to him which indicated that Mrs Mashaba was a potential threat to the maintenance of public order and safety

Mrs Mashaba allegedly intimidated fellow workers by saying their names would be given to "the Comrades — a self-appointed force in the townships, whose purpose was to make the country ungovernable" — unless they stayed away from work on certain occasions.

Mr Justice McCreath said it was contended that when considering the bona fides of Captain Ueckermann's decision to detain Mrs Mashaba, the court should consider his failure to identify the sources of his information

"It's clear that Ueckermann did not disclose the identity of his informants because he fears for their safety," said Mr Justice McCreath

"Captain Ueckermann said he went to considerable trouble to establish the integrity of people who gave him his information.

"It is not clear that her employment is a prerequisite to her intimidating others to stay away from work, as it is alleged she did"

Counsel for Mr Mashaba submitted that the police had not sought to lay a charge against Mrs Mashaba as an alternative to detaining her under the emergency regulations

Mr Mashaba said he and his wife had discussed their mutual interests and he had no knowledge of her being involved in any matters of a political nature

NECC case: judgment reserved

JOHANNESBURG
Judgment was reserved yesterday in the Rand Supreme Court on an urgent application by the National Education Crisis Committee (NECC), challenging the compulsory registration of black pupils

The proclamation was promulgated by the State President, Mr P W Botha, in terms of the Public Safety Act

Mr Gilbert Marcus, for the NECC and two parents, Mrs Maggie Mmaphiose and Mr Peter Mabaso, said Mr Botha was acting beyond his powers when he promulgated the regulations, which "don't have anything to do with public safety"

Mr Justice G A Coetzee said much of the unrest in South Africa was related to schools and "I confess an inability to draw conclusions on facts of which I have no knowlege"

"There is unrest and it's connected with black education I haven't got facts on which I can base a view on whether the State President is acting beyond his powers or not," he said

"Dealing with the question of delegation of power, Mr Marcus said the Director General of Education could refuse a pupil admission to school at his own "unbounded" discretion, "with no guidelines which have a bearing on public safety"

"Surely it must be stated in the regulations The regulations contain no restrictions whatsoever," he said

Counsel for the state, Mr J H Coetzee, applied to have the application set aside with costs, and cited a case in which the definition of "liberty" did not permit a complete outsider to come to court on behalf of another

"The NECC does not fall into that category," Mr Marcus said

Mr Marcus said the state of emergency subjected black children to "a serious threat", causing considerable disruption to their lives and liberty

He said the regulations were unreasonable

"Black children are subject to a regime which white children are not," he said

Mr Coetzee challenged the legal standing of the second and third applicants as Mrs Mmaphiose's child had registered and Mr Mabaso's children were in a private school The regulations only apply to public schools

Mr Marcus said although Mrs Mmaphiose's child had registered "the powers conferred may be exercised in the future"

Mr Justice Coetzee said "If you are right, it means every child who is registered and happy at school can go to court and say 'I don't like the situation' " — Sapa

Prisoner Christie calls for his parole

WEEKLY MAIL REPORTER

DR RENFREW CHRISTIE, sentenced in 1980 to an effective 10 years' imprisonment for offences under the Terrorism Act has applied to the Supreme Court for an order for his immediate release

The application cites the State President of the Republic of South Africa as first respondent and the Commissioner of Police and the Head of Pretoria Central Prison as second and third respondents

Christie's move follows his acceptance of an offer made by the State President in parliament in January last year that the release of long-term political prisoners would be considered if they unconditionally rejected violence as a political instrument

In papers before the court, Christie cites PW Botha's statement that the government would be willing to consider the release of Nelson Mandela if he gave such a commitment, quoting the State President as saying· "It is therefore not the South African government which now stands in the way of Mr Mandela's freedom It is he himself The choice is his. All that is required of him now is that he should unconditionally reject violence as a political instrument "

Denis Goldberg, sentenced to life imprisonment in 1964, last year signed a declaration renouncing violence and was released

In his application, Christie says he was told by the prison authorities that the offer applied to him and, in February last year, wrote to the State President and "unconditionally undertook that I would not make myself guilty of planning, instigating or committing acts of violence for the furthering of political objectives but would conduct myself in such a way that I would not again have to be arrested"

None of the counts on which he was convicted involved violence, Christie adds

He later signed a form given to him by the Prisons Department which provided for acceptance of the State President's conditions It contained in addition a proviso that the renunciation of violence did not entitle the prisoner to immediate release but that it would be taken into consideration as a factor by the Release Board

"I had no alternative but to sign the form with that condition," says Christie, "but respectfully submit that this additional condition cannot and did not affect my earlier acceptance of the First Respondent's offer"

Christie has made several applications for his release since signing the form but they have all been refused by the prison authorities.

The State President has two weeks in which to enter an appearance to oppose the application

F.M 8/8/86

STATE OF EMERGENCY 252

Plugging loopholes

The amendments to the emergency regulations promulgated by State President P W Botha last Friday have significantly narrowed the scope for legal challenges to emergency measures

But court decisions limiting police powers of arrest — it is necessary for the arresting officer to form a bona fide opinion about the detainee's threat to public order and safety — and assuring detainees the right of access to their legal representatives, remain in force Further, government has not attempted to redraft those aspects of the definitions of "subversive statements" which were rejected by the Natal Supreme Court three weeks ago on the grounds of vagueness.

The main effect of the amendments is to circumvent the series of court rulings that divisional commissioners of police were not entitled to issue orders since the power to do so had, in terms of the regulations, been delegated only to the Commissioner of Police by the State President Divisional Commissioners had issued several such orders placing restrictions on the holding of indoor meetings by scores of student, community and political organisations, and on the holding of funerals. In the western Cape, restrictions forbidding the quoting of officials of more than 100 organisations had been decreed

The amendment takes effect retroactively from June 12, the day the State of Emergency was declared. However, during the three days before the gazetting of the amendments, and in the wake of the Supreme Court judgments, divisional commissioners of a number of major urban areas — including the Witwatersrand, Boland, eastern Cape, Cape Peninsula and the northern Transvaal — formally withdrew the orders applying to their areas To become valid again, they will have to be reissued

49

The amendments do not materially affect the challenge to the emergency regulations being brought by Saan, the Argus group, *The Natal Witness* and Natal Newspapers due to be heard in the Natal Supreme Court on Monday (*Current Affairs* August 1) The applicants are arguing that the power of delegation, and the extent of the orders authorised, go beyond the powers given to the State President in terms of the Public Safety Act

Meanwhile, at the time of going to press, lawyers were awaiting reasons for judgments handed down in the Pretoria Supreme Court last week dismissing applications for the release of a number of detainees They include a United Democratic Front (UDF) leader, Raymond Suttner, trade unionist Sipho Khubeka, SA Catholic Bishops' Conference general secretary Father Smangaliso Mkhatshwa; and 24 others

The applications had been brought on the grounds that the detainees were originally arrested in terms of Section 50 of the Internal Security Act and were later, allegedly unlawfully, informed that they were being held in terms of the emergency regulations

In another case aimed at challenging the validity of the emergency regulations, the full bench of the Natal Supreme Court last week reserved judgment in the application by UDF member Solomon Tsenoli to have the emergency regulations declared invalid Council for Tsenoli argued that the powers of arrest and detention in terms of the State of Emergency were too wide.

And in a judgment delivered by the Rand Supreme Court on Monday, Mr Justice Leveson ruled that detainees have the right to be furnished with reasons should the Minister of Law and Order decide to extend their period of detention beyond an initial 14-day period.

All information on the situation in black schools is sub judice This is because of the challenge in the Rand Supreme Court by the National Education Crisis Committee against the Department of Education and Training's controversial school security measures

☐ In the week to Tuesday, the Bureau for Information reported 19 unrest-related deaths, bringing to 203 the official unrest death-toll since June 12 This includes five victims of the explosion which occurred at a Walvis Bay butchery last weekend The figure also includes seven people, of whom five were policemen, who were gunned down during an attack on the Umtata police station last week ■

BDDM 8/8/12

Police repeal orders — again

252

Own Correspondent

SEVERAL emergency orders overturned by judgments in the Grahamstown Supreme Court last month — and which subsequently came back into force — were again repealed yesterday

The orders concerned were withdrawn by Eastern Province Divisional Commissioner of Police Brigadier Ernest Schnetler on July 31, two days after the court judgment

On August 2 Schnetler reimposed the orders.

Yesterday, the orders were again withdrawn. No reasons were given for Schnetler's repeal of the orders for the second time in a week

Eastern Cape SAP liaison officer Major Eddie Everson stressed, however, that emergency regulations were still in force

The orders repealed yesterday relate to

- Bans on non-residents from entering certain areas without the written permission of a member of the security forces,
- A curfew between 9pm and 4am in certain Eastern Cape areas,
- Restrictions on funerals in 13 magisterial districts,
- Orders controlling school boycotts and prohibiting possession of certain items, including T-shirts;
- Prohibitions on gatherings, barring 52 organisations from organising, arranging or holding meetings in 13 magisterial districts

Everson said Schnetler would now only issue orders as and when dictated by circumstances

FINMAIL

A new liberal era

SA's courts have over the past two years, and particularly since the declaration of the current State of Emergency, gained prominence as a result of a series of pro-civil rights judgments.

How, in the midst of an unprecedented period of repressive security measures, can this phenomenon be explained? The question is especially vexing given that our Supreme Court judges are appointed by the very same people responsible for such hardline security measures

In a discussion with the *FM*, John Dugard, Director of the Wits Centre for Applied Legal Studies, set out the historical circumstances which have given rise to this situation

Dugard argues that it is inevitable that judges appointed by the executive will be political appointments In SA, as in the UK, judges are appointed by the chief executive on the advice of the Cabinet

When the National Party (NP) came to power in 1948, the Supreme Court was served by judges appointed by Jan Smuts's United Party government and were, by and large, sympathetic to it. The Fifties were a period of confrontation between the courts and the State, not only over the question of the coloured vote, but also over other race and even security laws

To counter this, the NP government set in motion four distinct strategies·

☐ It expanded the size of the Appellate Division from five to 11 judges for the hearing of constitutional cases;

☐ It appointed its own nominees to the bench, where judges are traditionally appointed from the ranks of senior advocates. During the Fifties and early Sixties, however, the government overlooked a number of SA's most distinguished advocates for no reason other than, it appears, their liberal views,

☐ It appointed a former State law adviser — the relatively junior Lucas Steyn — as Chief Justice in 1959, ignoring the tradition that the most senior Appellate Division member is next in line for the position; and

☐ It began to enact laws which severely limited the powers of the courts

As a result, the courts appeared to take a pro-government stance during the Sixties, especially in political cases At that stage, there was also harrassment of civil rights lawyers Some were banned and others deprived of their passports This, and a series of "disappointing" judgments, caused the liberal legal fraternity to lose heart

The pattern of appointments began to change after 1962 The then Justice Minister John Vorster apparently decided that laws had been tightened and judicial rights sufficiently curbed to ensure that there would be no harm in returning to the traditional methods of appointing judges So, at the same time as introducing more laws to curb judicial powers, government began to appoint more judges on merit.

According to a study by Dugard, another practice apparently emerged during the early Seventies, particularly in the Transvaal. It seemed that judges who had previously practised as advocates in the more conservative atmosphere of Pretoria were appointed to preside over political trials more frequently than those from the more liberal Johannesburg Bar

Dugard argues there are four main reasons for the return of our courts to a pro-civil rights attitude

☐ While there are still some political appointments, most are now on merit;

☐ A wider spectrum of judges now sit in political trials This may be the result of remarks made by the Hoexter Commission;

☐ A large number of civil rights lawyers have come to the fore. They approach the courts with imaginative and innovative arguments, and have been encouraged because many have been accepted; and

☐ In the Sixties, judges could trade on their reputations for independence from the earlier Smuts appointees. Towards the end of that decade, however, and during the next, there was widespread academic criticism of the judiciary Also, the courts developed severe credibility problems among blacks. Dugard believes that today the courts are more concerned about their reputation for independence, and have taken greater cognisance of their role in balancing the competing interests of the individual and the State

This attitude is particularly noticeable among judges not generally perceived to be activist or liberal Many enlightened judgments have been delivered by this section of our judiciary

SA's judiciary would probably be even more liberal if many offers of judgeships had not been turned down by liberal members of the Johannesburg Bar specifically In some cases, this has been because of discomfort at the idea of administering patently unjust laws, but usually the reason has been financial A top advocate's potential earnings are about four times that of a judge

This is why, in the Transvaal mainly, government has been forced to appoint young advocates from the Pretoria Bar

In Natal, attitudes among top advocates have differed. They have generally accepted appointments; this goes a long way towards explaining the exceptionally liberal nature of the Natal Supreme Court bench

Right now, says Dugard, government has grown lawless and sloppy. The courts are having to control, as far as possible, the arbitrary and excessive use of power. Even within these limits — with the armoury of security legislation available — government can still achieve its repressive aims, he says

As if to drive home this point, State President P W Botha last week amended the emergency regulations so as to nullify the large body of court judgments which had rendered ineffective all police divisional commissioners' emergency decrees ■

252

Court bid to free Border detainees

DD 8/8/86

Dispatch Correspondent

GRAHAMSTOWN — Three separate applications for the release of six King William's Town detainees were brought before the Supreme Court here yesterday

They were postponed by Mr Justice Kroon to August 14 The applications are to be argued simultaneously before a full bench of the court

All three applications seek an order declaring Regulations 3 (1) and 3 (3) of the emergency regulations as invalid and of no force or effect, and that the arrests and detentions of the detainees are unlawful.

In one of the applications, the release of a 31-year-old United Congregationalist Church minister, the Reverend Colin Jooste, is sought.

The application also seeks an order directing the officer commanding Berlin police station to supply Mr Jooste with adequate bedding facilities, including a bed, or alternatively a mattress, and "such quantity and nature of food as to ensure adequate sustenance and nutrition"

In an affidavit presented to the court, Mr Jooste said the conditions under which he was being detained were "extreme, harsh and punitive"

He said that since his arrest and detention on June 15, he had been forced to sleep on the floor of his cell, with only a thin felt mat to separate his body from the floor.

Mr Jooste said he had, also since his detention, received only a quarter loaf of bread and a cup of coffee for breakfast, a cup of vegetable soup and a quarter loaf of bread for lunch, and a cup of coffee and a quarter loaf of bread for supper.

The circumstances of his detention, he said, appeared designed to effect physical and emotional harm to him

Mr Jooste further said the dank cell and "extremely cold" weather in the past two months, coupled with the inadequate bedding facilities and diet afforded him, had caused him to fear for his health

The respondents named in this application are the State President, the Government of the Republic of South Africa, the Minister of Law and Order and the officer commanding Berlin police station.

In the second application, the release of an 18-year-old schoolboy, Mr Gareth Damons, and Mr Mxolisi Jackson Fuzile and Mr Brian Osteridge is sought

In an affidavit, Mr Gareth Damons said he received only a five centimetre thick slice of dry brown bread with a cup of coffee for breakfast, a cup of vegetable soup and a five centimetre thick slice of dry brown bread for lunch, and only a five centimetre slice of the same bread for supper.

The respondents cited in this application are the State President, the Government of the Republic of South Africa, the Minister of Law and Order, the officer commanding King William's Town prison and the officer commanding King William's Town police station

The third application seeks the release of of a King William's Town freelance journalist, Mr Phila Ngqumba, and Mr Prince Mhamhe

Sewage leaks into

pupils their studies without background

8/8/86 Business Day 252

PW 'exceeded limits'

THELMA TUCH

THE State President was not authorised to impose on black pupils the type of regime contained in the proclamation compelling them to register for school, Gilbert Marcus, counsel for the National Education Crisis Committee, said yesterday

He was making his submissions in the Rand Supreme Court on behalf of the NECC and two parents — Maggie Sole and Peter Mabaso — in an urgent application that Proclamation R131 be declared invalid

The proclamation was gazetted in terms of the Public Safety Act on July 13 — the eve of the re-opening of black schools — and provides for a system of compulsory registration of black pupils.

It also empowers the Director-General of Education and Training, or any officer authorised by him, to refuse admission to any pupil, without giving reasons for such action.

Jack Coetzee, counsel for the respondents — the State President and the Minister of Education and Training — submitted that the applicants did not have sufficient interest in the matter to justify their bringing it to court

Marcus conceded Coetzee's earlier argument that the Public Safety Act conferred powers on the State President to make different regulations for different classes of person.

However, in this case, the State President had acted in excess of the limits placed on him in terms of the Public Safety Act because the proclamation — applicable only to black pupils — created a regime of inequality, Marcus argued.

The regulations, he added, failed to include guidelines which had a bearing on public safety.

Judgment was reserved.

Squatters win court action

CAPE TOWN — The Minister of Law and Order, Mr Louis le Grange, told the Supreme Court here yesterday he would not oppose a final order restraining security forces and a squatter leader from attacking, or allowing attacks, on KTC squatter camp and agreed to pay costs.

A provisional order was granted on May 26 after 44 affidavits containing allegations of police involvement in vigilante attacks on squatters were filed

The order was extended on June 13 when another 45 affidavits were filed in which claims were made that vigilantes had attacked KTC in spite of security force presence

The applicants were squatter leaders Mr Milton Mbewana, Mr Zenzile Memani, Mr Stormont Madebula, Mr Alfred Sipeika, Mr Mtuzimele Melford Yamile and Mr Christopher Toise

The respondents were the Minister of Law and Order, the Minister of Defence, the officer commanding Western Province Command of the South African Defence Force, the Divisional Commissioner of Police, Cape, the Athlone district commandant, the Guguletu station commander, Warrant Officer Barnard, and Mr Sam Ndima

In an affidavit handed in to court, the minister said that after weighing up the advantages and disadvantages of proceeding with the trial he decided to agree to a final order

The provisional order restrained security forces and squatter leader Mr Sam Ndima from being involved in or permitting attacks on the KTC squatter camp

The minister said his legal representatives had advised him that the trial would last for up to a year and the costs would run to hundreds of thousands of rands Many members of the police force would have had to be present in court The police could not afford to forego their services

Mr S Aaron, SC, for the applicants, said he wished to bring to the judge's attention claims contained in affidavits that the respondents had "flouted" the temporary order on June 9 and 10 when "witdoeke" attacked KTC, destroying 75 per cent of the squatter camp

Mr G Griessel, SC, for the respondents, said the respondents had "nothing to hide".

He also recorded that the respondents had given an undertaking to preserve and keep in safe custody all material connected to the case, pending possible civil action — Sapa

Judge says why Kubheka's inside

252

By SOL MORATHI

A FULL bench of the Pretoria Supreme Court gave reasons this week why they dismissed an urgent application for the release of two emergency detainees.

The applications for the release of Wits senior law lecturer and UDF member Raymond Suttner and trade unionist Sipho Kubheka were dismissed last week.

Suttner and Kubheka were arrested in terms of Section 50 of Internal Security Act, but were later told they were being held under the emergency regulations.

Their lawyers argued that they should have been released from Section 50 before being re-detained under Section 3(1) of the emergency regulations.

Judge Preiss said they had been told they were being held under different regulations to the one under which they were arrested.

THE EMERGENCY

Lawyers won't be charged

CP Correspondent

TWO Western Cape lawyers – detained while defending clients – have been told they will not be charged with contravening the emergency regulations.

The Attorney-General has decided not to prosecute Cape Town advocate Mohammed Anwar Albertus and Stellenbosch lawyer Trevor Vernon Gerald de Bruyn.

The two were detained on June 19 while defending people accused of public violence

Albertus and De Bruyn were released from detention on June 25 on R500 bail each, hours before their wives applied to the Cape Town Supreme Court for their release.

After their release, the men appeared in the Worcester magistrate's court on charges of contravening the regulations

They did not plead to the charges and the matter was referred to the A-G.

Albertus said he intended instituting civil proceedings against Law and Order Minister Louis le Grange for wrongful arrest and crimen injuria.

Court frees 2 more

CP Correspondent

TWO emergency detainees were released from detention this week without being charged, after an urgent Supreme Court application in Durban.

One of the detainees, Vusimuzi Langa, said in an affidavit that on June 15 he was on his way home from the shops when he saw police and soldiers travelling in a Hippo.

He said he heard shooting and was struck in the back by birdshot.

Langa said he tried to run away, but lost consciousness and later woke up in KwaMashu police station.

He was taken to the Westville prison, he said, where he was kept until his release this week.

Langa claimed he was questioned only once during his detention

He said he told his interrogators he was not a member of the UDF, the "comrades" or any other political organisation

During his questioning he was asked to sign a statement that he and other people planned to necklace somebody

He said he refused to sign the statement

The other applicant, Busi Molefe, said that on July 9 seven policeman arrived at her home and arrested her.

She was asked whether she was involved in arranging school boycotts and whether she distributed boycott pamphlets – as her name, together with the names of other people, appeared on a list in the police's possession

Molefe denied the police had any grounds to hold her and added that while she was questioned she saw another detainee, Muzi Sibiya, being assaulted

Because Langa and Molefe have been released, their case has been postponed until later this month for argument over the costs of the application

ce won't d – Steyn

risk, Steyn said.

The Urban Foundation totally rejected the idea that "the end justifies the means Rather, we would argue a contrary position: Sound means contribute to good ends".

Steyn said the government had committed itself to a process of reform that resulted in a number of "very real changes in the laws in terms of which we are governed" – Sapa

Free - but

CP Correspondent

MIDLANDS Council of Churches organising secretary Abe Visagie was released from detention this week – but placed under strict restrictions.

Visagie – detained in Schoonbee, a settlement 40km from Middelburg – has been prohibited from leaving the Middelburg area, taking part in MCC and UDF activities, attend-

Papers challenge curbs

Dispatch Correspondent

JOHANNESBURG — The emergency regulations specifically affecting newspapers are to be challenged today in the Natal Supreme Court in a joint South African Associated Newspapers (Saan) and Argus action

The application against the State President, the South African Government, the Minister of Law and Order and the Commissioner of Police will be heard before a Full Bench in Pietermaritzburg

Six emergency regulations will be challenged.

Counsel for Saan-Argus will argue that the effect of the regulations — issued as emergency regulations in terms of the Public Safety Act — could not have been intended by the legislature when it promulgated the Act in 1953 and that they are ultra vires

It will be argued that the regulation empowering the Commissioner of Police to issue orders in terms of the regulations also is ultra vires

The regulations concerning subversive statements and photographs will be challenged on the basis that they exceed the State Presidents' powers in terms of the Act and unreasonably inhibit activities that would otherwise be lawful

Regulations dealing with the seizure or banning of publications will also be challenged

Cosatu in court bid

DURBAN — The Congress of South African Trade Unions (Cosatu) is to challenge the state of emergency in the Natal Supreme Court in Pietermaritzburg tomorrow.

Cosatu's legal representative, Mr Chris Albertyn, said an application would be made to have the provisions of two of the emergency regulations declared ultra vires and invalid.

An application would also be made to have the detentions of 30 people ruled invalid and to order their release.

The action is being brought against the State President, Mr P W Botha, and the Minister of Law and Order, Mr Louis le Grange — DDC

Courts face wave of bids to free detainees

STAR 252 12/8/86

An unprecedented wave of applications for the release of emergency detainees is descending on courts throughout South Africa

And a top constitutional lawyer, Professor Dion Basson, says detainees still held in Natal could launch actions for damages against the Government, which "does not have a leg to stand on" following yesterday's landmark judgment.

A Full Bench of the Natal Supreme Court declared two clauses of the emergency regulations invalid

Mr Justice Friedman, with Acting Deputy Judge-President Mr Justice Leon and Mr Justice Wilson concurring, ruled that President Botha had acted beyond his power in promulgating clauses 3(1) and 3(3)

The judges ordered the release of UDF publicity secretary Mr Solomon Lechesa Tsenoli

Mr Tsenoli had lodged an urgent application for his release from Westville Prison on the grounds that President Botha issued emergency regulations that were ultra vires in terms of the Public Safety Act of 1953

Human rights lawyers met in Johannesburg last night to work out a strategy and are preparing at least three applications affecting scores of detainees to be heard in the Rand Supreme Court in the next few days.

Lawyers in the Cape and Natal began preparing similar applications as it became clear that the State would not release other detainees without court orders

Professor Basson, lecturer in law at University of the Pretoria, said today the State did "not have a leg to stand on against civil claims by Natal detainees who are still being held under the two emergency regulations which were declared invalid yesterday".

He said all Natal detainees held under clauses 3(1) and 3(3) were being unlawfully detained

"It is absurd they are still in detention despite the two regulations having been declared invalid. There is no higher legal authority in Natal than the Supreme Court

"This meant that all those detainees will have solid grounds for civil claims for unlawful detention since the moment that the judgment had been made The State will not have a leg to stand on," Professor Basson said

Some lawyers believe the State may issue new regulations or use the Internal Security Act to keep the more than 5 000 detainees behind bars.

It seems no other detainees will be released until the Government's appeal against the judgment is heard

A leading Johannesburg lawyer said that although the Natal Supreme Court judgment was academically "the law", in reality the State would only release detainees if specifically ordered to do so by the courts He said the countrywide court applications were being launched to enforce the judgment

In the Western Cape, lawyers acting for emergency detainees last night began telexing the Minister of Law and Order, Mr Louis le Grange, to ask for the immediate release of their clients in the light of the Natal judgment

Lawyers and legal bodies said they welcomed the judgment that declared invalid two clauses relating to the arrest and detention of people under the emergency regulations

The associate professor of law and the University of Cape Town, Professor Denis Davis, said all detainees should be released, but if they were not "one has to proceed to court to get them released"

He said although the judgment was a good one, it could be "very easily amended"

He said the judgment would cut down on the power of police to detain people and would increase the ability of the courts to review police action

The national chairman of Lawyers for Human Rights, Mr Jules Browde, said his organisation welcomed any decision that brought detention without trial to an end

● See Page 4.

Natal judgment opens floodgates

Lawyers in struggle to free detainees

● TSENOLI

DOMINIQUE GILBERT and MAX DU PREEZ

LAWYERS will square up today for round two of a legal battle with government by flooding supreme courts countrywide with applications for the release of detainees.

Durban lawyers are drafting more than 138 applications for the release of detainees. Transvaal and Cape lawyers are making similar applications affecting more than 500 others.

A number of applications are likely to be heard today.

● See Comment — Page 6

Government, meanwhile, is fighting yesterday's dramatic Natal Supreme Court ruling invalidating key emergency regulations used to detain thousands and says the status quo will be maintained.

A spokesman for Law and Order Minister Louis le Grange said yesterday no detainees other than the UDF's Lechesa Tsenoli, whose immediate release was ordered by the Natal court, would be freed until the state's appeal against the judgment was heard.

12 000 HELD

THE PFP has concrete information that organisations monitoring missing persons have considerably underestimated their numbers.

The head of its Bureau for Missing Persons Neil Ross said yesterday that 5 900 people were known to have been detained since June 12.

He said that the real figure could be as high as 12 000.

However, it could take three months to a year before the appeal can be accommodated by the Appellate Division.

In the successful application for the release of Tsenoli, the UDF's Natal publicity secretary who has been in detention since June, Mr Justice Friedman with Mr Justice Leon and Mr Justice Wilson concurring, ruled that President P W Botha had acted beyond his powers in promulgating clauses 3 (1) and 3 (3) of

● To Page 2

Battle on for detainees

● From Page 1

the emergency regulations.

These clauses, relating to arrest by security forces and the length of detention, were declared invalid. The respondents, the State President, the Law and Order Minister and the Minister of Justice were ordered to pay costs.

Lawyers countrywide responded yesterday by sending a flood of telexes demanding the release of detainees on the basis of the Natal judgment.

In Natal, some lawyers asked for the release of detainees by 2pm yesterday, and others by 8,30am today.

They received no response to or acknowlegement of their telexes.

It is believed the Natal judgment may not be binding in other provinces. But is likely to be persuasive in Transvaal, Cape and Free State courts.

The judgment is thought effectively to invalidate any arrest and detention in terms of the Public Safety Act, in Natal at least.

Any further arrests in Natal in terms of the Act will now be unlawful.

But legal experts predict the state may introduce new legislation to counter the judgment because, if the court's ruling is upheld by authorities nationwide, it could lead to the release of all those detained under the emergency.

Government would be forced to pull out all the stops, a lawyer said yesterday, because it could face an estimated 9 000 or more civil actions for unlawful arrest, should it lose on appeal.

"This could cost the state hundreds of thousands of rands in law suits," he said.

Spokesmen for the Department of Justice, the Prison Service and the Bureau for Information yesterday declined to comment on the judgment.

☐ The Congress of South African Trade Unions (Cosatu) is to challenge Regulations 3 (1) and 3 (3) of the emergency in the Natal Supreme Court, Maritzburg, tomorrow.

An application will also be made to have the detention of 30 people declared invalid and to order their immediate release.

The action is being brought against President Botha and Minister of Law and Order Louis le Grange.

Advocate says papers driven to court action

D. D 12/8/86

252

Dispatch Correspondent

PIETERMARITZBURG — Newspapers, which had tried in good faith to see if they could live with the emergency regulations, had been driven to court after coming up against insuperable difficulties, a full bench of the Supreme Court here was told yesterday.

Mr Justice Leon, Mr Justice Nienaber and Mr Justice Kumleben are hearing an application by the English newspaper groups challenging certain emergency regulations affecting the press.

The applicants are Natal Newspapers (Pty) Ltd, the Natal Witness (Pty) Ltd, the Argus Printing and Publishing Ltd and South African Associated Newspapers Ltd (SAAN).

They have brought an application against the State President, Mr P W Botha, the South African Government, the Minister of Law and Order and the Commissioner of the South African Police.

They are seeking an order declaring six emergency regulations — regulations seven to 12 — to be void and of no force and effect in law

Emphasising the urgency of the application yesterday, Mr Sydney Kentridge, SC, for the applicants, said newspaper companies stood to lose hundreds of thousands of rands if even one of the publications were seized in terms of the emergency regulations.

Mr Kentridge referred specifically to regulation 11 which he described as the most considerable clog in the freedom of the press to inform the public of what was happening in the country.

This regulation empowered the Minister of Law and Order to seize a newspaper if, in his opinion, it contained a subversive statement

Mr Kentridge said this "enormous power" had now been given to any member of the force serving as a commissioned officer in the South African Police, the South African Defence Force or the Prisons Service

"Any serving commissioned officer is given the power to seize the whole of an issue of the Sunday Times or Rapport, which, in his opinion, contains information which is detrimental to the safety of the public.

"This power is bad enough even in the hands of the minister, but we say that the endowing of any commissioned officer with this power goes far beyond what is permitted in the Act

"On the face of it, it gives power to what must be thousands of people of varying types, backgrounds and abilities."

Turning to regulation 12 — which deals with the confiscation and seizure of subversive publications and allows for the banning of a newspaper for a specific period if the Minister of Law and Order is of the opinion that it is of a "subversive nature" — Mr Kentridge referred to the possible disastrous effects on such a newspaper or publication

The editor of the Daily News, Mr Michael Green, said in an affidavit that if one day's issue of the Daily News were seized, the cost to Natal Newspapers would be about R175 000.

The editor of the Sunday Times, Mr Tertius Myburgh, said the task of an editor had been rendered almost impossible by the emergency regulations

He said in an affidavit that as an editor he could never be certain whether a particular item of news or comment would or would not be viewed by some or other member of the security forces as a "subversive statement", "or worse still, as being detrimental to, say, the termination of the state of emergency (whatever that may mean)".

Mr Myburgh said that consequently he had been forced to censor fear of seizure"

He did not believe that it was at all necessary, or desirable, to restrict the press in the manner that the emergency regulations do, even in a state of emergency

"The ordinary laws of the land are more than adequate to curb seditious journalism The effect of the emergency regulations on the press is quite simply to stifle news and comment which, in these times, the public in South Africa ought to hear," Mr Myburgh submitted in his affidavit

The editor of the Natal Witness, Mr Richard Steyn, said in an affidavit that while he and his staff tried conscientiously to avoid breaking the law he was now fearful that at any time he might quite innocently publish a statement, report or article which could result not only in criminal prosecution but also the seizure of the newspaper without warning and forfeiture of their printing press.

Earlier yesterday, Mr J Conradie, SC, and Mr Jan Combrink, SC, for the respondents, asked for an adjournment of the hearing on the grounds that they needed time to assess the implications of the Lechesa Tsenoli judgment handed down in the Durban Supreme Court

Mr Conradie submitted that the judgment could affect their position in the present hearing "quite dramatically".

The judges, however, found that the matter was urgent and that Mr Kentridge should be allowed to present his argument after which the hearing would be adjourned to enable the respondents to prepare their case

Commenting on the urgency of the case, Mr Justice Leon said great inroads had been made on the public's right to know and the possibility of their being closed down was a daily source of anxiety to newspapers

DETENTIONS ILLEGAL

COURT RULES

All those held under emergency may go free

MUMS, DADS, KIDS TORN APART

Page 2

ALL emergency detainees may be freed after the Natal Supreme Court yesterday declared invalid two clauses of the emergency regulations.

The clauses relate to arrests and detentions

A Full Bench of the court made the ruling after an application by the Natal publicity secretary of the United Democratic Front (UDF), Mr Lechesa Tsenoli

Mr Tsenoli was released yesterday after the court found his detention was unlawful.

Mr Justice Friedman, with Acting Deputy Judge-President Mr Justice Leon and Mr Justice Wilson concurring, also ruled that President P W Botha had acted beyond his power in promulgating clauses 3(1) and 3(3) of the emergency regulations

Lawyers for the State lodged an appeal immediately after the judgment

In a written judgment handed down by the Judge-President of Natal, Mr Justice Milne, Mr Justice Friedman ordered that Mr Tsenoli be released and that the respondents — President Botha, Law and Order Minister Mr Louis le Grange and Justice Minister Mr Kobie Coetsee — pay the costs of the application.

The first clause declared invalid is 3(1) which empowers any security member to arrest and detain anyone whose detention is "in the opinion of such member, necessary for the maintenance of public order or the safety of the public or that person himself or for the termination of the state of emergency "

The second clause is 3(3) which states "the Minister may order that any person arrested and detained under (3)1 be further detained for the period mentioned in the notice or for as long as these regulations remain in force"

The *Sowetan*'s legal adviser yesterday said that because the State has appealed, the ruling does not have the effect of immediately releasing all prisoners under the Natal division of the Supreme Court

But each and every prisoner can demand his release and use the reasoning in the Tsenoli case

PRESIDENT Botha one of the respondents

Unrest stories

THIS issue of the *Sowetan* has been produced under conditions that amount to censorship. ALL stories that relate to unrest, the state of emergency and the activities of the security forces were supplied by the Bureau for Information established by the Government

Additional facts or information which we may have had relating to unrest had to be approved by the bureau or cannot be published

Detention laws ruled invalid

12/8/86 DVN LYDIOP

252

DURBAN — A full bench of the Natal Supreme Court yesterday declared invalid two clauses of the emergency regulations.

The clauses relate to the arrest and detention of persons considered to be a threat to the maintenance of public order

Mr Justice Friedman, with Acting Deputy Judge-President Mr Justice Leon and Mr Justice Wilson concurring, ruled that the State President, Mr P W Botha, had acted beyond his power in promulgating clauses 3 (1) and 3 (3) of the emergency regulations

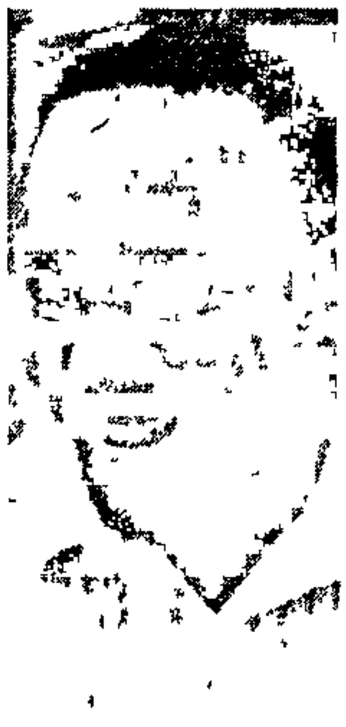
The Natal publicity secretary of the United Democratic Front, Mr Lechesa Tsenoli, had lodged an urgent application for his release from Westville Prison on the grounds that Mr Botha issued emergency regulations that were ultra vires in terms of the Public Safety Act of 1953

Counsel for the state has lodged an appeal and a decision on whether the order should be made effective immediately is expected to be made soon

In a written judgment handed down by the Judge-President of Natal, Mr Justice Milne, Mr Justice Friedman ordered that Mr Tsenoli be released and that the respondents — Mr Botha, the Minister of Law and Order, Mr Louis le Grange, and the Justice Minister, Mr Kobie Coetsee — pay the costs of the application

The clauses declared invalid read

"3 (1) A member of a force may, without warrant of arrest, arrest or cause to be arrested any person whose detention is, in the opinion of such member, necessary for the maintenance of public order or the safety of the public or that person himself, or for the termination of the state



MR TSENOLI

of emergency, and may, under a written order signed by any member of a force, detain, or cause to be detained, any such person in custody in a prison

"3 (3) The minister may order that any person arrested and detained under 3 (1) be further detained for the period mentioned in the notice or for as long as these regulations remain in force"

Mr Justice Friedman said regulation 3 (1) contained provisions which in his opinion proceeded beyond the powers conferred upon the State President by section 3 (1) (a) of the Public Safety Act

"The fact that (Mr Botha) may believe that the regulation in the terms in which he made it is well within his powers, however bona fide that may be, cannot, in my view, affect the position"

Earlier in the judgment, he said the clause could be construed as meaning that "every common criminal might be considered a threat to the safety of the public and liable as such to be detained summarily for the duration of the state of emergency"

It followed that 3 (3) was also invalid, as it extended a detention in terms of 3 (1)

The Progressive Federal Party spokesman on law and order, Mr Peter Gastrow, said the case provided a ray of hope that the courts would continue to play a watchdog role in the narrow areas where they were still allowed to investigate executive action

Meanwhile, Western Cape lawyers acting for emergency detainees last night began telexing Mr Le Grange, asking for the immediate release of their clients following the judgment

Lawyers and legal bodies said they welcomed the judgment

An associate professor of law at the University of Cape Town, Professor Denis Davis, said a judgment by the full bench "is the law" until there is a court decision to the contrary

He said as a result all detainees should be released, but if they were not "one has to proceed to court to get them released"

Legal experts said they expected a flood of urgent applications to courts throughout the country for the release of detainees

Mr Dullah Omar, president of the Democratic Lawyers' Association said, "In terms of the judgment virtually all detentions are unlawful and it is our view that all detainees must be released immediately"

We'll never win the July at this rate! a schoolgirl rides her father's ox during a junior Bavarian ox-riding championships at Langenpettenbach, West Germany. (Reuters)

147 rescued

HALIFAX — Fishing vessels yesterday plucked 147 people from the Atlantic Ocean, where they had been adrift in lifeboats for five days off the coast of Newfoundland

The nationality of the survivors and the name of the ship they had abandoned were not immediately available

Emergency regulations nightmare

Judges told of editors' fears

NEWSPAPERS, which had tried in good faith to see if they could live with the emergency regulations, had been driven to court after coming up against insuperable difficulties, a full Bench of the Supreme Court was told in Maritzburg yesterday.

Mr Justice Leon, Mr Justice Nienaber and Mr Justice Kumleben are hearing an application by the English newspaper groups challenging some emergency regulations affecting the Press.

The applicants are Natal Newspapers, the Natal Witness, Argus Printing & Publishing and SA Associated Newspapers

They have brought an application against the State President, the SA government, the Minister of Law and Order, and the Commissioner of the SA Police, and are seeking an order declaring emergency regulations 7 to 12 to be void and of no force and effect in law

Stressing the urgency of the application yesterday, Mr Sydney Kentridge, SC, for the applicants, said newspaper companies stood to lose hundreds of thousands of rands if even one of the publications were seized in terms of the emergency regulations.

Kentridge referred specifically to regulation 11, which he described as the most considerable clog in the freedom of the Press to inform the public of what was happening in the country

This regulation empowers the Minister of Law and Order to seize a newspaper if, in his opinion, it contains a "subversive" statement

Kentridge said this "enormous power" had now been given to any member of the force serving as a commissioned officer in the SAP, Railways Police, Defence Force or Prisons Service

Turning to regulation 12 — which deals with the confiscation and seizure of "subversive" publications and allows for the banning of a newspaper for a specific period if the Minister of Law and Order is of the opinion it is of a "subversive nature" — Kentridge referred to the possible disastrous effects on such a paper or publication

Daily News Editor Michael Green said in an affidavit if one day's issue of the paper were seized, the cost to Natal Newspapers would be about R175 000.

Sunday Times Editor Tertius Myburgh said the task of an editor had been rendered almost impossible by the emergency regulations

He said in an affidavit that as an editor he could never be certain whether

Own Correspondent

a particular item of news or comment would or would not be viewed by some or other member of the security forces as a "subversive statement".

Myburgh said that, consequently, he had been forced to censor the newspaper on a completely arbitrary basis, "and still live under the fear of seizure".

Natal Witness Editor Richard Steyn said in an affidavit that while he and his staff tried conscientiously to avoid breaking the law, he was now fearful that at any time he might quite innocently publish a statement, report or article which could result not only in criminal prosecution but also the seizure of the newspaper, without warning, and forfeiture of the paper's printing press.

☐ Earlier yesterday, Mr J Conradie, SC, and Mr Jan Combrink, SC, for the respondents, asked for an adjournment of the hearing on the grounds that they needed time to assess the implications of the Lechesa Tsenoli judgment handed down in the Durban Supreme Court

Conradie submitted that the judgment could affect their position in the present hearing "quite dramatically".

However, the judges found that the matter was urgent and that Kentridge should be allowed to present his argument, after which the hearing would be adjourned to enable the respondents to prepare their case

Commenting on the urgency of the case, Mr Justice Leon said great inroads had been made on the public's right to know, and the possibility of their being closed down was a daily source of anxiety to newspapers.

The hearing continues today.

Cape oil data

ON-SHORE oil drilling could begin in the Algoa Bay area next year if locations of certain oil traps are confirmed by an Israeli exploration group

By using oil-finding techniques from North Africa, the Israelis have reinterpreted Soekor research and pinpointed several possible oil traps in the Eastern Cape.

The find has not yet been proved but, if interpretation of research is correct, oil reserves of about 90-million barrels could be uncovered

Prospecting rights for the area belong

DAILY DISPATCH

Court rejects bid for release

12/8/86

252

Dispatch Correspondent

PORT ELIZABETH —An application for the release of a 26-year-old Port Elizabeth man arrested in terms of the state of emergency regulations was dismissed yesterday by the Grahamstown Supreme Court

An application for leave to appeal against the judgment was noted and postponed to a date to be arranged by the Registrar

The respondents are the Minister of Law and Order, the Minister of Justice, the Commissioner of Police and the officer commanding St Albans Prison

Mr Justice Kroon found that the initial arrest and detention, as well as the subsequent re-detention of Mr Isaac Zwelidumile Nguta, was valid

Mr Nguta, who is employed by South African Breweries, was initially arrested on Friday, June 13, in Pearston He was released on June 26

In an affidavit before the court, he said that as he was due to re-commence work at his place of employment here on June 23, he had requested written proof of his detention from the police

It was during a visit to the Pearston police station for this purpose on June 29 that he was informed he was "not supposed to have been released in the first place" and was re detained

Justice Kroon said he was unable to find that the arresting officer had acted improperly in reaching the view that the detention of Mr Nguta was necessary for the maintenance of public order and safety

Furthermore, it was clear that the Minister of Law and Order had signed an order extending Mr Nguta's detention before the initial 14-day period of detention had expired, he said

The police were therefore entitled to redetain Mr Nguta

STAR 12/8/85

Court rules detention regulations invalid

Staff Reporters and Own Correspondent

A Full Bench of three judges yesterday declared invalid two key clauses of the emergency regulations relating to arrests and detentions

It found that the arrest and detention of the United Democratic Front's Natal publicity secretary, Mr Solomon Tsenoli, was unlawful He has been in detention since the start of the emergency

But the court noted an appeal against the judgment which was lodged immediately by lawyers for the State.

The court decided Mr Tsenoli should be released.

Legal experts told *The Star* that if the Natal Supreme Court judgment was accepted by the authorities throughout South Africa, it would mean all those detained under emergency regulations would have to be released.

In the event that the authorities do not begin to release detainees immediately, it is expected that a flood of urgent applications will be brought to court throughout the country.

It is thought that more than 5 000 people are in detention

The clauses the court ruled invalid were 3(1) and 3(3) of the emergency regulations, concerning arrests by members of the security forces and the length of detentions.

Mr Justice Friedman, with Acting Deputy Judge-President Mr Justice Leon and Mr Justice Wilson concurring, ruled that President P W Botha had acted beyond his power in promulgating clauses 3(1) and 3(3)

Mr Tsenoli had lodged an urgent application for his release from Westville Prison on the grounds that President Botha issued emergency regulations that were ultra vires in terms of the Public Safety Act of 1953.

In a written judgment handed down by the Judge-President of Natal, Mr Justice Milne, Mr Justice Friedman ordered that Mr Tsenoli be released

The court also ordered the respondents — the State President, Minister of Law and Order and Minister of Justice — to pay costs

Mr Justice Friedman said regulation 3(1) contained provisions which, in his opinion, proceeded beyond the powers conferred upon the State President by section 3(1)(a) of the Public Safety Act

EMPOWERS

Declared invalid are the first and third clauses under regulation 3 — "arrest and detention of persons"

The first, 3 (1), empowers any member of the police force, Railways Police, or the SADF to arrest and detain anyone whose detention is necessary for the maintenance of public safety or order — or necessary for the "termination of the state of emergency" in the opinion of that member of a force

The other clause, 3 (3), gives the Minister of Law and Order the power to order that anyone so detained be held for as long as he decides, or for as long as the emergency regulations remain in force.

The Minister does not have to give notice or a hearing to any person before the extension

Mr Justice Friedman said "The fact that (President Botha) may believe that the regulation in the terms in which he made it is well within his powers, however bona fide that may be, cannot, in my view, affect the position"

CRIMINAL

Earlier in the judgment he said the clause could be construed as meaning that "every common criminal might be considered a threat to the safety of the public as a result which does not seem to accord with the object of the (Public Safety) Act."

It followed that 3(3) was also invalid, as it extended a detention in terms of 3(1).

Court ruling on detainees gets cautious approval

Staff Reporters

If yesterday's judgment by the Natal Supreme Court on emergency detentions and arrests is accepted by the authorities throughout South Africa, all persons detained under emergency regulations will have to be released, legal experts told *The Star* today.

If the authorities do not begin to release detainees immediately, it is expected that a flood of urgent applications for their release will be brought to courts throughout the country

More than 5 000 people are believed to be in detention.

Mr Peter Reynolds, *The Star's* legal adviser, said "It is reassuring that the courts are continuing to uphold the rule of law in South Africa.

"This will have a beneficial effect on our country's somewhat tarnished image overseas at a time when we sorely need to be seen to be supporting the public's right to be heard and protected by the courts.

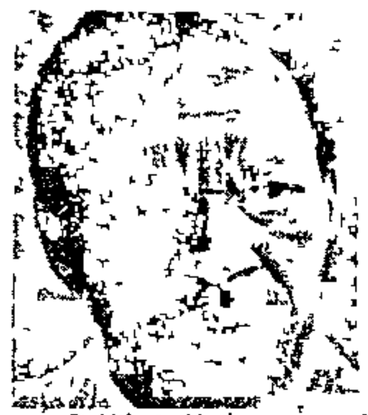
"This is a most important judgment and it is hoped the authorities will respect it, not only in Natal, but throughout the whole country, by releasing all detainees without delay."

The national chairman of Lawyers for Human Rights, Mr Jules Browde, said his organisation welcomed any decision that would end detention without trial.

He cautioned against over-reaction. "This decision is not binding on courts in the other provinces and applies only in Natal However, it would be very persuasive to other courts if similar actions were brought."

He said the Government might decide to change the orders under which detainees were being held.

Dr Beyers Naude



Dr Nthato Motlana

Mr Louis Nel

The Progressive Federal Party (PFP) said today that the Natal Supreme Court ruling setting aside state of emergency detention regulations was a barrier against complete authoritarian rule.

Ruling on an application by a United Democratic Front detainee, the court found that President P W Botha had acted beyond the powers of the Public Safety Act.

Rightful role

PFP Federal chairman, Mr Peter Gastrow, said today that it was encouraging that the Supreme Court had again played its rightful role in checking the powers of the State President.

"The President may well regard it as an interference with his powers but the courts are now the only institution which can hold back complete authoritarian rule.

"This is a good example of the powers given to the executive by legislation being abused."

Mr Gastrow said that, in this case, the courts were able to rule on abuse of power because it was secondary legislation — regulations issued in terms of legislation approved by Parliament.

But it highlighted the need for the courts to be given the right to interfere with measures approved by Parliament such as section 29 of the Internal Security Act.

"The legislation prevented the courts from interfering which, in turn, left no one to control abuse of the powers."

A spokesman for the Detainees' Parents Support Committee (DPSC) said the ruling was "exciting" and again demonstrated the judiciary's independence of thought.

"However, last time they did so, their actions were neutralised by Government administrative action We can only hope that this does not happen again," the spokesman said.

A spokesman for the largest black union, the National Union of Mineworkers, said "It has been quite clear that, for a long time, the State has been acting beyond its powers. It remains to be seen whether the State President will amend the laws concerned, as he has done before."

A spokesman for the Office of the Deputy Minister of Information, Mr Louis Nel, said today that the Ministry would not be commenting as the Government had appealed and the matter was therefore sub judice

The Bureau for Information made a similar comment

Brigadier Jaap Venter of the Police Public Relations Directorate in Pretoria said the police did not have enough facts at their disposal to comment at this stage.

Dr Nthato Motlana, chairman of the Soweto Civic Association, complimented the Natal Supreme Court for independent thinking in dealing with applications challenging the state of emergency.

"This illustrates how power-drunk the Government is in thinking that it can detain as it pleases without even observing the laws that it makes," he said

No difference

But the ruling would make no difference because legislators could make new laws to counter the ruling, which would be enforced retrospectively.

"In the end we don't win Maybe the war may be resolved in other frontiers than the courts," said Dr Motlana

The President of the South African Council of Churches, Bishop Manas Buthelezi said, "We are awaiting with interest the outcome of the appeal because the lives and liberties of people hinge on it"

Dr Beyers Naude, secretary general of the SA Council of Churches, said he was "very glad" about the decision

"We are grateful for this decision and we obviously hope that it will become a judgment to be applied in all provinces We must exercise restraint until we know that it does"

Professor Mervyn Shear, dean of student affairs at the University of the Witwatersrand, said he was delighted with the court decision Twenty students and two university staff members are in detention

"This is, however, similar to previous court decisions. But, on the basis of these decisions, and the new development, the university intends to take action on behalf of its detained students and staff"

A spokesman for the Transvaal Indian Congress, Dr Yusuf Jassat, said he was pleased with the ruling.

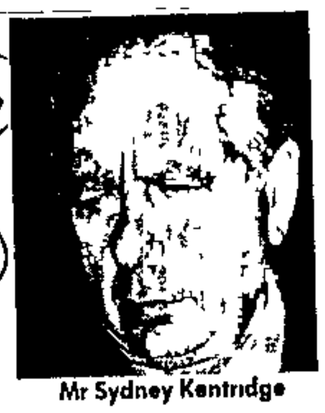
"What is upsetting is that the State comes up with amendments that still curtail civil liberties — and then we are back to square one," he said.

The suppression of freedom of speech and the detentions were unwarranted, he added.

The Bishop Suffragan of Johannesburg East, Bishop Simeon Nkoane, said he was upset that the State attorneys had filed an appeal against the ruling

Bishop Nkoane said he was concerned about the liberties of all South Africans It was important for the State to show it was also concerned that people should be free.

Kentridge blasts regulations 7-12 in Press application



Mr Sydney Kentridge

Own Correspondent

DURBAN — Emergency regulation 11 went beyond the pale by allowing any commissioned officer to seize a newspaper if in his opinion it contained a subversive statement, it was argued in the Maritzburg Supreme Court yesterday

Mr Sydney Kentridge said it was bad enough when the seizure of a publication was left to the Minister, but the mind boggled when one considered that even a National Serviceman who received a commission after a year had these enormous powers

He said this before a Full Bench of judges who are hearing an urgent joint application by the Argus Company and South African Associated Newspapers against the State President. They are asking for an order declaring emergency regulations 7-12 void and without force and effect in law

The Full Bench consists of Mr Justice Leon, Mr Justice Kumleben and Mr Justice Nienaber

Mr Kentridge, who appears for the newspaper groups, said regulation 11 was riddled with vice

He said newspapers ran the risk of committing a serious offence, not by publishing what could be objectively defined as a subversive statement, but what the Minister of Law and Order considered to be one

Mr Kentridge argued that the Minister might act in good faith, but he might regard as subversive a statement which no court would regard as such

One could not get a court interdict because the Minister's opinion could not be substituted by another

Mr Kentridge said regulation 11 was so gratuitously oppressive that it could never have been contemplated by Parliament

"The idea that one can seize a whole publication, which amounts to a fine of hundreds of thousands, if not millions of rands, simply on the opinion of a Minister cannot commend itself to any reasonable man"

Mr Kentridge said it was something that interfered with a common law right and was also bad because it left it to the discretion of an official

Dealing with section 10, which makes it a criminal offence to make, disseminate or possess a subversive statement, Mr Kentrige argued that Parliament could never have intended the regulation to go as far as it did

He said it went too far because it meant that it was now an offence to possess statements which were lawful before the regulations were made and had been acquired and disseminated lawfully

Mr Kentridge said this was of extreme importance to newspapers because they had libraries and archives which no doubt now contained subversive material

He said this went too far, particularly as the state of emergency was supposed to be temporary and newspapers could not be expected to strip their libraries and burn the offending material

Mr Kentridge said newpapers also received letters, reports from journalists and other unsolicited material, some of which might even have come by telex

He said even if an editor decided a report was subversive and did not publish it, he had still had it in his possession

Regulation 9, which forbade the taking of photographs, films and graphic representations of police conduct, was breathtaking in its scope, Mr Kentridge argued He said this was because the regulation was not limited in terms of time and place This meant that material taken one or 20 years ago fell within the restrictions placed by regulation 9 and even included pictures from overseas

The application was adjourned to August 18

Reg de Beer denies corruption

Mercury 13/8/86

252

Court Reporter

A FORMER employee of the SABC and head of Radio Port Natal, Reginald Carel de Beer, denied yesterday that he had corruptly received compensation of R1 500 from Ster Kinekor

The 40-year-old radio personality pleaded not guilty before a Durban magistrate to having corruptly accepted, agreed to accept or attempted to obtain payment for himself by asking Ster Kinekor for R1 500 for the programme *Movie Parade*, broadcast during October last year

Earlier, an application by the defence for a discharge was rejected

Giving evidence, Mr de Beer said that at the time he did not think he was doing anything unlawful and as he was entitled to do extra work in his own time, he understood he was entitled to receive compensation for it

Prize

Mr Keith Bartlett, marketing manager for Ster Kinekor, and Mr de Beer had met to discuss the possibility of running a one-year programme called *Movie Parade*, culminating in a trip to Hollywood for a listener who predicted the top five films of the week.

Mr Bartlett had asked that Mr de Beer present the programme

Mr de Beer had approached his superiors, who, he said, had told him that because the programme would not be part of his normal duties, he would not be paid any extra by the SABC

He had approached Mr Bartlett, who had agreed to compensate him with the amount of R125 a programme

Mr Bartlett had received two invoices from Mr de Beer totalling R1 500, but payment had not been made because, Mr Bartlett said, the information given on the invoices had not been that which had been discussed

Mr J Costello appeared for the State

The hearing continues today

More emergency detainees released

Dispatch Correspondent

JOHANNESBURG — A number of emergency detainees throughout the country have been released following this week's Natal judgment

The Judge President of the Orange Free State, Mr Justice Frank Smuts yesterday confirmed that all 42 detainees held in Frankfort had been released

However, he said that about 480 others were being held in Free State prisons and that detainees were being released "from time to time"

Transvaal lawyers are expected to bring a similar case as was argued in the Natal Supreme Court before the end of the week, possibly today, it was announced after Johannesburg attorneys met last night

An indication of the government's opposition to the Natal judgment came from the Minister of Law and Order, Mr Louis le Grange, yesterday when he said the government did not accept the Natal court's decision that the detention clauses in the emergency regulations were ultra vires

He would not comment on whether other detainees would be released in terms of the ruling but said "We are not accepting the decision of the court We have entered an appeal which will be heard by the Appellate Court as soon as possible"

No government departments would confirm or deny the release of detainees

Lawyers throughout the country have confirmed that a "significant number" of detainees have been released during the past few days — in most cases shortly before their applications were brought to courts

Mr Richard Lyster of Legal Resources in Durban, said applications were being made in spite of the state's appeal

He said if the state lost its appeal it could be faced with a load of civil actions

He said Mr Paddy Kearney of Diakonia was claiming R10 000 from the state for wrongful arrest after the Supreme Court ordered his release

The release of five detainees has been confirmed by lawyers — two in Johannesburg, one in Natal, one in George and one in Bloemfontein

A Johannesburg law firm confirmed the release of Transvaal Indian Congress (TIC) members, Mr Achmed Cachalia and Mr Jai Prakash Bhula, and the release of two other detainees, Mr Ashiom Shah, also of TIC, and a trade unionist, Mr Baxter Ndungwana, last week

Another law firm said it was in the process of making more than 40 applications for the release of clients

Six detainees, Mr Cornelius Skhosana, Mr Bonginkosi Gumede, Mr Eric Gwacele, Mr Boy Mfeka, Mr Msizi Nzuza and Mr Mandla Miya, were released from Westville prison near Durban after an urgent Supreme Court application, but were re-arrested under terms of the Criminal Procedures Act

Editorial opinion P12; See also P13.

Application for release is test case

By CATHY SCHNELL

TOMORROW's application in the Grahamstown Supreme Court for the release of detained journalist Mr Mike Loewe, would serve as a test case

This is the viewpoint of an advocate for the Legal Resources Centre in Port Elizabeth, who is making the application on behalf of Mr Loewe, a freelance writer.

The case follows the Natal Supreme Court ruling this week, which invalidated certain emergency regulations

The advocate said he was waiting for the judgment in the Supreme Court tomorrow on the application for Mr Loewe's immediate release, before submitting any other applications

Pending the outcome of Mr Loewe's case, he would submit other applications

"There is no point right now in rushing through dozens of applications until we know what standing the Eastern Cape is going to take on the issue"

He said the application for the release of Mr Loewe hinged on "specifically the same point" on which the Natal judgment was based

"The Natal judgement is a technical one based on the interpretation of the relevant section of the Public Safety Act and of Regulation Three," he said.

He said the Legal Resources Centre was acting on behalf of many other detainees.

Meanwhile PE attorneys are sending telegrams to the Minister of Law and Order, Mr Louis le Grange, asking for the release of the detainees they are representing.

One attorney, representing more than 100 detainees from PE, Uitenhage and Jansenville, said she was trying to contact the families of the detainees for permission to file applications on their behalf

● The Eastern Cape has been hardest hit by detentions and 250 people are known to be in custody under security legislation

The Transvaal comes second with 240 known security detainees.

The Detainees' Parents Support Committee (DPSC) said in a report released yesterday that the level of detentions this year was "running at a level never before experienced"

● Meanwhile, eight people from Lenasia who were detained under the emergency regulations were released yesterday

Oram plea for detained DV 3

Dispatch Reporter

EAST LONDON — Judgment was reserved in the Grahamstown Supreme Court yesterday in a case in which the Bishop of Grahamstown, Bishop Kenneth Cyril Oram, sought the release of three Duncan Village Anglican Church officials detained under the State of Emergency since June 13

In papers before the court, Bishop Oram said that Canon Bernard Ndlwana, churchwarden Colbert Lubelwana and church secretary Sister Florence Solomon had been detained in terms of regulation 3 of the emergency regulations.

The respondents were cited as the Minister of Law and Order, the Commissioner of Police and the head of the South African Security Police in East London

Bishop Oram said in an affidavit "I cannot believe that the member of the force who detained them could have known of their qualities and the invaluable services which they have rendered to the community in which they reside.

"It is incomprehensible that any right-thinking individual could legitimately have formed the opinion that their detentions were necessary for the maintenance of public order and those responsible for their arrests and detention could not properly have applied their minds to the facts"

Bishop Oram said Mr Ndlwana was a man of peace, one of the most highly thought of clergymen in the diocese who had been elected to his canonry by clergymen of various political persuasions, both black and white.

"While in England this year, I met people with whom Canon Ndlwana had stayed while he was overseas They were amazed at the fact that he had been detained, for they had known him to a man of God and not a political activist.

"While studying in Britain, Canon Ndlwana stated publicly his opposition to sanctions against South Africa because of the sufferings that sanctions would cause to fellow blacks," Bishop Oram said

He added that he had appointed Canon Ndlwana this year to certain duties in a white congregation at St Saviour's Church in East London so he could be a "bridge-builder".

Turning to Mr Lubelwana and Sister Solomon, Bishop Oram said the two were communicant members of the church who had shown themselves to be devout Christians, with compassion for their fellow men

Captain Charles Edward van Wyk of the South African Security Police, East London, who filed the replying papers on behalf of all the respondents, said he had been in charge of a special police unit known as the Unrest Investigation Team which was involved in curbing unrest in East London

He said he had caused the detention of the three people but denied that he could not have been of the opinion that their detention was necessary for the maintenance of public order

Captain Van Wyk said all three were being held in the Fort Glamorgan Prison, East London

He said Mr Lubelwana was a member of the Duncan Village Residents' Association (DVRA) and at the time of his detention was treasurer of the Bebelela area committee of the DVRA

Referring to the DVRA as an "alternative government" structure, Capt Van Wyk said the purpose of "alternative structures" was to supplant government structures throughout the country as a vital part of the revolutionary strategy to overthrow the existing system of government in South Africa

Capt Van Wyk said he believed that the DVRA was an "alternative structure" of the ANC.

Before the declaration of the state of emergency, the DVRA had succeeded in driving out all community councillors in Duncan Village, he said. Members of the DVRA were responsible for the enforcement of stay-aways and consumer boycotts, accompanied by widespread intimidation.

He said Mr Lubelwana, as a treasurer of the DVRA, had been actively involved in ensuring that residents of Duncan Village did not pay their rents to the legally constituted authority, but to the DVRA instead.

Capt Van Wyk said Sister Solomon was also a member of the DVRA and secretary of the Duncan Village Proper area branch committee.

He said the Duncan Village Proper area was one of the best organised areas under the DVRA and that most incidents of stone-throwing, burnings, necklaces and "people's courts" came from that area.

Capt Van Wyk said Canon Ndlwana was the vice-chairman of the Egesini area branch committee of the DVRA He said the Egesini branch committee meetings were held in the church buildings of which Canon Ndlwana was in charge.

Mr Justice Kroon was on the bench Advocate I G Farlam, SC, assisted by advocate S Cole instructed by Mr N N Dullabh and Mr H Lalla, appeared for Bishop Oram Advocate J J Nepgen, SC, assisted by advocate J Froneman instructed by Whitesides firm of attorneys, appeared for the respondents

Release plea dismissed

14/8/86

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252

Own Correspondent

THE application brought by alleged terrorist Gordon Webster's sister-in-law for the release from detention of her husband, George Webster, was dismissed in the Durban Supreme Court this week

Gordon Webster was sprung from Maritzburg's Edendale Hospital where he was being treated after a shoot-out with police.

The urgent application was made on Tuesday by Lucille Webster against the Minister of Law and Order and the SA Police for the release of her attorney husband, George Webster, who is Gordon Webster's brother.

Brigadier Johan van Niekerk, divisional commanding officer of the Port Natal Security Branch, said in an affidavit that Gordon Webster had been trained in the use of firearms and explosives by an SA policeman at a terrorist base in Angola

The policeman, who was an ANC member at the time, recognised Webster from a photograph given to him by security police after the shoot-out.

Van Niekerk said Webster was arrested on April 27 after he was wounded in a shoot-out with police

"A landline photograph of Gordon was sent to a member of the SAP who identified him as an ANC terrorist he had trained in the use of arms, explosives and other general terrorist acts at the Pango Base in Angola," Van Niekerk said

The application, heard by Mr Justice Page, was dismissed with costs by consent

All applications for release of detainees halted

Political Reporter

All applications for the release of detainees in the Rand Supreme Court have been halted pending a judgment on the issue of emergency detentions to be made by the Appellate Division in Bloemfontein next week.

The Deputy Judge President, Mr Justice Gert Coetzee, yesterday met counsel involved in the applications and asked that they wait for the outcome of an appeal against this week's Natal Supreme Court judgment against emergency detentions. The State appealed against the judgment

Lawyers thoughout South Africa have been lodging applications for the release of detainees, creating fears that Supreme Courts could be jammed up dealing with the matter, only to have their decisions later turned aside by the Appeal Court

"It can take up to two years for an appeal to be decided, but an exception is going to be made in this case on the basis of urgency," said an attorney who was present at the meeting "We expect the appeal to be heard in Bloemfontein next week."

In Maritzburg, the Supreme Court ordered the release of 22 Congress of SA Trade Union (Cosatu) members, pending a Supreme Court hearing in which they will challenge the validity of their detentions under the emergency.

The 22 were were detained between June 11 and July 7 this year. Their release followed Monday's court ruling in Durban that detentions under emergency regulation 3(1) read with 3(3) were invalid.

The Maritzburg Supreme Court was due to hear the Cosatu application today Cosatu's education secretary, Mr Alexander Erwin, alleged in an affidavit the police had detained the 22 men "in an attempt to hamstring, if not destroy, the activities of Cosatu and its affiliate unions"

Chase MD leaves for

KBC to pay R9,7[illegible]

THE multi-million-rand dispute between [illegible] (KBC) and

MICK COLLINS

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80c (71c + 9c tax) Natal, Western Province, Eastern Province

"THE VITAL VIEWPOINT"

14/8/86 252

Fears for landmark judgment following re-arrest of six

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POLICE re-arrested six emergency detainees immediately after their release by the Maritzburg Supreme Court in terms of the landmark Durban Supreme Court judgment two days ago

The six are being held under the Criminal Procedures Act

Lawyers are now expressing fears that the landmark judgment might have become "an academic exercise".

Yesterday, another 11 emergency detainees' applications were postponed pending a police investigation into whether they were being held unlawfully.

And the Transvaal challenge to two key emergency regulations declared invalid by the Durban judgment was postponed until after the hearing of the State's appeal in Bloemfontein

A reliable legal source indicated the appeal could be heard as a matter of urgency next week.

In developments yesterday:

☐ In Maritzburg, the Supreme Court ordered the release of 22 Congress of SA Trade Unions (Cosatu) members, pending a Supreme Court hearing in which they will challenge the validity of their detentions under the emergency;

☐ Johannesburg lawyers were told to let about 25 applications based on emergency regulations 3(1) and 3(3) — which were invalidated in Natal — stand down until the Appellate Division's decision on the State's appeal,

DOMINIQUE GILBERT

☐ An application in the Cape Supreme Court to declare invalid the detention of teacher Dehran Swart, detained on June 26 with allegedly subversive stickers in his possession, was postponed to August 22,

☐ The Rand Supreme Court heard an interim application on behalf of detained Catholic priest Father James Hartop, 57, to have a fellow detainee subpoenaed to give evidence in connection with the priest's detention, reports LIAM EGAN The action is pending a main application for Hartop's release,

☐ The Southern African Catholic Bishops' Conference's legal adviser said he was preparing a second application — on the basis of the Natal II ruling — for the release of SACBC secretary general Father Smangaliso Mkhatshwa, who has been in detention since the start of the state of emergency;

☐ The Durban Supreme Court dismissed, with costs, an application for the release of George Webster — detained in terms of Section 29(1) of the Internal Security Act;

☐ Eight remaining political activists from Lenasia, near Krugersdorp, detained under the emergency regulations were released on Tuesday, according to Sapa;

☐ The Trade Union Council of SA (Tucsa) condemned the "haste with which the authorities rushed through the emergency measures, now proved as inadequate with the resultant waste of money, manpower and unnecessary suffering"

Applications for release flood courts

By Dispatch Correspondent

PIETERMARITZBURG — The Supreme Court here yesterday ordered the release of 22 members of the Congress of South African Trade Unions (Cosatu), being detained under the emergency regulations, after an agreement between the state and Cosatu.

They were to be released pending a Supreme Court hearing in which they will challenge the validity of their detentions in terms of the regulations.

They will also seek an interdict restraining the State President and Minister of Law and Order from causing or permitting members of the S A Police from intimidating, harrassing or interfering with the activities of eight of the unions.

The court hearing will take place on a date to be arranged.

● A full bench decision on an application for the release of a Pietermaritzburg detainee, Mr Peter Kerchhoff, is expected to be handed down in the Supreme Court here today, after which an urgent application for his release and that of five other detainees will be heard.

Mr Kerchhoff brought a second urgent application for his release together with five other emergency detainees before Mr Justice Nienaber yesterday on the grounds that their detentions were unlawful as a result of the Lechesa Tsenoli judgment handed down in the Durban Supreme Court on Monday.

● Three urgent applications in the Supreme Court, Durban, yesterday for the release of detainees held under the Emergency Regulations were postponed by consent until tomorrow.

The applications were heard in chambers by Mr Justice Didcott.

The first application concerned 76 detainees.

A list of their names is to be studied by the police during the interim and it is expected that tomorrow certain of these people will have either been released or held under common law offences.

The second application concerned 39 people detained in Westville Prison, Newcastle Prison, Newcastle police cells and Utrecht Prison.

A third application was brought on behalf of 11 detainees in Westville Prison.

● Sapa reported from Pretoria yesterday that the state would not confirm reports that all 42 detainees held at Frankfort in the Free State had been released.

A Bureau for Information spokesman said the bureau would not supply information relating to detainees held under the emergency regulations.

Mr Neil Ross of the PFP's Missing Persons Bureau said in Cape Town yesterday there was an urgent necessity for an official list of people being detained or released to eliminate uncertainty, speculation and anxiety.

New bid to release priest is prepared

Pretoria Bureau

A second urgent application for the release of the secretary general of the South African Catholics Bishops' Conference (SACBC), Father Smangaliso Mkhatshwa, is being prepared and should be served in the Pretoria Supreme Court soon

A Press statement released by the SACBC in Pretoria yesterday said the second application "is being made after a ruling by the Natal Division of the Supreme Court that two key detention clauses in the state of emergency regulation were ultra vires".

The invalid clauses were 3(1), which covered the arrest and detention of people during the emergency, and 3(3), which concerned the further detention of those people arrested in terms of section 3(1).

This ruling by the Natal Supreme Court was made on August 11 in the case of Mr Solomon Tsenoli, publicity secretary of the Natal province of the United Democratic Front (UDF)

Father Mkhatshwa's legal adviser said papers had not been served in the Pretoria Supreme Court, but they would be completed soon.

Father Mkhatshwa was arrested at his Soshanguve vicarage on June 12.

The first application by Father Mkhatshwa and 25 other detainees to have an order declaring their detention unlawful was heard by Mr Justice L Harms in the Pretoria Supreme Court on August 1.

Natal judgment spurs unionists into action

By Estelle Trengove

Three urgent applications have been lodged at the Rand Supreme Court for the release of 25 emergency detainees following Monday's landmark judgment in the Natal

A Full Bench of the Natal Supreme Court declared two clauses of the emergency regulations invalid — regulation 3 (1) which refers to the arrest and initial period of detention, and 3 (3) which concerns the extension of the period of detention

It is understood that the three Rand Supreme Court applications will be based on the points that were upheld in Natal

One of the Transvaal actions was instituted by trade unionists including the National Union of Mineworkers' Mr Cyril Ramaphosa, the Metal and Allied Workers' Union's Dr Bernie Fanaroff and Ms Christine Bonner of the Chemical Workers' Industrial Union

The unionists have joined forces with six other people to seek the release of 21 detainees.

In another application, two mothers, Mrs Caroline Khumalo and Mrs Ruth Lebone, will seek the release of a son and a daughter respectively, namely Mr Victor Khumalo and Miss Grace Lebone In the same application, Mr Morgan Montoedi will apply for his own release from the Krugersdorp prison

APPLICATIONS

The third similar application is being brought by Mr Abram Sello Morolong to secure the release of his son Jeffrey.

Mr I Mahomed SC, for Mrs Khumalo, Mrs Lebone and Mr Montoedi, yesterday asked a Rand Supreme Court that his clients' applications be postponed to examine the possibility of consolidating them, since the argument in all three would be the same

It is understood the applications will not be heard until the Appellate Division gives judgment in the State's appeal against Monday's decision by the Natal Full Bench

Application for detainee to give oral evidence

By Jenni Tennant

An urgent application to have an emergency detainee brought before a court to give oral evidence is being heard in the Rand Supreme Court.

The application is brought by Father Carel Spruyt on behalf of a fellow Catholic priest, Father James Hortop, against the Minister of Law and Order, the Minister of Justice and the Divisional Commissioner of Police, East Rand.

Father Hortop, who is in charge of the Catholic congregation in kwaThema, Springs, is being detained in terms of the emergency regulations.

Yesterday Mr J H Conradie, SC, said Father Spruyt asked for an order that a Std 7 pupil, whose age has not been ascertained, appear personally before court or that Mr Spruyt be allowed to have the pupil subpoenaed to appear as a witness in court.

An application was originally brought for the release of Father Hortop and it was alleged the policeman who arrested him could not have formed the opinion that it was necessary to arrest him in terms of the emergency regulations.

ALLEGATIONS

Included in the reasons given for his arrest was a statement which the pupil allegedly gave to another police officer, in which certain allegations were made.

The court was told that it was alleged, among other things, that Father Hortop spoke at a specific meeting during March this year when he allegedly said the comrades must organise and burn police houses and was also alleged to have said that the people must not pay rent.

Mr Conradie said clearly what happened was that the sergeant had relied substantially on the information given by the pupil.

However, Father Hortop denied the allegations.

It was a fundamental right of a detainee to see a legal advisor and it would be an empty right if thereafter he was not able to present a case because he could not call a witness, it was argued

Mr P A Hattingh, SC, for the Minister of Law and Order and the Divisional Commissioner, submitted that in terms of the regulations no-one was entitled to information about a detainee.

The hearing continues.

A boost for civil rights law from US visitors

WEEKLY MAIL REPORTER

THE concept of human rights under the law — which has fought an apparently losing battle in South Africa for many years — was given fresh life recently by a party of international legal experts visiting this country

The four were invited by Professor John Dugard of the Centre for Applied Legal Studies at the University of the Witwatersrand, who said he saw the visit as part of the Centre's work of furthering the cause of human rights in South Africa by public education

Two of the visitors, interviewed by the Weekly Mail, had suggestions and challenges to offer the legal profession

Professor Louis Henkin of the Centre for the Study of Human Rights at Columbia University in New York said that, as a signatory to the United Nations Charter, South Africa had an obligation to respect human rights

He said although it might not be widely known, South Africa, like the US, was bound by customary international law, including the customary international law of human rights — and was part of the process of making it, as all states are

"In South Africa, customary international law is part of your common law and your courts apply it in the absence of clearly inconsistent legislation

"In my country the courts use customary international law as a guide to the interpretation of the law and on principle interpret a statute wherever possible so it will not be inconsistent with international law obligations"

He said customary international law could be used in several ways — where it actually determined the outcome of a case, or where it could be used as a guide to the interpretation of a statute.

Even where it did not finally affect the outcome of proceedings, because a statute ruled against a human rights verdict, "it is one of the functions of the judiciary to educate and I think the courts would educate both the bar and the citizen and even Parliament by making it clear where South African law on a certain issue fits in to the international human rights legal system

"For example, I think if you have a detention which would be arbitrary and a violation of customary international law, it would be proper for a judge to say that the detention is arbitrary under the common law of this country and under customary international law, and go on to indicate that even though this is the case, he is bound by an act of Parliament and has to give effect to it

"This would educate the citizen about what was happening and would be an indication to Parliament to take note that what it was doing was contrary not only to the traditions of this country under common law, but was contrary to the customary law of the international community"

On this issue his colleague, Judge Nathaniel Jones, commented that very few pronouncements by any law-making body were so clear and unambiguous they did not need construction He said the situation called for "creative lawyering and courageous judging"

Jones said members of the judiciary he met in South Africa were "deeply concerned and interested in meeting the challenge reposed in judges

"This is the same kind of concern and development that occurred in the USA — the judges now have a much more open mind and are re-examining their basic responsibilities and obligations and are looking to developments in the legal systems in other countries They are looking at the restatement of international human rights and at the documents and basic charters that govern the conduct of all civilised nations of the world That is causing judges here to find ways to apply those customary international standards to the jurisprudence of South Africa."

Commenting on the visit of the jurists, Dugard said lawyers in this country needed to be reminded of the extent to which South Africa was out of line on human rights issues with countries which shared a common legal system.

Police link detainee to Durban blast

By CARMEL RICKARD
Durban

A SUPREME Court bid for the release of Section 29 detainee George Webster failed this week after police presented affadavits of his alleged involvement with an ANC cell accused of executing various bomb blasts in the city

The police papers indicate members of the group were responsible, among other things, for the Parade Hotel blast in June which left three dead

The court application for the release of Webster, a Durban attorney, was brought by his wife, who said her husband was not to the best of her knowledge involved in any violent activities

Durban Security Police Chief Brigadier Johann van Niekerk said Webster had refused to make a statement but information from an alleged accomplice revealed he was implicated

The accomplice, Robert McBride, is alleged to have been recruited into the ANC by Webster's brother, Gordon

Gordon Webster was wounded by police in an incident in April and "sprung" from Edendale Hospital in May

Most of the information in the police papers comes from McBride's interrogator, Captain Jacobus Vorster of the Pietermaritzburg Security Police

Vorster claimed he was told by McBride that McBride and other members of his cell were responsible for a number of explosions or attempted explosions These include the double blast at a Durban power station in January A senior police officer died as a result of the injuries sustained in this blast

They were allegedly responsible for two separate grenade attacks on members of the Labour Party living in Wentworth and they were also alleged to have planted 15kg of explosives in the Durban Pine Parade, removed by police and detonated safely

The most serious claim is that McBride admitted he and two others planted a bomb at the Parade Hotel on June 14 Three people died, about 100 were injured and 30 vehicles were damaged in the explosion

The following weekend, June 22, they allegedly caused a number of explosions in and around Durban, including a blast at an oil pipeline

Details were also given of the plan to release Gordon Webster from Edendale Hospital, where he was being held in police custody He was severely wounded after being shot by police when he ran away from a car where he and an accomplice were working A large arms cache was later found in the car boot

The plan to "spring" Webster was drawn up after Gordon's ANC cell mate, identified only as Mr X, revealed he and Gordon had an agreement that if one of them were arrested, the other should "eliminate" him

Gordon's brothers, George and Trevor, did not agree that Mr X should kill Gordon, and made a plan with McBride to free him instead

McBride went to Pietermaritzburg to collect weapons stored there to use in the escape In all, six people were involved Two kept watch, while McBride and the other three cut the security fence around the hospital Two stayed behind to guard the excape route while McBride and another went into the hospital Shots were fired, killing one person and wounding four others

Gordon was then taken back to Durban and given medical treatment that same night in McBride's workshop, where he sheltered

The papers give no details about what subsequently happened to Gordon, but for weeks after his escape police continued a massive search for him

The court papers contain the first public details of claims by Law and Order Minister Louis le Grange that members of a Durban ANC cell responsible for a number of bomb attacks had recently been arrested.

The application for George Webster's release was dismissed with costs

WEEKLY MAIL, August 15 to August 21, 1986

Application for witness dismissed

By Jenni Tennant

An urgent application to have an emergency detainee brought before a court to give oral evidence was dismissed by a Rand Supreme Court judge yesterday

The application was brought by Father Carel Peter Spruyt on behalf of a fellow Catholic priest, Father James Arthur Hortop, against the Minister of Law and Order, the Minister of Justice and the Divisional Commissioner of the South African Police, East Rand.

An order was sought that a Std 7 pupil, who is an emergency detainee, appear personally before court or that the pupil could be subpoenaed to appear as a witness in court

An application was originally brought for the release of Father Hortop, who is in charge of the Catholic congregation in kwaThema, Springs.

Father Hortop was arrested on June 17 and is being detained in terms of the emergency regulations.

Among the reasons given for his detention was a statement given to another policeman by the school pupil The statement related to Father Hortop's alleged activities and behaviour before his detention.

These allegations were denied by Father Hortop.

The court was told that it had become a matter of concern to be able to consult the pupil to establish whether the circumstances were such as induced in the sergeant — a bona fide belief in its truth However, lawyers who wanted to interview the pupil had been refused permission

In dismissing the application Mr Justice A M van Niekerk referred to an earlier Appeal Court judgment concerning a section of the Supression of Communism Act and said that he was entitled to take that decision into account.

He said the object of the regulations and rules was to make lawful the holding of a detainee incommunicado and to override the right of an ordinary litigant to compel a witness to attend judicial proceedings.

Appeal court must rule on opposing judgments

Two opposing rulings by Full Benches of the Natal Supreme Court on the emergency regulations will have to be sorted out by the Appeal Court

The legal situation could become even more complex when another Full Bench of the Natal Supreme Court on Monday continues hearing an application by English-language newspaper groups

The court is expected to rule on the same points of law to the two judgments handed down this week Its ruling will inevitably contradict one of the Full Bench judgments

There is even confusion as to when the Appeal Court, the highest court in the land, will hear the matter

Reports that it could hear the matter as early as next week have been discounted

But it is understood the Appellate Division views the appeal as a matter of urgency and plans to hear it at the soonest possible date

By yesterday, the registrar in Bloemfontein had not yet received any official notice of the appeal.

The first judgment, by a Full Bench of the Supreme Court sitting in Durban, declared certain clauses of the emergency regulations invalid. The effect was that detainees held under these clauses were being detained unlawfully But this judgment was yesterday neutralised by a second Full Bench sitting in Maritzburg, which found the regulations to be valid

The two judgments now stand side by side and both carry equal weight, because they are Full Bench decisions in different divisions

An individual judge must abide by the Full Bench decision in his division

In the meantime, there is concern that urgent applications for the release of emergency detainees brought before the Rand Supreme Court are being delayed pending the outcome of the appeal.

At present, the position is that applications of this nature can still be brought to court The presiding Bench would be free to go along with either of the Natal decisions.

"The *status quo* has been returned to Natal — it is as if there had been no judgment at all," the chairman of Lawyers for Human Rights, Mr Jules Browde, said The second judgment did not mean that the first was wrong. "It will have to be decided by the Appeal Court"

A legal academic, Professor Dion Basson of the University of Pretoria, said "Both contradictory judgments would be valid in terms of authoritative value The Appeal Court must decide on this law point to bring to an end the uncertainty."

Both judgments have persuasive power, according to the president of the Association of Law Societies, Mr Roger Cleaver "This is clearly not a satisfactory situation and the sooner it comes to the Appeal Court for a definitive ruling, the better," he said

● Last week's judgment which invalidated emergency regulations providing for detention has been attacked in the Eastern Cape Supreme Court

Commenting "with respect" on the Natal judgment, Mr Justice Kannemeyer suggested that the regulations had to be read within the context of a state of emergency situation

● See Page 4.

15/8/86 STAR (252)

Bench says Durban judges erred in freeing UDF man

MARITZBURG — A Full Bench of the Natal Supreme Court in Maritzburg yesterday found that Durban judges had incorrectly interpreted a state of emergency regulation when they freed United Democratic Front publicity secretary Mr Lechesa Tsenoli on Monday

The finding was made during a reserved judgment in which an application for the release of emergency detainee Mr Peter Kerchhoff was refused

The Durban Supreme Court had ruled that emergency regulations 3 (1) and 3 (3), relating to detention and continued detention of persons held under the emergency, were invalid and that Mr Tsenoli's detention was unlawful and without effect

The Tsenoli judgment resulted in a flood of urgent applications by emergency detainees for their release Nineteen applications were withdrawn in the Maritzburg Supreme Court after yesterday's ruling

Mr Justice Kriek, Mr Justice Thirion and Mr Justice Law said Parliament had intended to confer on the State President the power to make regulations to deal effectively with a situation where the safety of the public or the maintenance of public order was seriously threatened, and where the ordinary law of the land was inadequate to enable the Government to ensure the safety of the public or to maintain public order

Parliament must have contemplated that such a situation would call for "drastic measures which would necessitate the making of serious inroads into the rights and freedom of the individual in order to ensure the safety of the public or the maintenance of law and order"

The judges found that the Durban Supreme Court had put an incorrect construction on section 3(1)(a) of the Public Safety Act no 3 of 1953 in their judgment on Monday when they ordered the release of Mr Tsenoli

They said Parliament was not content — in section 3(1)(a) of the Public Safety Act — to confer on the State President the power to make regulations relating to specific matters and within defined limits.

"It went much further It employed a special form of words.

"By empowering the State President to make such regulations as appear to him to be necessary or expedient for the achievment of the objects or for dealing with the circumstances mentioned in the section, Parliament conferred a far-reaching discretion on the State President"

Commenting on the interpretation by the Full Bench in the Tsenoli judgment, the judges said in their view it "largely frustrates the object for which the State President is empowered to make regulations"

Referring to Mr Kerchhoff's detention in solitary confinement, the judges said an assurance had been given that the head of the Security Police would investigate ways of bringing him into contact with other people

This assurance was accepted by Mr Kerchhoff's counsel.

Professor Tony Mathews of the School of Law in Maritzburg said he was unable to comment on the implications of the latest judgment because he had to study it — Sapa.

Detainees withdraw applications

MARITZBURG — Urgent applications for the release of 19 Natal people being held in terms of the emergency regulations were withdrawn in the Supreme Court here yesterday.

The detainees were to seek a rule nisi declaring their arrests and continued detentions in terms of regulations 3 (1) and 3 (3) unlawful and ordering their immediate release

After the cases were called Mr Alistair Dickson, for all 19 detainees, asked leave to withdraw the applications and, by consent, requested that each party pay their own costs in the matter.

Reference was made in papers lodged by 13 of the detainees to the Tsenoli judgment delivered by three judges of the Durban and Coast Local Division on Monday

Mr Dickson gave no reasons for the withdrawal of the applications.

The applicants were Mr Peter Kerchhoff, Mr Appiah Saravana Chetty, Mr Khetokwakwe Khambule, Mr Athwell Majosi, Mr France Ngcamu, Mr Charles Shelembe, Mr Mondli Zuma, Mr John Masikane, Mr Mabungeni Madonsela, Mr Sibusiso Mtshali, Mr Mzwandile Hlatswayo, Mr Sipho Mthembu, Mr Victor Nzuza, Mr Mduduzi Ndlovu, Mr Skhumbuso Ngwenya, Miss Feroza West, Miss Thembisile Mkhize, Miss Dudu Ngcobo and Miss Pamela Mnandi.

Mr Acting Justice Hurt was on the bench. — Sapa

Sparg in court

FORMER Johannesburg journalist Marion Sparg and rural development worker Stephen Marais will make a preliminary appearance in the Johannesburg Magistrate's Court this afternoon, a representative for the Attorney General's office confirmed.

The announcement comes as Marais's lawyers were preparing an urgent application calling on the state to charge or release him. (See story on page 6)

The two have been in detention since early this year. Shortly after Sparg's arrest, police said she was being held in connection with a series of bomb attacks on police stations, including Johannesburg's John Vorster Square.

NUM WAGE DISPUTE

Amazing omission

The Minister of Manpower's unexpected failure to appoint a conciliation board in the wage dispute between the National Union of Mineworkers (NUM) and the Chamber of Mines means that the union is now entitled to call a legal strike But the union is considering very carefully its next move.

NUM fulfilled its part of procedure by asking the minister to appoint a conciliation board. Expiry of the 30-day period provided for in the Labour Relations Act entitled the union to go on strike on August 7 — provided, of course, that NUM, which became a registered union earlier this year, first holds a strike ballot

Approached for comment on the minister's omission, Manpower Director General Piet van der Merwe told the *FM*. "There are certain legal requirements that must be fulfilled, and there must be a reasonable chance that appointing a conciliation board will contribute to the solution of a particular dispute. The minister has full discretion in the matter of conciliation boards and we never give reasons for his decisions"

But talk in mining circles this week was that the Manpower Department simply fluffed the issue, and failed to appreciate fully what the consequences of its inaction would be Bitter allegations were also made that the department botched the application earlier by classifying it as an unfair labour practice instead of a wage dispute.

Minister Du Plessis ... failure to appoint conciliation board

Nevertheless, NUM does not at present appear to be intent on rushing into strike action Says its press officer Marcel Golding "We obviously expected the board to be appointed Now we will have to convene appropriate structures in the union to decide upon our course of action"

The dispute was declared at the stage when NUM had dropped the wage component of its demand from 45% to 30%, and the chamber was offering to increase the minimum wage rates of workers in the lowest and highest job categories by 20% and by 15% respectively The union may well feel that it can squeeze more out of the mining houses If so, there would be little point in precipitating industrial action — especially as its right to strike means it would have a distinct advantage over employers if negotiations are re-opened. ■

TOWNSHIP RENT BOYCOTTS

Councillors' arrears

In the wake of the official proposal to evict rent defaulters in black townships, it has come to light that all councillors in Soweto and the six townships in the Vaal Triangle have not paid rent either since the boycotts began

Paradoxically, the evictions, intended to break the rent boycotts in 30 townships, are co-ordinated by the black councils themselves.

Sustained rent boycotts (see page 59), have cost the State at least R250m in lost rentals (*Current affairs* August 8)

The Bureau for Information has warned "Services and infrastructure for the benefit of the consumer can only be maintained if rents and service charges are paid by householders" Plans for eviction of rent defaulters have been formulated in many affected townships

Sebokeng's town clerk, Nicolaas Louw, tells the *FM* that of a total 1 800 eviction orders obtained, only 13 families — three at Zamdela, two at Sharpeville, and eight at Bophelong — were evicted on Monday

Asked how many of those evicted were councillors, Louw said "Councillors are not being evicted They're making arrangements to pay off their arrears Arrangements by any other person to pay arrears are welcome. We are not saying residents should pay all they owe immediately They can pay off their arrears in instalments"

Asked what it was doing about councillors' arrears, Soweto housing director Del Kevin said: "I don't want want to express an opinion on councillors. After all, they are the elected representatives."

Kevin also explained that her office has drawn up notices warning residents to pay or face prosecution

Meanwhile, the Soweto Civic Association and other activist groups are jointly distributing a pamphlet, entitled *Asinamali* ("We have no money") It urges residents to remain steadfast in refusing to pay It states, among other things, that "an eviction of one is an eviction of all," and calls for boycott of businesses owned by councillors

It says "The people of Soweto took a life-and-death decision that we are no longer prepared to finance our own oppression We won't pay rent, we won't pay salaries of the puppet councils and their police" ■

STATE OF EMERGENCY — 2

Legal breakthrough?

The emergency regulations took yet another legal knock this week with the judgment of the Natal bench of the Supreme Court ordering the release from detention of United Democratic Front (UDF) publicity secretary, Lechesa Tsenoli

Legal representatives for Tsenoli successfully argued that his detention was unlawful as emergency regulations 3 (1) and 3 (3) conveyed too wide a power on the State President or his nominee and, as such, contradicted the Public Safety Act of 1953, under whose authority the regulations are drafted

Although the judgment specifically affects Tsenoli and is binding only in Natal, legal representatives for detainees countrywide are planning to flood the courts with release applications on their clients' behalf

The Congress of South African Trade Unions (Cosatu), for example, was due to bring an application in the Natal Supreme Court on Wednesday for the release of 30 detainees on the grounds of the invalidity of those regulations

Meanwhile, the State has appealed against the Natal bench judgment, and is bunkering down to defend all similar applications The appeal is only expected to be heard in about three months, during which time the detainees will remain incarcerated unless their legal representatives can successfully plead on their behalf

Legal sources also speculated that the Natal judgment could have a bearing on an application by several newspaper publishing groups seeking to have an entire section of the emergency regulations declared *ultra vires* The publishers are seeking to have regulations seven to 12 declared void and of no force in law

Legal counsel for the applicants, Sydney Kentridge, SC, is similarly probing the wide nature of the State's powers under the regulations and the competency of the State President's nominees in interpreting and applying them correctly. Inherent contradictions between the regulations and the Public Safety Act also form part of his argument

The applicants are SA Associated Newspapers (Saan — owners of the *FM*), the Argus Printing & Publishing, Natal Newspapers and the Natal Witness Argument on their behalf started before the full bench of the Natal Supreme Court in Pietermaritzburg earlier this week

After the Tsenoli judgment, counsel for the State asked that the hearing be postponed for them to assess the implications The judges ruled, however, that the matter was so "pressing" for the newspapers that Kentridge should be allowed to proceed with his argument

An adjournment would be granted at the conclusion of his delivery to enable the State to prepare its case. Judgment is expected in several weeks. ■

THE PAPER FOR A CHANGING SOUTH AFRICA

Natal bench splits over regulations

Turmoil as courts waver on detainees

252

WEEKLY MAIL 15/8/86

By CARMEL RICKARD
Durban

THE wave of applications for Emergency detainees to be released came to a sudden halt yesterday when a full bench of the Natal Supreme Court overturned a crucial decision of another full bench of the same division three days earlier

Since there is no certainty on which judgement takes precedence, the hopes of tens of thousands of detainees are now pinned on the outcome of an appeal, which is to be heard by the Appellate Division in Bloemfontein within the next few weeks

The quick scheduling of the appeal — normally they can wait for up to a year to be heard — follows urgent representations by the state to the court

It is highly unusual for two full benches within the same division of the Supreme Court to differ Normally, individual judges would be bound by the decision of a full bench, but technically another full bench can reach a different decision on the same matter

Yesterday's judgement in Pietermaritzburg was given jointly by Judges Knek, Thirion and Law in response to an application brought for the release of Pietermaritzburg church worker Peter Kerchoff

Kerchoff's application was filed before the case of Lechesa Tsenoli was heard earlier in the week in Durban, and it relied

THE FACE BEHIND MONDAY'S COURT VICTORY 10

on a different legal issue Both cases were reserved, but judgement in the Tsenoli matter was handed down first

In Tsenoli's case, Judges Leon, Friedman and Wilson decided the government's regulations permitting arrest and detention were unlawful and ordered Tsenoli's release

This ruling immediately released scores of detainees and raised the prospect that the state would be landed with massive damage claims from detainees countrywide

The judges said the State President had acted outside the powers given to him by the Public Safety Act when he issued the arrest and detention regulations

The Public Safety Act imposed some restrictions on the conditions under which detentions were allowed However, the regulations did not reflect these restrictions, which meant they permitted detentions under a wider set of circumstances than envisaged under the Public Safety Act

The key provision in the Public Safety Act is that a detention should be necessary to end the State of Emergency Both the regulations made this merely an alternative consideration for the arresting officer to bear in mind Thus, for example, he could also arrest and detain if he thought it necessary for the safety of the public, even if that person's detention could in no way affect the ending of the Emergency

The judgement meant each arrest and detention made under the Emergency regulations had been unlawful Although this should mean that the state automatically releases each unlawfully held detainee, this has not been the case

First state reaction — from Law and

●To PAGE 5

A dream collapses· KwaNdebele Chief Minister Simon Skhosana, his head bowed, is a broken man as his Legislative Assembly rejects Pretoria-style independence this week in the face of a massive popular revolt. Speaking against independence is Prince Cornelius Mahlangu, Minister of Health, Welfare and Pensions. Full story on pages 14, 15

Picture STEVE HILTON-BARBER, Afrapix

Confusion after new judgement

● From PAGE 1

Order Minister Louis le Grange — made it clear the government did not intend to give in without a fight He said an appeal had been lodged which would be heard by the Appellate Division as soon as possible In the meantime the government 'did not accept" the court's ruling and would fight each release application He also hinted that the state might issue new regulations and prevent any further releases on the orders of the court.

It was the first time the state had reacted to a court judgement on the Emergency in this way Nevertheless, many detainees were released and the courts faced hundreds more applications

However, lawyers acting for Kerchoff were asked by the judges to submit supplementary argument on the issues dealt with in the Tsenoli matter

The three judges who heard the Kerchoff matter devoted half their 50-page judgement to these issues raised by the Tsenoli judgement, and decided their colleagues "had been wrong"

They said to construe the subsection as the Tsenoli judges had "would be to defeat the obvious intention of Parliament which was to confer wide legislative powers on the State President

"The intention of Parliament was quite plainly that the State President has the power to make regulations as appear to him to be necessary or expedient for any one or some or all of the purposes mentioned .

"The difficulty we have (with the earlier judgement) is that it, in our view, largely frustrates the object for which the State President is empowered to make regulations," they said

This judgement comes as a massive blow to the Kerchoff family, who have been waiting anxiously for the outcome of the case, confident that the Tsenoli ruling would hold In particular the family is concerned about the effect the news will have on Kerchoff himself, as they said at the time of the original application that his mental health had begun to deteriorate.

The new ruling, which sees the Natal judges in open disagreement on the issue, had an immediate effect, and lawyers with release applications pending in the Pietermaritzburg court withdrew their cases

One positive effect of the Kerchoff ruling is that it confirmed the right of legal access to Emergency detainees

Freedom for Lechesa Tsenoli. Outside the court he shakes hands with senior counsel Malcolm Wallis while Leonard Gering looks on. Picture: CEDRIC NUNN, Afrapix

Pietermaritzburg lawyers welcomed this as they had experienced difficulties in getting to see their clients

Commenting on the earlier judgement, the director of the Legal Resources Centre in Durban, Chris Nicholson, said there might well be a case for detainees, held under Emergency regulations, to bring claims for damages

He said while the regulations contained an indemnity clause, this only protected the police acting "*bona fide*" within the terms of the regulations. However he thought it could be argued that the police could not have been acting "*bona fide*" under an unlawful regulation

One of the mass releases which followed the Tsenoli judgement was in Northern Natal, where 22 Cosatu members were freed

Cosatu and several other unions brought a 350-page application for the release of 22 detained officials They asked for documents and records confiscated by the police during various raids to be returned and for the police to be ordered to refrain from harrassing the unions in their legitimate work.

They claimed the police in Northern Natal were trying to clear Cosatu out of the area Cosatu Education Officer Alec Erwin said the police deliberately left the Inkatha-backed United Workers Union of South Africa (Uwusa) "unhampered while they constantly attacked Cosatu and its affiliates "to limit its ability to challenge Uwusa'

The state released the 22 before the case could proceed One of the freed unionists is Mawu's Willies Mchunu , his wife and Mawu brought the first successful challenge to the Emergency regulations Their court application led to lawyers being allowed access to their detained clients This in turn has led to a number of other applications

Mchunu's release was sought during the original application on the grounds that the Emergency itself was invalid. While the union lost that argument— and with it, its right to have him freed — he was released on Wednesday, as a result of the Tsenoli case.

Lawyers acting for Cosatu said some of the 22 released this week were served with restriction orders, but they could not give specific details of the nature of the restrictions and the number affected as they had not yet been able to consult with all their clients.

While the courts were hearing applications for the release of detainees this week, the Pietermaritzburg Supreme Court was the scene of yet another major challenge to Emergency regulations Most of the major English language newspapers brought an application for provisions severely hampering the media to be declared unlawful

Argus, Saan, Natal newspapers and the Natal Witness asked for Regulations 7-12 to be declared void, as they claimed that the State President had exceeded his powers and that the regulations were vague, unjust and unreasonable

Argus managing director Peter McLean said the regulations directly or indirectly affected the free flow of news or comment

Durban editor Michael Green said if even one issue of the Daily News were seized it would cost the company R175 000.

He said an editor had had a difficult task before the Emergency, but that under the Emergency regulations the burden had become almost intolerable

Argument in the application has been adjourned until Monday

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Vol. 254 PRETORIA, 15 AUGUSTUS / AUGUST 1986 No. 10396

GOEWERMENTSKENNISGEWING

DEPARTEMENT VAN JUSTISIE

No. R. 1755 **15 Augustus 1986**

REËLS UITGEVAARDIG KRAGTENS REGULASIE 3 (9) VAN DIE REGULASIES AFGEKONDIG BY PROKLAMASIE R. 109 VAN 12 JUNIE 1986—WET OP OPENBARE VEILIGHEID, 1953

Die Minister van Justisie het kragtens regulasie 3 (9) van die Regulasies afgekondig by Proklamasie R. 109 van 12 Junie 1986 die reël in die Bylae vervat, uitgevaardig

BYLAE

1. Reël 5 van die Reëls afgekondig by Goewermentskennisgewing 1196 van 12 Junie 1986 word hierby herroep.

GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE

No. R. 1755 **15 August 1986**

RULES MADE UNDER REGULATION 3 (9) OF THE REGULATIONS PUBLISHED BY PROCLAMATION R. 109 OF 12 JUNE 1986—PUBLIC SAFETY ACT, 1953

The Minister of Justice has under regulation 3 (9) of the Regulations published by Proclamation R. 109 of 12 June 1986 made the rule contained in the Schedule.

SCHEDULE

1. Rule 5 of the Rules published by Government Notice 1196 of 12 June 1986 is hereby repealed.

Natal judges clash on reading of emergency regulations

TWO key emergency regulations were thrown into disarray yesterday when a judgment handed down by a full bench of the Maritzburg Supreme Court conflicted directly with the landmark judgment handed down by a full bench in Durban earlier this week

The earlier judgment, which freed United Democratic Front's Lechesa Tsenoli, and resulted in a flood of urgent Supreme Court applications and the release of several emergency detainees, appears to have been overruled by judges in Maritzburg

Applications for the release of 19 detainee's were immediately withdrawn in the Maritzburg Supreme Court following yesterday's ruling

However, Durban lawyers will today press ahead with more than 80 applications based on the Tsenoli judgment

Lawyers fear that an immediate result of yesterday's judgment — in which emergency detainee Peter Kerchhoff's release was refused — means police are no longer under pressure to release detainees as they have been doing since Monday

In a 50-page judgment yesterday, Justices Kriek, Thirion and Law said Parliament had intended to confer on the State President the power to make regulations

DOMINIQUE GILBERT and Own Correspondent

to deal effectively with the safety of the public or the maintenance of public order where the ordinary law of the land was inadequate

They found that three Durban judges, Justices Wilson, Friedman and Leon, had incorrectly interpreted in their judgment which was handed down by Justice Milne, that the State President had acted *ultra vires* and emergency regulations 3(1) and 3(3) were invalid

Parliament must have contemplated serious inroads into the rights and freedom of the individual would be necessary in order to ensure the public's safety or the maintenance of law and order, they said

Commenting on the interpretation of the full bench in the Tsenoli judgment, the judges said in their view it "largely frustrates the object for which the State President is empowered to make regulations"

☐ The Appeal Court begins its third term today but no date for the State's appeal against the Durban judgment has been lodged yet

☐ The Grahamstown Supreme Court reserved judgment on an application for the release of the Bishop of Grahamstown, Kenneth Cyril Oram and three Duncan village Anglican church officials

☐ The Congress of SA Trade Unions (Cosatu) said it would decide at a later stage whether to continue with their application involving 22 of their members

☐ The Bureau for Information, commenting for the first time on detainees and court rulings, sent newspapers a telex to say the Durban Supreme Court's declaration on certain emergency regulations "had been declared wrong" by the Maritzburg Supreme Court

Natal bench differs on detention ruling

DS 15/8/82

Dispatch Correspondent

PIETERMARITZBURG — A Full Bench of the Natal Supreme Court found here yesterday that Durban judges had incorrectly interpreted a state of emergency regulation when they freed the United Democratic Front's publicity secretary, Mr Lechesa Tsenoli, on Monday

This finding was made during a reserved judgement in which an application for the release of an emergency detainee, Mr Peter Kerchhof, was refused

The Durban Supreme Court ruled on Monday that emergency regulations 3 (1) and 3 (3), relating to detention and continued detention, were invalid

Mr Justice Kriek, Mr Justice Thirion and Mr Justice Law said in Pietermaritzburg an assurance had been given that the head of the security police would investigate bringing Mr Kerchhoff into contact with other people

Urgent applications for the release of 19 Natal people being held under emergency regulations were withdrawn later yesterday.

BDG 252

King detainees: court sits again today

Dispatch Correspondent
GRAHAMSTOWN — Argument in four different applications for the release of seven detainees will continue today in the Grahamstown Supreme Court.

The applications seek an order declaring Regulations 3 (1) and 3 (3) of the emergency regulations invalid and that the arrests and detentions of the detainees are unlawful.

An order is also sought which would provide six of the detainees with "such quantity and nature of food as to ensure adequate sustenance and nutrition"

Yesterday, Mr Ian Farlam, SC, for six of the detainees, argued that a citizen had the right to know the reason for his arrest and his detention so that he could submit a plea of innocence or mistaken identity

As to the reason for the arrests, Mr Farlam said, the arresting officers did not state whether the information they had allegedly received from "reliable" sources was first-hand, or merely the "tittle-tattle" of the townships

Mr Farlam further submitted it was valueless for the police to recite a "ritualistic incantation" of a formula from the emergency regulations to prove they were of the opinion the detentions were necessary for maintaining public order and safety

Mr J L van der Merwe, SC, for the respondents, yesterday argued that the detainees were not entitled to be told the reason for their arrests until after the first 14 days of their detention, and after their detentions had been extended by the Minister of Law and Order

If the court found that the detainees should have been told the reasons at the time of their arrests, he submitted that the arrests became lawful at the time they were given the reasons

The detainees are a Port Elizabeth freelance journalist, Mr Mike Loewe (excluded from the diet plea), and a United Congregational Church minister, the Reverend Colin Jooste, an 18-year-old schoolboy, Mr Gareth Damons, two freelance journalists, Mr Phila Ngumba and Mr Mxolisi Fuzile, Mr Prince Mhamhe and Mr Brian Osteridge, all of King William's Town

The respondents are the State President, the government, the Minister of Law and Order, the Minister of Justice, and certain police and prison officials

Mr Dawie de Villiers, QC, and Mr Farlam appeared for six of the detainees and were instructed by Mr Bonisile Sandi and Mr Dumisani Tabata Mr Van Der Merwe was assisted by Mr L E Leach and instructed by Mr I S Douglas, of Whitesides Mr Jeremy Pickering, of the Legal Resources Centre, appeared for Mr Loewe

Regulations 'uncomfortable but necessary'

Pietermaritzburg Bureau

SOME emergency regulations could well be 'unjust and unfair' to certain people and this was the reason that they were not part of the ordinary law of the land, a Full Bench of the Supreme Court here heard yesterday in an application by four English-language newspaper groups challenging emergency regulations affecting the Press

Natal Newspapers, the Natal Witness, the Argus Printing and Publishing Company and South African Associated Newspapers (SAAN) lodged the application last week against the State President, the Government, the Minister of Law and Order and the Commissioner of the South African police, in which they contest the validity of Regulations 7, 8, 9, 10, 11 and 12

'Unfortunate'

Mr J Conradie SC, for President Botha and the Government, arguing before Mr Justice Leon, Mr Justice Kumleben and Mr Justice Nienaber, submitted yesterday that the Court had limited powers to intervene on the grounds that the regulations were unreasonable

He said it was unfortunate that the regulations might be unjust to certain people, but they were necessarily uncomfortable

'That is why they are emergency regulations'

Mr Conradie submitted that that did not mean they were unreasonable in the lawful sense

For example, someone who was subjected to a curfew could well argue that it was inconvenient and grossly unreasonable to a law-abiding citizen

'This does not mean that in the broad context it would be unreasonable'

Mr Conradie said it would be difficult for a court to assess the reasonableness or otherwise of the regulations because it did not know the circumstances which prompted the authorities to promulgate the regulations

If one didn't know the neccessity for them, they might well appear to be unreasonable

He submitted that the Public Safety Act gave the State President the discretion to do whatever he thought was required in the circumstances

'That is why the powers of intervention of this Court are extremely limited'

Mr Conradie said the regulations might operate very harshly on newspapers, but he asked at the same time whether the Court was in a position to say they were not neccessary

'Vague'

Mr Sidney Kentridge QC, for the newspapers, submitted during his argument, lasting about two-and-a-half days, that the regulations went beyond the powers of the State President, were vague, grossly unreasonable and could not have been envisaged by Parliament

Mr Conradie contended that if the powers given in terms of the regulations could be validly or invalidly interpreted, there was no prejudice until they were invalidly exercised

'One cannot challenge the empowering regulations on the basis that perhaps someone might act ultra vires in terms of it,' he submitted

In answer to an attack by Mr Kentridge on regulations 7, 11 and 12, on the grounds that they gave an undue and unfettered discretion to the commissioner or his delegate to make orders, Mr Conradie submitted that in terms of the 'vast' powers bestowed on the State President, he was entitled to grant this power to the commissioner (or his delegate) if he believed it was neccessary.

The hearing continues today

Press clamp acceptable in emergency, counsel argues

Pietermaritzburg Bureau

PRESS censorship in an emergency situation was acceptable, counsel for President Botha and the Government argued yesterday before a Full Bench of the Supreme Court in Pietermaritzburg in an application by four newspaper groups attacking the validity of six emergency regulations affecting the Press.

Mr J Conradie, SC, said 'unhappily' the freedom of the Press and the free flow of news was always 'one of the first things to go' in a war or unrest situation to protect the public from 'dismay or despondency'.

Mr Conradie submitted before Mr Justice Leon, Mr Justice Kumleben and Mr Justice Nienaber that prejudice to newspaper proprietors should not be set higher than prejudice to the individual in an emergency

Mr Conradie said many people were unfairly affected by measures taken in terms of emergency regulations and agreed that newspapers were among those and could well complain that the regulations were so wide that they did not know how to conduct their affairs properly

Prejudiced

This did not, however, mean that the regulations were grossly unreasonable, he submitted

'It may be that there are facts not before this Court which make it clear that the regulations must necessarily operate so harshly on newspapers for the maintenance of public order and safety overall'

He said newspapers might claim to be prejudiced because, for example, they were prohibited from publishing a photograph of the scene of a terrorist bomb explosion, but one of the aims of the emergency was to prevent the dismay and despondency which the publication of such a photograph could cause

Mr Conradie submitted that Mr Sidney Kentridge, QC, for the newspapers, sought out absurd examples on the basis of which to attack the regulations and submitted that when interpreting the meaning of regulations one should always first look for a 'sensible' interpretation and only if there wasn't one could the regulation be declared ultra vires

He referred to an example that even photographs of violence at a soccer match could be prohibited in terms of Regulation 9, and said it was clear this was not what the regulations intended

Mr Conradie agreed with a question by Mr Justice Leon that Regulation 10, which makes it an offence to posess a subversive statement, was an unqualified prohibition and covered even statements which could be found in the Supreme Court library Mr Conradie said, however, the regulation should be viewed in the light of the objects of the emergency

Referring to Regulation 11, which provides for the seizure of a publication if in the opinion of the minister or a commissioned officer it contained a subversive statement, Mr Conradie submitted that Parliament had given enormously wide powers to the President and could have countenanced such a regulation if, in his opinion, it was neccessary

Similarly, he submitted, Regulation 12, which provides for the seizure, confiscation or banning of a publication if the Minister of Law and Order were of the opinion that it contains a subversive statement, was within the powers of the President.

The hearing continues today with argument by Mr Jan Combrink, SC, for the Minister of Law and Order and the Commissioner of the South African Police

The application has been brought by Natal Newspapers, the Natal Witness, Argus Printing and Publishing and South African Associated Newspapers (SAAN)

Women abuse: The forgott

By SIZAKELE KOOMA

A MIDDLE-aged woman with five children, many scars and a broken cheekbone bears testimony to the rising number of battered women.

Mrs Kenleng Mokae (not her real name) and her five children, aged between 12 and two, is separated from her husband and presently lives in a sheltered home.

The home, which she shares with five other women and their children with simular prob-

lems, is the property of a feminist organisation called People Opposing Women Abuse (Powa), founded six years ago with the aim of providing help and information to raped and battered women.

Mrs Mokae has a history of assault and attempted murder cases, all experiences during her 13 years of married life.

Her husband's abusive behaviour started in the latter years of their marriage. He became a heavy drinker after losing a job he had held for 12 years.

"He would come home very late after a drinking spree, throw around everything in the house and beat me up for no reason," Mrs Mokae says.

"The scenes of fighting and furniture breaking would be repeated every time he came home drunk. The children would start screaming and run into our neighbour's homes to seek help or lock themselves in their bedrooms so that they could not hear us fighting.

"Once he had tried to kill me. He tied me to our bed with neck-ties and put firewood under it. Had it not been that he could not find matches, I would have burnt to death."

Powa has so far handled 1 388 cases similar to Mrs Mokae's this year only.

The organisation is non-racial and offers help through counselling and provides shelter for destitute and abused women. They also ad-

vise legal r to lay

"Our helping control make and no spoken man pre ways under tion, o who dispa

Seven apply for their release

A FULL bench of the Grahamstown Supreme Court has reserved judgment on applications by seven emergency detainees for their release.

In four applications, being heard as one, the detainees seek court orders declaring emergency regulations 3 (1) and 3 (3) invalid and their arrest and detention illegal.

Alternatively, they want an order improving the conditions of their detention.

Student

The detainees are. Mr Mike Loewe, a Port Elizabeth based freelance journalist; the Rev Abraham Jooste, Mr Gareth Damons, a student, King William's Town freelance journalists Mr Phila Gqumba and Mr Mxolisi Fuzile, Mr Prince Mhamhe and Mr Brian Osterdge

The respondents are the State President, the South African Government, the Minister of Law and Order and several police station commanders.

No date set for Botha's appeal

NO date has yet been set by the Appeal Court in Bloemfontein for the consideration of the appeal by the State President and the Ministers of Law and Order and of Justice against the decision of the Durban and Coast Local Division of the Supreme Court in the Tsenoli case.

Last week a full bench of that court ruled that the State President had acted beyond his power in the promulgation of clauses 3 (1) and (3) of the emergency regulations.

The court ordered the release from detention of the Natal publicity secretary of the United Democratic Front, Mr Solomon Lechesa Tsenoli.

However, three days later a full bench of the Natal Supreme Court, in Maritzburg, disagreed with the Durban decision and refused an application for the release of Mr Peter Kerchhoff — organiser of the Maritzburg Association for Christian Social Awareness.

Although the record for the appeal in the Tsenoli case has been lodged at the court, it is possible that it will have to be considered in conjunction with any appeal by Mr Kerchhoff.

Other factors that have a bearing on how soon the appeal can be heard by the court are that the roll for the present term is heavy, with only Wednesdays being open until the last week of September as also the availability of the judges who will be designated to hear the appeal.

Another factor is the number of judges who will hear the appeal — Sapa

Correspondent

THE United Democratic Front this week brought two new challenges against key provisions of the State's emergency regulations – in Natal and the Transvaal.

In the Rand Supreme Court today the UDF will try to prove that a meeting it wishes to hold in Soweto tomorrow would not constitute a gathering prohibited by any of the emergency regulations.

And in the Durban Supreme Court this week an application was brought for the release of UDF Natal publicity secretary Lechesa Tsenoli.

Tsenoli – in detention since the emergency was declared – claims the regulations which allow for arrest and detention are invalid as they are outside the powers of the State President.

Wilson, who heard the application, adjourned it until next week when it will be heard by a full bench of the Supreme Court.

Tsenoli's application against the State President and the Law and Order Minister is brought on his own behalf, as his lawyers were able to get access to him following the judgment of the Durban Supreme Court in the Metal and Allied Workers' Union case last week.

His challenge to the validity of the arrest and detention provisions is based on a number of technical arguments. It includes the claim that no guidelines were given by the State President to those who may detain and arrest, concerning the circumstances under which they may act against a person they wish to detain.

● Transvaal's first test against provisions of the emergency regulations will be heard in the Rand Supreme Court today, when the UDF will try to have a meeting scheduled for Soweto declared lawful, writes **Mono Badela.**

The UDF will challenge Regulation 7, which gives the Police Commisioner the power to issue special or additional regulations affecting particular areas.

Regulation 11, which authorizes the seizure of copies of publications regarded as subversive or detrimental to public safety, will also be challenged.

The UDF will also apply to the court to interdict and restrain any member of the SA police or the force from rendering the planned meeting inaccessible to any member of the public, or from interfering with the meeting.

In an accompanying affidavit, UDF Transvaal vice-president, Samson Ratshivhanda Ndou, said the UDF was a legal organisation, with a number of other organisations such as civic, student, women and youth organisations as affiliates.

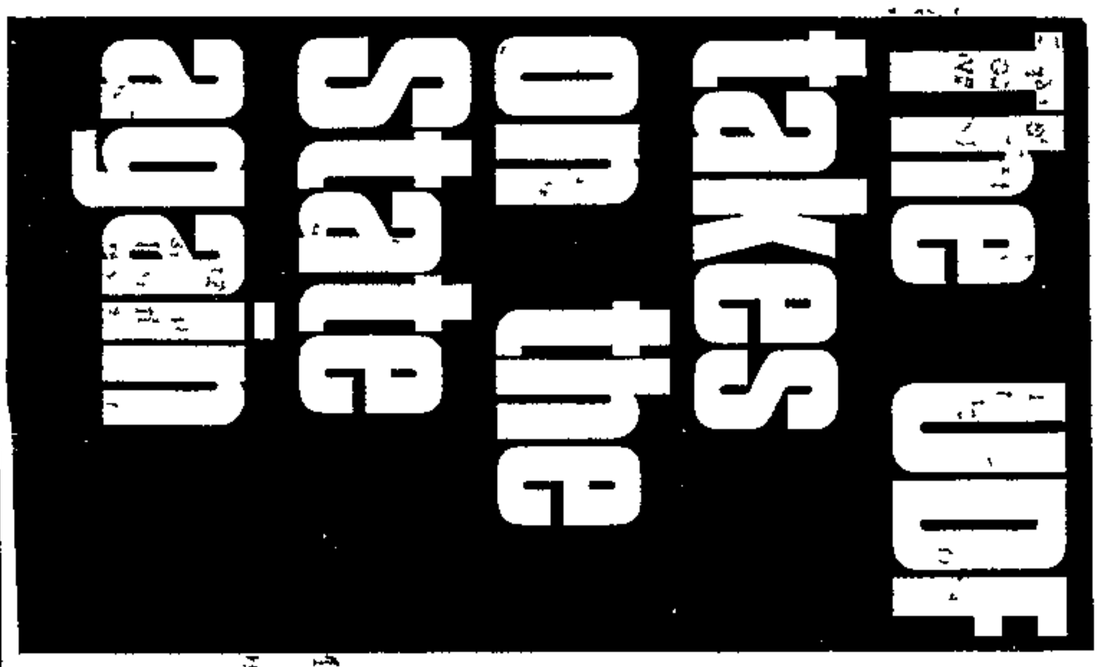
It operates openly and publicly throughout South Africa, he said.

He said it was resolved at an executive meeting that an indoor meeting be held in Soweto to discuss with and inform the community that the emergency had had upon the UDF and its affiliates and other matters incidental thereto.

He said that on Monday the UDF's lawyer had sent a letter to Soweto's Divisional Police Commissioner, asking for permission to convene and hold the meeting.

UDF lawyer Krish Naidoo said yesterday papers had already been sent to the State President PW Botha – who is the first respondent, Soweto Divisional Police Commissioner – second respondent, the SA Police Commissioner – third respondent and Law and Order Minister Louis le Grange – fourth respondent.

● A full bench of the Eastern Cape Division of the Supreme Court this week reserved judgment on a UDF application for a similar meeting in New Brighton.



252

Suggestions for Bill of Rights

THE SA Law Commission yesterday invited "reasoned suggestions in writing" from the public on the feasibility of enacting a Bill of Human Rights.

Mr Justice P J J Olivier, chairman of the commission's task group, said at a Press conference in Pretoria that the commission would also invite about 600 organisations, including black ones, to submit recommendations to it

The commission had, however, not decided on whether it would accept evidence from the African National Congress, he said

It was pointed out that unless this was done, the commission's eventual report could be discredited

Mr Justice Olivier said the commission would consider the claims and aspirations of minority groups like homosexuals and feminists.

The commission would also consider whether a bill of rights should be written into the constitution or whether it should be separately enacted by Parliament, and the role the courts would play in enforcing it.

The judge said such a bill of rights should ideally correspond to the generally accepted standards of civilised law, but also take into account the problems of the country and the legal protection claimed by minority groups

The commission had already done substantial work on the issue since government had requested a report in April.

A working paper on the commission's findings may be presented to various organisations for comment before its report will be submitted to the Justice Minister.

The commission's brief is to investigate group rights and human rights

It invites suggestions from the public regarding the definition and protection of such rights, the role which the courts should play in this regard and the desirability and feasibility of a bill of human and group rights

Suggestions may be mailed to the secretary of the SA Law Commission, Private Bag X668, Pretoria 0001 — Sapa.

PE court sends two to gallows

PORT ELIZABETH —A 47-year-old former gardener at the University of Port Elizabeth and a 21-year-old hired killer have been convicted of murder without extenuating circumstances for killing an elderly farm manager and were sentenced to death in the Supreme Court here yesterday

Johannes Frederick de Lange lived on the farm and hired Thembile Jama to carry out the murder of 70-year-old Mr Stefanus Beyers de La Rey Du Preez, who was found slain in his bakkie on the farm Brandwag, in Kirkwood, on Monday, May 13 last year.

Lindiwe Mavis Bam, their accomplice, was also found guilty of murder with extenuating circumstances and was sentenced to an effective seven years' imprisonment

The court rejected medical evidence to establish extenuating circumstances that De Lange and Jama were mentally retarded or borderline cases

Dr T. Zabow, a Cape Town psychiatrist, who was a member of a team that assessed De Lange, said they had found De Lange's intelligence to be on the border between "low normal and retarded"

He said chronic alcoholism, a heart condition and a disease of the blood vessels also affected De Lange However, Dr Zabow said, De Lange showed satisfactory insight and an appreciation of the wrongfulness of his acts

Handing down his judgment, Mr Justice Solomon said that from De Lange's demeanour in the witness box, the content of his evidence in court and his statements and explanation of plea, the court had observed no sign of mental retardation or lack of appreciation of his acts.

Mr Solomon said the crime De Lange had been convicted of had been premeditated

The court found that De Lange had initiated the murder plot, planned it and furnished Jama, the hired killer, with the means to carry out the plan and had suggested the time and place where Mr Du Preez had to be ambushed

Mr J de Villiers and Mr J A F Nel sat as assessors Mr S Redpath appeared for the state Mr N van Rensburg, Mr G B Myburgh and Mr J Huisamen appeared for the defence

Evicted families' fate uncertain

By MTOBELI MXOTWA

EAST LONDON — The fate of the Rala families dumped alongside the Mount Coke road by the Ciskei Government this week remained unclear yesterday

The South African embassy in Ciskei said the families had been evicted from Ciskei soil and were dumped inside the Ciskei borders and no action could be taken by the embassy.

The Ciskei Government said it was unsure of the nationality of the families

The families claimed on Wednesday that they were South Africans

The first secretary at the South African embassy in King William's Town, Mr K Brennan, said the embassy could not comment since the families were "physically" in Ciskei

The Ciskei Government had not consulted the embassy about the families, Mr Brennan added

Ciskei's deputy director-general of Foreign Affairs and Information, Mr Headman Somtunzi, said the evicted families' nationality was uncertain and depended on where they had been registered

He did not say whether the government had alternative plans to accommodate the families

Meanwhile, welfare organisations here have rallied to the aid of the families

The director of Operation Hunger here, Mrs Rossella Frasca, said her organisation had sought aid to alleviate the plight of the families and had received an offer of help from a supermarket

Mrs Frasca said Operation Hunger had supplied the families with soup on Wednesday and mealie meal yesterday

There was a pressing need for tents, blankets, bread and large plastic containers for fetching water since there was no water nearby.

She said she had been in touch with the families' lawyer in King William's Town since the group wanted to join other squatters in Needs Camp and did not want to go back to Ciskei

Mrs Frasca emphasised that "somebody must take responsibility" for the families.

The veld was dry and the squatters were exposed to the dangers of veld fires.

Miss Vangiwe Mtyunjwa of the South African Council for Higher Education (Sached) said her organisation hoped to arrange accommodation for the families

The families were evicted early on Monday morning from a farm belonging to Mr D P Rala The Ciskei Government the children of the families of burning down houses and killing livestock

Attempted jailbreak foiled by inmates

by
esident said that when the ne The plant was shut down

Barbed-wire 'pay beach' takes shape

Cape Times 22/4/86 282

By PETER DENNEHY
Municipal Reporter

FISH HOEK municipality has begun to erect a arbed-wire fence enclosing the entire length of its each, which is to become a "pay beach" when it is pened soon to people of all races

An entrance fee of R2 a day is to be levied on adult isitors to the beach, while Fish Hoek residents and few others will be eligible for R1-a-year "season ickets", the town clerk, Mr Eric Fry, said yesterday.

The Mayor of Fish Hoek, Mr Howard Wood, said he fence was a "crowd-control measure"

"We see no other way of controlling crowds."

Mr Wood said a public meeting had been held in anuary and a "substantial majority had voted in avour of having a fence Now they have forgotten bout it all".

Mr Andrew Cunningham, chairman of Fish Hoek esidents' Association, disagreed with Mr Wood nd said less than a quarter of the audience of 300 at he association's January meeting had voted for a ay beach.

'Split down the middle'

"More than half put up their hands for no fences nd no pay beach, it's in the minutes," Mr Cunningam said. "People are overwhelmingly against the ence and having to pay.

"As far as the open beach is concerned, the town as fairly split down the middle At that meeting, esidents voted in favour of opening to all races by 20 votes to 100. If a vote were held today, more ould want it open to all."

A random sample of yesterday's Fish Hoek beach sers showed no overt race prejudice, and most ere in favour of a free beach.

Mr Fry said the Fish Hoek Town Council had pplied to the Administrator in December for permission to open its beach to people of all races, and as implementing control measures for this season n anticipation of a favourable reply". The fence ould be in place by November 1

The project would cost R70 000, Mr Fry said.

Curb on media invalid

SAS [illegible] can now report on unrest incidents – for the first time since this year's June 16 anniversary of the Soweto riots – the emergency regulations banning reporting on security force action and banning journalists from unrest areas effectively fell away after the State conceded in the Maritzburg Supreme Court that they were invalid

The State made its concession during the application by four newspaper groups challenging six emergency regulations

It agreed that the restrictions on media coverage had not been promulgated – they had merely been sent to newspapers by telex

● Taking photographs and other visual material of security force action is still banned

EVC 27/8/86

7 will contest their arrests

Post Reporter

IN one of the first cases of its kind under the current state of emergency, seven detainees will bring an application for their release before the Grahamstown Supreme Court tomorrow.

The case, set down for two days, has been brought by several prominent Grahamstown residents, including two Black Sash members, Mrs Louise Vale and Miss Anne Burroughs, a Rhodes University lecturer, Mr Andre Roux, a teacher at one of the local African schools, Mr Timothy Bouwer and three students, Miss Melissa de Villiers, Miss Karen-Leigh Thorne and Miss Jean Burgess.

The application includes allegations that a security branch policeman, Lieutenant Lloyd Edwards, misdirected himself and acted improperly in ordering the arrests and detentions of the seven detainees.

The applicants also hope to persuade the court to rule — if it finds that if the facts relied on by the arresting officer Lt Edwards, are shown to be wrong — that the arrests and detentions were invalid even though he held the opinion that they were necessary.

The respondents are the Minister of Law and Order, the Commissioner of Police, the Divisional Commissioner of Police and the Commissioner of Prisons.

Chipping away at South Africa's legal system

CP Correspondent

THE SA government's tough state of emergency regulations were dealt a sharp blow by the Natal Supreme Court last week

The ruling by three judges in Durban that the strict regulations governing visits by lawyers to detainees were invalid, has already been felt countrywide

Dozens of detainees have been already been visited by their lawyers Access to detainees by their lawyers constitutes far more effective protection against abuse

The Natal ruling – and the case in Cape Town where a nun was released and in Johannesburg where a TV soundman was freed – has shown that judges have a wider discretion to interpret the law than is sometimes thought

Over the years a series of cases have established that in SA parliament is the final power which the courts cannot check, regardless of whether the law is "just" "fair" or even "reasonable"

Prof John Dugard of Wits Law School commented "In SA few holds are barred, as far as parliament is concerned parliamentary soyereignty has been taken to its logical and brutal conclusion at the expense of human rights"

During the early 50s the situation was different Parliament tried to remove Cape Town's coloured people from the voters' roll

But this law, the Separate Representation of Voters' Act, was declared invalid by the Appeal Court which ruled that coloureds could not be removed from the roll except by a two thirds majority of both Houses of Parliament – the Assembly and the Senate

Parliament then passed the High Court of Parliament Act, giving it the power to set aside an Appeal Court decision

But even this didn't work – the Appeal Court threw out the High Court of Parliament Act

The government then increased the number of judges who had to hear the appeal from five to 11 and almost doubled the number of members of the senate – from 48 to 89

This method of electing the senators meant the government had no difficulty passing its legislation as the National Party had an overwhelming majority in that house

Since then there has been a shift in Appeal Court decision In many key human rights cases, when the Appeal Court judges had the freedom to decide either way – in favour or against the rights of the individual – they tended to favour the executive (parliament) against the individual

For example, in 1964 Cape Town lawyer Albie Sachs – held under the 90-day detention law – wanted to have reading and writing material during his detention The law did not say whether detainees could have books or not – so it was up to the judges to decide

The Appeal Court judges decided he could not have books Since the purpose of the 90-day law was to get information from detainees, the purpose may be frustrated if detainees were allowed to read or write, they said

A number of legal authors have claimed there has been a trend for the Appeal Court to decide against human rights and in favour of the executive

The trend can be summed up in the words of the judgment by the Appeal Court in Sachs' case, where one judge said, "Parliament may make any encroachment it chooses upon the life, liberty or property of any individual subject to its way And it is the function of the court of law to enforce its will (ie, parliament's will)"

Today's judges are bound by the decision made by the Appeal Court in these and other cases In addition many of the laws themselves have become harsher This is why the Supreme Court is so seldom able to intervene when human rights are violated by law

One basic human right is having access to a lawyer This was allowed under the emergency regulations, but only under strict conditions – and in fact no lawyer was granted permission to visit a client detained under the emergency regulations.

But the Natal Supreme Court restored this basic right.

Given the courts' background against civil liberties, how was it possible that this right could be restored? How could the judges throw out this section permitting visits under the tightest of conditions only?

The important difference is that judges cannot question or set aside laws made by parliament – but "subordinate legislation" is a different story

City by-laws and township regulations are examples of "subordinate legislation" and the court has the power under certain conditions to overturn them – and to declare them invalid Emergency regulations are also "subordinate legislation" which is why the judges were able to consider whether they were lawful or not.

They decided that it was established as basic right in SA law that any individual should be allowed access to legal representation Only a law made by a parliament could exclude this right – for example some sections of the Internal Security Act prohibit lawyers from having access to detainees When the law takes this right away, the courts can do nothing about it

However, when it is "subordinate legislation", the courts may intervene and declare the regulation invalid

The Supreme Court ruling has important implications for emergency detainees, who can now see their lawyers And it could well lead to a number of applications for release

But while it will clearly benefit many detainees, it does not necessarily mean that the courts have found a new power to challenge government laws,

The judges were ruling on a specific example of where "subordinate legislation" was contrary to established legal rights If legal access was restricted in a law, they would have found it difficult, if not impossible, to throw it out

KERCHOFF'S COCKTAIL 'CONTACT'

CITY PR. 27/7/86

252

CP Correspondent

A CHANCE encounter with an alleged ANC member at a cocktail party in West Germany was at the centre of claims and counter claims in the Maritzburg Supreme Court this week.

Maritzburg church worker Peter Kerchoff has been detained since June 12 and has been in solitary confinement for most of that time. He was allowed visits by his lawyers last week and has brought an application to the Supreme Court for his release – and also for the police to stop holding him in solitary.

Kerchoff says he is totally opposed to violence and has had no "connection" with any unlawful organisation.

Replying to this, Brigadier Barend Beukes, Maritzburg's security cop chief, denied the claims and said that during an overseas visit last year Kerkoff had "had contact with a member of the ANC".

Kerchoff pointed out that he was at a social function in Germany when he was introduced to "Tony Seedat, who is apparently a member of the ANC".

He said the meeting was "fortuitous".

The brigadier also claimed he had information that Kerchoff was involved in organising meetings and rallies of mainly black youths for the period June 16 to June 26 last year.

He admitted Kerchoff was being held in a single cell, but he and other security cops denied this was a "punishment".

They said it was an administrative arrangement as there were no other white detainees who he could be kept with. Kerchoff then asked why he could not be held with detainees of other race groups.

A psychiatrist called in by the State recommended Kerchoff be removed from solitary.

The case will be argued before a full bench of the Supreme Court today.

Ellen wins award

ELLEN KUZWAYO became the first black author to be awarded the CNA Prize when her book called *Call Me Woman* won the English section of the awards at a ceremony in Johannesburg this week.

The Afrikaans award went to Potchefstroom University lecturer TT Cloete for his book *Allotroop*. Struik Publishers won the book design award.

Mine union signs

A RECOGNITION agreement between the Black Allied Mines and Tunnel Workers' Union and the SA Chamber of Mines will be signed today. This is the third agreement – one was signed with NUM in 1983 and one with the African Miners and Allied Workers' Union this year – to be signed between the chamber and a black miners' union since the new industrial relations dispensation came into effect in 1980.

Youths in

Judge overrules lawyer

27/8/96 252 Sowetan

Duduza trial

THE Pretoria Supreme Court yesterday ruled as inadmissible a move by the State prosecutor to hand over a statement made by a witness who did not remember some of its contents.

The witness, who may not be identified, admitted under cross-examination by the defence counsel he could have "confused" or made a mistake on the identity and number of people who met at a house hours before the alleged hand grenade attack in June last year

The witness also told the Duduza terrorism trial he did not remember making the statement he made before a magistrate in July last year. Mr Jan Oberholzer, for the State, then handed the witness a statement he made "to refresh your memory" The move was contested by both defence lawyers Mr Nick de Vos and Mr Eric Dane

The judge ruled that it was inadmissible to give the witness the statement

Court hears of police beatings in classrooms

Police have told a Free State court that they moved into schools to prevent unrest. But a teacher has accused them of daily assaults upon pupils, reports JO-ANN BEKKER

PAPERS before the Free State Supreme Court have lifted the veil on Security Force activities in black schools during the first two months of the Emergency, when reports on their actions were restricted.

While the police have told the Supreme Court that they were deployed in schools to prevent unrest, parents and a teacher from Parys' Tumahole township have accused them of conducting daily assaults on schoolchildren

The allegations form part of an urgent application brought by Keabetse "Archie" Tlhobelo, a mathematics and physical science teacher at Tumahole's Phehellang Senior Secondary School.

The application for an order stopping Security Forces from continuing the alleged assaults was brought two weeks ago However, the details were embargoed until Wednesday to allow the replying affidavits to be filed

Tlhobelo alleged the principal and education authorities were making no effort to end the abuse. Instead, he said, they had handed over their disciplinary functions to the Security Forces

His claims were countered by the SA Police, Phehellang's principal and officials of the Department of Education and Training (DET).

In replying papers served this week, the authorities stressed it was in the interests of curbing unrest in schools, which was sometimes instigated by teachers, that two members of the "community guards", known as local authority police, were permanently stationed in the schools

The principal, Jafta Mokgotle Mogashoa, denied surrendering his disciplinary powers to the police. He did, however, concede that he had handed one unruly pupil over to the police and watched a policeman lash him four times while another policeman held him down

DET's assistant director, Majora Mtsheumayelo, said the principal's actions would receive his immediate attention "and disciplinary action will be taken"

Tlhobelo's claims are supported by affidavits from eight students allegedly assaulted by the police

According to Tlhobelo, normal teaching was "difficult if not impossible" since the Security Forces were stationed in school premises in terms of the Department of Education and Training's new measures introduced on July 14

His principal, Mogashoa, however, said the "reassuring presence" of the Security Forces "promoted an atmosphere condusive to proper teaching".

Tlhobelo claimed the police, in particular the "local authority police" previously attached to the now disbanded development boards, were unlawfully assaulting and abusing pupils "in an arbitrary fashion and without any reason

Man behind the case: Teacher Archie Tlhobelo

"I have gained the impression that because the police claim to be acting under the Emergency regulations, and because they apparently believe that they enjoy an immunity under these regulations, at least some of them are quite unrestrained in the abuses they have inflicted on the children," he said.

Lieutenant Jan Andries van Heerden, station commander of the Parys police, said he had met principals and teachers of schools in Tumahole before the schools reopened. He had explained that the Security Forces would be available to protect residents and schoolchildren and invited them to discuss any complaints with him personally.

He had, however, received no complaints at all, and none relating to the claims in Tlhobelo's application.

In his affidavit, Tlhobelo said the police disregarded the authority of teachers They entered classes without knocking and sometimes removed pupils in the middle of a lesson

On one occasion, he said, he was discussing a mathematics problem with his class when two policemen burst into the room and asked what the noise was about When he explained they were discussing mathematics, he was accused of being 'insubordinate"

In terms of DET's regulations, children may not leave the schoolgrounds during break There is no tuck shop at the school and in the past students bought food from nearby shops Now they go hungry, Tlhobelo said "Pupils often complain of hunger and say they can't concentrate properly"

Tlhobelo said the police did not allow children to leave their classes to visit the toilet Thus, every break more than the more than 1 000 Phehellang students all raced to the single toilet block, causing "enormous disorder".

He said as soon as the siren sounded to end break police began whipping children into classrooms. "They don't even allow a reasonable time for pupils to get from schoolyard to classes."

These claims have been denied by police and the principal.

"The police are apparently engaged in a pattern of daily assaults upon the children and the teachers are desisting from taking any action to prohibit them. For every day that goes by, these apparently unrestrained assaults continue," Tlhobelo said.

The rights denied to treason accused

By JO-ANN BEKKER

MOST people tried for high treason in South African courts have been deprived of two fundamental rights the right to remain silent before coming to court and the right to be tried by a judge who is not a stranger to their experience

But, according to George Bizos, a senior advocate who has represented many treason trialists, observers at treason trials would never guess at these infringements

Speaking at the Professional Responses to the Law conference at the University of the Witwatersrand last weekend, Bizos said, "The public relations men of South Africa invite the world at large to see how well we do our court cases

"At any treason trial you will see a judge and two assessors There will be decorum There will be peace and quiet And, since the passing of legislation prohibiting demonstrations outside the court, the proceedings will not be disrupted Consular representatives and learned men from abroad will watch the proceedings and they will be impressed with the manner in which the trial is conducted"

But, he stressed, most trialists had been deprived of one of the most fundamental human rights — the right to remain silent

"There is almost a 99 percent chance that a person charged with treason has been detained under Section 29 of the Internal Security Act," Bizos said "This means he will not be brought to court until he has made a statement to the satisfaction of the Commissioner of Police, which usually means to the satisfaction of the investigating officer"

Many treason accused claim the confessions were extracted by force or threat, but this was difficult to prove, he said If the confessions were made during the early stages of detention, the police often created a fiction that the accused was not detained under Section 29 at that time, but was an awaiting trial prisoner

This made it more difficult for the defence to prove his admissions were not freely and voluntarily made

If the accused has pointed out targets for attack, or arms caches, these "pointings out" are admissable as evidence, even if it can be proved they were compelled, he said And often the "pointing out" is enough evidence to secure a conviction

The second fundamental right denied treason trialists, according to Bizos, is the right to a judge who understands their world experience Most of the accused are black and, except for a recent trial in Pietermaritzburg where both assessors were black, most judges and assessors are white

"Most have no experience of black people except in the master and servant relationship," Bizos said

In the words of South West African People's Organisation leader Herman Toivo ja Toiva, any black South African can say he is a stranger to the judge and assessors who are trying him, Bizos said

Bizos said defence lawyers should not apologise for what their clients have done There is a tendency for some to preface their defence with "I am not a communist, nor a terrorist and am not sympathetic to the accused, but "

Bizos said there was an unfortunate tendency for the advocate to be confused with the accused "It is no accident that the ancient Greek word for advocate means co-accused"

He said in spite of a history of hostility between the lawyers representing the treason trialists and the prosecution, defence lawyers should not lose their sense of objectivity

"But that does not mean you should not understand and identify with your client so you can understand what he has done and help him put his point of view across," Bizos said "It is not for you to judge him, there are judges to do that"

Asked whether lawyers who campaigned for human rights did not lend an undeserved respectability to South Africa's legal system, Bizos said "The people who argue about the ethics of giving the system respectability are those who can afford to intellectualise. Those who have really been through the worst want their day in court and they want assistance"

Bizos added "We at the Bar will stop defending people when their mothers and fathers and brothers and sisters stop knocking at our door. If an accused person wants to be defended, we will defend him"

Doonesbury BY GARRY TRUDEAU

29/8/86 (252) (B)

STATE OF EMERGENCY — 2

For Mond.

Judging the judges

Two conflicting judicial interpretations of the legality of the emergency regulations have forced a temporary halt in applications for the release of detainees in Natal held under the emergency.

Their legal representatives are now waiting for the Bloemfontein Appellate Division's definitive judgment before deciding how to proceed Both judgments have gone on appeal to Bloemfontein, and will be heard together on September 10

The conflicting judgments are almost epoch-making in legal terms, say lawyers Certainly, it is the first time that a judgment of one high court has been struck down and overturned, within days, by another high court

Much now rests on the Appellate Division ruling it will obviously have a bearing on emergency detainees' continued incarceration; and the increasingly liberal judicial interpretation of State security legislation, especially by the Natal bench, could be called into question.

Contradiction

The background to the matter is broadly as follows On August 11 a full bench of the Durban Supreme Court found that the State President had acted outside his powers in drafting the emergency regulations, and that there were inherent contradictions of the Public Safety Act of 1953 (*Current affairs* August 15)

Accordingly, the judges declared section 3(1) and 3(3) of the regulations (relating to the detention and continued detention of detainees) invalid, and ordered the release of United Democratic Front officer Lechesa Tsenoli On the bench were Justices Friedman, Leon and Wilson

Three days later, a full bench of the Natal Supreme Court, hearing an application for the release of Peter Kerchhof, an organiser for the Pietermaritzburg Association for Christian Social Awareness, disagreed with 'he Durban bench's finding and dismissed Kerchhof's application

Justices Kriek, Thirion and Law contended that the Durban division had put an improper construction on section 3 (1) (a) of the Public Safety Act It had been argued that, in effecting an arrest or detention in terms of the emergency regulations, the arresting officer must have in mind the bringing about of an early end to the State of Emergency

But the Natal bench held that the State President, in drafting the regulations, had "already decided that the arrest and detention of all people who are a threat to public peace will hasten the end of the emergency"

It held further that the provisions of the Public Safety Act had been purposefully framed widely to enable him to use his discretion in making regulations. Hence, if the Durban division's narrow interpretation was accepted, it would have the purpose of "frustrating" the object for which he is empowered to regulate.

The State has appealed the Tsenoli judgment, and Kerchhof that of the Natal Bench

Newspapers

The outcome of the appeal could also have a bearing on the application being brought by several newspaper groups, including Saan (publishers of the *FM*), to have several of the emergency regulations declared invalid

Counsel for the newspapers has similarly probed for weaknesses in the regulations on the grounds that the State President had acted ultra vires. But more specifically, the attack has been directed at the sweeping nature and unreasonableness of the regulations

Counsel for the State has already conceded that two orders issued in terms of regulation 7(1)(c) are invalid on the grounds of a technicality The orders were issued to newspaper offices by means of a telex — not an accepted means of promulgation

The orders deal with the reporting on the activities of the security forces, and entering black areas for the purposes of reporting Government has yet to re-issue the orders in an acceptable form — as it did when the jurisdiction of police commissioners in the emergency was called into question.

Legal sources speculate that government could be holding off until the court has handed down its judgment. That is expected to be any day now. 1 1/2 ■

CAPE TIMES 2/9/86 (252)

Widman: 'Pardon drug offenders'

By PATRICK CULL
Political Staff

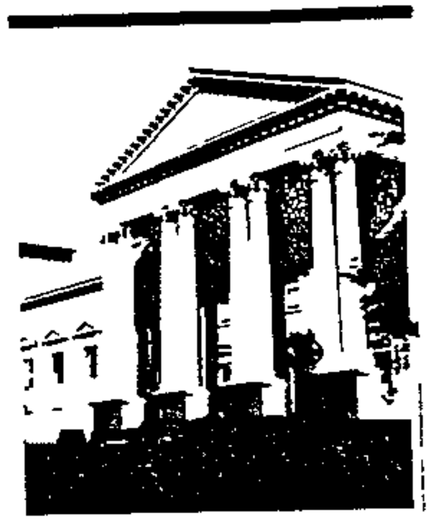
HOUSE OF ASSEMBLY. — Mr Alf Widman (PFP Hillbrow) yesterday appealed for drug offenders serving mandatory prison sentences to be pardoned or set free on parole

He was speaking during second-reading debate on the Abuse of Dependance-Producing Substances and Rehabiliation Centres Amendment Bill.

The bill scraps the provision in terms of which minimum jail sentences were mandatory, thereby re-establishing the discretion of the courts with regard to sentences handed down for drug-related offences.

Mr Widman said he wished to express his anger at the government's failure to deal adequately with the drug problem and his sorrow that hundreds of people were languishing in jail because of the necessity to impose minimum sentences.

And he pointed out that the government had not only ignored representations made by the PFP about minimum jail sentences when the act was passed in 1971, but also the findings of the Viljoen Commission of Inquiry into the Penal System in 1976.



Mr Widman said the extent of the drug problem facing South Africa had been spelled out by the Minister of National Health and Population Development, Dr Willie van Niekerk, at the weekend, when he stated that between July 1, 1984, and June 30, 1985·

- 2 586 children between 7 and 17 were charged with possession or use of drugs and 2 329 found guilty.
- 6 791 people between 18 and 20 had been similarly charged and 6 176 found guilty.
- 30 158 people over 21 were also charged and 27 245 found guilty.

Mr Widman asked how many of the total of 35 000 were still languishing in jail because of the necessity to impose a minimum sentence.

He said the courts would now be able to postpone or suspend sentence or caution and reprimand or refer to a rehabilitation centre.

Mr Widman said a distinction should be made between people who were "pushers" to make money and those who dealt in drugs because they themselves were dependent on drugs.

56 pc of urban whites support idea of Bill of Rights

Some 56 percent of urban white South Africans would support the inclusion and entrenchment of a Bill of Rights in the South African constitution

This is the finding of an Omnichek poll involving face-to-face interviews by Research Surveys among 800 women and 500 men in the last six weeks.

The poll result was announced soon after a call by the South African Law Commission for "reasoned suggestions in writing" from the public on the feasibility of enacting a Bill of Rights.

The poll asked: "If you understand a Bill of Rights to mean freedom of speech, religion and movement, and the protection of the interests of minorities would you support this being entrenched in the constitution of a new South Africa?"

Research Surveys director Mr John Rice said that despite the time difference in posing questions there was a striking similarity in responses which bore out the accuracy of the poll as a barometer of political thinking among whites. This correlation was reflected consistently throughout the sample, with English-speaking men and women revealing quite independently that they were less conservative than their Afrikaans-speaking counterparts towards the idea.

The negative and noncommittal aspects of the poll were a surprise and could be attributed to the fluid political situation which lacked clear policy direction and management.

"The big surprise was the reluctance among respondents in the Pretoria-Witwatersrand-Vereeniging region — 60 percent of the total sample of 1 309 men and women — to commit themselves: 32 percent answered "Don't know" to the question compared with 20 percent who said "No" and only 49 percent who said "Yes" In contrast, there was a 71 percent positive response in both Cape Town and Durban "

GIVEN THUMBS DOWN

In most major centres country-wide, the question was supported by 62 percent of the men and 53 percent of the women respondents.

The idea was given "thumbs down" by 18 percent (20 percent of the men and 16 percent of the women)

A high 26 percent had no views or declined to commit themselves This standpoint was adopted by 18 percent of men and 31 percent of women.

There was a higher affirmative response among English-speaking respondents, comprising a sample of 667 men and women, than in the Afrikaans community, comprising 642.

Of English-speaking people, 67 percent (men 69 percent and women 66 percent) said "Yes" to the question compared with 45 percent of Afrikaans-speaking (men 54 percent and women 40 percent)

This pattern was repeated in the negative and neutral responses, with 23 percent of Afrikaans-speaking women saying "No" to the question and 37 percent declining to commit themselves

A Bill of Rights had least attraction for people in the 18-24 age group, with only 51 percent saying 'Yes' compared with 23 percent saying "No" and 26 percent "Don't know"

Warmest response to the idea came from people aged 50 or more (64 percent, with 64 percent of men and 63 percent of women saying "Yes").

Similarly, 64 percent of those earning R3 500 or more a month supported the supposition compared with 53 percent in the R2 000 - R3 499 income bracket and 56 percent earning R1 999 or less. — Sapa

Urban whites back a Bill of Rights

JOHANNESBURG— Altogether 56% of urban white South Africans would support the inclusion and entrenchment of a Bill of Rights in the South African constitution.

This is the finding of an Omnichek face-to-face interview poll conducted by Research Surveys among 800 women and 500 men in the past six weeks.

The poll for men was conducted two weeks after the Omnichek poll for women went into the field

The poll results were announced soon after a call by the South African Law Commission for 'reasoned suggestions in writing' from the public on the feasibility of enacting a Bill of Rights

The poll asked 'If you understand a Bill of Rights to mean freedom of speech, religion and movement, and the protection of the interests of minorities, would you support this being entrenched in the constitution of a new South Africa?'

Research Surveys director Mr John Rice said that in spite of the time difference in posing questions there was a striking similarity in responses, which bore out the accuracy of the poll as a barometer of political thinking among whites.

This correlation was reflected consistently throughout the sample, with English-speaking men and women showing quite independently that they were less conservative than their Afrikaans-speaking counterparts towards the idea of a Bill of Rights, he said

Mr Rice said the high negative and noncommittal aspects of the poll was a surprise, particularly among women, and could be attributed to the fluid political situation which lacked clear policy direction and management

'The big surprise was the reluctance among respondents in the Pretoria-Witwatersrand-Vereeniging region, comprising 60% of the total sample of 1 309 men and women, to commit themselves — 32% answered "Don't know" to the question, against 20% who said "No" and only 49% who said "Yes"

'In contrast, there was a 71% positive response in both Cape Town and Durban,' Mr Rice said

In most major centres countrywide, the question was supported by 62% of the men and 53% of the women respondents

The idea was given 'thumbs down' by 18% of all respondents (20% of the men and 16% of the women).

A high 26% had no views or declined to commit themselves by answering 'Don't know' This neutral standpoint was adopted by 18% of the men and a massive 31% of the women respondents

There was a higher affirmative response among English-speaking respondents, comprising a sample of 667 men and women, than in the Afriaans community, comprising 642 people

A total of 67% of English-speaking people (men, 69% and women. 66%) said 'Yes' to the question, against 45% of Afrikaans-speaking (men. 54% and women 40%)

This pattern was repeated in the negative and neutral responses — (Sapa)

Winterveldt probe nearing the end

THE Smith Commission of Inquiry into the deaths of 11 Winterveldt residents who were shot by the Bophuthatswana police earlier this year, is nearing its end, according to Mr Hennie de Vos who is leading the evidence.

By ALINAH DUBE

Mr de Vos told the *Sowetan* yesterday that the commission will hear evidence of the remaining six witnesses starting today He said a short adjournment had also been arranged to enable lawyers to prepare themselves for argument which is expected to start on September 24

The commission was established after the Bophuthatswana police killed 11 residents and injured others at a soccer field on March 26 The scope of the inquiry includes scrutinising the role the police and the army played at the scene of unrest

There has been a conflict over who organised the meeting at which 11 residents were shot dead on that day.

Police blamed certain individuals while the majority of residents said it was the police who had called them to the soccer ground

Police

Lawyers representing the Winterveldt community withdrew from the proceedings on June 11

Police behaviour at the soccer field, the lawyers said, "must fall squarely on the shoulders of either Brigadier Andrew Molope or Colonel D J Mokobyane" The two were in charge when policemen opened fire at the crowd The two were later promoted to senior posts

Advocate Bob Nugent told the commission that his clients saw the promotions as a "public display of the government's confidence in the two men"

Brigadier Molope, a key witness before the commission, said his men were forced to shoot at the people as their lives were in danger He said residents who were carrying an assortment of weapons attacked the police

Brig Molope was later shot dead with an AK-47 rifle in the Beirut section of Winterveldt He was said to have been visiting his girlfriend at the time

3/9/86

SA inter-state co-operation talks go on

PRETORIA — Discussions on interstate co-operation in Southern Africa on juridical matters, including the question of extradition, was continued yesterday in Pretoria at a meeting of representatives of the governments of South Africa, Transkei, Bophuthatswana, Venda and Ciskei

A statement by the Secretariat for Multilateral Co-operation in Southern Africa said yesterday's meeting of the Multilateral Technical Committee on Juridical Matters, follows a conference on law reform in Southern Africa last month which was attended by representatives of all five states

The committee was established to attend to interstate juridical matters in order to facilitate and improve the administration of justice in Southern Africa

The meeting investigated the possibilities of establishing links between the law reform bodies of the participating states and studied the following

● Extradition,

● Reciprocal enforcement of civil judgements, and

● Reciprocal enforcement of maintenance orders

Delegates will report to their governments on the recommendations formulated at the meeting

A further announcement will be made about the outcome of the multilateral work programme after the meeting of the full Multilateral Development Council of Ministers in November, the statement says — Sapa

Jailing of children a 'travesty of justice'

By CLARE HARPER

CHILD welfare societies and the Black Sash yesterday expressed "the strongest possible protest" against the lengthy prison sentences imposed on children by the Worcester Regional Court on Tuesday

The Child Welfare Society, Cape Town, yesterday telexed the Minister of Justice, Mr Kobie Coetsee, recording their protest

The Black Sash described the "harsh" sentencing of 33 residents of Zolani Township, Ashton, as "a travesty of justice"

And attorneys acting for the children said the Department of Health and Welfare had made inquiries about the case

The residents, according to the charge sheet, included 13 children aged 13 to 17 and seven men and women aged 18 and 19 who received sentences of between seven and ten years in jail for public violence

A 14th child was sentenced to seven cuts with a light cane

The Director of the Child Welfare Society, Cape Town, Mrs Helen Starke, said the society was "appalled" at the sentences.

She said it was a matter of principle that when children were involved in court cases, a probation officer's report was called for.

A director of the National Institute for Crime Prevention and the Rehabilitation of Offendors (NICRO), Miss Linda Christiansen, said: "We are opposed to any form of institutionalization as we do not believe it has much merit and is definitely not good for children."

Magistrate 'openly partisan'

The regional chairman of the Black Sash in the Western Cape, Mrs Jenny de Tolly, said the magistrate, Mr A J van Wyk, had been openly "partisan".

"He was openly partisan by describing Messrs Klaas, Matroos and Ndabeni as good citizens . when these same three men were named in court papers as being vigilantes who assaulted some of the accused schoolchildren and imposed a brutal curfew on the township."

She said the sentences handed down to the 14 children were "indefensible according to Western democratic standards"

Court rules against 'oppressive' Press regulations

Own Correspondent

A FULL Bench of the Supreme Court in Maritzburg yesterday struck down two "far-reaching and oppressive" emergency regulations relating to the seizure and confiscation of newspapers, in a unanimous judgment delivered yesterday

Mr Justice Leon, with Mr Justice Kumleben and Mr Justice Nienaber concurring, declared Regulations 11 and 12 of the emergency regulations published in the Government Gazette on June 12 as amended to be void and of no force and effect in law.

The judges also ruled Regulations 7 (1) d and 10 (b) to be void.

The Full Bench further declared the orders issued in terms of Regulation seven on June 16 and June 21 to be void and of no force and effect.

Natal Newspapers, the Natal Witness, the Argus Printing and Publishing Company and South African Associated Newspapers brought an urgent application against the State President, the Government, the Minister of Law and Order and the Commissioner of Police last month challenging six emergency regulations, Regulations seven to 12

In his 55-page judgment, Judge Leon dealt at length with the provisions of Regulation 11, as amended, (in which the Minister of Law and Order or a commissioned officer may seize a publication which in his opinion contains a subversive statement) and Regulation 12, which relates to the seizure and confiscation of publications of a subversive nature

The judges viewed the provisions of Regulation 11 as "objectionable and unduly excessive" for a number of reasons

The definition of "publication" in the regulation made not only newspaper proprietors but other persons vulnerable to seizure of their publications

Judge Leon added that the fate of any publication or copies seized depended on directions issued by the Minister or a person authorised by him An "unfettered and unlimited power" was thus conferred on unspecified persons, other than the Minister, to decide on what was to happen to, say, a painting or text book.

"These far-reaching powers of seizure, with the attendant consequences, are not conferred on the Minister alone but also on any commissioned officer of the Force It means thus that a second lieutenant in the railway police or a young man who has been commissioned at the end of his first year of National Service can 'under his hand' authorise the seizure of all copies of an issue of a national Sunday newspaper"

● The Bureau for Information said yesterday the government could get round the Supreme Court ruling invalidating some of the curbs on the Press by "reformulating" them.

STAR
September 5 1986 11

State 'will probably get around judgment'

Political Staff

Legal experts yesterday welcomed the Natal Supreme Court judgment which declared invalid several emergency regulations, but warned that the State would probably circumvent the ruling by issuing new orders.

A leading Johannesburg advocate said the judgment "constitutes further proof that much of the emergency has proceeded along unlawful lines"

"The authorities have in the past sought to circumvent court decisions dealing with the emergency, and they will probably do so again," he said.

Another Johannesburg lawyer said: "Although this judgment is very encouraging, it is clear the State has no interest in allowing the courts to dictate to it."

It was likely that the Government would issue new, clearer regulations in future.

Media lawyer Mr Peter Reynolds said the judgment would give "a huge sense of relief to a large section of the English-language Press which has fought the restrictive legislation".

Newspapers now had clear guidelines as to what they could and could not publish.

There was low-key reaction to the judgment from the Government yesterday.

Mr Louis Nel, Deputy Minister of Information, issued a brief statement saying: "We have taken note of the judgment and are studying the detail."

PFP MP Mrs Helen Suzman said, "It is a great pity that the positive effects of the judgment could well be offset by the tremendously wide new restrictions placed on the reporting of unrest situations last night."

● Events in Soweto highlight the "draconian" effects of remaining and new Press censorship measures, the Southern African Society of Journalists (SASJ) said yesterday.

"The public should be under no misapprehension that with the latest clamps announced by the Commissioner of Police, the information they are receiving is by definition only police-sanctioned hearsay and cannot be independently verified," the SASJ statement said.

"The public should also know that journalists are still incarcerated without charge or trial."

It said the SASJ regretted that an application for the release of three journalists in the Eastern Cape had failed yesterday — Sapa

PUBLIC PENSION FUNDS

Time to cut the fat

A decade of double-digit inflation has exposed weaknesses in public pension funds. Two critical areas — buying back service and how the funds are invested — are to be overhauled. The painful details can be expected within weeks.

South Africa's public sector pension schemes are bloated, yet dangerously underfunded Many people suspect they are propped up by current revenue They are patently unaffordable and need to be re-written This, we are told, is now on the cards

The two critical issues are buy-back benefits (which should be scrapped) and funds' investment portfolios (whose growth lags the rate of salary increases, let alone inflation).

A government spokesman assures the *FM* changes in one main problem area can be expected within weeks The system of pension buy-backs could be amended immediately But changes to pension fund investment rules, allowing fund managers to move into equities and other non-prescribed investment areas, will obviously take time to implement, if severe overheating of the JSE is to be avoided

The critical problems are self-evident In a public service buy-back negotiated recently, the total cost computed at R175 000, the cost to back-date to age 16 was R25 000 The buy-in cost — immediately following back-dating — computed at R250 000 So the R25 000 paid immediately became "worth" R75 000

Not all cases are as advantageous as this

But the practice is tantamount to printing money. Another perk — for public pension benefits are perks in everything but tax law — is that the R25 000 cost can be redeemed over fairly lengthy periods Interest payable is a mere 5,5% a year.

The *real* cost of public pensions is a direct result of pressure from bureaucrats to increase government salaries to levels commensurate with those in the private sector. In the late Forties and early Fifties, when parliament was more susceptible to electoral control because of a smaller ruling majority in the House and the Senate, large (visible) salary increases would have come under heavy attack

To feed the animal, so to speak, large increases in "hidden" remuneration — perks and pensions — were effected. Even if anyone noticed, it attracted little attention because the civil service was tiny, barely a fraction of the behemoth it is today Nor, unlike today, was it the feedstock of the ruling party's power, although the real or imagined swing of support of battalions of civil servants to Nationalist Afrikanerdom's rightwing may well have been one of the reasons for bringing public pensions into line with the rather austerely managed private sector funds

Solvency crisis

The solvency crisis overhanging public pensions has been well documented The report of a firm of consulting actuaries shows that the largest of ten public funds was under-funded by R7,6 billion a year ago. And in the 1986 Budget taxpayers contributed R1,2 billion to public pensions — up from R857m a year before That is the nub of the problem public pension funds, by definition, cannot go broke.

In essence, the current public pension fund crisis is not new. No actuarial valuation has ever shown public funds as 100% "solvent " On the contrary, an actuary notes that the latest investigation shows up to 50% underfunding On a less conservative basis, he adds, the figure is nearer 30%

A feature of the Botha administration has been a "new" preoccupation with the civil service First, the then PM set himself the task of creating a "clean" machine Then he

'I should have been a civil servant'

introduced a system of "occupational differentiation" by which bureaucrats with scarce skills would be paid market-related packages, ostensibly to stem the flow of officials to the private sector

But now rates of pay, and perks, appear way in excess of "comparable" remuneration in the private sector They are the new Hoggenheimers, except they don't take risks or produce things, and they cost over R10 billion a year in salaries alone Their real cost, which would include pension benefits, is impossible to measure

The answer is simple inflation has destroyed the basis of classic pension fund theory which was based on the ideas of an English peer a century ago when there was zero inflation.

Perks tax, effective since March 1985, largely equalised the treatment of public and private sector perks, although bureaucrats were singled for special treatment in respect of housing Pensions were ignored by perks law

Public servants are given 1/55th of salary at retirement multiplied by their period of pensionable service, plus a tax-free gratuity of 6,72% of final salary for each year of pensionable service Final salary, moreover, means exactly that — and not the average of the last three years' service as in the private sector

Comparing public and private sector pensions unveils a host of tax anomalies. Public servants' contributions are tax-deductible in full; in the private sector the greater of 7,5% of remuneration or R1 750 applies Public sector withdrawals are not taxable; for private sector withdrawees only R1 800 of the take-away is tax-free

The commutation of lump-sum benefits by public servants is tax-free; in the private sector any lump-sum commutation is tax-free up to a maximum of R120 000 — or the number of years' service multiplied by R4 500 The two take 27 years' pensionable service to equalise One more public and private sector employees qualify for a R30 000 lump-sum payment on retirement in the form of a gratuity

To illustrate just how much better off civil servants are, take the *typical* case of a male aged 40 when he starts work under either fund His starting salary is R300 (in 1961), his retirement age 65, and his salary is increased 7,5% a year until 1986, when he ultimately retires

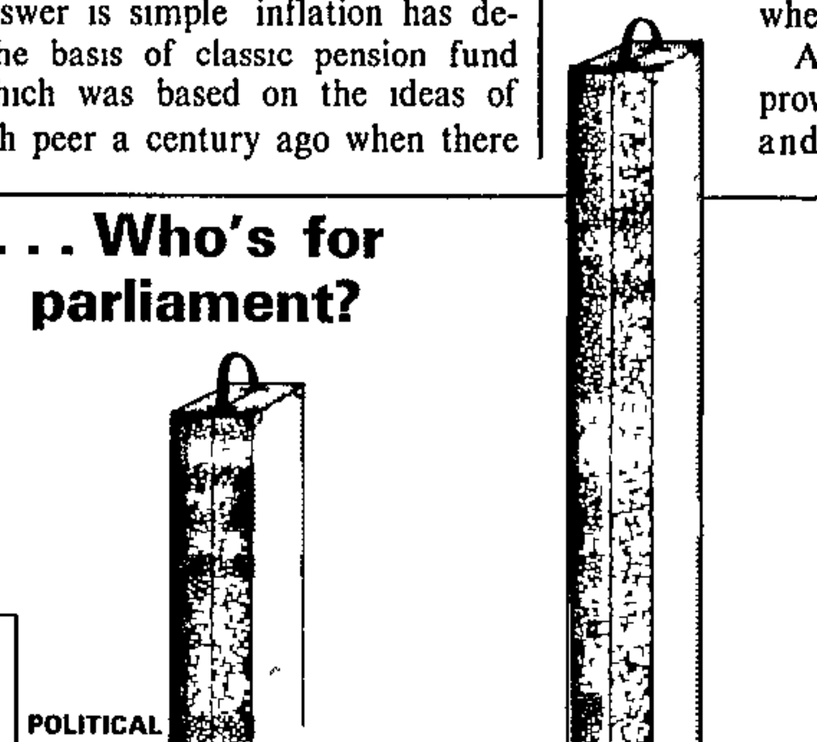
A typical private fund would provide a 2%/year accrual rate, and the employee's salary would be averaged for retirement over his last three working years

On this basis the private fund would produce a pension of R852 a month, or, assuming a commutation factor of 10 1, a lump sum of R34 080, and a remaining pension of R568 a month

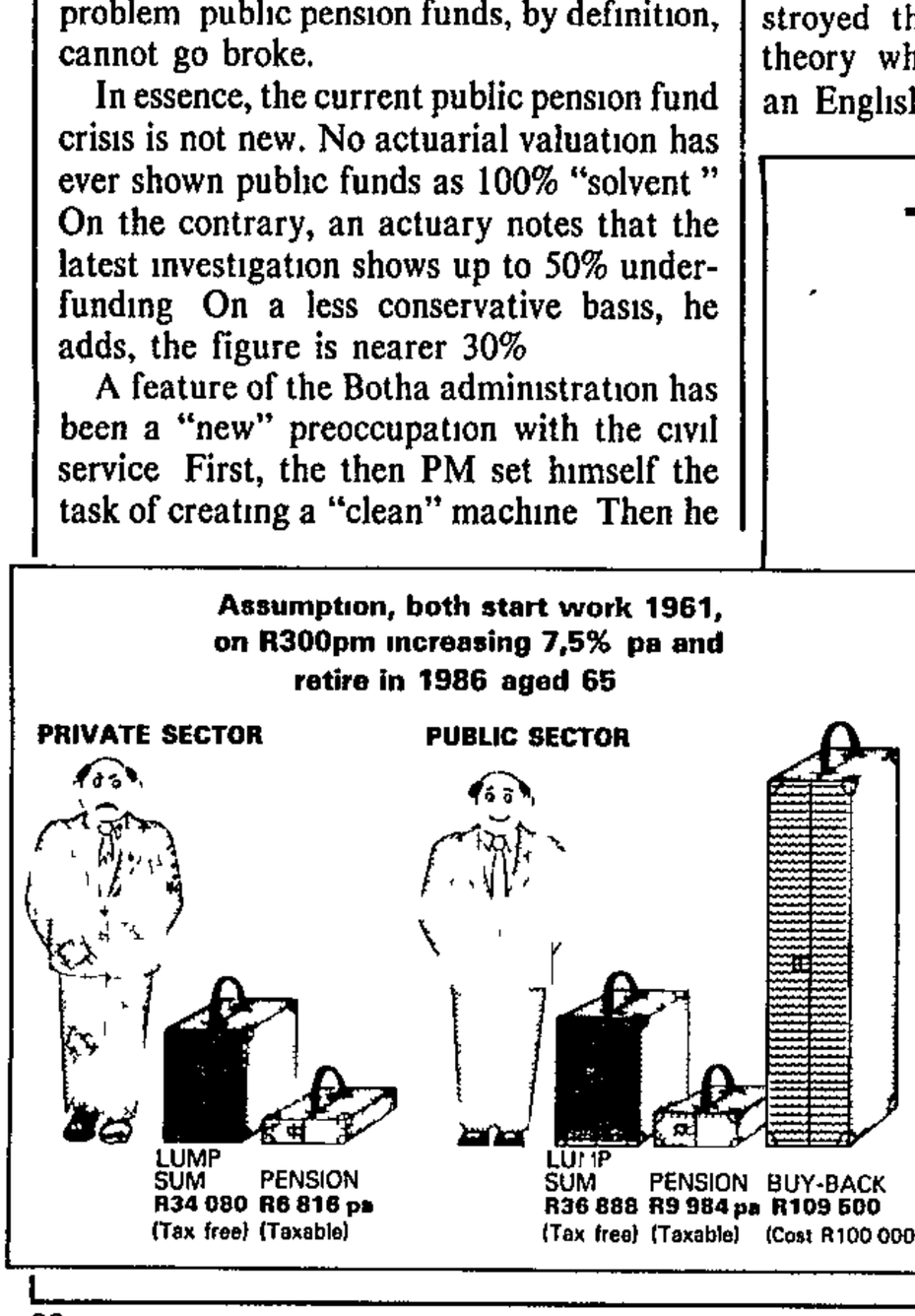
The same employee in the public sector would receive a gratuity (lump sum) of 6,72% for each year of service of his *actual* annualised pay on the last day before retirement — equal to R36 888

He would be paid, in addition, a pension based on the formula of 1/55th of each year of service of final

. . . Who's for parliament?



Assumption, both start work 1961, on R300pm increasing 7,5% pa and retire in 1986 aged 65



5/9/86

nergency: Court rules
out 'oppressive' laws

252 NATAL-MERC.

Pietermaritzburg Bureau

A FULL Bench of the Supreme Court, Pietermaritzburg, struck down two 'far-reaching and oppressive' emergency regulations relating to the seizure and confiscation of newspapers, in a unanimous judgment yesterday.

Mr Justice Leon, with Mr Justice Kumleben and Mr Justice Nienaber concurring, declared Regulations 11 and 12 of the emergency regulations published in the Government Gazette on June 12, as amended, to be void and of no force and effect in law.

The Judges also ruled Regulations 7 (1) d and 10 (b) to be void

The Full Bench further declared the orders issued in terms of Regulation 7 on June 16 and June 21 to be void and of no force and effect

Natal Newspapers, the Natal Witness, the Argus Printing and Publishing Company and South African Associated Newspapers brought an urgent application against President Botha, the Government, the Minister of Law and Order and the Commissioner of the South African Police last month, challenging six emergency regulations, Regulations seven to 12

In his 55-page judgment, Mr Justice Leon dealt at length with the provisions of Regulation 11, as amended (which says the Minister of Law and Order or a commissioned officer may seize a publication which in his opinion contains a subversive statement) and Regulation 12, which relates to the seizure and confiscation of publications of a subversive nature

'Objectionable'

The Judges saw the provisions of Regulation 11 as 'objectionable and unduly excessive' for a number of reasons

Mr Justice Leon said the applicants had explained the financial loss and other prejudice they would inevitably suffer should but one edition of a daily paper be seized

The definition of 'publication' in the regulation made not only newspaper proprietors but other people vulnerable to seizure of their publications and perhaps financial ruin — for instance, the author of a book

Mr Justice Leon added that an 'unfettered and unlimited power' was conferred on unspecified people

What was more, his right to do so was not determined or circumscribed by any objective yardstick, the Judge said

Mr Justice Leon said the Court had chosen to base its decision on the validity of this regulation 'on the simple ground that its provisions are so far reaching and its consequences so drastic, particularly when viewed in relation to the purpose it is sought to serve, that the legislature could never have contemplated that such a measure be countenanced'

The Judge said the Court's reasons for holding Regulation 11 to be ultra vires applied with equal force to Regulation 12

'Indeed, the latter regulation is much more far-reaching and oppressive than the former,' he said, adding later that it was also 'far more drastic in its consequences'

Regulation 12 (1) was not limited to subversive publications but extended to any publication containing any matter which in the minister's opinion was subversive

The Judges observed that a contravention of Regulation 12 (2) was punishable in terms of Regulation 14, which provided for a fine of up to R20 000 or imprisonment of up to 10 years, or for imprisonment without the option of a fine

They considered that Regulation 12 was ultra vires because the minister was given greater powers than the State President himself was given under the Act

Uncertainty

It was also void for uncertainty

Referring earlier in his judgment to sub-regulation 10 (b), which makes it an offence for any person to possess any subversive statement, Mr Justice Leon said the consequences of its application were 'so far-reaching and horrendous' that the Court had to conclude that they could never have been intended nor would be countenanced by Parliament

The Judges considered that the applicants' attack on the validity of Regulation 9 — which relates to the prohibition of the taking or publishing of photographs of unrest — failed

Mr Justice Leon concluded that the applicants had been substantially successful and were entitled to their costs

Newspapers better off but by no means free, says prof

Mercury Reporter

PROF Tony Mathews, head of the University of Natal's Law Department, said yesterday that the judgment in the Pietermaritzburg Supreme Court did not overtake the new gazetting of Section 7 (1) of the emergency regulations on Wednesday

'Although it is a substantial victory for the Press, one must be disappointed that the regulation dealing with visual and sound material has been declared valid

'Newspapers are now considerably better off, but they are by no means free to report independently on the emergency and the related events This means that the security forces are not publicly accountable, even after this judgment,' he said

'What is of particular importance is the part of the judgment which invalidates the clauses which authorise the minister to seize newspapers or to prevent newspapers from being published

'For that, South Africans should be grateful'

Although the Court had gone just about as far as it could, it was unfortunate that the regulations which allowed the Commissioner of Police to keep journalists out of unrest areas and to prohibit news or comment about the conduct of the security forces had been upheld, Prof Mathews said

'Newspapers will once again have to refer to the Bureau for Information'

Mr Stephen Mulholland, SAAN's managing director, said the company was 'delighted' with the Supreme Court decision

Only 5 Zolani children jailed

Staff Reporter

THE Attorney General of the Cape, Mr D J Rossouw, said yesterday that only five, and not 14, of the 33 residents of Zolani, Ashton, who were sentenced on Tuesday to a total of 258 years' jail for public violence were minors

Mr Rossouw said he had investigated the sentences after being "inundated" with calls following a Cape Times report on Wednesday which reported the sentences

He said that once the birth certificates of the accused had been examined, it emerged that the youngest accused, aged 16, had been sentenced to seven cuts with a light cane.

Four 17-year-olds were sentenced to seven years in jail each The magistrate, Mr A J van Wyk, had used the ages reflected on the birth certificates for the purpose of sentence

Mr Rossouw said the ages of the accused recorded on the charge sheet used by the magistrate, which was given to the Cape Times by the prosecutor, Mr W Bouwer, had been incorrect

"Those were apparently rule of thumb ages, and were not the proven ages," he said

He said the Cape Times had been correct in using the charge sheet as its source of information and the fact that the ages had not been amended on the charge sheet was "unfortunate".

Mr Rossouw said an accused who had given his age as 13 was proved to be 18 once his birth certificate was produced, and another who had given his age as 16 was proved to be 23.

SOWETAN
Daily Mirror

Funeral ban 'invalid'

THE order banning the holding of a mass funeral for the Soweto unrest victims is invalid in terms of the judgment handed down by the full bench of the Natal Supreme Court, according to legal opinion.

The order was issued in terms of Regulation 7 (d), which was found to be invalid by the court. Legal opinion is that this ruling was binding throughout the country unless, or until, a judgment to the contrary is given.

Newspapers win court battle

EMERGENCY powers which allow the Minister of Law and Order to seize and close down any publication which he feels contains a subversive statement have been declared invalid by a Full Bench of the Natal Supreme Court.

In a judgment handed down yesterday by Mr Justice van Heerden, the Full Bench consisting of Mr Justice Leon, Mr Justice Kumleben and Mr Justice Nienaber found regulations 11 and 12 to be void and without force and effect in law

The judgment described emergency regulations related to the Press as "objectionable" and "unduly excessive"

Regulation 7 (1) (d), which authorises the Commissioner of Police to make orders related to anything which in his opinion is necessary for maintaining public order or terminating the state of emergency, was also declared void

The Full Bench also found that Regulation 10 (b) which prohibits the possession of a subversive statement was void and without force and effect in law

The urgent application challenging emergency regulations 7 to 12 was brought last month by South African Associated Newspapers, The Argus Company, Natal Newspapers and the *Natal Witness* against the State President, the Government the Minister of Law and Order and the Commissioner of Police.

In the 54-page

To Page 2

Newspapers win in court

From Page 1

judgment the judges said Regulation D contained the phrase "in his opinion"

They said that the phrase was coupled with a reiteration in substantially similar terms of the powers and purposes of the enabling section This meant that the State President in effect vested the commissioner with the discretion to decide for himself what was necessary and expedient for the maintenance of public order, public safety and the termination of the state of emergency

The judges said the commissioner was also given a free hand to decide himself what form and in respect of what matters action ought to be taken

The range of matters on which he could issue orders was not restricted provided he considered it expedient

The judge said they had considered whether the phrase "in his opinion" could be legitimately removed from the section but had concluded that it could not be

Dealing with regulation 10 (b) the judges said this sub-regulation had to be struck down

They said the consequences of its application were so far reaching and horrendous that Parliament could never have intended or countenanced it

"The impact of Section 10 (b) is particularly severe for newspapers in view of the fact that such newspapers have archives and libraries in which no doubt there are old copies containing reports which were lawful at the time but now contained subversive statements"

The judges said Regulation 11, which allowed the Minister of Law and Order or a person authorised by him to seize a publication if in his opinion it contained a subversive statement was objectionable and unduly excessive

They said that the Minister's right to do so was not determined by any objective yardstick

It was sufficient that he was of the opinion that a publication contained a subversive statement

The judges said it also entitled him to seize any publication which in his view contained any other information which might be detrimental to the safety of the public

"One readily accepts that it may be necessary to take prompt action to avoid the publication of subversive matter and that suitable regulations to permit this may be necessary This regulation, however, goes much too far"

Interests

The judges said Regulation 12 went far beond Press censorship because it introduced catastrophic consequences far out of proportion to the act involved and to the interests of public safety which the measure was intended to secure

The judges said Regulation 12 was far more drastic in its consequences than Regulation 11 because if the Minister found one issue of a newspaper or publication to contain what he believed was a subversive statement he could seize all future issues and thus close down a newspaper permanently

Orders issued by the Commissioner of Police in terms of Regulation 7 on June 16 and 21 which prohibited the media from reporting on any unrest matters except with his permission were also found to be void and of no force and effect in law

The State President and his co-respondent were ordered to pay the costs of the application

E Cape judges uphold detentions

By FRANZ KRUGER AND JO-ANN BEKKER

A FULL bench of the Grahamstown Supreme Court yesterday found the Emergency regulations' detention provisions valid and upheld the detention of the seven applicants, including three freelance journalists

The ruling comes days before the Bloemfontein Appeal Court is expected to decide on earlier conflicting judgements by Natal courts on the legality of detentions under the State of Emergency.

Meanwhile, applications for the release of detainees have been postponed in the Transvaal, after a Pretoria Supreme Court judge indicated detention-related applications would not be heard until after the Bloemfontein ruling.

The seven detainees who applied to the Grahamstown Supreme Court for their release included Mike Loewe, who runs a freelance news agency in Port Elizabeth and contributes regularly to the Weekly Mail, and freelance journalists Phila Ngqumba and Mxolisi Jackson Fuzile, who work together in a small news agency in King William's Town.

The other applicants, all of King William's Town, were the Reverend Colin Jooste, a Congregational Church minister and the chairman of the Border Council of Churches' executive, Gary Damons, a schoolboy, Prince Mhamhe and Brian Osteridge.

In an 88-page judgement handed down in Grahamstown, Justice Kannemeyer said the detention clauses could not be set aside on grounds of unreasonableness or vagueness, or that Parliament could never have intended the State President to make such regulations.

His ruling is the first Eastern Cape decision on the detention regulations.

It follows the contradictory judgements delivered by Natal courts: the Durban Supreme Court decision which ordered the release of United Democratic Front publicity secretary Lechesa Tsenoli, on the grounds that the State President had acted beyond his powers in promulgating the detention provisions; and the Pietermaritzburg Supreme Court, which upheld the detention of church worker Peter Kerchhoff, and said its Durban colleagues had erred in striking down the detention provisions.

Kannemeyer said he found himself in agreement with the ruling in the Kerchoff case, as the other was "based upon grammatical reasoning which, in my view, does not give effect to the intention of the legislature".

Dealing with the applicants one by one, Kannemeyer found that in each case there was no proof the arresting officer had acted in bad faith.

Kannemeyer accordingly found their detentions lawful and dismissed the application with costs. Jooste was released before yesterday's ruling.

Meanwhile, lawyers acting for detained Bishop Sigisbert Ndandwe told the Weekly Mail Justice TJ van der Walt of the Pretoria Supreme Court had indicated it would be pointless to consider Ndandwe's application for his release, or other detainees' applications, since the Appellate Division would be pronouncing on the validity of all detentions in the near future.

Other applications for the release of detainees have accordingly been postponed, the lawyers said.

The Bloemfontein Appeal Court is expected to hear argument on the Tsenoli and Kerchhoff cases on Wednesday.

Court rules emergency detention laws valid

Own Correspondent

GRAHAMSTOWN — A full bench of the Supreme Court ruled yesterday the detention provisions of the emergency regulations valid.

This follows the conflicting judgments delivered by the Supreme Courts in Durban and Maritzburg recently. Both Natal cases are on appeal, and the Appellate Division in Bloemfontein is expected to hear argument on Wednesday.

In an 88-page judgment handed down yesterday, Mr Justice Kannemeyer considered both Natal cases and found the regulations valid.

At issue were applications by seven emergency detainees for their release. The seven include three freelance journalists, Phila Ngqumba and Mxolisi Jackson Fuzile, both operating a small news agency in King William's Town, and Mike Loewe, of Port Elizabeth.

The other applicants were Congregational Church minister and chairman of the Border Council of Churches executive, the Rev Colin Jooste, who has already been released, Gary Damons, a schoolboy, Prince Mhamhe and Brian Osteridge, all of King William's Town.

Mr Justice Kannemeyer said he found himself in agreement with the ruling in the Maritzburg case, as the other was "based upon grammatical reasoning which in my view, does not give effect to the intention of the legislature".

He found the sections could not be set aside on grounds of unreasonableness, or of vagueness, or on the grounds that Parliament could never have intended the State President to make such regulations.

Cape Times 6/9/86

Ages of jailed minors: A correction

THE Cape Times believes it is imperative in fairness to all concerned to draw prominent attention to the fact that a seriously misleading impression was given by a report on the front page of the newspaper on September 3 headed "Children jailed for public violence", which said that 32 residents of Zolani township, Ashton, including 14 children aged 13 to 17, were sentenced to terms of imprisonment totalling 258 years for public violence

As reported yesterday, the factual position is that only five of the accused were minors, one of them a 16-year-old who was sentenced to seven cuts with a light cane, and four 17-year-olds who were sentenced to seven years in jail each

Accused

The error in the report, as noted yesterday, was due to the fact that the ages of the accused as given on the charge sheet before the court were incorrect. The charge sheet is invariably used by the press as the source of information about the accused and the charges before the court.

It has been brought to the attention of the Cape Times, however, that the correct ages of the accused were admitted by the defence in the course of the court proceedings, which evidence was unfortunately missed by the Cape Times reporter The ages were not amended on the charge sheet.

The Cape Times, while noting that the question of jailing 17-year-olds remains highly controversial, recognizes that front-page prominence was given to the original report suggesting that 14 children aged from 13 to 17 were sentenced to terms of imprisonment and that the report has aroused widespread reaction and so hastens to put the record straight with appropriate prominence.

Norweto row may end in court

THE battle against Norweto, the proposed new black township to be built north of Johannesburg, may now be fought in court.

By LEN MASEKO

This emerged at a protest meeting called at the weekend by the Greenbelt Action Committee, which has launched a fund-raising campaign to sponsor its fight against the development.

The meeting, held at Fourways in Sandton, was told that the committee needed at least R¼-million in this campaign. The committee had called the meeting to seek support from residents living in the area earmarked for the development as well as those from neighbouring suburbs such as Bryanston and Sandton.

The Government's plan for the new township came under attack at the meeting, which resolved to send 2 000 protest letters as well as petition the Department of Constitutional Affairs.

Greenbelt Action Committee member, Mr Nick Taylor, told the meeting: "We have been accused of being racists, yet the contrary is very much the case."

To support this, he pointed to the community's "declaration of intent", which read: "We believe in the future of a dynamic society formed along non-racial lines. We choose to open our own community to all races and challenge all other communities to make a choice for peace, integrity and true democracy."

Ultra-right

The meeting also heard that various political groups had thrown their weight behind the white community in its protest against Norweto, including ultra-right political organisations.

Norweto, now dubbed Huenisstad after Constitutional Affairs Minister Chris Heunis, is to be home for about 250 000 people. About 45 000 houses are to be built in the 3 000-hectare lot.

3 ANC men to hang

STAR 8/9/86

252

Pretoria Bureau

Three members of the African National Congress — including the Amanzimtoti bomber — are due to go to the gallows tomorrow.

Some activist groups have asked for their execution to be stayed

Andrew Sibusiso Zondo was sentenced to death for his part in planting the limpet mine in the Amanzimtoti shopping centre in December last year Five people died and many others were injured in the explosion

The two others, Sipho Bridget Xulu and Clarence Lucky Payi, will hang for the assassination of Mr Benjamin Langa of Georgetown near Maritzburg.

252

PW halts Namibia murder trial

BRIAN JONES

WINDHOEK — The Namibian cabinet has stopped the murder trial of four SADF members for the alleged beating of a man to death last November Acting on behalf of State President P W Botha, the cabinet issued a certificate in terms of the Defence Act halting the trial, but distanced itself from the action and asked the President for the legislation to be changed so that it no longer had to be involved in issuing such certificates on his behalf

The President's action in stopping the trial at the end of July has focused attention on a little-used — but all-powerful — section of the Defence Act which gives him the power to halt trials involving SADF members if he believes they acted in good faith and "for the purposes of the prevention and suppression of terrorism in an operational area"

The move sparked a wave of protest and condemnation from legal and church circles in Namibia and SA

The case arose from allegations that Frans Uapota, a 48-year-old father of five, had been beaten, kicked and assaulted by SADF members and had died as a result According to a sworn statement by Uapota's widow, she and her husband had been visiting friends on November 30 last year near Ohangwena, in Owamboland

She said that during the evening "white soldiers suddenly arrived, ordered everybody to lie down and kicked and beat us, and then attacked my husband like a pack of wild dogs"

In evidence in a statement by the SWA Bar Council it was alleged that she saw her husband being "dragged in an almost lifeless or unconscious form away to nearby bushes, disappearing from sight"

According to the evidence, police brought the body of her husband for identification the next day. "She was able to discern a clear mark around the deceased's neck, similar to that which a rope would leave," it was alleged

Four SADF members — C J Harmse, J Fernando, F J Herbs and D F Enslin — were due to appear in court in northern Namibia on murder charges when the certificate issued by the Namibian cabinet halted the trial The courts have no power to challenge the halting or prohibition of a trial in terms of the Defence Act

The SWA Bar Council reacted to the State President's action by calling it a "rape of justice" and a cover-up in its most naked form" The cancellation of the court proceedings made a mockery of the Bill of Rights of the Namibian government

The SA Bar Council said it had repeatedly expressed its opposition to legislation excluding the jurisdiction of the courts "In the present case the Attorney-General of SWA has, on facts contained in an investigation docket, decided to prosecute the Defence Force members for murder

"To interfere with that discretion and remove the matter from the jurisdiction of the Supreme Court gives rise to speculation and resentment which is far more damaging than an open investigation and finding on the facts in a court of law."

Replying to a question in Parliament on Tuesday, President Botha said he had been of the opinion it was not in the national interest that the proceedings be continued

Three ANC men hanged

Eve Post 9/9/86

252

PRETORIA — Three African National Congress members convicted of murder were hanged today at Pretoria Prison, a Supreme Court official said

One of the three members of the ANC, Andrew Sibusiso Zondo, was sentenced to death for his part in planting the limpet mine in an Amanzimtoti shopping centre last December Five people died in the blast

The other two, Sipho Bridget Xulu and Clarence Lucky Payi, were convicted for the murder in Georgetown, Natal, of a fellow ANC member, Mr Benjamin Langa, whom they suspected of being an informer

The United Democratic Front yesterday appealed to the State President, Mr P W Botha, to reprieve the three men

The UDF said in a statement the three were "not ordinary bloodthirsty criminals but prisoners of war, who have a right to be accorded such status as accorded under the Geneva Convention".

The UDF reminded Mr Botha he had recently granted a reprieve to a group of SA Defence Force men responsible for the death of a civilian in SWA/Namibia.

"Going on with the hanging can only be seen as immoral and unjust

"There is nothing in this act that promotes reconciliation," it said — Sapa

'Toti bomber goes to gallows for killing 5

'ANC 3 hang as pleas for clemency fail

SMM

252

9/9/80.

By Kym Hamilton and Maokeng Kgwete, Pretoria Bureau

Three African National Congress killers were among six men hanged at Pretoria Central Prison today.

One was Andrew Sibusiso Zondo, who was sentenced to death for planting a limpet mine in a shopping centre in Amanzimtoti last December last year Five people were killed and many injured by the blast

The other two were Sipho Bridget Xulu and Clarence Lucky Payi, convicted for the murder of Mr Benjamin Langa of Georgetown near Maritzburg in 1984

Mr Langa was gunned down at his home According to evidence during the trial, Xulu and Payi had been told to kill Mr Langa by the ANC

Local anti-apartheid organisations and Amnesty International had appealed to the State President to grant the three men clemency and give them prisoner-of-war status

The Sheriff of Pretoria, Mr Melt van der Westhuisen, confirmed that the executions took place on schedule at 7 am

The other three men executed were

Toto Swapi, convicted of murder by the East London Supreme Court in February 1983, Ernest Tapiyiana, convicted of murder by the Springs Circuit Court in February 1984, and Joseph Junior Basa, convicted of murder by the Maritzburg Supreme Court on October 16 1985

The ANC trio had decided not to seek a last-minute stay of executions "because they were not fighting a legal battle but a political one", according to relatives

The three were visited on death row at Pretoria Central Prison yesterday afternoon by their families and lawyer, Mr Bheka Shezi

Afterwards, Mr Shezi said they were in good spirits and determined not to attempt an 11th-hour fight to stay their executions

The Department of Justice issued a statement today saying there was no justification for commuting the death sentences Cognisance had been taken of requests from local and international bodies for clemency, but in view of the "horrendous murders" there was no justification for commuting the court's sentences

Reprieve calls

Mr Shezi said Zondo had not been prepared to beg the State President to spare his life

He told the lawyer that if he had wanted to escape the gallows he would have accepted an offer from the State to testify against others facing similair charges

A relative of Xulu said the family were pained that the State President had not found it possible to reprieve the men

The United Democratic Front had called on President Botha to order an immediate reprieve for the ANC men

Saying they were not "ordinary blood-thirsty criminals", the UDF argued that they should be accorded prisoner-of-war status in terms of the Geneva Convention

It added that hanging the three men would only be seen as immoral and unjust "There is nothing in this act that promotes reconciliation Rather than hanging those fighting for freedom, the Government should be meeting the demands of the people"

World-wide campaign against 'abuses'

Amnesty focuses on human rights in South Africa

9/9/86. STAR

252

Amnesty International has begun a world-wide campaign against alleged human rights violations in South Africa

"Since frequent violations of basic human rights are continuously being reported from your country, Amnesty International has started an international campaign against the violations of human rights in the Republic of South Africa," says an Amnesty International statement released in Johannesburg yesterday

Amnesty International activities in South Africa include appeals to the Government to abstain from human rights violations, urging authorities to release prisoners of conscience

"In addition we inform the public world-wide about what is going on in the Republic of South Africa regarding human rights violations," said the statement

A report by Amnesty International on South Africa in March this year called on the Government to take steps to protect basic human rights

There had been an escalation of human rights violations in the country since the publication of the report, Amnesty International said

The new emergency regulations in force since June 12 "give further way to an abuse of power by the police and the security forces"

Among those detained since June 12 were clergymen, trade union officials, members of political organisations opposed to the Government, lawyers, doctors, students, teachers and community leaders, the organisation said

In its report, Amnesty International called on the Government, among other things, to

- Immediately release all "prisoners of conscience" (These included people sentenced to prison terms, detained without trial, banned or banished)
- Abolish all legislation which led to imprisonment on the basis of race

Curb police powers

- Release all political detainees unless they were to be brought fairly and promptly to trial for criminal offences
- Guarantee all trials of political prisoners were conducted according to internationally recognised standards
- Curb police powers of arbitrary arrest
- Act immediately to "stop torture and ill-treatment of detainees and other prisoners by withdrawing the immunity from prosecution given in advance to police and security forces"
- Urgently establish a judicial commission of inquiry into alleged torture and ill-treatment and to investigate the deaths of political detainees
- Establish an independent judicial inquiry into allegations that recent attacks on government critics had been carried out by agents of the Government in an official capacity or on their own account
- Investigate thoroughly all cases of killings of civilians by police — Sapa

Conflicting Natal cases heard

Outcome of appeals will effect detainees

The Appeal Court in Bloemfontein was hearing appeals today against two conflicting Natal Supreme Court judgments which materially affect the status of emergency detainees.

The first was the appeal by the State President and the Ministers of Law and Order and of Justice against a judgment ordering the release from detention of Mr Solomon Lechesa Tsenoli, the Natal publicity secretary of the United Democratic Front

The Durban and Coast Local Division made this order on the basis that the State President had acted beyond his powers when he promulgated emergency regulations 3(1) and 3(3)

In a judgment given on August 11, the court declared those regulations invalid, but three days later the Natal Supreme Court in Maritzburg rejected the Tsenoli decision and refused an application for the release of Mr Peter Kerchhoff, the organiser of the Pietermaritzburg Association for Christian Social Awareness (Pacsa)

If the Appellate Division upholds the Durban and Coast Local Supreme Court's decision that Mr Tsenoli's detention was unlawful, it is likely that courts in every province will be flooded with applications for the release of emergency detainees

Pace wants h

Teachers at Pace College held a meeti
unanimously decided that the suspend
Oswald Mtshali, should report for work t

A spokesman for the teachers said the
that the school would not be able to oper
that pupils needed to get an explanation
sion

Schools re-opened today

Mr Mtshali resigned in August "due
members of the SADF and Pace students

Mr Mtshali's resignation was accep
American Chamber of Commerce (Amch

252 DD 10/7/86

Death sentence on ANC three carried out

PRETORIA — Three African National Congress members convicted of murder were hanged at Pretoria Prison yesterday morning, the Supreme Court Registrar, Mr Martin van der Westhuizen, said

Andrew Zondo, one of the three, was sentenced to death for taking part in a bomb attack on an Amanzimtoti shopping centre last December in which five people died

The other two, Sipho Xulu and Clarence Payi, were convicted for the murder of an alleged fellow ANC member

Meanwhile, it has emerged that the United Nations Security Council decided privately against issuing a clemency plea on behalf of Xulu and Payi because Britain and the United States objected

A council source said Britain and the United States argued during closed-door consultations that it was inappropriate to intervene in this case, although they had joined in previous appeals where they felt there were extenuating circumstances or sufficient doubt

The source said council members had previously failed to agree to issue a clemency statement on behalf of Zondo — Sapa-RNS

252 SHAB STAR 11/9/86

82 hanged, 209 wait in 'death row'

By Kym Hamilton,
Pretoria Bureau

So far this year 82 people — including three ANC members — have died on the gallows in Pretoria.

And a total of 209 convicted persons are at present waiting to hear their final fate on death row at the Pretoria Central Prison

All executions within South Africa take place here.

On Tuesday six men were hanged — including the Amanmtoti bomber, Andrew Sibuso Zondo and two other convicted ANC killers, Sipho Bridget Xulu and Clarence Lucky Payi.

A seventh man was reprieved from the gallows at the 11th hour following a petition to the Minister of Justice. An urgent application for a stay of execution in the Pretoria Supreme Court earlier in the day was dismissed

In 1985 a total of 137 people were hanged in South Africa, the majority receiving the death sentence for murder.

Since April 1979 a total of eight convicted ANC killers have been executed by the South African authorities. These incude:

- Solomon Mahlangu, hanged in 1979 for his part in the shootings in a central Johannesburg warehouse during which two people died.
- In June 1983, the "Moroka Three", Thelle Simon Mogoerane, Jerry Semano Mosololi and Marcus Thabo Motaung were hanged for several terror attacks on police stations in Pretoria and Soweto and the sabotage of a Pretoria sub-station and the New Canada railway line
- ANC assassin Benjamin Moloise was executed in October last year after a 28-month legal battle. Moloise was convicted of murdering a Mamelodi security policeman.

Among those still on death row waiting to hear the outcome of various petitions to the judiciary and the State President are six men sentenced to death in December 1985 for the murder of the Lekoa deputy mayor, Mr Kuzwayo Jacob Dlamini.

In June this year, six Modderbee prisoners who were members of the notorious prison "26 Gang" were sentenced to death for the killing of a fellow inmate.

More recently, Johannes Stephanus Delpoort was given the death sentence by the Free State Supreme Court for the murder of a four-year-old girl

The court heard that he threw the child into the Wilge River at Frankfort after sexually assaulting her.

Others on death row include the two men sentenced to death in the "boot murder"

Schalk Burger (20) and George Scheepers (21) were both given the double death sentence for the murder and rape of a young nurse, Miss Ginny Goitsione. Both men were granted leave to appeal

Top civil servant lambastes critics of State pensions

Political Reporter

THE president of the Public Servants' Association of South Africa, Dr Colin Cameron, yesterday lashed out at critics of State pensions and said the payouts were adequate but not excessive.

Several people have blamed large 'golden handshakes' for State employees for leaving the largest State pension scheme under-funded

Speaking after the PSA's congress in Durban, Dr Cameron said the PSA deplored the tendency to cite isolated and individual examples and then construe them as representing the whole picture

'This gives a one-sided picture and verges on being grossly untruthful

'Pensions should be seen as part of a total remuneration package One aspect of the package is being highlighted, which is unfair

'None of these critics has divulged details of their own pension schemes They cite figures out of context which gives a wrong impression These are not balanced with equivalent schemes

'The whole vendetta against the pension fund is distorted'

Dr Cameron said the three-day congress had put the delegates' minds at rest about the prospective privatisation of certain Government activities

'It was clear that the whole privatisation programme is being handled in a very circumspect way'

He said the congress decided the PSA should ask the authorities for a general salary increase to off-set the effects of inflation last year

He said the request would be that funds be made available in the next financial year

● See Editorial Opinion

DD 11/9/86 252

Court drops bid on pupil registration

JOHANNESBURG — An urgent application brought before the Rand Supreme Court by the National Education Crisis Committee (NECC) and two Soweto parents challenging the cumpulsory registration of black school children at public schools, was yesterday dismissed

The deputy judge-president of the Transvaal Division, Mr Justice Coetzee, said in his written judgement that the applicants did not have the right to challenge the promulgation in the Government Gazette on July 13

Meanwhile the Department of Education and Training (DET) is still to draw up a list of schools that are to be closed in Soweto

The chief liaison officer for the DET, Mr Job Schoeman, said officials would still investigate class attendance before deciding on the number of schools to be closed

● Pupils in Port Elizabeth's townships trickled back to classes in boycott-hit post-primary schools yesterday, but walked out en masse from the Ithembelihle High School in New Brighton

The developments yesterday coincided with a statement from Mr Schoeman that no schools in Port Elizabeth would be closed in terms of Tuesday's announcement, but that 20 schools in the Eastern Cape yet to be identified, would be closed

Schools that were closed at present were in Duncan Village, Queenstown, Grahamstown, Fort Beaufort, Cradock, Graaff-Reinet, Kirkwood, Addo, Humansdorp and Hankey

Permanent teachers at these schools would be transferred or sent for in-service training Temporary staff would be retrenched

However, Mr Schoeman said yesterday: "We are still looking at the situation in Port Elizabeth

"Where re-registration had taken place schooling will continue but where the attendance drops below 80 (per cent) schools will have to be closed"

The walkout at Ithembelihle followed a demand for identity cards

News of the demand for identity documents was received with "shock" by the secretary general of the Inter-denominational African Minister's Association (Idamasa), Mr Patrick Pasha, who claimed DET had undertaken not to demand identity documents from pupils

There was a good turnout at other Port Elizabeth schools where pupils said they were not instructed to produce identity cards. — DDC-Sapa

NECC statement, page 17

Emergency detainees wait for decision

Judgment on appeals reserved

STAR 11/9/86

By Estelle Trengove

The Appeal Court in Bloemfontein has reserved judgment in a hearing which could affect the status of thousands of emergency detainees countrywide.

The Appellate Division yesterday heard the appeals — in a special session due to the urgency of the matter — against two conflicting judgments on the emergency regulations pertaining to arrests and detentions. It is not known when the judgment will be given.

In the two opposing Natal Full Bench decisions, one court ruled that clauses 3(1) and 3(3) of the Emergency Regulations were invalid and ordered the release of Mr Solomon Lechesa Tsenoli. The other court rejected this decision and refused to make a similar order for the release of Mr Peter Kerchhoff.

If the Appeal Court rules that regulations 3(1) and 3(3) are invalid, the implication would be that all emergency detainees are being held unlawfully. All courts in the country will be bound by the Appelate Division ruling.

The Natal judgments were made last month. Had the Appellate Division not heard the appeals on an urgent basis, it could have taken up to two years to come to court in the normal course of events.

The State President had been given "wide and awesome powers by the legislature to enable him to cope with the situation in South Africa", council representing the State President, Mr P W Botha, the Minister of Law and Order, Mr Louis le Grange, and the Minister of Justice, Mr Kobie Coetsee, Mr J H Combrink SC, argued in defence of the regulations.

He said the court was dealing with a discretion which was the widest he had come across in case law.

Council representing the two Ministers in the Kerchhoff appeal, Mr J H Conradie SC, argued that the Appeal Court could not limit the State President's powers.

"The State President must act bona fide and he cannot make regulations that Parliament would never have contemplated. Other than that there are no restrictions on his powers," Mr Conradie said.

Council representing Mr Tsenoli and Mr Kerchhoff, Mr M J D Wallis SC argued that the State President had delegated power improperly in the emergency regulations which governed the arrest of detainees.

To illustrate this he sketched the following hypothetical situation: If a detainee brought an application for his release, supported by an affidavit made by Mr P W Botha himself, saying that he knew the detainee and did not regard his detention necessary, yet a constable said that in his opinion the detention was necessary, then the application would fail.

Appearances on the Bench were the Chief Justice, Mr Justice P J Rabie, Mr Justice E L Jansen, Mr Justice M M Corbett, Mr Justice C P Joubert, Mr Justice G Viljoen Mr M J D Wallis SC for Mr Tsenoli and Mr Kerchhoff was assisted by Mr R Seggie and Mr L Gering Mr J H Combrink SC for the State President, the Minister of Law and Order and the Minister of Justice in the Tsenoli case and Mr J H Conradie SC for the two Ministers in the Kerchhoff case, were both assisted by Mr R C Himstra

Why this rumpus over the hanging of three killers?

KHOTSO HOUSE
Mourners of all races sing Nkosi Sikelel' iAfrika at the conclusion of the memorial service for the hanged ANC trio
Picture WENDY SCHWEGMANN REUTER

WEEKLY MAIL 252 MAIL 12/9/86

The hanging of three men in Pretoria this week aroused international attention Why? None of the men denied the killings they were accused of But in an increasingly divided society, those who are bloodthirsty criminals to some, are martyrs to others PATRICK LAURENCE reports

THE hanging of six men in Pretoria on a single day is not particularly unusual in South Africa, where hanging has become almost commonplace

The execution of six men on Tuesday was given rather more attention by the media than normal because three were members of the African National Congress underground army, Umkhonto we Sizwe

The three men, Andrew Zondo, Sipho Xulu and Clarence Payi, were hanged for acts of murder, sharing the fate of three men whose murderous actions were not prompted by political considerations

The hanging of the ANC men brought the number of guerrillas executed since the black student rebellion of 1976 — which provided the ANC with a fresh supply of recruits — to eight

The execution of the six men on Tuesday brought the total number of people hanged in South Africa since the beginning of the year to 82, of whom 63 were black, 16 coloured and two white

The decision to hang the ANC killers on the same day and at the same time as three ordinary murderers reflects the bid by the authorities to deny special status to ANC men found guilty of murder

All eight guerrillas hanged since 1976 were convicted of murder The three executed in 1983 — Thello Mogoerane, Jerry Mosololi and Marcus Motaung — were, however, found guilty of treason as well

In a vain last-minute plea for the lives of Zondo, Xulu and Payi, the United Democratic Front insisted they were not "ordinary blood-thirsty criminals", arguing they should have been accorded prisoner-of-war status under the Geneva Convention

Asserting that their executions would be seen as unjust, the UDF said "Rather than hanging those fighting for freedom, the government should be meeting the demands of the people"

The UDF might have, but did not, recall the words of former Prime Minister DF Malan when he was pleading for the life of Robey Leibrandt, a pro Nazi activist sentenced to death during the Second World War

"If blood is spilt we make the future difficult," Malan declared "Blood that is spilt creates a deep gulf which, in the history of a people like ours, might be unbridgeable"

In calling on President PW Botha to exercise clemency and save Zondo, Xulu and Payi from the gallows, the UDF did draw attention to his decision to order the South African controlled interim administration in Namibia to withdraw charges of murder against four South African soldiers

The four white soldiers — CJ Harmse, SJ Herbst, DF Enslin and J Fernando — were charged with murder in connection with the death of Frans Upapota, a 48-year-old black man and father of five children

According to Upapota's widow, Victoria, the four soldiers attacked her husband "like a pack of wild dogs", beating and kicking him and butting him with their rifles.

Botha acted under the Defence Act, which provides for the trial of soldiers to be halted if they acted in good faith in "suppressing terrorism in an operational area'

The executed ANC trio — who, like the white conscripts in Namibia, were young men — described themselves as Umkhonto we Sizwe soldiers acting on orders from superiors

Zondo, the son of a minister of religion, planted a limpet mine in a supermarket in Amanzimtoti, near Durban, two days before Christmas last year Five people, all white, were killed in the explosion

Zondo, who was 19 at the time, told the trial court that he planted the bomb in retaliation for the gunning down of nine ANC cadres in Lesotho three days earlier

The assassins were disguised They carried weapons equipped with silencers The Lesotho government and the ANC had no hesitation in labelling them as commandos of the South African Defence Force

As Zondo put it "On 20 December 1985 the SADF attacked our people in Maseru Their action was so horrible that they did not even admit their crime" He was, he told the court, instructed by an ANC superior to retaliate

He claimed, however, that he planned to warn the management at the supermarket about the bomb in time to enable them to clear it of civilians The judge rejected his claim

Xulu, an ANC battalion commander, and Payi, an ANC commissar, were found guilty of shooting a fellow black man, Ben Langa, on the night of May 20, 1984

Langa, a former secretary general of the now banned South African Students' Organisation, recruited Xulu into the ANC

But according to Xulu's trial evidence, he and Payi were told by an ANC regional commander in Swaziland that Langa had betrayed the cause

At first he was incredulous — "I knew him as a comrade" — but then the regional commander informed him "Three Umkhonto soldiers were sent to Ben in Pietermaritzburg But those people were arrested A short time went by and Ben Langa sent a message to the effect that they were safe"

Later Xulu recalled going to Langa's home near Pietermaritzburg and entering his bedroom Xulu was armed with a Makarov pistol Payi carried a Luger pistol

Xulu recalled "Ben was standing there He looked at me As soon as he did, I fired a shot (hitting him in the chest) I went outside"

Later he wrote a coded message for transmission to his superiors It read "Mission executed Ben Langa eliminated on May 20 Ben is the guy who handed two comrades to the Boers'

Payi agreed in court that he, too, had fired at Langa and that the bullet 'struck him in the face' Asked how he felt, he replied "I felt I was going to fulfil orders"

Under cross-examination both assassins admitted they had no regrets

Xulu said "I killed Langa because I was performing a duty for which I had taken an oath to do" Payi said "As a soldier I had to execute the order I did not like what (Langa) had done"

The two men had orders to kill another alleged traitor to the ANC cause, Faith Matlaopone, a medical doctor Matlaopone had given evidence for the state in a security trial, Xulu said

Matlaopone was not killed because when they went to his house on the night of May 20 he was in bed with another person They feared that an innocent person might die if they opened fire

Xulu explained "My heart told me that I should not do so because there was another person inside" He admitted, however, that he did not check charges that Langa was a turncoat or give him a chance to explain before killing him

In an interview this week, Pius Langa, Ben Langa's brother, expressed sympathy with the families of Xulu and Payi "We can guess how they are feeeling We are against capital punishment'

On the charges that his brother was a police informer, he said "Those smears are unfounded It is a pity Ben can't answer for himself What will never be highlighted again is that the ANC has said it did not order the killing"

IN MY OPINION

JOEL MERVIS

'A very remarkable judgment'

The Natal Supreme Court has handed down its judgment in the case in which SA Associated Newspapers *(Saan)* the Argus Group, Natal Newspapers and the *Natal Mercury* challenged the emergency regulations relating to the press. Joel Mervis, a former *Sunday Times* editor, analyses the implications of the judgment.

Last week's decision by three Natal judges — Leon, Kumleben and Nienaber — declaring emergency laws affecting the press to be invalid, may come to be seen as a watershed in relations between the executive, parliament, the courts and the people

For a parallel one may need to go back about 30 years to the Appellate Division's dismissal of the notorious "High Court of Parliament" as void, invalid and of no effect.

The legal points in last week's Natal case were clear enough In drawing up the emergency regulations, the State President exceeded the powers granted to him by the Public Safety Act President Botha gave the Commissioner of Police a free hand to take whatever action he pleased, thereby granting to the commissioner greater powers than the president himself possessed

A regulation that possession of a subversive statement was an offence was described by the court as so far-reaching and horrendous as to be void and of no effect Regulations providing for the "seizure" of a newspaper and for closing down a newspaper were also declared invalid All these findings are explicit, and were reached after a careful and thorough scrutiny of the law

It is the implicit part of the judgment — the unspoken affirmation — that raises it to a summit of eminence One is irresistibly drawn to what appears to be some basic, fundamental assumptions of the court

The first would seem to be that although a court has no power to invalidate an Act of parliament, the court is nevertheless bound to ensure that parliament and the government exercise their sovereign power according to law

Running like a thread through the judgment was the concept that not only the law, but the rule of law, must be applied strictly and correctly What does rule of law entail? In a civilised community, based on natural justice, the rule of law demands the recognition and acceptance of civil liberties, of free speech, of respect (by the lawmaker) for the law, and of an unswerving allegiance (by the lawmaker) to the rule of law itself

One could add that the rule of law includes also a recognition of, and a respect for, the democratic process

The Natal judges, in my view, may not have been unmindful of these considerations as they went carefully through their task of a strict, formal, logical interpretation of the law

All these factors may possibly help people to realise that a court is not necessarily a cabal of austere, aloof intellectuals, far removed from the hurly-burly of life, delivering their judgments from some kind of cloistered academe

The Natal court, in its meticulous legal analysis, did not hesitate to speak out in fact as well as in law When the court described regulations as "so far-reaching and horrendous" it spoke its mind Significantly, it added that such regulations "could never have been intended, nor would be countenanced by parliament

That test — what parliament would or would not have intended — is applied on several occasions What it suggests is that the court puts parliament in the role of that well-known legal character, "a reasonable man"

Would "a reasonable man" have drawn up such regulations? If he would not have done so, one must assume parliament would not have done so either

One surmises, therefore, that the court might have had under consideration questions such as these would "a reasonable man" suppress free speech, or impose harsh and outrageous penalties on newspapers, or arm the Commissioner of Police with powers greater than those of the State President? Would "a reasonable man" give these his approval?

From these assessments and evaluations, the judgment gives the impression of having two prongs, one visible, the other not The visible prong interprets and sets out the law with abundant, convincing clarity The invisible prong would seem to accept that the rule of law, civil liberty, free speech, and the public's right to know, are an integral, inseparable part of the civilised, democratic process

Would it be right to suggest that it is the invisible prong which carries the real sting of this very remarkable judgment?

Emergency clauses declared invalid

12/8/86 Mercury

Court Reporter

IN A dramatic and far-ranging decision, a Full Bench of the Supreme Court in Durban yesterday freed the publicity secretary of the United Democratic Front who was being held held under the Emergency Regulations and declared two main clauses of the regulations to be invalid.

Mr Solomon Lechesa Tsenoli, in detention since June, had brought an urgent application seeking his release on the grounds that his detention was unlawful and without effect

The Full Bench comprised Mr Justice Friedman Mr Justice Leon and Mr Justice Wilson

The two clauses involved were Regulation 3 (1) and Regulation 3 (3) relating to detention and continued detention of persons held under the emergency

Yesterday's judgment was read by the Judge President, Mr Justice Milne, and handed down on behalf of Mr Justice Friedman who threw out the two regulations ruling that the State President had exceeded his powers

The Judge ordered that the respondents pay costs of the application

Leave to appeal by the respondents was granted

The Judge said the first respondent in the application, the State President, derived his power to make the regulations from Section 3 (1) (a) of the Public Safety Act.

'It is of course clear that in promulgating these regulations, the first respondent is bound to observe the powers thus conferred upon him by the enabling statute and consequently, should he stray beyond these powers, he will have acted ultra vires'

Mr M J D Wallis SC, assisted by Mr L Gearing, instructed by Yunus Mahomed and Associates, appeared for the applicant. Mr J Combrink SC, assisted by Mr R Hiemstra, appeared for the respondents

JCI chairman calls for universal franchise in SA

ONLY acceptance of a universal franchise for all South Africans would ensure an end to violence and unrest, Johannesburg Consolidated Investments (JCI) chairman Gordon Waddell said in London yesterday

And he called for immediate negotiations for the achievement of that goal.

A universal franchise was inevitable despite its rejection by government, Waddell told the shareholders' meeting when delivering JCI's annual report.

He said "The costs of that rejection will, in human and material terms, be simply enormous and in the end, the sacrifices will have been wasted.

"It surely must be better for all to come to terms with reality and negotiate now so as to avoid a similar path to that followed in the past by the Smith government of Rhodesia as it then was"

Waddell said that while a siege economy might appear beneficial initially, the real

Business Day Reporters

sacrifices required would only become apparent when additional sanctions were imposed, as the quality of life deteriorated and government moved "inexorably to still the remaining voices of dissent in order to try and maintain its writ as far as possible".

The future was so clouded by political and social violence, unrest and the threat of sanctions that it was impossible to forecast JCI's performance for the year ending June 1987.

All Waddell could say was that if present circumstances did not change — "an unlikely event" in his view — all the major contributors to the group excluding coal, interest received and money market operations, should increase their individual profits

It could therefore be expected that group profits would also increase.

EL blasts: two guilty of terrorism

Dispatch Reporter

GRAHAMSTOWN —Two 25-year-old Mdantsane men were found guilty here yesterday of terrorism involving the bomb blasts in East London last year

The Judge President of the Eastern Cape, Mr Justice Cloete, found Khaya Libazi and Andile Hewukile guilty on charges of terrorism and on one count of unlawful possession of explosives

Sentence will be passed tomorrow

In his three hour judgment, Mr Justice Cloete found the two East London-born men not guilty of murder in connection with the death of Detective-Constable Lungisile Bhekiso, who died in a shoot-out with two trained African National Congress insurgents at a T-junction near Mount Ruth on July 31 last year

The two ANC men, Mr Mzwandile Mcata, alias Bra-L, and Mr Nkululeko Njongwe, alias Lucas, were killed in the shoot-out while the two accused were seriously injured

Mr Justice Cloete also found them not guilty on five counts of attempted murder of five policemen at the roadblock. They were found not guilty on three other counts involving arms and explosives.

Full report page 13

Kangaroo court six not evil — defence

ARGUS 18/9/86

252

Staff Reporter

AN Nyanga kangaroo court was convened because police did nothing about certain charges laid by residents, Wynberg Regional Court has been told.

Mr Mhlophe Yakobi was giving evidence in mitigation of sentence of six Nyanga residents convicted of assaulting on two sisters after a "court" hearing at the Nyanga Art Centre last November.

Thobeka Hanoyi, Mziwakhe Mdidimba, 29, Simon Pasiya, 28, Lawrence Sidlayiya, 26, Ndimpine Kweza, 23, and Syd Jack, 21, were involved in "court" proceedings, after which Mrs Nompumelelo Sogiba and Mrs Nompendulo Ngiminginini were given 60 lashes each with sjamboks

Hanoyi had brought an assault charge against the women to the "court" because she felt a Langa magistrate had been too lenient when sentencing Mrs Sogiba for the same offence earlier Mrs Sogiba had stabbed Hanoyi in the upper arm

Relatives of Mrs Sogiba and Mrs Ngiminginini had taunted Hanoyi about the suspended sentence imposed by the magistrate

Mr Yakobi said "We had approached a Major Burger at the Guguletu police station and he agreed with our plan to form a vigilante group to help stop the skollie element

"On our part we agreed not to arm ourselves and Major Burger gave us a stamped and signed letter of sanction, which is now with the attorneys

"When it became apparent that some cases were not being taken on by the police, we had to have meetings to discuss to try to solve people's problems

"That's how the people's court came about The court ceased to exist in November last year

"Mrs Sogiba and Mrs Ngiminginini were originally sentenced to 15 cuts each, but the number was increased because they swore continuously in the court."

Public prosecutor Mr W King "Is it that they did not agree with the court a type of contempt of court?"

Mr Yakobi "Yes, I agree"

Mr Yakobi added that various men administered 10 cuts each to Mrs Sogiba and Mrs Ngiminginini, who were made to lie over a table

In his plea in mitigation of sentence, Mr M Parker, for all the accused, said the fact that there was no permanent damage to the the women was an extenuating factor

"It doesn't make the crime any less serious, but these are not inherently evil people The fact that they pleaded guilty shows remorse on their part," he said

Mr King contended that the "court" could be seen as tampering with the authority of the State

The hearing continues

Mr M Marais is on the Bench

LAWRENCE SCHLEMMER

Moving off-camera

There's a certain poignancy in Prof Lawrence Schlemmer's decision to quit the Centre for Applied Social Sciences at the University of Natal to take up a new research post at Wits

The day he stood amid the ruins of his fire-blackened office on the university campus in Durban and surveyed the damage done to a life's work, he wore the expression of a man defeated

Bone-weary of his high political profile — which he says he does not relish and did not seek — he is finally moving on

Schlemmer . . . seeking the quiet life

"Sometimes it is easier to start afresh somewhere new," he reflects. "One avoids that sense of standing in one place."

For a man as busy as Schlemmer, the sense of helplessness and outrage at the loss he suffered must be profound There are many times he turns to his filing cabinets for reference — only to find that his carefully accumulated research material has been destroyed or damaged beyond salvation For an academic of his stature, it must be heart-rending, and he admits "it has slowed me down considerably"

In his new function at Wits, Schlemmer is likely to be less conspicuous He plans to set up a new research department attached to the business school which will study the effects of both public and private sector policy, regionally, nationally and internationally It's an area, he says, which is of growing importance Latterly, much of his time has been consumed by South African policy studies and scenario-sketching of future political outcomes His talks on the subject are much in demand

Going back to Wits, will, in a sense, be like a second home-coming He has fond memories of his early days spent there in the Sixties as a research officer and lecturer after he graduated from the University of Pretoria

In the intense world that sociologists in SA live in, Schlemmer is probably pre-eminent As a consequence, perhaps, he has attracted more than his fair share of controversy — a condition, some say, which ultimately led to the fire bombing of his office

Schlemmer came to Natal University 22 years ago to set up the establishment's first centre for social research In 1973 the centre was accorded institute status, and, when it acquired teaching functions, its name was changed to the Centre for Applied Social Sciences.

It was inevitable that through his work Schlemmer would quickly be drawn into the dark vortex of black politics, riven as it is with fractious in-fighting and disputes over strategy and ideological objectives

The consolidation proposals for KwaZulu and the subsequent report on the region's political options by Prof Jan Lombard, pressed home to the KwaZulu government the need for systematic research into these areas It turned to Schlemmer as the most suitable person to head the newly formed Inkatha Institute

By now he is well known for his detailed research into black attitudes for the Buthelezi Commission But probably his most controversial assignment was the study he did among black workers which revealed that most were opposed to disinvestment Predictably, he was pilloried by black militants and left-leaning academics who attacked the study as unscientific and subjective

"In SA," he philosophically says, "everything is politicised One must also expect knowledge, which is an important aspect in the political process, to be attacked too"

However, he sticks with his survey's findings Subsequent polls — there have been 11 of them in all — have shown that "you can't get more than 25% of people coming out in favour of a clear-cut disinvestment policy"

In future, Schlemmer is likely to have his hands full He plans to retain his connections with the *Indicator* publication he started, is writing a book on social change in SA, updating a recent study on the prospects for peaceful change, is working on an HSRC project on intergroup relations, assisting the Urban Foundation with a policy review and is drawing up an employment code for the KwaZulu government In addition, he hopes to keep his links with KwaZulu-Natal while offering inputs to the Natal Indaba — an initiative be believes offers real hope for the future

"I don't want to fall into the trap of thinking that the whole world is established around the Witwatersrand," he says

A typically retiring academic, Schlemmer lives quietly with his books and dogs for companions in a rambling, leafy home on Durban's Berea Indeed, it's the quiet life he has always wanted and, out of the public gaze, he has every hope of finding it ■

Commission to consider extra courts

STM

252

19/9/86

Pretoria Bureau

A commission of inquiry has been appointed by the State President to investigate the possible decentralisation of the Supreme Court

The commission will be under the chairmanship of Mr Justice J Hefer of the Appellate Division of the Supreme Court

It will particularly consider local divisions of the Supreme Court in the Southern Cape and Western Transvaal, but will also identify other regions which qualify for decentralised Supreme Court services

The costs to the State, lawyers, litigants, accused and witnesses in such a system will also be investigated

The commission will be known as the Commission of Inquiry into the Further Decentralisation of Services by the Supreme Court of South Africa to Specific Regions

The venues and dates of the commission's sittings will be announced soon

'People's court' lashers jailed

Cape Times 19/9/86

Court Reporter

FIVE Nyanga men who "acted barbarically" by giving two women 60 lashes each at a Nyanga 'people's court' were yesterday jailed for an effective total of 11 years by a Wynberg Regional magistrate

Mziwakhe Mdidimba, 29, an actor who had been chairman of the 'people's court', was sentenced to five years' imprisonment of which three were suspended for five years

Simon Pasiya, 28, Lawrence Sidlayiya, 26, and Ndimpine Kweza, 23 (members of the court), were each sentenced to five years, with half suspended for five years They each lashed the women 10 times, the court found .

Sid Jack, 21, who had acted as "clerk of the court", was given five years of which 3½ were suspended for five years

A woman, Thobeka Hanoyi, 29, who charged the two women at the 'people's court', was fined R500 (or nine months) and sentenced to one year, suspended for five years

The magistrate, Mr M Marais, said the lashings were "nothing less than barbaric"

Mr W A King prosecuted Mr M Parker appeared for the six.

A brief for children

Appearing in court as a witness can be a traumatic experience for a child. Three Pietermaritzburg academics are working to change the system.

A CHILD is a victim or a witness of rape or violence in the family. He or she is traumatised, a victim of child abuse, directly or indirectly.

Then the child has the further traumatic experience of giving a statement to the police, followed — sometimes months later — by having to give evidence in the harsh and hostile atmosphere of a courtroom

Psychologists rate these harrowing experiences as further child abuse

Three academics from Natal University's Pietermaritzburg Child and Family Centre have been researching the project, 'The Child as a Witness', from the beginning of the year, have discussed the problem with the Attorney-General of Natal, and hope to influence changes in the present procedure, so that children are spared much of the agony

Prof Gustav Fouché, head of Educational Psychology, Prof John Hammond, head of the Department of Psychology, and his wife, Dr Jean Hammond (a research fellow) are being funded by the HSRC in the project, the only one of its kind undertaken in South Africa

Questions

'Our legal system is adversarial,' says Prof Fouché, 'so a child, already stressed by the procedure in a harsh courtroom, can be browbeaten by a lawyer to produce the required answer

'Often proceedings are held in a closed court, but this doesn't lessen the trauma of a child being asked to give evidence against its own parent, or even being cross-questioned by its own guilty father

'We decided to analyse actual court cases and came across one recently in which the magistrate allowed a child to be questioned by a lawyer for three hours.'

The group is also studying the circumstances under which a child has to give the initial statement to the police, very few of whom have been specially trained to handle such matters

One specialist in this field is Det-Const Grant Robertson at C R Swart Square in Durban He is a trained psychologist and hopes to join the research group and read a paper at a symposium based on the results, to be presented at next month's Psychological Association of S A conference in Johannesburg

Dr Jean Hammond has received welcome co-operation from the Courts and was given special permission to sit in closed courts

'In July,' she said, 'along with three members of the Addington Child Abuse Unit, including chairman Dr Bill Winship, I discussed our problems with the Attorney-General, who was very interested and sympathetic

'My memo to him was passed on to the Department of Justice and we are hoping that our final report and recommendations will result in legal reforms'

Dr Hammond said that Scandinavian countries and Israel had a specially trained 'youth interrogator' at police station level, who would go to court with an affidavit, saving the child from giving evidence

And in Israel courts have an adjoining room with a one-way screen, where the child is questioned by the youth interrogator, with the child unable to see the courtroom

Dr Winship has just returned from a congress on child abuse in Sydney,

He says that 27 American states are presently amending legislation on the subject and 20 of them allow children to be questioned on closed-circuit TV, to avoid their being exposed to the stresses of the courtroom

'But unfortunately, the law tends to look backwards and bases everything on precedent It is difficult to get the legal profession to look forwards.'

Dr Hammond is also examining the possibility of having video tapes and recorded evidence universally accepted by the Courts At the moment it depends on the ruling of the individual magistrate or judge, and they can be swayed by defence counsel

Limit

She has also suggested to the Attorney-General that there should be a limit to the period between the initial report to the police and the date of trial

'It is the worst possible thing for the child to be kept in a state of anxiety while this waiting period drags on,' she says

Women flogged in 'barbaric court'

Sunday Times Reporter

TWO women, one of them four months' pregnant, were tied to a table and flogged 60 times in front of more than 100 people on the orders of a "people's court", a magistrate was told this week.

The floggings were dealt out after a woman complained to the "court" because she was dissatisfied with the punishment handed down by a Langa, Cape Town, magistrate in an assault case

The magistrate at this week's hearing, Mr M Marais, who called the "bundu court" proceedings "barbaric", sent five "court officials" to jail for running the "court" and administering punishment illegally .

According to the evidence the court had convened at the Nyanga Art Centre last November, when Thobeka Hanoyi brought a case of assault against the two women, Mrs Nompumelelo Sogiba and Mrs Nompendulo Ngimingini

Mrs Hanoyi had been unhappy after a Langa magistrate had given Mrs Sogiba a suspended sentence for stabbing her

The two women were originally sentenced to 15 cuts each by the "people's court", but this was increased when the women — who did not agree with the proceedings — swore in "court"

They were tied to a table and lashed There were more than 100 people present

Mr Marais sentenced Simon Pasiya, Lawrence Sidlayiya and Ndimpine Kweza, who each admitted administering 10 cuts, to five years in prison, of which half was suspended

The "chairman" of the "court", Mzawakhe Mdidimba, was jailed for two years, and the "clerk", Syd Jack, for 18 months.

Mrs Hanoyi was fined R500 (or nine months) with a further year suspended for five years.

4 murderers are to hang

STAR 252 22/9/86

Northern Transvaal Bureau

THOHOYANDOU — Four Venda men were sentenced to death on Friday for the axe-killing of a Tshidzini villager, Mr Elias Mulaudzi (60), on August 11 last year.

David Nthatheni Rembuluwani (25), Rawlson Mulaudzi (25, John Tsakani Chauke (27) and Nkhumeleni Mulaudzi (26) had pleaded not guilty to murder

Mr Justice H W O Klopper, sitting in the Supreme Court, found the four men had planned and executed the murder together

The convicted men have applied for leave to appeal against the sentence.

Neither time nor room for complacency, says Coetsee

SA Bill of Rights 'must be balanced'

23/9/76 252 STAR

By Bruce Cameron,
Political Staff

CAPE TOWN — A Bill of Rights for South Africa would have to find the balance between group and individual rights and would have to be home-grown to reflect the "special" circumstances of the country, according to the Minister of Justice, Mr Kobie Coetsee

A Bill of Rights has suddenly become respectable in National Party circles and Mr Coetsee made a lengthy speech at the National Party's Transvaal congress giving it a National Party separate development slant

Long a major pillar of Progressive Federal Party policy, a Bill of Rights was ridiculed until last year as a "piece of paper that could easily be torn up and would never give any guarantees"

Even now there is caution Mr Coetsee told the congress that there were laws protecting rights in other countries

For example, section 77 of the constitution of the Soviet Union read "In accordance with the interests of the people and in order to strengthen and develop the socialist system, citizens of the USSR are guaranteed freedom of speech, of the Press and of assembly, meeting and street procedures and demonstrations.'

No one, he advised, should rush to emigrate to Russia to find out if this was the case.

In April Mr Coetsee referred the question of a Bill of Rights to the Law Commission.

The requirement was a Bill that would reflect the tone and spirit of the country and its people

There were also the implications of a Bill of Rights on existing legislation, for example on security legislation

International criticism rejected

In his speech at the congress, Mr Coetsee rejected international criticisms that the Government was not concerned about protecting human rights

"The question is not whether — the question is how"

He said the issue of a Bill of Rights should not be regarded as a new phenomenon or a new discovery such as an exciting gold strike — "although our will and ability to adhere to the principle of human rights may have the value of inexhaustible gold deposits

"The issue of human rights everywhere in the world is dealt with not on a universal basis in every respect but also against the socio-economic background that prevails in a particular country where a Bill of Rights is operative

"In the South African context human rights will have to encompass the needs of groups and notably minority groups and individuals and will have to account for the wealth of our multi-cultural societies

"Successive National Party governments have in all sincerity searched for an ideal balance between and among the interests of groups and individuals.

"The fact that our black people enjoy in relation to Africa the highest standard of living is evidence of our success in this respect

"We have, however, neither time nor room for complacency and back-slapping and have to consider our next step'

Mr Coetsee said there was a renewed interest in the issue of human rights throughout the country and 'there is one thing more powerful than all the armies of the world and that is an idea whose time has arrived"

Complaints by radicals

He appealed for a "positive" participation in the debate on the issue of group and individual rights

"Already there are noises against a manifesto of human rights, especially from the radical Left, because such a manifesto will stand in their way to have our economic dispensation substituted by a socialist/communist kind of economy — also because, rumour has it, they want to settle accounts'

Mr Coetsee felt this tendency could create a dividing line between the radical left and the soft left

He predicted that some well-known politicians would have to "discard their role as champions of the radical Left or else sink with them"

Mr Coetsee referred to the high reputation of judges and magistrates as guardians of basic rights

"Rights that have been highlighted by court judgements include the freedom of the individual, the right to be heard, access to the courts and equality before the law."

'POLICE AMAZED DOCTOR'

24/9/86
Sowetan
25

A POLISH doctor yesterday described how suprised he was at the "unusual" presence of police whom he stopped from interrogating two accused shortly before their right hands were amputated at the Natalspruit Hospital last year.

By MONK NKOMO

Dr Marek Gadjinsky, under cross examination by defence counsel, Mr Eric Dane told the Pretoria Supreme Court that he objected to the police presence in the corridors of the hospital shortly after the accused, Mr Jospeh Mazibuko and Mr John Mlangeni were brought to the hospital after alleged handgrenade attacks in Duduza on June 26 last year

He said three policemen, two white, one black, asked the accused what had happened

The court heard that he prevented them from asking further questions and even closed the door leading to a room where the two accused sat on trollies

The police, he added even tried to persuade a nursing sister to convey messages to the accused but he refused

Dr Gadjinsky said that even if the accused were in good condition he would not, on ethical grounds, have allowed police to question them at the theatre

The doctor was giving evidence for the State against seven alleged members of the banned Congress of South African Students who have pleaded not guilty to charges of terrorism, attempted murder, possession of handgrenades and a bomb and of malicious damage to property

Dr Gadjinsky said he had performed anaesthetic duties on Mr Mazibuko and Mr Mlangeni. Mr Mazibuko was seriously injured and one of them told him the history of what had happened that night

But the other one, the doctor said, was reluctant to talk to him and was "purposefully withdrawn" Both accused, the doctor said were fully conscious on arrival at the hospital.

Under cross examination by Mr Nick de Vos, for the defence, Dr Gadjinsky conceded that altough he had a diploma in anaesthetics he did not know how much morphine-like drugs should be in the blood system before a person suffers "mental clouding"

The doctor also conceded that it was probably that Mr Mazibuko was still in pain at the time he made the statement to a magistrate 55 hours after undergoing an operation to amputate his right hand

COSAS HAS TO WAIT FOR OUTCOME

252

THE Congress of South African Students will have to wait to hear the outcome of its bid to have the organisation's banning overturned.

After hearing argument for both sides Mr Justice Leon reserved his judgment in the Supreme Court, Durban, on Monday.

The Minister of Law and Order, Mr Louis le Grange, issued a proclamation in the Government Gazette on August 28 last year declaring Cosas to be an unlawful organisation in terms of Section 4 (1) of the Internal Security Act No 74 of 1982.

Force

Cosas has asked for an order making the Minister's declaration to be of no force and effect.

The application was heard by Mr Justice Leon.

A student, Glen Gabriel Goldstone, who was the Cosas national treasurer and served on the national executive until the banning, said in an affidavit that there was no lawful reason for

BID TO HAVE BAN ORDER LIFTED

MINISTER Le Grange' ... respondent.

the Minister to have banned the organisation

Mr Goldstone said Cosas was dedicated to attaining a society where free compulsory education was a right and not a privilege

He said no Cosas office bearer had been convicted of an unlawful act while in office.

Certain members, he added, acting as individuals had fallen foul of the law but thee was no institutional link between the organisation and any unlawful act

Mr Goldstone said Cosas had been given no advance warning of the banning nor was it or any of its office bearers given an opportunity to put any information before the Minister or anyone else

He said before the banning Cosas did not receive any written notice from an advisory committee as required by section 7 (5) of the Act

Mr Goldstone said if an advisory committee had been appointed by the Minister in terms of the Act neither it or any other reasonable committee could possibly have formed the opinion that there were any grounds that made it necessary not to comply with the provisions of Section 7 (5).

He claimed that the banning was invalid because an advisory committee had not been convened in terms of Section 7

In his replying affidavit the Minister of Law and Order, Mr le Grange, said he had received information on Cosas since its inception.

Military

This information had come from a number of sources which included military intelligence, the security police, the National Intelligence Service and the intelligence section of the railways police

The Minister said he had come to the conclusion that Cosas was involved in activities that endangered the safety of the State and maintenance of law and order

After hearing argument for both sides Mr Justice Leon reserved his judgment

252

NEW WAY TO MEET LEGAL COSTS

MILLIONS of South Africans are effectively denied justice because of high fees charged by attorneys and advocates, says Mr Zak Crafford, a director of a new specialist legal expenses company.

By NKOPANE MAKOBANE

The company is called Legal Expenses Insurance Southern Africa Limited (LISA) It is a specialist company providing indemnity to the man-in-the-street and business enterprises against payment of legal costs

Mr Crafford, an attorney, said after extensive research overseas and locally, LISA was incorporated in November 1984

On March 13, this year, the Registrar of Insurance granted approval in principle for the registration of LISA as a specialist legal expenses insurer subject, among other things, to certain conditions concerning shareholders' funds

According to Mr Crafford, high legal fees are depriving many people of legal representation

Suspicion

This has caused suspicion towards the judicial system

He said legal aid bodies could only perform a peripheral function

"The solution to the problem of high fees, which have long been a heated point of discussion, is the legal expenses insurance " I South Africa today, if you are not very rich, or not very poor, then the chances are that you could not afford legal representation

"Now for the first time in South Africa, legal rights can be totally secure People will not need money when they need a lawyer LISA will bring justice to the home of every man, woman and child," he said

LISA's plan offer protection in three main categories

The are

- All-Inclusive Legal Protection at between R8 and R18 a month, for legal disputes involving the entire family, arising from any situation, excluding marriage and profit-making activities,
- Matrimonial Legal Protection at between R18 and R22 a month, and
- Commercial Legal Protection for commercial disputes Premiums will be determined according to the circumstances of each applicant

MR GODFREY Pitje a LISA director

Disputes

Legal disputes arising from the following situations which are all covered by the All-Inclusive Legal Protection may be taken out separately

- Motor vehicle owners for cases connected with the driving or ownership of a car (Motorists' Legal Protection) at R10 a month, and
- Any employment (Employees' Legal Protection) at R8 a month

All the common types of cases that a person or business is likely to get involved in, such as serious traffic and other offences, obtaining bail, suing someone or defending a civil case in court, appealing against unfavourable Judgments or convictions are all covered by the indemnity

The insurance is taken out on a monthly basis If one pays the monthly premium, he is covered for a month If he does not pay, he is not covered

To obtain a cover, one merely contacts his insurance broker asks his attorney or employer or obtains more information from LISA

Upon receipt of an application, LISA will supply the applicant with bank, building society, or post office deposit forms already filled in to correspond with his requirements

This will enable, the applicant to make a monthly or weekly deposit of the premium directly in to LISA's account

Mr Crafford also said another LISA benefit is that it will operate free to its policyholders a 24-hour general advice service in English, Zulu, Afrikaans and North Sotho

"An insured person can choose any attorney since there is no interference However if the person wishes LISA can supply them with names of attorneys," he said

He added that the legal expenses insurance has been advocated for a long time

The Hoexter Commission of Inquiry into the functioning of the courts approved of it in its final report

Others who have also approved of it are, Mr Henri Viljoen president of the General Council of the Bar, Mr L S van Zyl, past president of The Association of Law Societies of South Africa and Professor J P van Niekerk of UNISA

Other LISA directors are, Mr Eric Annegarn, a foreign exchange risk management expert, and Mr Godfrey Pitje, a well-known attorney who has has practised in Johannesburg for the past 25 years

For more information people can write to Deqtime House, 280 Pretoria Avenue Randburg, 2194, PO Box 3528, Randburg 2125, or telephone 886-2587

Freedom songs as two jailed for terrorism

By DEBBIE BOOYSEN

FREEDOM songs were chanted in a Port Elizabeth court today when two men were jailed for terrorism.

Vuyani Knowledge Motaung, 22, and Sakiwo Christopher Sokutu, 26, both of Zwide, were each sentenced to eight years for terrorism, three years for possession of firearms and six months for possession of ammunition.

They were also sentenced in the Regional Court to five years for possessing, or importing, seven handgrenades, an AK47 rifle and detonating devices brought into the country by two ANC terrorists they assisted in PE.

The sentences will run concurrently.

Handcuffed to each other, Motaung and Sokutu danced and sang after sentence was passed.

Some in the public gallery responded and freedom songs and slogans reverberated through the passages.

They continued chanting and raising clenched fists in front of a television camera outside the building.

The Regional Court President, Mr G Steyn, said aggravating features in the case were that Motaung and Sokutu became part of a greater conspiracy against the State by getting involved with terrorist insurgents.

They had associated themselves with the conspiracy to further the aims of the ANC, thereby committing terrorism.

They had also assisted in finding hideouts for the terrorists, provided them with transport, had received training from them in the use of handgrenades, and were found in possession of handgrenades.

The court did not find that they had been part of the attack on the police after Motaung and Sokutu's premature contact with police led to the deaths of the two terrorists on February 17.

Mr Steyn said the court had compassion for hardship suffered by the young, untrained and unemployed, but this did not justify resorting to violence.

Mr H van der Walt appeared for the State. Mr P Langa (instructed by T Majodina and Company) appeared for the defence.

 252

Human rights journal criticizes top city judge

Political Staff

THE Judge-President of the Cape, Mr Justice George Munnik, has been criticized by a human-rights journal for his attack on academics and laymen who questioned the independence and impartiality of the Bench.

In its latest issue, The South African Journal on Human Rights welcomed the fact that the administration of justice was no longer seen as a sacred cow and that legal scholars freely explored sensitive subjects.

In an editorial, it said: "This new freedom is a sign of maturity on the part of judges and lawyers.

"It can only yield positive results, because the greatest threat to our legal system is not public scrutiny and criticism, but the growing loss of confidence in the system among blacks occasioned by the implementation of racist and repressive laws."

The perception of black people was shaped by examples, some isolated, of aberrant judicial behaviour, shamelessly pro-executive court decisions, sentences smacking of racial bias and the enforcement of unjust laws.

"Unhappily, the freedom of debate over the administration of justice is not approved by all."

Last year Mr Justice Munnik and the Minister of Justice, Mr Kobie Coetsee, suggested "there are still some in high places who wish to see a curtailment of the debate".

Judge Munnik had said "certain academics" and "uninformed laymen" should not question the independence and impartiality of the Bench.

He said he and his colleagues were sick and tired of the perpetual sniping at the Bench and efforts to play off divisions of the Supreme Court against one another.

Mr Coetsee welcomed academic scrutiny of judgments and constructive criticism but questioned the motives of some legal academics.

The journal said its concern was not justice for some in accordance with the standards laid down by the government but "justice for all in accordance with the standards of our common law and contemporary human rights conventions.

"Where injustice raises its ugly head, silence is not an option".

Two to hang for murder

28/9/78 Ary/Pta 252

CP Correspondent

TWO Sebokeng youths who killed a security policeman were sentenced to death by Judge HP van Dyk in the Vanderbijl Circuit Court

Josiah Tsawane, 29, and Daniel Maleke, 19, were also sentenced to 10 years each for armed robbery this week.

Both are from Zone 13 in Sebokeng.

The court found that on August 31 they killed Sgt Philemon Velaphi Letsele, a Vereeniging security policeman, by attacking him with a knife and chopper They also robbed him of his clothes and a pair of shoes

Van Dyk said there was no doubt the accused plotted to kill Letsele after an argument in which Letsele was accused of being responsible for the arrest of Tswane's elder brother and other Congress of SA Students members.

The judge said they had no right to stop a policeman from doing his duty

He rejected the youths' plea that they were drunk when they committed the offence and that the deceased swore at them

Both are presently serving jail terms for robbery Tsawane is serving 18 months and Malweke three years

Three to hang for 'political necklace'

THREE men were sentenced to death in the Cape Supreme Court for the "politically-inspired" necklace murder of Oudtshoorn community councillor Patrick "Big Boy" Maranene last November.

Judge AJ Lategan said this week there was "only one sentence" for Patrick Manginda, 23, Desmond Majoja, 27, and Dickson Madikane, 26, after ruling that there were no extenuating circumstances.

Manginda smiled after hearing the sentence.

Lategan said on November 22, while Maranene was on his way from his house to where he was killed Manginda, Majola and Madikane must have made a choice to join a group following him.

According to evidence, it was clear that when the group started following Maranene and throwing stones they intended to harm him, the judge said.

The group was not deterred when Maranene fired his revolver repeatedly.

Maranene was killed because he collaborated with the authorities, Lategan said.

The judge said he was "convinced the murder was politically-inspired".

He said there was "so much hate" in Majola's heart that after most of the group left the scene, he smoked a cigarette and washed the blood from his hands. He replaced the burning tyre around Maranene's neck after a woman had removed it.

The sentencing of a 16-year-old youth – also convicted of murdering Maranene – was postponed to October 14 for a probation officer's report.

Two youths, aged 15 and 17, were each jailed for two years for robbing Maranene.

Manginda, Majola, Madikane and the youths have previous convictions, including assault with intent to do grievous bodily harm. – Sapa

Alleged Security Act offender is refused bail

JOHANNESBURG — A man alleged to have assisted the African National Congress by assessing South African attitudes to conscription and attempting to obtain "sensitive" computer programme information about the Defence Force appeared in court yesterday

Mr Rocklyn Mark Williams, 26, of Braamfontein, who will be charged under the Internal Security Act, was refused bail

The State alleges his involvement with the ANC started in January, 1979 He is said to have travelled to Swaziland and other neighbouring states for discussions with ANC He also allegedly assessed attitudes to the Defence Force and the extent of resistance to conscription

According to to the charge sheet, Mr Williams liaised with Mr Steven Marias of the Herschel district, Transkei

He was allegedly a friend of the Johannesburg journalist, Miss Marion Sparg, who is awaiting trial in the Rand Supreme Court on charges of treason relating to two bomb blasts in police stations

Mr Williams is also said to have tried to obtain a copy of a "sensitive" computer programme written for the SADF The case was postponed to November 19 — Sapa

PW launches 5-year plan for financial management of SA

David Braun
Political Correspondent

EAST LONDON — South Africa is soon to get a new financial management system with a five-year plan and a 10-year forecast on state spending

President P W Botha announced this last night during his speech at the opening of the Cape National Party congress

He said that in the difficult times experienced by the economy over the past five years there were few people who had looked more critically at its finances and financial management system than the State itself

During the past number of years planning over a wide front was undertaken by the Government

Institutions such as the Central Economic Advisory Service, the recreated Economic Advisory Council and the National Priorities Committee of the State President were involved

"It is my pleasure to be able to announce that these years of preparation will bear their first fruit in next year's Budget

"Through our new financial management system we will soon be able to make a five-year plan and a 10-year forecast with regard to State expenditure in terms of current expenditure as well as capital expenditure

"To ensure that South Africa's capital resources are applied in the best possible way, a new set of criteria for decision-makers will be instituted shortly," Mr Botha said

The criteria, he added, involved among others, factors such as the availability of capital and the provision of State guarantees

Capital could not just be provided Somewhere this had to be done on the basis of priorities, he said

● Possibly prompted by sanctions, the Commissioner of Customs and Excise issued a significantly abridged monthly foreign trade report in Pretoria today, omitting the usual breakdown of world trading zones and of the type of products South Africa imported and exported, Sapa reports

The preliminary report for the year up to the end of August only reflected the total amounts of money traded

A Customs and Excise spokesman, asked if it was intended as a counter-sanctions measure, said he could not comment on the abridgement

The report showed, however, that South Africa recorded a favourable trade balance of R8 249,4 million for the year up to the end of August

This was an increase of R1 123,6 million against the end of July figure, and R444,6 million more than had been recorded by the end of August last year

By the end of August this year, South Africa had exported goods worth R26 606,3 million while imports ran to R18 356,9 million

Judge dismisses appeal application

By CHRIS RENNIE

MR JUSTICE JENNETT today refused an application by the Minister of Law and Order and the Station Commander of the Swartkops Police Station for leave to appeal against a judgment he had given in an application brought by Mrs Marilyn Carol Mkele.

On September 16 he dismissed an urgent application brought by Mrs Mkele asking that an attorney be given access to her husband, who is in protective custody as a witness in the Watson case.

But Judge Jennett ordered each party in the application to pay their own costs.

In the appeal application, it was submitted that the matter was of importance to the station commander because his conduct had been criticised and the amount of costs was substantial — about R4 000.

Mr Justice Jennett said he had decided not to award costs to either party in the application because he felt the blame for the dismissal did not lie entirely with Mrs Mkele.

Mr P J de Bruyn, instructed by the Deputy State Attorney, appeared for the Minister. Mr J D Pickering, instructed by the Legal Resources Centre, appeared for Mrs Mkele.

25 Eve Post : 30/9/86

(R373,6m), Income before tax R10... able levels, and that...

Kerchoff appeal dismissed as Durban ruling set aside

Appeal Court upholds the ruling on detention

THE Appeal Court in Bloemfontein yesterday ruled in favour of the full bench decision of the Natal Supreme Court in Maritzburg in regard to the validity of the emergency regulations.

It dismissed an appeal by Lynette Kerchoff and her husband, Peter Campbell Kerchoff, against the Maritzburg decision which refused to release him from detention.

The court upheld the appeal of the President and the Ministers of Law and Order and of Justice against the earlier decision of a full bench of the Durban and Coast Local Supreme Court which held that certain of the regulations were invalid

On August 11, the Durban court found the President had acted beyond the powers conferred on him by the Public Safety Act and that regulations 3(1) and 3(3) were invalid That court ordered the release from detention of the United Democratic Front's Natal publicity secretary, Solomon Lechesa Tsenoli.

Four days later the Maritzburg court disagreed with the Durban decision and refused an application for the release of Kerchoff, organiser of the Pietermaritzburg Association for Christian Social Awareness.

Yesterday, Mr Chief Justice Rabie, with the concurrence of Mr Justice Jansen, Mr Justice Corbett, Mr Justice Joubert and Mr Justice Viljoen, set aside, with costs including those of two counsel, the order of the Durban court in the Tsenoli case Substituted therefore was an order that Tsenoli's application for his release was dismissed with costs, including those of two counsel

In the Kerchoff appeal, in which the respondents were the two Ministers, the appeal by the Kerchoffs was dismissed with costs including those of two counsel

In a judgment of 64 pages, the Chief Justice said that as to determining the meaning of a statutory provision which encroached on the liberty of the subject, it had often been said that, if the language thereof was uncertain or ambiguous, it should be interpreted in a way which least interfered with the rights of the individual.

It was to be noted, however, that such an approach to the task of interpretation was permissible only if the language used by the legislature was indeed ambiguous or open to doubt If it was not, and the meaning thereof was clear, the court must give effect thereto, no matter how unfortunate the result may be for those who may be affected by it

In the Tsenoli case, Mr Justice D B Friedman, reading Section 3 (1) (a) of the English version of the Public Safety Act as if there was a comma after the word "order" (there is a comma after the word "orde" in the signed Afrikaans text), held that the section was capable of two meanings

The Chief Justice quoted the Afrikaans text of the relevant section and thereafter in his judgment referred to the Afrikaans version, "not because I believe it has a meaning which is in any way different from that of the English version, but because I consider that the relevant part of the section in the Afrikaans version is grammatically so constructed as to reveal immediately what the legislature intended to say"

He said it was no doubt likely that measures designed to ensure the safety of the public or the maintenance of public order would often contribute to the termination of the state of emergency, but that did not detract from the fact that the protection of the public or the maintenance of public order, on the one hand, and the termination of the state of emergency, on the other, were not the same concept

The Chief Justice did not agree with the submission that the powers in regulation 3 (1) were so wide that they could be used for any purpose that the member of the Force who effected an arrest, or ordered a detention, wished

He said that to hold that the failure to inform Kerchoff in express terms that he was being arrested had the effect to render his detention under regulation 3 (1) invalid, would be, in his opinion, to pay undue reverence to formalism.

He said regulation 3 (5) provided that a member of a Force may, "with a view to the maintenance of public order, the safety of the public or the termination of the state of emergency, interrogate any person arrested or detained in terms of this regulation" — Sapa

Erapo man in 'test' case

A PAMPHLET calling for a consumer boycott on the East Rand started, amongst other things, that while business should be conducted in the "break country, a Benoni magistrate heard yesterday.

The pamphlets formed part of the evidence in a trial involving Mr A b e l o t "Star" Motswege (34) of Dayton, Benoni, vice president of the Rand People's Organisation and Rand Democratic Party who is appearing before J J F United in the Benoni Regional Court on a charge of subversion.

Motswege, who is the first person to be charged for a consumer boycott in the Transvaal to appeared before Mr Justice Coetzer, is the first person to be charged for a consumer boycott in the Transvaal to appeared before Mr Justice Coetzer, is the first person to be charged for a consumer boycott in the Transvaal as a "test case" in the economic subversion Court.

From the Benoni Regional Court on a charge of subversion and that Motswege, who is the first person to be charged for a consumer boycott in the Transvaal as a "test case" in the economic subversion Court.

Legal experts regard the trial as a test case because, if Mr Motswege is found guilty, it might open the way for consumer boycott the authorities to charge organisers under the Internal Security Act.

A State witness, Ms Mandisa Jubase, read to the court a pamphlet she was given in Zulu and translated from English.

Part of the pamphlet stated that people were paying high rents in the townships and that there were no jobs "because of apartheid". The pamphlets further stated that rents should be reduced.

People should not buy in town in order to break apartheid, the pamphlets stated. Free-dom activists were being detained without charges and that people were being killed in a "criminal court and that people were being buried other than those who were killed by the police," the pamphlets said.

More bids to free detainees

APPLICATIONS to the Supreme Court to free detainees are expected to begin again in earnest following the setting aside yesterday by the Appeal Court of the Tsenoli judgment

Lawyers, who have been involved in applications to free detainees described the judgment as "most regrettable", but said a number of other applications brought on different grounds could now proceed.

These applications have been in limbo, pending the outcome of the Appeal Court ruling on the Tsenoli case.

The Appeal Court set aside a decision by the Durban Supreme Court ordering the release from detention of Solomon Lechesa Tsenoli

The judgment represents a major set-back to efforts by civil rights lawyers to ameliorate the effects of the emergency regulations. Had the Appeal Court upheld the Durban judgment, it would have effectively meant the release of all people detained in terms of the emergency regulations

● See Page 10

Emergency powers upheld

BLOEMFONTEIN — The emergency regulations governing detention without trial were upheld in the Appeal Court here yesterday.

The court dismissed an appeal by Mrs Lynette Kerchoff and her husband, Mr Peter Kerchoff, against a decision by a full bench of the Pietermaritzburg Supreme Court that had refused to release Mr Kerchoff from detention.

The court upheld the appeal of the State President and the ministers of Law and Order and of Justice against the earlier decision of a full bench of the Durban Supreme Court which held that certain of the regulations were invalid.

On August 11 the Durban court found that the State President had acted beyond the powers conferred on him by the Public Safety Act and that regulations 3(1) and 3(3) were invalid. That court ordered the release from detention of the Natal publicity secretary of the United Democratic Front, Mr Lechesa Tsenoli.

Four days later the Pietermaritzburg court disagreed with the Durban decision and refused the application demanding the release of Mr Kerchoff, an organiser of the Pietermaritzburg Association for Christian Social Awareness.

Yesterday, the Chief Justice, Mr Justice Rabie, Mr Justice Jansen, Mr Justice Corbett, Mr Justice Joubert and Mr Justice Viljoen concurring, set aside, with costs, including those of two counsel, the order of the Durban court in the Tsenoli case.

The Kerchoffs' appeal was also dismissed with costs, including those of two counsel.

In a 64-page judgment, Mr Justice Rabie said that in determining the meaning of a statutory provision which encroached on the liberty of an individual, it had often been said that, if the language were uncertain or ambiguous, it should be interpreted in a way which least interfered with the rights of the individual.

It was noted, however, that this approach was permissible only if the language used by the legislature were indeed ambiguous or open to doubt.

If not, and the meaning was clear, the court had to give effect to the legislation; no matter how unfortunate the result could be for those affected by it, Mr Justice Rabie said.

In the Tsenoli case, Mr Justice D B Friedman, reading the English version of the legislation, had held the Section 3(1)(a) of the Public Safety Act had a possible two meanings.

The first meaning was that the State President was empowered to make regulations which appeared to him to be necessary or expedient for one or more of:

- Providing for the safety of the public,
- Providing for the maintenance of public order,
- Making adequate provision for terminating the state of emergency, and
- Dealing with any circumstances which, in his opinion, had arisen as a result of the state of emergency.

The second meaning was that the State President was empowered to make such regulations

- Providing for the safety of the public and for making adequate provision for terminating the state of emergency,
- Providing for the maintenance of law and order and for making adequate provision for terminating the state of emergency, and
- Dealing with any circumstances which in his opinion had arisen or were likely to arise as a result of the state of emergency.

Mr Justice Friedman had held that the second meaning was the correct one.

The Chief Justice said that, in his opinion, Mr Justice Friedman's interpretation of Section 3(1)(a) of the act was forced and strained, and was not supported by the language used by the legislature — Sapa

N/M/10/86 (252)

Chief Justice quotes 'more precise' Afrikaans section

Emergency laws valid, Appeal Court rules

BLOEMFONTEIN—The Appeal Court in Bloemfontein yesterday ruled in favour of the Full Bench decision of the Natal Supreme Court in Pietermaritzburg in regard to the validity of the emergency regulations.

It dismissed an appeal by Mrs Lynette Kerchoff and her husband, Mr Peter Campbell Kerchoff, against the Pietermaritzburg decision that had refused to release Mr Kerchoff from detention

The Court upheld the appeal of the State President and the Ministers of Law and Order and of Justice against the earlier decision of a Full Bench of the Durban and Coast Local Supreme Court which held that certain of the regulations were invalid

Disagreed

On August 11 the Durban Court found that the State President had acted beyond the powers conferred on him by the Public Safety Act and that regulations 3 (1) and 3 (3) were invalid That Court ordered the release from detention of the Natal Publicity Secretary of the United Democratic Front, Mr Solomon Lechesa Tsenoli

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Afrikaans

In the Kerchoff appeal, in which the respondents were the two ministers, the appeal by the Kerchoffs was dismissed with costs including those of two counsel

The Chief Justice said that in the Tsenoli case, Mr Justice Friedman, reading Section 3 (1) (a) of the English version of the Public Safety Act as if there were a comma after the word 'order' (there is a comma after the word 'orde' in the signed Afrikaans text), held that the section was capable of two meanings

The first meaning was to the effect that the State President is empowered to make such regulations as appear to him to be necessary or expedient for one or more of (a) providing for the safety of the public, (b) providing for the maintenance of public order, (c) making adequate provision for terminating the state of emergency, (d) dealing with any circumstances which in his opinion have arisen as a result of the state of emergency

The second meaning was to the effect that the State President was empowered to make such regulations (a) providing for the safety of the public and for making adequate provision for terminating the state of emergency, (b) providing for the maintenance of law and order and for making adequate provision for terminating the state of emergency, (c) dealing with any circumstances which in his opinion have arisen or are likely to arise as a result of the state of emergency

Strained

Mr Justice Friedman held that the second meaning was the correct one

The Chief Justice said that, in his opinion, Mr Justice Friedman's interpretation of Section 3 (1) (a) of the Act is forced and strained, and not supported by the language used by the legislature

The Chief Justice quoted the Afrikaans text of the relevant section and thereafter in his judgment referred to the Afrikaans version, 'not because I believe that it has a meaning which is in any way different from that of the English version, but because I consider that the relevant part of the section in the Afrikaans version is grammatically so constructed as to reveal immediately what the legislature intended to say'

In addition to contending that regulation 3 (1) was invalid for the reasons stated by Mr Justice Friedman, counsel had submitted that it was ultra vires on certain other grounds

Wide powers

The submission was that the State President, in conferring powers of arrest and detention in regulation 3 (1), did so in terms that permit those powers to be used for purposes other than those set forth in Section 3 (1) (a) of the Act

The Chief Justice did not agree with the submission that the powers in regulation 3 (1) are so wide that they may be used for any purpose that the member of the Force who effects an arrest, or orders a detention, may wish There is nothing in the wording of the regulation that justifies the submission, he said

The Chief Justice said that in Kerchoff's case the legality of his detention was attacked on the further ground that he was not arrested as required by regulation 3 (1)

Criminal

The Chief Justice said it was, rightly in his view, not contended that an arrest as contemplated in regulation 3 (1) is an arrest as provided for in Section 39 of the Criminal Procedure Act — which is an arrest that is intended to bring a person before a court of law to answer a criminal charge

The Chief Justice dealt finally with the argument that Mr Kerchoff's detention was invalid because Brig B J Beukes, Commanding Officer of the Security Branch of the South African Police in Pietermaritzburg, could not 'bona fide' have been of the opinion that his detention was necessary for the safety of the public or the maintenance of public order

He could see no reason why Brig Beukes's decision to detain Mr Kerchoff under regulation 3 (1) rather than Section 50 of the Internal Security Act should be considered to afford proof of 'mala fides' on his part — (Sapa)

Ruling seen as 'severe setback for detainees'

Mercury Reporter

THE Appellate Division rulings on the validity of the emergency regulations were a severe setback for the rights of political detainees, the Detainees' Support Committee said in Durban yesterday

The ruling was greeted with dismay and disappointment from a wide political spectrum in Natal and brought renewed calls for the release of all political detainees

The PFP's spokesman ... in this area,' he said

The Detainees' Support Committee said the ruling 'maintains the original, unduly oppressive and unjust powers of the emergency regulations and demonstrates that although in the short term the courts may act significantly to alleviate oppression, there is a limited long-term effect'

Mr Peter Kerchoff, organiser of the Pietermaritzburg Agency for Christian Social Awareness who was freed on Sep- ... temper 16 after 97 days' detention, told the Mercury that he was 'extremely disappointed' with the ruling

'We are also very much concerned about the many thousands of detainees still held in terms of the emergency regulations and repeat our concern that detention without trial is unjust and the sooner the detainees are released the better,' he added

Justice, Mr Peter Gastrow, said it would not augur well for the standing of the Supreme Court if the Appellate Division decision was based on an interpretation which favoured the State rather than the liberty of the individual

'The Supreme Court is now the only effective body which can check an abuse of power by the executive and it will be a sad day for civil liberties if the Appellate Division judgment diminishes the effective role which the courts can play

Cosas loses bid to be unbanned

DURBAN — The Congress of South African Students (Cosas), which was declared unlawful last year, has failed in an attempt to have its banning overturned.

In judgment in the Durban Supreme Court yesterday, Mr Justice Leon dismissed, with costs, an application by Cosas for an order declaring the banning to be of no force and effect.

The Minister of Law and Order, Mr Louis le Grange, declared Cosas an unlawful organisation.

The application against the minister was heard by Mr Justice Leon earlier last month.

He said in his judgment there was nothing in the court papers to suggest the minister's conduct in issuing the notice had been anything other than impeccable. The minister had followed the provisions of the statute, he said.

He had reached a decision only after considering the reports and recommendations of an advisory committee and other relevant information.

Mr Justice Leon said the minister had acted in terms of the statute in issuing the notice after having strictly complied with the legal requirements. — Sapa

Laundry

Cosas court bid to have banning overturned fails

DURBAN — The Congress of South African Students, which was declared an unlawful organisation last year, has failed in a bid to have its banning overturned

In a judgment handed down in the Supreme Court, Durban, yesterday, Mr Justice Leon dismissed with costs an application by Cosas for an order declaring the banning to be of no force and effect

The Minister of Law and Order, Mr Louis le Grange, declared Cosas to be an unlawful organisation in terms of Section 4(1) of the Internal Security Act in a notice published in the Government Gazette on August 28 last year

In his judgment Mr Justice Leon said there was nothing in the court papers to suggest that the Minister's conduct in issuing the notice had been anything other than impeccable. The Minister had followed the provisions of the statute

He had considered the reports and recommendations of the advisory committee and other relevant information and had reached a decision only after that

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In his judgment Mr Justice Leon said there was 'nothing in the court papers to suggest that the Minister's conduct in issuing the notice had been anything other than impeccable. The judge said the Minister had followed the provisions of the statute.

Decision

He had considered the reports and recommendations of the advisory committee and other relevant information and had reached a decision only after that

Mr Justice Leon acted in terms of the statute

Pik: anti-SA press starts at home

Dispatch Reporter

EAST LONDON — Most of the propaganda used against South Africa emanated from within the Republic, the Minister of Foreign Affairs, Mr Pik Botha, told the congress

He was speaking on a resolution on the marketing of South Africa overseas

Mr Botha went on to say, according to a report in a Port Elizabeth newspaper, that further steps might be taken against South Africa as a result of an anti-government advertisement placed in the Daily Dispatch

The advertisement, sponsored by 77 people, including the former mayor of East London, Mr Joe Yazbek, suggested that delegates to the congress ask themselves three questions

- How can children be held in detention for weeks on end without trial?
- How can community councillors who have been rejected by the people and who have been unable to live in their constituencies for over a year be seen as true representatives of the people?
- How can Mr Heunis (Mr Chris Heunis, the Minister of Constitutional Development and Planning) turn down the request of the city council and the Duncan Village Residents' Association for the incorporation of Duncan Village into East London?

The advertisement appealed to delegates to listen to the real leaders — "not just those who say what you want to hear".

loses bid to be unbanned

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Application to salvage wreck

CAPE TOWN — The first application for a permit to salvage a shipwreck in terms of new legislation has appeared in the Government Gazette.

The application is for the salvage of the Ternate, a Dutch East Indiaman that stranded off Betties Bay in 1681. — Sapa

Court rejects newsmen's challenge on subpoenas

PORT ELIZABETH — An application to review and set aside a decision by a Port Elizabeth magistrate that subpoenas served on four newsmen and the Government notice under which they were served were valid was yesterday dismissed with costs by the Grahamstown Supreme Court.

The applicants were the editor of the *Eastern Province Herald* and editor-in-chief of the *Herald* and *Evening Post*, Mr J C Viviers, the news editor of the *Herald*, Mr Andre Erasmus, the deputy editor of the *Evening Post*, Mr Trevor Bisseker; and the news editor of the *Post*, Mr Clifford Foster.

The respondents were the magistrate, Mr P Rothman, and the Attorney-General of the East Cape Division, Mr J A d'Oliveira.

MATERIAL EVIDENCE

The hearing arose out of an inquiry held when the four newsmen were called on to appear before Mr Rothman to give material evidence concerning an offence allegedly committed by Mr Mkhuseli Jack and others.

The newsmen were required to produce photographic material taken by photographers at a meeting at the Dan Qeqe Stadium in Zwide on March 31.

Judge T M Mullins handed down the judgment reached by himself, Judge L Olivier and Judge J P G Eksteen.

It was stated that the first question to be decided was whether the judical existence of the alleged offence was a condition precedent to the validity of the subpoenas, or the compellability of the witnesses to answer questions or produce documents, and whether the magistrate hearing the evidence was entitled to go into this question.

It was found the magistrate should be entitled to go into the question of whether the offence was known to the law of this country.

The judges stated that a witness subpoenaed under section 205 of the Criminal Procedures Act to give evidence in respect of an alleged contravention under the relevant sections of the Internal Security Act was entitled to attack the validity of the prohibition.

If the objection succeeded, it was said, they would not be compelled to testify or to deliver any documents unless the prosecutor expressly sought to rely on some other prohibition.

The judges said the ultimate question was that, if it was found that a ground of complaint was present, whether the public authority or the person acting had the power to do what it or he did.

It was found that section 46 (3) of the Internal Security Act enabled the Minister of Law and Order to issue the notice.

The judges said that, even if it was ambiguous, the Government notice could not be declared void for vagueness, as it merely gave effect to the statute.

Nor could the statute be declared void, they said, adding that it should be interpreted and given meaning in any particular situation.

They ordered that, in the result, the application could not succeed and should be refused with costs — Sapa

THE WEEKLY MAIL

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THE PAPER FOR A CHANGING SOUTH AFRICA

Murderer Wessels gets death

By PATRICK LAURENCE

AN 18-year-old white man, Johan Wessels, was yesterday sentenced to death for murdering a young black woman, Elizabeth Mokoena The judge found no extentuating circumstances

Only six whites have been hanged for the murder of blacks in South African legal history, according to Wits University Professor John Dugard in his authoritative book, *Human Rights and the South African Legal Order*.

The penalty for murder without extentuating circumstances is death The courts have no discretion to impose a lesser penalty under South African law

Wessels is fated to become the 210th man to occupy death row in Pretoria Central Prison, unless the judge grants him leave to appeal and bail pending hearing of the appeal

Wessels was one of four men from the Free State town of Bethlehem who raped Mokoena, 18, after pretending to be policemen and "arresting" her for not being in possession of a pass

Another young man, Christo Viljoen, 19, was also found guilty of murder The judge, however, found that there were extentuating circumstances in his case Viljoen was sentenced to nine years' imprisonment

Wessels hit Mokoena over the head with a bottle and stabbed her several times with a fishing knife The judge found that he killed Mokoena because he did not want her to identify him

Viljoen drove back to the scene of the rape with Wessels He did nothing to stop Wessels from killing her, although when Wessels took out the knife, his intention was plain

The court found that Viljoen had not planned the murder and that he had driven the truck toward but not over Mokoena after she had been stabbed To that extent, there were extenuating circumstances

Death row already contains two young white men, Schalk Burger, 20, and George Scheepers, 21, who were each sentenced to death twice for the murder and rape of a young black nurse, Ginny Goitsione, last year

They have been granted leave to appeal

Rape is a capital offence in South Africa In South African legal history, very few white men, if any, have been sentenced to death — and actually executed — for the rape of black women

The Attorney General of the Free State, TP McNally, however, contended in the trial of the Bethlehem men yesterday that the court was dealing with an extreme case which justified the death penalty

The four convicted rapists in the trial are Wessels, Viljoen, Frederick Swanepoel, 24, and Michael Mynhardt, 24. All four men were sentenced to eight years' imprisonment

Jodac President held in raid

WEEKLY MAIL REPORTER

POLICE raided a meeting of the Johannesburg Democratic Action Committee (Jodac) on Wednesday night and detained its leader, Tom Waspe.

Waspe, who is employed by the SA Catholic Bishops Conference, has been on the run since the beginning of the State of Emergency.

The police briefly held five other Jodac members at the meeting, searched their houses and warned them not to participate in the organisation before releasing them

A Jodac representative issued a statement saying the raid was "a clear indication that the state will do everything in its power to end all legitimate opposition to its inquitous apartheid policies"

This is the second such raid on a Jodac meeting during the Emergency. Jodac officials Lisa Seftel, Morris Smithers and Rosemary Grealey were detained at a branch meeting during August and are still being held

Court upholds Cosas ban

By JO-ANN BERKER

FOLLOWING this week's Appeal Court decision which upheld the Emergency regulations' detention provisions, the Durban Supreme Court struck another blow for the power of the state over individual rights by dismissing the Congress of South African Students' bid to overturn its banning order

Cosas was banned in August last year after a State President-appointed advisory committee had sat behind closed doors for 84 day-long sessions. The national student organisation had not been told the investigation was underway, nor was it given an opportunity to put its case to the committee.

In his judgement, Justice R Leon said there was nothing in the court papers to suggest the Minister of Law and Order's conduct had been anything but impeccable He had followed the provisions of the statute and considered the reports and recommendations of the advisory committee and other relevant information and had reached a decision to ban Cosas only after that

"The notice bears no mark of invalidity upon its forehead," Leon said, "and the applicants are caught in the web of the statute." The application was dismissed with costs.

WEEKLY MAIL 3/10/86

252

Civil rights lawyers lick their wounds

NATAL's civil rights lawyers are licking their wounds and preparing fresh — though severely hamstrung — legal attacks against Emergency detentions

Tuesday's Appellate Division ruling in Bloemfontein effectively upheld clauses 3(1) and 3(3) of the Emergency regulations which empower Security Forces to arrest and detain anyone deemed a threat to the maintenance of public order

This means the Natal Supreme Court is now in the position of the other three provinces — a situation which has raised doubts about the ability of the courts to pose any meaningful challenge to the legislature

The decision has come as a severe blow to Natal detainees whose hopes of possible release were raised by the landmark Tsenoli judgment of a full

WEEKLY MAIL REPORTER, Durban

bench in the Durban Supreme Court on August 11 only to be dashed three days later by the contrary Kerchhoff judgment in the Pietermaritzburg Supreme Court

Disappointed lawyers acting for detainees said that while it would be a case of "back to the drawing-board" at least they now knew where they stood

They said they would now simply have to press ahead — as lawyers in the other provinces have been doing — with applications for release either on grounds of insufficient evidence of an individual's threat to public order, or of irregularities in extensions of the detention period

Applications for the release of detainees all but ceased pending the Bloemfontein decision

Dhaya Pillay of Yunus Mahomed and Associates, who represented Lechesa Tsenoli of the United Democratic Front in the successful Durban applications, described the Bloemfontein decision as a great setback

However, like other lawyers approached by Weekly Mail, she said she needed to study a copy of the whole judgment before commenting further

Professor Tony Matthews of the law department at the University of Natal, Pietermaritzburg, said it was a great pity the Tsenoli judgment, which emphasised strict adherence to the terms of the Public Safety Act of 1953, had been rejected

David Sampson of Lawyers for Human Right said he believed that in any case where a decision between two conflicting judgments had to be made the one which favoured the liberty of the individual should be upheld

The decision had come as a disappointment, he said

A representative for the Legal Resources Centre said all that could be done now was to get cracking on the many applications that had to wait until the Appeal Court decision was known

The Detainees' Support Committee (Descom) said both the rights of political detainees and the rule of law in South Africa had suffered a severe setback

In a strongly worded statement, Descom said "Not only does the ruling keep the original unduly harsh powers of the regulations intact but it demonstrates that although in the short-term the courts may be able to act significantly, this has limited long-term effect"

FUN MAIL 3/10/87 252 IX

STATE OF EMERGENCY

The right to detain

The high court in Bloemfontein this week turned back legal challenges to government's wide powers to detain people under the State of Emergency regulations

In a unanimous decision, the Appellate Division rejected an appeal for the release of a detained social worker, Peter Kerchhof, and struck down a decision by Judge David Friedman that had released United Democratic Front activist Lechesa Tsenoli (*Current affairs*, August 29) The Tsenoli case had hinged on a grammatical point and many advocates expected the decision to be overturned But they hoped the court would delineate limits to the government's powers of dentention

Instead, Chief Justice Pieter Rabie said the language of the Public Safety Act was unambiguous.

The ruling dashes the hopes of thousands of detainees for early release, and ends a string of court decisions that had restricted the State President's emergency powers ■

Students fined for march

Pietermaritzburg Bureau

TWENTY students from the St Joseph's Scholasticate at Cedara were sentenced to 100 days' imprisonment (or R200), suspended for two years, in the Magistrate's Court here yesterday after being convicted of attending an unlawful gathering in the capital on June 12.

The students, Solomon Mathuloe, Lazarus Moiloa, Sylvester John, Jabulani Khumalo, Malcolm Jacobs, Sibusio Ndwalane, Clive Malherbe, Boniface Shabangu, Derrick Houston, Stephen Docherty, Paul Mangope, Trevor Mufweba, Derek Harris, Mandla Msoni, Gabriel Jama, Alan Henriques, Jan Samson, Marthinus Bardenhorst, Brendan Proctor and Japet Mtolo, pleaded not guilty.

They were arrested in Durban Road on June 12 while illegally marching on the Alexandra Road police station to deliver a letter, addressed to the police chief, protesting at the detention of two St Joseph's clerics, Fr Larry Kaufmann and the Rev Theo Kniefel.

Mr P Wolmarans appeared for the State.

...Verwoerdin...tablishn

5/10/86

...CHIPKES

252

Judge overrules Cosas application

THE CONGRESS of SA Students – banned last year – has lost its bid to have its banning overturned

In a judgment handed down in the Durban Supreme Court, Judge Leon dismissed with costs an application by Cosas for an order declaring the banning to be of no force and affect

Law and Order Minister Louis le Grange declared Cosas an unlawful organisation in terms of Section 4 (1) of the Internal Security Act in a notice published in the Government Gazette on August 28 last year.

Leon said there was nothing in the court papers to suggest Le Grange's conduct in issuing the notice had been "anything other than impeccable"

The judge said the Minister had followed the provisions of the statute

He had considered the reports and recommmendations of the advisory committee and other relevant information, and had only reached a decision after that

Leon said Le Grange had acted in terms of the statute in issuing the notice after having strictly complied with its requirements – Sapa

Gumede slams bureau's claims

5/10/86 PRESS

THE government and its Bureau for Information are clearly running out of ways to justify the continued imposition of the emergency, UDF president Archie Gumede said this week

Gumede was responding to allegations against the UDF made by bureau's research division deputy director David Venter in Durban

Venter said the emergency had been declared just in time to prevent the UDF – which he claimed was a legal front for the ANC – from carrying out stayaways, student and worker unrest, flag-burning ceremonies and tributes to the ANC and SA Communist Party from June 16 to 26

Gumede said the "malicious" claim that the UDF was a legal front for the ANC was something which had not stood up in court

"If there had been a well-organised conspiracy, surely there would have been prosecutions against those supposedly involved?

"The bureau has apparently run out of excuses for the government's interference – through the emergency – in extra-parliamentary activities The sooner the emergency is lifted, the better," he said – Sapa

Appeal Court clears dispute over detention

THE Bloemfontein Appeal Court this week dismissed an appeal by churchworker Peter Kerchoff to have his detention declared invalid.

The court upheld an earlier appeal by the State President and the Ministers of Law and Order and Justice in the Natal Supreme Court in Maritzburg, which ruled Kerchoff's detention valid.

On August 11, the Durban and Coastal Supreme Court found that the State President had acted beyond the powers conferred on him by the Public Safety Act and that Regulations 3(1) and 3(3) of the Act were invalid. It ordered the release from detention of the UDF's Natal publicity secretary Solomon Tsenoli.

Four days later the Maritzburg court disagreed with the Durban court's decision and refused an application for the release of Kerchoff, organiser of the Pietermaritzburg Association for Christian Social Awareness.

And this week the Appeal Court set aside, with costs, the order of the Durban court in the Tsenoli case.

In the Kerchoff appeal, in which the respondents were the Ministers of Law and Order and Justice, the appeal by Kerchoff and his wife, Lynette Kerchoff, was also dismissed with costs.

The judge in the Tsenoli case, Judge D Friedman, ruled that certain wording in Section 3(1)(A) was ambiguous, but the Appeal Court found this interpretation "forced and strained".

Kerchoff's detention was also attacked on the grounds that he was not arrested formally.

But, according to the Appeal Court judge, the failure to inform Kerchoff in express terms of his arrest was "formalism" and could not invalidate the arrest. – Sapa.

Cosas members jailed for 28 years

THREE self-confessed members of the banned Congress of South African Students were sentenced to a total of 28 years imprisonment in the Ga-Rankuwa Magistrate's Court on Friday for petrol bomb attacks which were aimed at the houses of policemen and teachers. The bombings were committed between January and February this year.

Peter Neo Ditsele, who confessed to being the president of the organisation in Mabopane was sentenced to an effective 15 year jail term. His accomplices, Jack and Joseph Maake, who are brothers, were sentenced to ten years and three years imprisonment respectively.

Sowetan 6/10/86 (25²)

One of Azapo accused not guilty of public violence

8/10/82 Eve Post 252

ONE of three Azapo officials appearing with the director of the PE Black Crisis Centre, the Reverend Mzwandile Maqina, on a charge of public violence was acquitted by the PE Regional Court today

Mr Nwabile Gramton Ndzaze, 23, of Zwide, was acquitted after the defence applied for the acquittal of the four accused at the end of the State case The court refused the application in respect of Mr Maqina, 49, of New Brighton, Mr Tololo Isaac Klaas, 30, of Kwazakele, and Mr Themba Elwin Solwandle, 38, of New Brighton

They are charged with public violence resulting from an incident on May 25 last year in which the home of shebeen keeper Mr Vosumzi Edward Pemba was set alight.

They all pleaded not guilty

Bringing the application for the accused's discharge, Mr L Pitje submitted the evidence of the three State witnesses (Mr Pemba, his wife, Ida, and 18-year-old daughter, Florence) was "of such poor quality that no reasonable person could possibly accept it". Their credibility, he submitted, had been so dented by cross-examination that it was too untrustworthy to be relied upon

Mr E Peffer submitted that there was no evidence to place Mr Ndzaze at the scene of the incident

The case will continue on November 11.

Mr P Campbell was on the Bench Mr C J Goosen appeared for the State Mr Pitje, instructed by B Ntonga and Co of Mdantsane, Mr Peffer and Mr C Somyalo appeared for the defence.

Editors lose case

Dispatch Correspondent

PORT ELIZABETH — An application to review and set aside a decision by a Port Elizabeth magistrate that subpoenas served on four newsmen and the government notice under which they were served were valid was yesterday dismissed with costs by the Grahamstown Supreme Court

The applicants were the editor of the Eastern Province Herald and editor-in Chief of the Herald and Evening Post, Mr J C Viviers, the news editor of the Herald, Mr Andre Erasmus, the deputy editor of the Evening Post, Mr Trevor Bisseker; and the news editor of the Post, Mr Clifford Foster.

The respondents were a magistrate, Mr P Rothman, and the Attorney-General of the East Cape Division, Mr J A d'Oliveira

The hearing arose out of an inquiry held when the four newsmen were called on to appear before Mr Rothman to give material evidence concerning an offence allegedly committed by Mr Mkhuseli Jack and others, and to testify and declare all they knew concerning the offence

The offence was apparently a contravention of Section 57 (1) read with Section 46 of the Internal Security Act No 74 of 1982

The newsmen were required to produce photographic material which was taken by freelance photographers Mr Brian Sokutu and Mr Elijah Jokazi, as well as notes taken by Mr Sokutu, at a meeting held at the Dan Qeqe Stadium in Zwide on March 31

Mr Justice Mullins handed down the judgment reached by himself, Mr Justice Olivier and Mr Justice Eksteen

It was found the magistrate should be entitled to go into the question of whether the offence was known to the law of this country

The judges said the ultimate question was that, if it was found that a ground of complaint was present, whether the public authority or the person acting had the power to do what it or he did

"The legislature can make enactments which are, notionally, unreasonable It can also delegate the power to others to give effect to such enactments "

It was found that Section 46 (3), although the language of the section was very wide, enabled the Minister of Law and Order to issue a notice The minister, therefore, was entitled to prohibit any gathering in any area of the Republic of South Africa

The judges said that, even if it was ambiguous, the government notice could not be declared void for vagueness, as it merely gave effect to the statute Nor could the statute be declared void, they said, adding it should be interpreted and given meaning in any particular situation.

Five in court after 'necklace' killing of white

Mercury Correspondent

GRAHAMSTOWN—Five people, of whom four are brothers and sisters, yesterday appeared in the Supreme Court here in connection with the death of a 40-year-old Uitenhage man, Mr Lodewyk George Vlooh, believed to have been the first white man killed by the 'necklace' method

Mr Vlooh was allegedly beaten with stones and robbed of his clothing and R6 in cash on June 14, before he was set alight.

The Deputy Attorney-General for the East Cape Division, Mr P J Strauss SC, appearing for the State, said medical evidence would be that Mr Vlooh had died from the 'effects of third degree burns' and 'trauma to the head'

The Court would be told Mr Vlooh had left his home on June 14 with R10 in his pocket. He later laid a R4 bet at the local off-course tote

He failed to return and was reported missing by his wife on Monday, June 16 His body was found after a police search two days later in Kwanobuhle, Uitenhage

The accused are Henry Swarts, 36, his common-law wife Pamela Lewis, 28, Marie Lewis, 19, Bernard Lewis, 18, and David Lewis, 21

Mr Swarts and both women are charged with murder and robbery The two brothers have been charged as accessories to the murder while Mr David Lewis is charged with robbery

Mr Swarts, Mr Bernard Lewis and Mr David Lewis are also charged with the 'violation of a dead body' in that they allegedly set the body alight.

Testified

The accused have all pleaded not guilty to the charges against them

Yesterday Lt Sarel Esterhuizen of the South African Police in Port Elizabeth testified he had arrived on the scene where the body was found.

The body was lying face downwards, he said, and was almost totally charred The area immediately surrounding the body was also burned, he added There were also wire rings, such as those found inside a rubber tyre, around the body, Lt Esterhuizen said

Hope for former detainees

ALAN FINE

MANY former detainees could be affected by Wednesday's judgment in the Rand Supreme Court, which set aside restriction orders imposed on two unionists after their release from emergency detention.

Other such orders are invalid, says a Johannesburg attorney.

The orders on Joyce Sedibe and Daniel Samela were set aside after counsel for the Minister of Law and Order had conceded they were vague.

Restriction orders are imposed on detainees in terms of section 3(6) of the emergency regulations as a condition for their release.

The Detainees Parents Support Committee has the names of about 30 people who have been served with restriction orders. It believes hundreds are affected.

Compiling data is difficult because restriction orders are kept secret under emergency regulations.

Mozambique and Ethiopia"

'Suspicious' so treason six go free

A TREASON trial collapsed in the Scottburgh magistrate's court on the Durban south coast this week, after the magistrate ruled that the state's evidence was "suspicious"

The six accused were all acquitted The state alleged they were on their way to Swaziland for military training under the auspices of the banned African National Congress (ANC) when they were arrested

The accused's defence was a "blanket of silence". Throughout their trial the six men standing in the dock smiled and winked at one another while their supporters — outnumbered by heavily armed police — frequently broke into freedom songs and shouted power slogans

The six men Dikuba Magongo, 20, Vuyani Shezi, 19, Sibusiso Msimango, 19, Ndumiso Magash, 19, and two 17-year-old youths who may not be named, were arrested by a railways policeman at the South African/ Swaziland border post at Golela in June.

The state prosecutor, Christo Meiring alleged that Magongo had instigated his co-accused and others, between June 1985 and June this year, to leave South Africa for military training In so doing, the state alleged, Magongo had been trying to further the ANC's aim of overthrowing or endangering the state Meiring said several of the accused had also recruited people for the ANC in Natal

The state's case was severely weakened when Vusumizi Mtshali, who was going to give evidence, refused to testify He was sentenced to six months in jail

In his judgement the magistrate, MP Tomlinson, said the state's evidence was not convincing enough The accused's decision to remain silent and not explain their actions verbally or in writing was a risky business, he said, as silence often pointed to guilt

However he decided to release the men because "a black cloud of suspicion" hung over the evidence given by a witness the state had relied upon

On their acquittal, police reinforcements converged on the court The magistrate requested the accused and their supporters not to make as much noise outside as they had done during the trial — Concord News

Doonesbury

BY GARRY TRUDEAU

WEEKLY MAIL

17/10/86

252

Court sets restriction orders aside

By JO-ANN BEKKER

TWO Johannesburg trade unionists this week successfully challenged restriction orders served on them on their release from detention

It was the first time the restriction orders, issued in terms of Regulation 3 (6) of the Emergency decree, had been contested in court

Although the ruling did not set aside the regulation itself, lawyers believe the judgement could have far-reaching implications for the more than 30 Emergency detainees served with similar orders on their release

In terms of the orders, Council of Unions of South Africa (Cusa) executive member Daniel Manene Samela and regional co-ordinator Nana Joyce Sedibe had to ask official permission to leave their home magisterial area They were barred from giving interviews and from attending meetings at which the government was criticised

Judge R Goldstone of the Rand Supreme Court said it was unnecessary for him to rule on the validity of Regulation 3 (6), as both parties had agreed that the particular conditions relating to the Cusa unionists were incorrect

He set aside the restriction orders and ordered costs to be paid by the respondents, the State President and the Minister of Law and Order

Union to challenge strikes restriction

WEEKLY MAIL REPORTERS, Durban

THE Food and Allied Workers Union (Fawu) is to challenge the State of Emergency regulations on strikes and boycotts in the Pietermaritzburg Supreme Court next month Fawu's action is a spinoff of their bid to have 166 dismissed Clover dairy workers reinstated.

An interim interdict was granted to Clover by the Pietermaritzburg Supreme Court on September 3, prohibiting the union from organising a boycott or publishing anything harmful to the dairy's reputation The union has until November 26 to respond

According to the Emergency regulations it is subversive to call or join an illegal strike or promote a boycott. Fawu's interpretation of the regulation was that calling for a product boycott following an industrial dispute was not a subversive statement. This is a "reasonable man's" view, their lawyer said, "but no one is sure of what the state's view is"

Much union activity has been paralysed by the vagueness of the Emergency regulation governing industrial action. Union leaders are uncertain about the difference between legitimate and subversive industrial action.

Fawu contacted the police last month for the police position on product boycotts as potentially subversive activity. Lack of police response led Fawu to seek clarification from the courts

Although it is unlikely the regulation will be scrapped, it is likely the state will be forced to present a clearer definition of subversive industrial action under the State of Emergency, Fawu's lawyer, Chris Albertyn said

Meanwhile community groups countrywide are promoting a national boycott of Clover dairy products following Fawu's four-month struggle to have the 166 Clover workers reinstated

The dismissed workers were protesting the firing of a popular union organiser in the Pietermaritzburg Clover factory

Support committees were formed in response to last month's interim interdict. The committees have called on consumers to stop buying Clover, National Co-operative Dairy and Elite products until the workers are re-employed

A Fawu representative said the support committees' action was a direct response to Clover's heavy-handed labour approach Fawu did not at any stage threaten the company with boycott action and management had only themselves to blame for losses incurred, she said According to the representative, the community action was a ripple effect outside the control of the union

After negotiations to reinstate the 166 workers failed, Fawu organised a legal strike involving 1 500 Clover workers throughout Natal After four days of what Clover called "a disruption of their normal services", management offered to renew negotiations On the workers return, the union says management abruptly cancelled the meetings Responding to the allegation on Wednesday, Clover denied cancelling any subsequent meetings

During the legal strike, two Port Shepstone Clover plant workers, Tobias Mbele and Reginald Cele, were detained under Emergency regulations The union alleges they were pointed out by management to security police Clover responded by saying 'the company cannot be accountable for police actions in pursuance of their responsibilities"

A few days later a Clover worker in Queensborough was also detained A lawyer acting for the three said they were still in detention.

Congress of South African Trade Unions (Cosatu) representative René Roux said the three workers were neither shop stewards nor politically active

In the light of the developments since the dismissal of the 166 workers, Fawu is bringing 20 charges of unfair labour practice against Clover before the Natal Industrial Court.

According to a Fawu representative, this decision led to the collapse or renewed negotiations over the fate of the 166 dismissed workers this week Clover management reportedly told union officials they were not prepared to negotiate following Fawu's decision to take 20 cases to the industrial court.

The union labelled Clover's behaviour as "utter nonsense", as the disputes are separate from negotiations over the 166 workers

Milestone verdict on Terror Act

By TONY FIGUEIRA, Windhoek

IN a judgement hailed as a milestone in the protection of human rights, a Namibian Supreme Court justice this week struck down as "unconstitutional" provisions of the Terrorism Act.

Justice Harold Levy upheld an objection to a charge sheet filed by eight accused against charges including 187 counts of participation in alleged acts of terrorism as defined under the Terrorism Act.

The judge found that the section providing for the crime of participation in "terroristic" activities conflicts with the Bill of Rights contained in the interim government's empowering proclamation (R101)

He was satisfied Section 2, which provides that accused persons must prove their innocence (rather than being presumed innocent until proven guilty), is in conflict with the provisions in the Bill of Rights safeguarding an accused person's right to a fair trial

Although the Terrorism Act was repealed in South Africa in 1982, it continued to operate in Namibia Levy found that Proclamation R101 effectively repealed Section 2 of the Terrorism Act when the proclamation was passed on June 17, 1985

However, the eight accused could still be prosecuted under Section 2 for acts committed before that date, as only 50 of the 187 "acts of terror" were allegedly perpetrated after June 17, 1985

The judge made it clear that it was a question of policy to be determined by the Attorney General whether to prosecute people for an offence which no longer existed

Namibian legal sources in Namibia have described the judgement as a "milestone" They point out that people can no longer be prosecuted for "participation of terroristic activities" in Namibia

Court told of 'necklace' death

Dispatch Correspondent

PORT ELIZABETH — One of the five accused in the Uitenhage murder trial being heard in the Grahamstown Supreme Court said yesterday he had set alight the body of Mr Lodewyk George Vlooh, 40, because he had wanted to prevent anyone from identifying Mr Vlooh

The accused, Mr Henry Swarts, 35, further admitted he and some of the other accused had attempted to implicate the "comrades" in the killing by making it look like a rubber "necklace" murder

On June 14, Mr Vlooh was allegedly hacked with stones and robbed of his clothing and R6 in cash before being set alight The case is to continue on Monday

The accused are Mr Swarts, his girlfriend, Miss Pamela Lewis, Miss Marie Lewis and their brothers, Mr Bernard Lewis and Mr David Lewis

Mr Swarts and both women are charged of murder and robbery The two brothers have been charged as accessories to the murder Mr David Lewis is also charged with robbery as he is alleged to have been in possession of Mr Vlooh's clothing

All the accused have pleaded not guilty

The Judge President of the East Cape Division, Mr Justice Cloete, was on the Bench Mr D Muir and Mr J F van der Riet acted as assessors The Deputy Attorney-General, Mr P J Strauss, SC, assisted by Mr T R Tyler, appeared for the state Mr R W N Brooks appeared for the accused

Cape Times
18/10/86
752

Image of SA courts 'dented by the press'

POTCHEFSTROOM — Pronouncements from lawyer politicians, political lawyers and the press detracted from the independent image of South African courts, Mr Louis le Grange said yesterday.

Opening a new magistrate's court building here named after him, the Minister of Law and Order said it was "not the actions of the courts or the judges themselves, nor the attitude of governments or ministers or lawmakers" that negatively affected the independent image

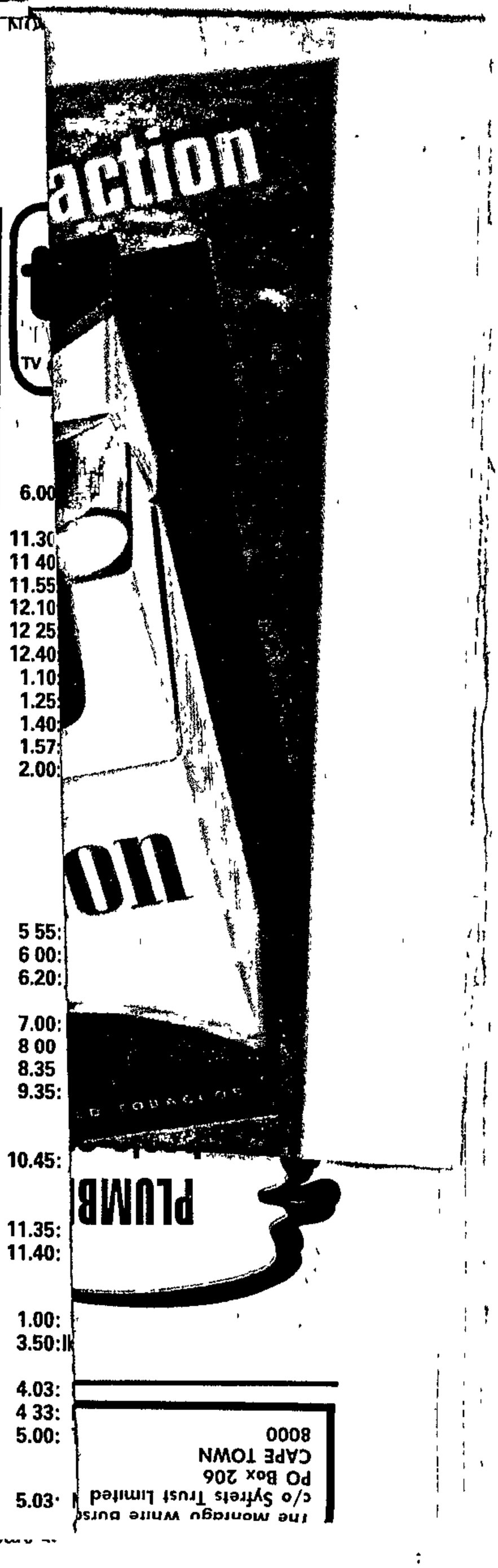
He said there were also "efforts to draw judges into crusades or a party political course trying to influence the courts to forsake that very independence . . "

The minister said there was no conflict between the courts and government when judgments against the State were handed down

"Where a court, for example, points out a deficiency in a regulation, the executive authority sees it as a guideline and new regulations are not intended as a clash with the court's standpoint or judgment, but rather as a supplementation to fill the gap in line with the finding"

Mr Le Grange said the government had over the past 3½ months been involved in about 260 court cases where detainees, held in terms of the emergency regulations, were contesting their detention

He had become something of an expert on the subject, he told guests — Sapa



Engineering union to take Escom job dispute to Supreme Court

Own Correspondent

CAPE TOWN — A long fight to save a man's job is to go to the Supreme Court

A final appeal to Escom by the Engineering Industrial Workers' Union (EIWU) for the reinstatement of Mr Esau Hoorn, who lost his job in February, has been turned down and the union will take the issue to court

Mr Hoorn, who, Escom has admitted, had a clean record with them, lost his job as a security guard after his certificate of competency was withdrawn in January by the National Key Points Secretariate

Escom, which had started a staff reduction programme, told him they did not have another position for him and he was given the option of being dismissed or resigning

Mr Leslie Davadoss, regional secretary of the union, said the Key Points Secretariate would not give reasons for the withdrawal of Mr Hoorn's certificate but it came after several confrontations last year with the head of security at Koeberg power station about his union activities.

At that time Mr Hoorn was chairman of the Escom Security Personnel Union which wanted to join EIWU

Appeals were made against Mr Hoorn's dismissal but Escom last week told the union that a committee which investigated the complaint could not find any evidence of his alleged victimisation Re-employment could not be considered

Mr Davadoss said that, when a security guard was at the mercy of faceless people who could take his job away without having to disclose reasons, it made a mockery of Escom's industrial relations procedures.

"There must be valid and substantial reasons for the dismissal or withdrawal of a certificate of competency and proper procedures followed where the accused is given ample opportunity to defend himself

"If he were found guilty others would know why and only then should a dismissal take place.

"It should not be left, as is the case now, to one or two people acting independently of any processes.

further production development was needed.

Death sentence call

NORMAN SHEPHERD

THE death sentence was requested yesterday for three young whites accused of burning a black man to death.

Judgment is expected in the Rand Supreme Court today on Anton Werner Stoop, 23, of Joffe Street, Luipaardsvlei, who pleaded guilty to culpable homicide (the plea was not accepted by the State), Willem Jansens, 22, of Zelda Court, Park Street, Krugersdorp, and Francois Johannes Bester, 22, of Haynes Street, Witpoortjie, who both pleaded not guilty to murder.

The men have been charged with the murder of Durban Deep mineworker David Ovemile Mthutang After being beaten, Mthutang was thrown out of a car and was then set alight.

Political comment in this issue by Ken Owen Newsbills by Neil Jacobsohn Headlines and sub editing by Michael Allwright All of 11 Diagonal Street, Johannesburg

AIRLINE MOVEMENTS

Tuesday Air Schedule
Johannesburg to Cape Town

Dep	Arr	Flight
0100	0305	SA395
0100	0305	SA397
0710	1040	SA301
0730	0935	SA303
0930	1240	SA309
1145	1350	SA 311
1250	1455	SA343
1430	1635	SA325
1800	2005	SA333
1810	2140	SA331
2030	2235	SA335

Cape Town to Johannesburg

Johannesburg to New York

1930	0650	SA203

Johannesburg to Frankfurt

1800	1100	SA240

Johannesburg to London

1845	0700	BA054
2000	0820	SA234

London to Johannesburg

1800	0750	SA235
1945	1000	BA055

Johannesburg to Gaborone

0730	0840	BP200

OD 21/10/86 (252)

Court told of blackening of Vlooh's body

Dispatch Correspondent

GRAHAMSTOWN — The Grahamstown Supreme Court yesterday heard that three of the five accused in the Uitenhage murder trial had set 40-year-old Mr Lodewyk George Vlooh alight in order to prevent people from recognising him as a white man

Mr Bernard Lewis, 18, said he had been told by Mr Henry Swarts, another of the accused, they should "blacken the body so that people could not see it was a white man".

According to his testimony, Mr Vlooh's body had been set alight on three separate occasions He had assisted Mr Swarts and Mr David Lewis, his elder brother and also one of the accused, on two occasions

Mr Lewis, told the court he had walked to Kwanobuhle township in Uitenhage to buy R2 worth of dagga for Mr Vlooh on June 14, after Mr Swarts had requested him to do so.

When he returned, he said, Mr Vlooh was lying face downwards on the ground and his head had already been set alight Mr Swarts, Miss Pamela Lewis and Miss Marie Lewis were standing around the body, Mr Lewis said

They left the scene Mr Swarts, Mr David Lewis and he himself returned later the same day to place two tyres on Mr Vlooh's body before setting it alight

The following day, a Sunday, the three of them again returned They placed a further two tyres as well as three inner tubes on the body, and again set it alight, Mr Lewis said

Earlier yesterday, Miss Marie Lewis, 19, described how her sister's common law husband, Mr Henry Swarts, had hacked Mr Vlooh to death with stones before setting his head alight with the use of paint, paper and kindling

Miss Lewis said she had obeyed Mr Swarts' commands because she was afraid of him His eyes were red, and moved restlessly, she said She added "He had a look of murder in his eyes"

According to her testimony, she had helped Mr Swarts rob Mr Vlooh of his clothing and had collected kindling for Mr Swarts She had also thrown a stone at Mr Vlooh's body on Mr Swarts instructions At this stage, Mr Vlooh was already dead, she said

Pamela Lewis, 28, yesterday testified she had stood by and watched while her lover murdered Mr Vlooh She denied any active involvement in the killing

During cross-examination, she conceded she had accompanied Mr Swarts when he sold the jacket Mr Vlooh had been wearing because she wanted to make sure he did not cheat her Mr Swarts was to buy liquor for them with the money, she added

The case is to continue today

The accused are Mr Henry Swarts, 36, his common-law wife, Miss Pamela Lewis, 28, Miss Marie Lewis, 19, Mr Bernard Lewis, 18, and Mr David Lewis, 21 The latter four accused are siblings

Mr Swarts and both women are charged with murder and robbery The two brothers have been charged as accessories to the murder Mr David Lewis is charged with robbery because he was allegedly found to have received an article of Mr Vlooh's clothing

Mr Swarts, Mr Bernard Lewis and Mr David Lewis are also charged with the "violation of a dead body" in that they allegedly set the body alight

They have all pleaded not guilty to the charges against them

The Judge President of the East Cape Division, Mr Justice Cloete, was on the Bench Mr D Muir and Mr J F van der Riet acted as assessors The deputy Attorney General, Mr P J Straus, assisted by Mr T R Tyler, appeared for the state Mr R W N Brooks acted for the accused

Torture claim probed, court told

22/10/86 SMH 252

Pretoria Correspondent

A police docket has been opened to investigate allegations by Father Smangaliso Mkhatshwa, general secretary of the Southern African Catholic Bishops' Conference, that he was tortured while in detention.

This was said in the Pretoria Supreme Court yesterday by counsel for the State during an application for the priest's release. Father Mkhatshwa has been detained since June 12.

Yesterday, the State said it was not in a position to deny the priest had been assaulted.

Father Mkhatshwa came to court at the end of August, asking that the police be forbidden to assault him.

The Minister of Law and Order undertook to ensure this, and the application was postponed to September 2.

Mr Justice Esselen then ruled there was a dispute of fact and the matter would go to trial.

The following day the judge withdrew his order pending the decision by the Appeal Court on the validity of the emergency regulations. The court has since upheld the validity.

Yesterday argument re-commenced in the application for the release of Father Mkhatshwa.

SPAK 23/10/85

Treason trial defence to call for discharge

232

By Estelle Trengove

Lawyers defending the Delmas treason accused are preparing to launch an application for the discharge of the 22 men.

Counsel for the State yesterday closed its case in the marathon trial which has been running in Delmas only three weeks short of a year.

The 22 men on trial include prominent members of the United Democratic Front (UDF) such as publicity secretary Mr Terror Lekota and general secretary Mr Popo Molefe, and members of Azapo and the Vaal Civic Association. They pleaded not guilty to a charge of high treason and charges under the Internal Security Act

TOWNSHIP UNREST

The State alleges that they conspired with the banned African National Congress (ANC) to overthrow the Government and promoted township unrest which led to riots in the Vaal triangle.

Mr A Chaskalson SC, for the defence, yesterday asked for an adjournment of a week to enable the defence to prepare for launching an application for the discharge of the treason trialists

The defence in a trial can launch such an application if it believes that, even on the State's evidence, the accused cannot be convicted or if the evidence presented by the State is so poor that no reasonable court can believe it.

Yesterday the courtroom was packed with family, friends and supporters when the trial was resumed after a month-long adjournment. The trialists received parcels of food and clothing from their visitors

The hearing was postponed until October 29.

Those on trial are UDF publicity secretary Mr Patrick "Terror Lekota (37) of Claremont Durban UDF general secretary Mr Popo Simon Molefe (33) of Soweto Anglican priest and Azapo member the Rev Tebogo Geoffrey Moselane (39) of Sharpeville former UDF secretray for the Transvaal Mr Moses Chikane (37) of Mamelodi Mr Patrick Mabuya Baleka (25) of Soweto Azapo member Mr Oupa Hlomoka (32), of Sebokeng Mr Mohapi Lazarus More (25) of Sebokeng Vaal Information Service member and Rhodes Black Student Society member Mr Thabiso Andrew Ratsomo (27), of Sebokeng Vaal Civic Association member Mr Geinunuzi Petrus Malindi (25) of Sebokeng secretary of the Evaton Ratepayers Association Mr Petrus Mokoena (47) of Evaton executive member of the Vaal Civic Association Mr Tsietsi David Mphuthi (48) of Sebokeng Mr Naphtali Mbuti Mkopane (40) of Sebokeng Mr Tebello Ephraim Ramakula (35) of Sebokeng educator with the Urban Training Project Mr Bavumile Herbert Vilakazi (30) of Sebokeng Vaal Civic Association executive member Mr Sekwati John Mokoena (33) of Boipatong Vanderbijlpark Congress of South African Students (Cosas) member Mr Mkhambi Amos Malindi (20), of Sebokeng former Cosas leader and now Institute of Race Relations worker Mr Simon Tseko Nkodi (25) of Sebokeng Mr Pelamotse Jerry Tlhopane (27) of Sebokeng Mr Serame Jacob Hlanyane (37) of Sebokeng, Soweto Civic Association member and worker for the South African Council of Churches Mr Thomas Madikwe Manthata (45) of Soweto, Vaal Civic Association executive member Mr Hlabeng Sam Matlole (61) of Sebokeng, and Mr Maxala Simon Vilakazi (24) of Sebokeng

23/10/86

Court confirms objector's 6 year sentence

252

PRETORIA — The case of a religious objector who had been sentenced to nearly six years' imprisonment for failing to report for community service came before the Supreme Court here this week for the second time this year

On February 5 this year a Blinkpan magistrate sentenced Marthinus Albertus Uys du Plessis, 20, to 2 175 days' detention after the religious objector failed to report for community service on December 6 last year

Mr Du Plessis told the magistrate he did not report "because it would be against my conscience to accept manpower work in place of military service"

In March, Mr Justice van Zyl reviewed the case in the Supreme Court here and found Mr Du Plessis had pleaded guilty to a charge in terms of the wrong section of the law

The conviction and sentence were set aside and the case was referred back to the magistrate

The magistrate then convicted Mr Du Plessis in terms of the correct section and again sentenced him to 2 175 days' detention

However, he was uncertain whether he could make the sentence retroactive to February 5 so he referred the case back to the Supreme Court where it was ruled possible on Monday — Sapa

Disagreement over Bill of Rights

FAK objects to Natal/Indaba ad

DIANNA GAMES

THE objections of the Federasie van Afrikaanse Kultuurverenigings (FAK) to the scrapping of the Group Areas Act and the prospect of "forced" integration of schooling implied in the Natal Indaba's Bill of Rights are not objections on behalf of the National Party (NP).

The FAK is a Broederbond organisation

Its Indaba delegate, Dr Johan Steenkamp, yesterday denied the FAK was spearheading an NP campaign against the Indaba where the NP — reported to be trying to undermine the Bill — has only observer status.

It was natural, he said, that there would be agreement between the NP and FAK on many issues, as the NP represented whites who also subscribed to the FAK point of view.

The FAK said it had been forced into breaking its vow of silence over the Indaba's internal matters when the Indaba's Image Management Committee went public, advertising in the media that the Indaba was to result in a non-racial democracy — an objective the FAK had not approved

The two-month-old Indaba Support Group says it has had about 120 000 requests for copies of the Bill of Rights

Steenkamp said the FAK objected to two main points in the Bill

The first was the simple scrapping of the Group Areas Act. "We are not saying its scrapping should not be investigated, but it is too soon simply to scrap it"

The second was a clause allowing everyone the same rights to educational facilities That, said Steenkamp, could be used to bring about forced integration in schools

Steenkamp said the advertisements implied the FAK's complete acceptance, but in fact did not reflect the position of FAK members

Indaba chairman Professor Desmond Clarence said Steenkamp had not quoted a clause which mentioned differentiation in schools on the grounds of sex and language

US paper questions support of SA violence

NEW YORK — The *Wall Street Journal* said this week decisions by General Motors and IBM to quit SA were not the only news items about Southern Africa

Quoting a range of other events, the report said. "We cite these to suggest once more that Americans who want a scorched earth in Southern Africa will probably get one"

Among the recorded incidents was the killing in Soweto of former student leader Masabato Loate, whose mother attributed her murder to her recent advocacy of non-violence.

The report, commenting on the World Council of Churches' loan to the ANC and Swapo, said "The ANC's Soviet-backed military wing is conducting guerrilla warfare in SA Swapo is warring against SA for control of Namibia"

Swarts to hang for murder

BY JEREMY McCABE

THE killer of the country's first white "necklace" victim was given the death sentence this week.

Henry Swarts, 36, was sentenced in the Grahamstown Supreme Court by the Judge President of the Eastern Cape, Mr Justice Cloete, to hang for the "gruesome and barbaric" murder of Mr Lodewyk Vlooh in June this year

A railway worker, Mr Vlooh, 40, was brutally beaten to death with a stone by Swarts outside Uitenhage's Kwanobuhle Township

Accomplices

Mr Vlooh was then robbed of his clothing and money before being set alight several times with car tyres, paint and paraffin

Swarts's four accomplices — all members of the same family — were also convicted for the part they played in the killing

Marie, 19, and Pamela Lewis, 28, were convicted as participants to the robbery and sentenced to five years' imprisonment

Their two brothers, David, 25, and Bernard, 18, were convicted as accessories to murder after the fact

Bernard Lewis was jailed for five years and David for six

10 years' jail for young field worker who supports ANC

JOHANNESBURG — Stephen Johannes Marais, 29, a field worker involved in rural development in homelands, who was convicted of terrorism this week, was sentenced in the Johannesburg Magistrate's Court today to 10 years' imprisonment.

Saying he was exposed to the harsh living conditions of the villagers among whom he worked, Marais, who was born in Stellenbosch and studied fine art at the University of Cape Town between 1975 and 1978, admitted supporting the aims of the African National Congress.

The magistrate, Mr T J la Grange, said Marais regarded the aims of the ANC to be of paramount importance and human life of secondary importance

"There's no point in trying to uplift the lives of some people and trying to destroy the lives of others," he said

Marais pleaded guilty but there was no evidence of any remorse only his justification for his actions, said Mr la Grange

Referring to Marais' work with the Environmental and Development Agency, the magistrate said "There's no doubt that his task was a commendable one"

Through ANC members in Lesotho, Marais became convinced that the ANC was "the most important organisation fighting for changes away from the apartheid system", the court heard

It also heard that Marais assisted in the transportation and storage of mines, travelling from Lesotho with Miss Marion Sparg in a hired car in which arms were concealed

Clenched fists were raised by friends and colleagues after sentence was passed — Sapa

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'Necklace' killing: three jailed

252

Eve Post 30/10/81

By CHRIS RENNIE

THREE men associated with a necklace murder were sentenced in the Port Elizabeth Supreme Court today.

Skhumbuzo Menziwa, 20, and Vuyisile Dabula, 20, were jailed for 10 years each, four years of which were suspended conditionally for five years. Bonakele Snyders, 19, was sentenced to five years imprisonment, of which three years were suspended conditionally for five years.

The three and two others were originally charged with the murder of Mr Eric Sipho Blouw in Langa, Uitenhage, on October 5 last year.

Mr Justice Solomon told them today that although they had been convicted of lesser offences, the court could not overlook the fact that they had been associated with a "necklace murder".

Menziwa and Dabula pleaded guilty to culpable homicide, saying they had assaulted Mr Blouw with stones and iron rods.

Snyders pleaded guilty to assault with intent to do grievous bodily harm.

Snyders said after he had thrown a stone at Mr Blouw, he realised he was doing wrong and ran away.

The State accepted their pleas and the court convicted them accordingly. The charges against the other two were withdrawn.

The judge said the offences had to be seen in the context of "dreadful crimes" now prevalent in the townships.

The post-mortem report showed the body had been so badly charred it was impossible to establish the cause of death.

Mr J de Villiers and Mr J A F Nel sat as assessors Mr K Lawlor appeared for the State Mr N P Willis (instructed by Miss V J Brereton) appeared for the defence

Squatters: judgment reserved

30/10/86

252 Evelyn

Court Reporter

JUDGMENT was reserved yesterday in an application to order the removal of illegal squatters from the area known as Little Soweto

Mr H J Liebenberg, who appeared for Swartkops Seesout, alleged that it was a major producer in the country and that salt was a strategic material He said the salt-making process was being threatened seriously by pollution and additional run-off from the squatter area

It was mentioned in court that there was confusion as to who was responsible for the area, because of a multiplicity of legislation and recent changes

Mr Liebenberg said the transfer of the land had been accompanied by an agreement in terms of which the authorities were to prevent pollution

He said it could not be accepted that the authorities could do nothing about the problem

Mr M H Claassens, SC, for the Administrator, asked that the application be dismissed with costs He argued that the Administrator did not have the resources to remove the squatters

Mr Liebenberg was instructed by P C van Staden, Venter and Co Mr Claassens was instructed by Blumberg, Katz, Saks and Butler

Call for Bill of Rights for disabled people

BLOEMFONTEIN—There should be a Bill of Rights for disabled people, cast in a mould appropriate to the South African legal system, Dr William Rowland, chairman of Disabled People South Africa, said at the national symposium on disablement here yesterday.

Such a Bill would extend to people with disabilities the civil liberties and fundamental freedoms enjoyed by all citizens.

It would provide opportunities for disabled people to develop their abilities in the most varied fields, promote their integration into normal life and ensure social justice said Dr Rowland, who is also executive director of the S A National Council for the Blind

Consulted

In South Africa, as elsewhere in the world, there had emerged a new spirit of independence among disabled people, expressed in a movement known, variously, as independent living, self-help or the disability rights movement.

It meant that disabled people wished to be consulted in matters that affected their lives, that they chose to represent themselves and that they expected to be employed in the service system

It was of the utmost importance that this movement be recognised officially and that a channel of direct communication be established between the elected leaders and the Government.

'We accept that rights are matched by obligations Therefore, it is our responsibility to contribute to society in general and our special responsibility to defend the rights of all minorities, but especially of disability groups more disadvantaged than our own,' said Dr Rowland.

'By helping the poorest and the hopeless, we free family and community of their heaviest burden,' he said The repercussions, economically and socially, were pervasive and real.

'In South Africa let us turn away from our affluent cities to attend to the townships and rural areas where are to be found the very wretched of the earth. Where the need is greatest is where to begin Let the last be first,' Dr Rowland said — (Sapa)

Company in debt: 90 to lose jobs

DURBAN — The 90-member work-force of Natal Beverages, manufacturers of Pepsi-Cola, are to be retrenched following a court order placing the company, which has debts of R3 000 000, into provisional liquidation.

The order was granted by Mr Justice Viljoen in Cape Town's Supreme Court on October 28, one of the company's joint provisional liquidators, Mr Ralph Millman of Cape Trustees, confirmed yesterday

The return date is December 3

"The closure of the Prospecton plant could mean that Pepsi will no longer be available in Natal or the Transvaal which was also supplied by Natal Beverages. However, this could not be confirmed last night.

A spokesman for the Registrar in Cape Town said the company had debts of R3 000 000 with a R234 000 loss in the 1986 tax year

Mr Millman said the book value of assets stood between R3 million to R3,5 million

According to court records the managing director is Mr Graeme Anthony Wynne — DDC

Fourth court bid to find missing Pebco leader

By JIMMY MATYU

AN application will be filed in the Port Elizabeth Supreme Court on Monday calling on the State and the South African Police to produce the president of the PE Black Civic Organisation (Pebco), Mr Qaqawuli Godolozi who disappeared mysteriously last year

The *habeas corpus* application will be brought by Mrs Benedicta Nobubele Godolozi, who believes her son is still alive.

Mr Godolozi disappeared on May 8 last year with two other Pebco executive members, the secretary-general, Mr Sipho Hashe, and the organising secretary, Mr Champion Galela

This will be the fourth attempt made in court to establish the fate of Mr Godolozi

An attorney for Priscilla Jana and Company in Johannesburg, which is representing Mrs Godolozi, said that according to papers to come before court, Mrs Godolozi was calling on the Minister of Law and Order, Mr Louis le Grange, and the officer commanding the Alexandria Police Station to produce her son

The matter was last heard in the PE Supreme Court in April

He said that since April he had been conducting research in PE on the matter and that 15 witnesses from various places would give evidence for the applicant

The attorney said the evidence would incorporate testimony on behalf of Mr Hashe and Mr Galela

The three Pebco leaders disappeared on May 8 last year.

252

Eve Post

31/10/86

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DD 1/11/86 (252)

Fourth bid to find missing Pebco men

PORT ELIZABETH — An application will be filed in the Supreme Court here on Monday calling on the state and the South African Police to produce the president of the Port Elizabeth Black Civic Organisation (Pebco), Mr Qaqawuli Godolozi, who disappeared mysteriously last year ago.

The habeas corpus application will be brought by Mrs Benedicta Nobubele Godolozi, who believes her son is still alive

Mr Godolozi disappeared on May 8 last year with two other Pebco executive members, the secretary-general, Mr Sipho Hashe, and the organising secretary, Mr Champion Galela

This will be the fourth attempt made in court to establish the fate of Mr Godolozi and the two other men

An attorney at the Johannesburg firm representing Mrs Godolozi said that according to papers to come before court, Mrs Godolozi was calling on the Minister of Law and Order, Mr Louis le Grange, and the officer commanding the Alexandria police station to produce her son

He said when the case was heard in the Supreme Court in April this year, Mr Justice Kroon made an agreement between the two parties and referred the matter for the hearing of oral evidence on the questions of whether

● Mr Godolozi was apprehended by members of the SAP — including the security police — on May 8 last year, and

● Mr Godolozi was in the custody of the police at any time between May 8 last year and now

The attorney said the case was scheduled to run for three weeks and arrangements were being made to get a judge from Grahamstown

He had been conducting researching the case since April and 15 witnesses from various places would give evidence for the applicant

The evidence would incorporate testimony on behalf of Mr Hashe and Mr Galela.

The first attempt to establish the fate of the three civic leaders was dismissed with costs in May last year after the court found the evidence produced by the applicants was largely hearsay and unreliable.

A second attempt was made in July last year, but the families later withdrew their applications, saying they found they had been misled by a "police informer" who alleged she saw the men in police custody

The third attempt was in April this year, when an agreement between the two involved parties, counsel representing Mr Godolozi's family and counsel representing Mr le Grange, was made an order of the court in which the judge referred the matter for the hearing of oral evidence

● Attorneys heard late yesterday the case would not be heard on Monday It was likely to go before the court in February — Sapa

Aim is to 'open' courts to public

Mr Treisman: better image for attorneys

By Estelle Trengove

The newly-elected president of the Transvaal Law Society, Mr Stan Treisman, has undertaken to move towards making the courts more accessible to the public.

Mr Treisman's other main goal will be to improve the image of the attorneys' profession in the minds of the public to move away from the idea that lawyers are just out to make money.

Mr Treisman, married with three children, took office as the 1987 president at the annual general meeting in Rustenburg at the weekend, succeeding Mr Ed Southey.

Born and bred in Johannesburg, Mr Treisman obtained an LlB degree at the University of the Witwatersrand.

Since 1971, he has specialised in property law and conveyancing. Co-author of a book on the Alienation of Land Act, he was actively involved in the Sectional Titles Act, particularly the amended Act.

He was recently appointed chairman of the Practising Rights Committee of the Association of Law Societies, which investigates impediments to attorneys carrying out their duties, such as discrimination in the courts

He was also appointed by the profession to liaise with the Commissioner of Police on the state of emergency.

Many Postdents of town ● See Editorial Opinion

Widow (65) wins fight against 130% increase

Court Reporter

A 65-YEAR-OLD Indian widow, who was facing a rent increase of about 130%, successfully challenged the increase in the Supreme Court, Durban, yesterday.

The rent increase, from R115 a month to R265 a month, had been claimed by her landlord when he thought she was no longer protected by the Rent Control Act.

Mrs Mottamma Naidoo, of Mount View, Carlisle Street, brought an application against the Minister of Communication and Public Works and the Minister of Local Government, Housing and Works in the House of Assembly

Yesterday, when the case was due to proceed, Mr Justice Nienaber was told the matter had been settled and it was adjourned by consent

Under the settlement terms, the two ministers have undertaken to withdraw Government notice 570 — which dissolved the rent boards in Durban and Pietermaritzburg — by not later than November 14

It will be replaced with an alternative notice indicating that rent control still applies to the Indian and coloured groups

Wording

The notice was published in the Government Gazette of March 27 this year

It referred to the dissolution of the Durban and Pietermaritzburg rent boards

Mr Douglas Vernon Thompson, the regional representative of the Department of Local Government, Housing and Works, said in an affidavit 'Unfortunately the wording of paragraph (a) failed to make it clear that what was being dissolved was the Durban and Pietermaritzburg rent boards for the white population group only'

252

1 000 at ECC rally as 9 members held

By RONNIE MORRIS and CLARE HARPER

ABOUT 1 000 people attended the End Conscription Campaign (ECC) rally in the City Hall last night in spite of the earlier detention of nine Cape Town ECC members, including the billed speaker

The nine were detained in terms of the emergency regulations yesterday morning while in Johannesburg another four ECC members were detained and 16 served with restriction orders

Prior to the meeting, Dr Van Zyl Slabbert said "It seems their detentions were more than a coincidence This is a rather cynical way of attempting to prevent the meeting from going ahead"

Standing in for the detained ECC chairperson, Ms Paula Hathorn, was the regional deputy chairman of the Institute of Race Relations, Sir Richard Luyt, who described the events as "distressing and traumatic for the ECC"

Those detained in Cape Town were The former ECC chairperson, Mr Mike Evans, the Western Cape ECC chairperson, Ms Paula Hathorn, Mr Crispin Olver, Mr Andrew Orpen, Ms Josie Grinrod, the ECC regional general secretary, Mr Alistair Teeling-Smith, Mr Matthew Blatchford, Ms Felicity Wood and Mr Mike Rautenbach

Violence erupted after dismissals, Court told

Labour Reporter

TWO people were killed and many were injured when violence erupted after a Howick rubber company dismissed nearly 1 000 employees and took on 'scabs', a Full Bench of the Industrial Court heard yesterday

The Court was being addressed by Mr Martin Brassey, who represented the Metal and Allied Workers' Union, during the second day of the hearing of an application for the reinstatement of the workers dismissed by BTR Sarmcol in May last year following a strike

The Court, sitting at the Ital Ecumenical Centre in Edendale, Pietermaritzburg, was also asked to order the company to accept Mawu as the 'collective bargaining representative' of the workforce at the Howick plant

Pressure

The hearing is being attended by more than 1 000 people, mainly the affected workers

Mr Brassey said the tragic events followed several attempts by the union and the workers to get the company, a subsidiary of the multinational British Tyre and Rubber to negotiate a reinstatement of the workers

Mr Brassey alleged that the company had consistently attempted to assert a position of dominance over the union during negotiations, which ultimately broke down

The union had deployed community and other pressure on the management and approached various chambers of commerce and industry to intervene

It sought support from churches and community organisations and also attempted to mobilise the public through the media, but still the company refused to accede to the sacked worker demands, the Court was told

In spite of further pressure both nationally and internationally the matter was still unresolved

He said the Sarmcol dispute had also been the subject of complaints to international agencies such as the European Economic Community, the International Labour Organisation and the United Nations

The application is being heard by Mr Pierre Roux, SC, deputy president of the Industrial Court with Prof M Oosthuisen and Prof Charl de Witt

The hearing continues today

Court told of 2 500 students with placards

Court Reporter

A PLACARD-WAVING crowd of about 2 500 students carrying sticks and stones had descended on the administration block at the campus of the University of Durban-Westville, a Durban regional magistrate was told yesterday

Mmankududu Mokoka, 22, Michelle Singh, 19, Vasudgvan Gounden, 24, Arnold Hansrajh, 22, Lingamaran Govender, 22, Kumaran Naidoo, 21 and Pragasan Moodley, 21, pleaded not guilty to a charge of public violence.

It is alleged that on June 13 the accused and 2 500 others assembled with the common intent of disturbing the public peace.

They are also alleged to have intimidated students to boycott classes

Giving evidence, Mr A Myburgh, a protection services officer on the campus, said he had been on duty when about 4 000 students assembled and were addressed by a black man

He said 2 500 students had then marched on the administration building singing, dancing, waving sticks and carrying placards

Some of the placards said, 'Break apartheid, Build unity', while others proclaimed, 'Bullets can't stop us', and 'SADF out of the townships'

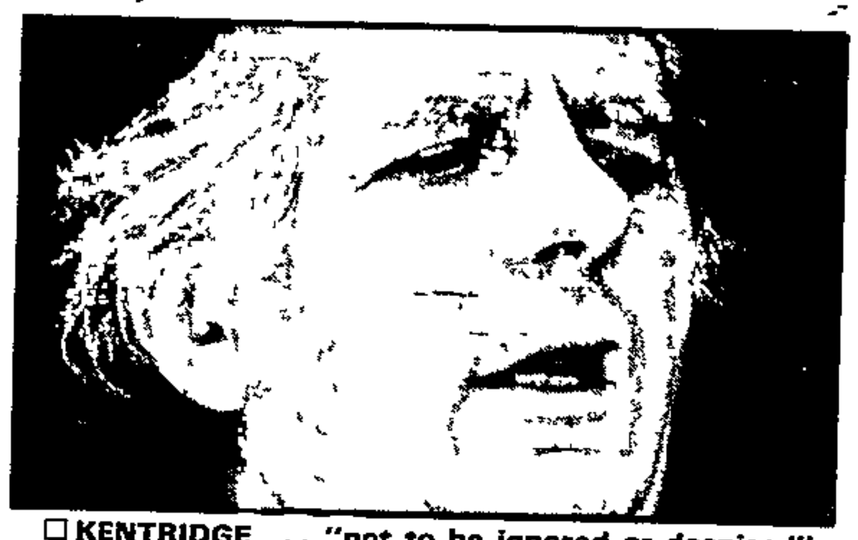
Mr Myburgh claimed that the president of the SRC, Mr Vasudgvan Gounden, had personally warned him to leave if he did not want to be hurt

He said he saw Mr Gounden, Mr Govender and Mr Moodley walking in front of the crowd giving the appearance they were leading them

The hearing continues

BUS DAY 7/11/86.

Advocating a bill of rights for SA



☐ KENTRIDGE .. "not to be ignored or despised"

JOHN BATTERSBY in London

COULD AN ENTRENCHED bill of rights be the instrument to break the political stalemate in SA and take the country across the Rubicon to a post-apartheid society?

This question formed the theme of a most penetrating and challenging address by one of SA's most distinguished lawyers — Sydney Kentridge, QC — this week

Kentridge was invited to deliver the first John Foster memorial lecture at the University College of London this week and chose as his theme the future prospects for civil rights in SA

At the centre of the debate about civil rights in SA lies the need for a bill of rights to protect individual civil liberties

During the past few years many of SA's leading legal and academic experts have been working to formulate a bill of rights that would guarantee basic human rights in a culturally and socio-economically diverse society It is a mechanism that finds support across the political spectrum

A bill of rights forms an integral part of the policy of the Progressive Federal Party The African National Congress (ANC) has made it clear that it would support a bill of rights to afford constitutional protection for individual human rights, although it has strong reservations about the principle of protecting "group" rights

And more recently — this April — Minister of Justice Kobie Coetsee instructed the SA Law Commission to investigate the desirability of a bill of rights In September Coetsee told the Transvaal Congress of the National Party that a bill of rights was "not a question of when, but how"

At the NP's Free State conference the same month, President P W Botha himself embraced the concept of a bill of rights as advocated by US Secretary of State George Shultz

So what, one may ask, is the hold-up?

The main problem is the stalemate in black/white relations and the lack of effective channels for negotiation and consultation which would be necessary to arrive at a mutually acceptable bill of rights

The business community, which is meeting with the SA government today, has produced its own guidelines for a bill of rights in the impressive Business Charter drawn up by the Federated Chamber of Industries (FCI) in January this year and subsequently endorsed by other arms of organised business

The Natal Indaba has drafted its own bill of rights, which is likely to make a major input into the national debate

In quiet, behind-the-scenes ways the search for an acceptable bill of rights has advanced a long way since 1978, when Professor John Dugard remarked that an entrenched bill of rights in a federal setting, or even the unentrenched Canadian-type, "must appear a Utopian dream to South African libertarians at this time"

But the significance of Kentridge's sensitive handling of the subject in a South African context was the need to take account of the African or Third World perception of human rights

"The Third World, especially in Africa, has perhaps concentrated more on the collective rights of peoples The right of racial equality has been seen not so much as the right of an individual not to be discriminated against on the ground of his race, but rather as the right of a black population to be liberated as a people from colonialism or white rule

"Many black political thinkers — and not merely Marxists — regard the major problem of SA as poverty and economic inequality to be redressed, not by a bill of rights, but by means of a redistribution of wealth, possibly in the form of a nationalisation of major industries

'Whether or not we think that economic prosperity is indeed attainable by this route, we would be wrong to ignore this view It is a powerful element in black political thought in Southern Africa and, in view of the political and economic history of the region, it is a wholly understandable one," Kentridge said

He said that these considerations helped to explain why the debate on a bill of rights had taken a curious turn — including being embraced by the SA government.

Kentridge went on to note that the growing popularity among whites for a bill of rights was matched by a growing suspicion among blacks, who interpreted the belated concern with a bill of rights as that of a group whose time was running out and wanted to protect its existing privileges

But he warned against equating these suspicions with rejection of a bill of rights and noted that the ANC did not appear to exclude a bill of rights from its thinking

Kentridge then turned to the Freedom Charter — the celebrated 1955 statement which forms the basis of ANC policy — and which also provided the inspiration for many of the clauses of the FCI's Business Charter

Kentridge described the Freedom Charter as "possibly the most important single document in black political history in SA based largely on the Universal Declaration of Human Rights, with the admixture of some basic socialist prescriptions".

"This is not a document to be ignored or despised. The clauses about nationalisation should certainly be taken seriously," he said.

Kentridge predicted that a black government in SA would be influenced by the examples of Zimbabwe and Mozambique — "which have shown that even governments with strong socialist pretensions are compelled in the event to recognise the value of private enterprise and to seek Western foreign aid and foreign investment. Subject to this, the growth of support for the Freedom Charter seems to me to be a good augury" Conceding that a bill of rights could never be a "sure bulwark against all abuses of executive power," Kentridge expressed the hope that "one may not unrealistically hope for something better The Freedom Charter gives ground for believing that respect for individual rights has some place in the policies of the black opposition," he said

Kentridge based his call for a bill of rights on an optimistic view of the future that revolution was not around the corner but that power would pass relatively peacefully through a negotiated settlement to a constitutional black majority government before the turn of the century

"The ANC is bound to have an important part in that process and there is likely to be a strong — but not necessarily dominant — socialist element in a future SA government," he said

'If SA in the future is to have a government of laws, whatever time is left must be used to try to ensure that the popular perception of law changes radically, that it is seen as protector of the individual, including — indeed, especially — the black individual," he said

Kentridge's 70-minute address brought home in the most compelling way the urgency of the need for a bill of rights before — rather than after — a transfer of power.

He suggested that the West could make a far more positive contribution by using "legitimate international intervention" to urge the adoption of a bill of rights on the Pretoria government.

It should be at the top of the agenda at today's encounter between government and the private sector. The least President Botha could do would be to read and re-read Kentridge's most thought-provoking address

Conviction set aside

THE conviction of 241 members and an official of the South African Allied Workers Union by a magistrate on charges of attending an illegal meeting, has been set aside by the Pretoria Supreme Court.

Mr Tshini Mulondo, a union official, and 240 former employees of Continental China in Rosslyn, who have all been retrenched follwoing a strike over wages, were convicted by Mr J N Pretorius in the Pretoria North Magistrate's Court on November 25 last year, for attending a prohibited or unlawful gathering

They were all sentenced to fines varying between R20 and R50

Advocate W P N Sceales this week successfully appealed against their conviction after he submitted that the magistrate had erred in accepting the scant and questionable evidence of State witnesses during the trial

The magistrate, Mr Sceales added, "erred both in regard to his application of legal principles in question and in regard to his assessment of the evidence"

The 241 were arrested outside the premises of their former employers on April 10 last year

Mr Sceales submitted that the State had led no evidence, that the 241 were warned that they were committing an offence by congregating

Release of U'hage schoolboy sought

GRAHAMSTOWN — A schoolboy of 17 said in papers before the Grahamstown Supreme Court today he believed he had been arrested and detained because he was a firm adherent of the Islamic faith

Mr Ashraf Mohammed, a Standard 9 pupil at the Uitenhage Senior Secondary School, said the police officer who arrested him told him he believed Islam was a revolutionary movement which posed a threat to the State.

Mr Ashraf was arrested on June 13 this year under the emergency regulations, according to the papers

An application for his release was brought by his father, Mr Fakier Mohammed, a Uitenhage hawker.

The respondents are the Minister of Law and Order, the Commissioner of Police, the Divisional Commissioner of Police for the Eastern Cape and the Commissioner of Prisons

Warrant Officer W J Needham, who arrested Mr Ashraf, said in papers he believed the arrest and detention of Mr Ashraf was necessary

He alleged that Mr Ashraf was chairman of the Students' Representative Council at his school, was actively involved in school and consumer boycotts in Uitenhage and was a member of the Azanian Student Movement

WO Needham denied having held the opinions alleged by Mr Ashraf Mohammed regarding the Islamic faith

(Proceeding)

Mr Justice Grosskopf was on the Bench Mr Izak Smuts (instructed by Eugene Peffer and Company of Port Elizabeth) appeared for the Mohammeds Mr J J Nepgen, SC, assisted by Mr Johan Froneman (instructed by Mr I S Douglas, of Whitesides) appeared for the respondents

Accused of spying on cops for ANC

SB's IN COURT

AMAZULU under siege as Pirates a

TWO former security branch policemen who allegedly spied for the banned African National Congress, giving them information relating to State security, have been charged with terrorism and espionage.

Mr Matshwenyego Daniel Mokgaabudi (29), of Atteridgeville and Mr Tshifhango Cedrick Rabuli (33) of Soshanguve, near Pretoria, appeared before Mr W J van den Bergh in the Pretoria Regional Court on Friday on ten charges of terrorism, furthering the aims of the ANC and of espionage.

Both accused who were represented by Mr Sakkie Mabua, were not asked to plead and the case was postponed to January 6 and 7 next year.

They were remanded in custody.

By MONK NKOMO
Pretoria Bureau

The State alleges that the accused were members or active supporters of the ANC and furthered its aims from 1980 to July 12 this year

Both, in their official duties of the SAP, allegedly had access to information concerning actions of the ANC in the Republic and of how to combat these actions

The accused also had documents or duplicate copies of secret files relating to ANC activities.

Documents

They were attached to the Security Branch in Pretoria at the time of their arrest early this year

The documents the accused had access to also related to security and military matters and anticipated actions of the ANC and the PAC (Pan Africanist Congress)

These documents, the State alleges, were given to members or active supporters of the ANC or a certain Malaza between June 16, 1982, and July 12 this year

The State also alleges that the accused were compensated by the ANC for the contribution of the information and documents they delivered to the organisation

The accused were also allegedly recruited by the ANC or a Malaza to join the organisation

According to the indictment, the accused neglected to report the sensitive information and or particulars relating to actions of the ANC or its supporters to the police

They also failed to report the involvement of Malaza in the activities of the ANC.

Lawyers acting for the police indicated to the magistrate on Friday that they have already applied for a certificate from the Attorney-General prohibiting bail for the accused under a section of the Internal Security Act

The defence counsel is expected to file replying affidavits within 14 days challenging the application

Schoolboy detention: judgment reserved

Post Reporter

JUDGMENT was reserved in the Grahamstown Supreme Court yesterday on an application for the release of a 17-year-old Uitenhage schoolboy arrested under the emergency regulations on June 13

The boy's father said in a sworn statement he had been told by a policeman that consideration would be given to his son's release from detention if he and the boy, a Std 9 pupil, renounced the Islamic faith.

The man said the policeman responsible for this statement was the man who had arrested his son

The policeman has denied the claim.

The boy, who may not be identified, said in an affidavit he was arrested by Warrant Officer W J Needham, who told him Islam was a revolutionary movement which posed a threat to the State.

WO Needham also told the youth he would "see to it" that the Islamic religion was never "mobilised".

In an affidavit, WO Needham said he arrested the youth because he was a leader at his school, was involved in school and consumer boycotts in Uitenhage earlier this year and was a member of the Azanian Student Movement (Azasm).

The youth confirmed his leadership position and acknowledged supporting boycotts at his school last year, but denied there had been a boycotts this year

An official at his school confirmed there had been no boycott of classes this year

He confirmed that, to the best of his knowledge, there had not been a consumer boycott in Uitenhage this year

The application for the youth's release was brought by his father against the Minister of Law and Order, the Commissioner of Police, the Divisional Commissioner of Police for the Eastern Cape and the Commissioner of Prisons.

Mr Justice Grosskopf was on the Bench The applicants were represented by Mr Izak Smuts (instructed by Eugene Peffer and Co) Mr J J Nepgen, SC, assisted by Mr Johan Froneman (instructed by Mr I S Douglas of Whitesides) appeared for the respondents.

Scathing critique likely to raise furore

World jurists slam SA courts

WEEKLY MAIL 14/11/86 252

By PAT SIDLEY

A LEADING international legal body, the International Commission of Jurists (ICJ), has launched an extraordinary attack on the the South African judiciary for its role in security cases

The scathing comments of Dutch lawyer Willem van Maanen, the ICJ observer at the treason trial of Helene Passtoors and other cases earlier this year, are certain to create a furore among local lawyers, including many concerned with human rights who have themselves been critical of the courts.

His attack was contained in a 162-page report on the Passtoors trial, published in the Netherlands this week. Passtoors, a Dutch and Belgian citizen, is serving a 10-year sentence for treason

Van Maanen was interviewed yesterday by Weekly Mail on the content of the report

He said the main points were his finding of the injustice inherent in South African court cases related to apartheid and his belief that apartheid is "even more total and ruthless than I had assumed before my visit to South Africa

"However neatly one may attempt to organise or, rather, dress up the proceedings in courtrooms, it is nothing other than an attempt . to camouflage what really is at stake — apartheid," he said

All the laws and decrees made to maintain apartheid served the purpose of creating the impression of "justice", he said, but amounted to one thing "We, the government and the police, do with our accused whatever we want to, and the judiciary should not meddle in it"

And it is Van Maanen's view that the judiciary do not meddle in this process

"The law and the way in which it is

● To PAGE 2

Scathing attack on courts

14/11/86 WEEKLY MAIL 252

● From PAGE 1

administered and developed by the courts cannot be isolated from the underlying politics and social circumstances

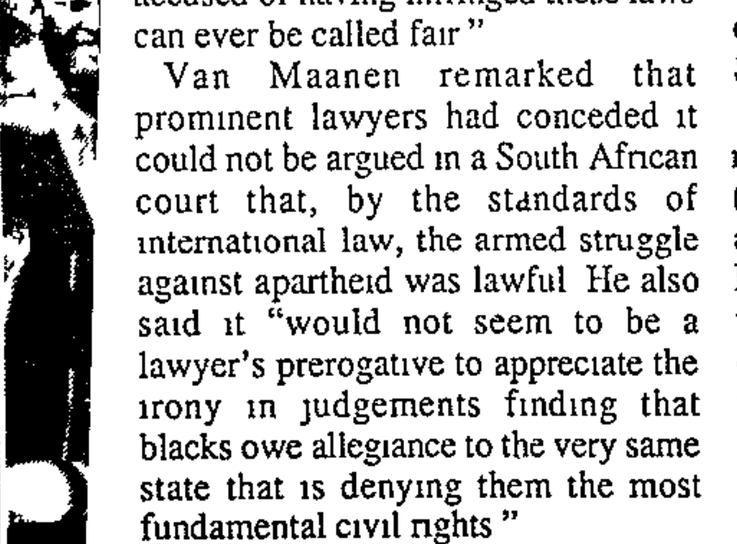
"Thus the Passtoors trail cannot be judged 'as such' — in isolation from its social and political context And that context is apartheid," he said

'The system of apartheid is unfair To maintain it requires unfair laws and a judiciary willing to enforce these laws No trial of a person accused of having infringed these laws can ever be called fair"

Van Maanen remarked that prominent lawyers had conceded it could not be argued in a South African court that, by the standards of international law, the armed struggle against apartheid was lawful He also said it "would not seem to be a lawyer's prerogative to appreciate the irony in judgements finding that blacks owe allegiance to the very same state that is denying them the most fundamental civil rights"

These arguments would irritate a court and would therefore not be in the interests of the accused

"This adds justification to the viewpoint of black people and concerned whites that most South African courts in their uncritical and 'positivist' approach to apartheid legislation merely serve as instruments of repression," he said.



While some judges seemed to oppose the regime, he said, the phenomenon was rare and, in any event, marginal, as it did not touch on "the heart of the matter, which is the injustice of apartheid, the injustice of racism and the injustice of South Africa"

Resistance to apartheid, he said, must be compared with resistance during the 1930s and 1940s against Spanish and German fascism

"I am concerned about certain reactions in the Netherlands — (people who say) 'OK, of course apartheid is wrong, but Helene Passtoors is just a terrorist who got what she deserved and she's lucky she only got 10 years' " Van Maanen says this was never said in the 1940s about Dutch fighters resisting the Nazis

The report also details a number of other trials Van Maanen attended. He draws on these trials to illustrate his thesis

On the Passtoors trial, he noted that "eight months in solitary confinement without access to a lawyer in any civilised Western country would mean the trial would be thrown out of court."

He said he hoped the courts in South Africa should concentrate "not on the form, but on the substance of apartheid and refuse to apply apartheid legislation". He added he knew it was a great deal to ask for.

Van Maanen said he knew his report would be controversial here

A prominent human rights lawyer, who cannot be named for professional reasons, said yesterday that although he did not have access to the ICJ report, it sounded like Van Maanen was basing his opinion on a limited number of cases which he had access to in the space of a short stay in South Africa.

Van Maanen's comments indicated that his report did not take into account significant judgements in the Supreme Court over the past few years which have advanced civil liberties.

Bill of rights not viable at present

SOUTH AFRICA is not yet in a position to concentrate its efforts on a national Bill of Rights, because such formal guarantees would be meaningless under the current political situation, where the black majority does not have a vote.

This was the view of Dr Thomas H Irwin, the American constitutional law academic, addressing a seminar on "Federalism and a Bill of Rights" at the Rand Afrikaans University's Institute for American Studies this week

Irwin, a member of the American Bar Association, is also currently assistant researcher for the Institute for Foreign and Comparative Law on federalism and constitutional change in SA at the University of SA

SIPHO NGCOBO

Disruptions

"South Africa has two constitutional revolutions before it — a restructuring of its constitutional system in a consociational or federal form, in order to attain a political system more in accord with the demands of social justice, and the evolution of a well-articulated system of civil rights for all members of the population," Irwin said

He said the American experience, however, has demonstrated that each of these transformations create profound disruptions in the political process, and are therefore best dealt with separately.

"What each of these stages have in common is the need for an independent judiciary, which can — in an impartial manner — police the compromise arrangements that have been arrived at in open-ended, non-paternalistic reform negotiations

"The success of the second — the Bill of Rights stage — in fact depends on developments in the first, federal, stage of constitutional reform The 'national consensus' negotiating style of the federal stage will, if successful, create the required negotiating experience for the creation of a Bill of Rights

"The judiciary, if successful is asserting its independent judgment in resolving federal or consociational issues, would then be prepared to interpret and enforce a Bill of Rights

"Finally, it is essential that, during the stage of constitutional reordering, any exclusive power of veto in one minority group — for example, the *de facto* veto among whites in the deadlock and failsafe provisions of the 1983 Constitution now in force — be eliminated.

"Only then, when all population groups can approach one another on a sound constitutional footing, could the idea of a Bill of Rights be taken seriously," Irwin said

He further advised that the present constitutional structure of SA's political system must itself be altered, in order to allow for political participation by members of all races.

"Whatever the eventual outcome in terms of specifics, the new political structure must be based on a real national consensus. This would entail an abandonment of the current National Party policy of reform from above and would instead call for a truly negotiated solution in which South Africans would confront one another as equals at the bargaining table

Change in attitude

"This would be a transformation from the 'reform from above' model to the American 'national convention' model of constitutional change However, it would not necessarily require a national convention in the formal sense; the style could be adapted to other organisational methods A change in attitude is what is necessary," he said

Secondly, said Irwin, it is necessary to develop a more independent judiciary.

"Certainly, the South African judiciary could already be described as independent — indeed, it is the only branch of government that is not ideologically tainted with apartheid, as members of all races can theoretically serve

"The South African judiciary must be imbued with sufficient authority to effectively maintain and police any constitutional solution arrived at by means of the open-ended, national consensus approach to negotiation

"The power to rule upon disagreements about the distribution of power, once a constitutional structure is legitimised by truly open discussion and a broad-based national consensus, must be placed outside the scope of the disputants in a depoliticised judiciary, composed of representatives of various racial groups.

"This is not to say that the new judiciary would have a constituency, each judge speaking for his respective race. Rather, such arrangements would merely be necessary to legitimise the judiciary in this racially diverse country," he concluded

Prisoner denounces violence, wants out

PRETORIA — An urgent application for the release from prison of a political prisoner who claims to have foresworn violence, has been postponed sine die in the Pretoria Supreme Court.

The release of the prisoner, who is serving a 10-year sentence in the security section of the Pretoria prison, would however have been considered in January next year.

The application for his release was based on a speech in Parliament by the State President, Mr P W Botha, earlier this year when he stated that the release of political prisoners who foreswear violence may be considered by the authorities

The application for release on Wednesday by Renfrew Leslie Christie, who holds an Oxford University doctorate, was postponed by Mr Acting Justice Human

Christie claimed an application for his release previously directed through normal prison channels was refused.

In his application to the Supreme Court, Christie referred to Mr Botha's speech in Parliament on January 31 this year when the State President indicated his willingness to consider the release from prison of Nelson Mandela — provided Mandela foreswore violence

According to Christie's application, the State President indicated that Mandela's release would be considered if he "gives a commitment that he will not make himself guilty of planning, instigating or committing acts of violence for furtherance of political objectives, but will conduct himself in such a way that he will not again have to be arrested"

Christie indicated that he "wondered whether it applied to him" as he was "keen to accept the offer if it did"

His application indicated that he wrote to the State President on February 12 this year, saying that he "unconditionally undertook not to make himself guilty of planning, instigating or committing acts of violence for the furthering of political objectives"

Furthermore, Christie claimed none of the counts on which he was convicted involved violence

According to the application, Christie signed a form brought to him in prison on February 2, this year, which incorporated provision or the acceptance of the conditions imposed by the State President.

In an answering affidavit, the Commissioner of Prisons, Lieutenant General Willem Hendrick Willemse, said he understood the contents of Mr Botha's speech as stating that the release of prisoners foreswearing violence would be "considered".

Mr L Visser (SC) said after the Supreme Court hearing on Wednesday that in the normal course of events Christie's release would have been considered by next January.

However, with a view to Christie's application for release before the Supreme Court, the matter will now probably be considered in the next two weeks — Sapa

Human rights chair for S'bosch

CAPE TOWN — South Africa's first chair in human rights, to be named after the former head of Anglo-American and current Chancellor of the University of Cape Town, Mr Harry Oppenheimer, is to be established at Stellenbosch University next year

The Rector of the university, Professor Mike de Vries, said the chair is to be funded by the De Beers diamond mine company through the largest-ever endowment to the university

He pointed out that the Minister of Justice, Mr Kobie Coetsee, had recently instructed the Law Commission to advise him on human rights and said at least two important symposiums on the subject were held earlier this year — at Stellenbosch and at Pretoria University

Professor De Vries said "With this chair, the university would like to initiate well-founded scientific research on human rights, the results of which may help to provide guidance in this field of study

Although the chair would be in the department of public law, human rights was such a broad field of study that other departments, including those in the law faculty, would also be involved

These included the faculty of theology and the departments of political science, economics, philosophy and political philosophy — Sapa

Mkhatshwa fails in release bid

PRETORIA — An application for the release from detention of the general secretary of the Southern African Catholic Bishops' Conference, Father Smangaliso Mkhatshwa, was yesterday dismissed with costs

In a judgment handed down in the Pretoria Supreme Court yesterday morning, Mr Acting Justice Melamet found that the priest had failed to make written representation to the Minister of Law and Order, Mr Louis le Grange

It had been argued that an affidavit made by Father Mkhatshwa denying allegations that he was involved, among other things in teaching people to make petrol bombs, could not be seen as representation to the minister

Father Mkhatshwa has been in detention for five months and has alleged he was assaulted in a "debasing and unChristian way"

The Minister of Law and Order undertook to ensure the priest would not be assaulted, and a police docket has been opened to investigate the allegations made by the priest

Father Mkhatshwa applied that if an assault be proved on him his detention be declared invalid, but this request was later dropped

Mr Acting Justice Melamet said it was doubtful that even if the priest had continued with this ground for release he would have succeeded

He said, however, the alleged assaults, if true "are most upsetting and deplorable"

He said he hoped the police investigations were brought to a speedy conclusion

The judge said there was nothing in the emergency regulations to show that the minister had to monitor the situation of detainees —Sapa

Father Mkhatshwa must stay in detention

IT'S NO TO FREEDOM

A PRETORIA Supreme Court judge yesterday dismissed an application for the release of Roman Catholic Church priest Father Smangaliso Mkhatshwa who has been in detention since June 12 this year.

By MONK NKOMO

Father Mkhatshwa is secretary of the Southern Africa Catholic Bishops Conference (SACBC) and a patron of the United Democratic Front. He is known worldwide for his opposition to the Government and its apartheid policies.

Mr Acting Justice Melamet dismissed the application with costs after finding that Father Mkhatshwa had not made representations to the Minister of Law and Order, Mr Louis le Grange who is a respondent in the matter.

Stripped

The SACBC, which brought the application, has alleged in one of its affidavits that Mr Mkhatshwa was stripped of his trousers and had his private parts exposed for 29 hours while being interrogated and insulted by security force members on August 20 and 21 this year.

The judge yesterday said the allegations, if proved to be true, were "most upsetting and deplorable".

He noted that Mr le Grange has promised to investigate the alleged assault on Father Mkhatshwa. Mr Acting Justice Melamet said he hoped the investigation would be concluded as soon as possible.

Father Mkhatshwa, in one of the affidavits, described as "sheer nonsense" allegations by Mr le Grange that he was an active supporter of the outlawed ANC and that he had trained black activists on how to make petrol bombs

He challenged the Minister to take him to court

The judge yesterday said Fr Mkhatshwa's denial of the allegations could not be seen as representation to the Minister.

Culpable homicide charge

TEMBISA administrator, Mr Solomon More who appeared in court yesterday.

See Page 2.

Alex hawker in court challenge

By JOSHUA RABOROKO

(252)

A 53-YEAR-OLD Alexandra father of six children who earns his living by selling fruit and vegetables yesterday brought an urgent application in the Rand Supreme Court challenging the action of the Johannesburg City Council in seizing his goods during October this year.

SOWETAN 17/11/86

In affidavits before the court, Mr Sam Kunana said he was a hawker and that the seizure of his goods and their destruction was unlawful.

Mr Kunana said on October 16 he was trading in Jeppe Street, Johannesburg, when he was confronted by Mr P Erasmus, an official of the City Council.

"Erasmus took my goods, including two boxes of apples, peanuts and other vegetables to the value of R103. I was later charged for trading without a licence," he said.

He later approached the city council officials to get his goods back because they were going to be destroyed. He said he had six children to support and the seizure of the goods had made him unable to feed them.

In replying papers the City Council contends that Mr Kunana traded illegally at the time when Mr Erasmus confiscated his goods.

Nationalist politician supports release of detainee

A NATIONALIST politician yesterday supported an application in the Supreme Court, Cape Town, for the detention of the president of the George Civic Association to be declared invalid.

Mr Kenneth Sibotho was detained on June 12 under the emergency regulations

Attorney Mr George Kellerman, the former provincial councillor for George, said in an affidavit that Mr Sibotho, his client, was respected in George's black community

After unrest broke out Mr Sibotho helped arrange meetings between Government, municipal and community representatives.

He also helped end a school boycott, said Mr Kellerman.

He was opposed to violence and was always prepared to negotiate to solve problems

A possible reason for his detention was the explosive situation in Lawaaikamp squatter camp

"My own opinion is that appalling conditions in Lawaaikamp and pressure that the municipality put on the residents to move to Sandkraal where circumstances were little better, were to a great extent instrumental in causing the explosive situation," said Mr Kellerman

He denied claims by the Minister of Law and Order, Mr Louis le Grange, in a letter, that the civic association was created to undermine the existing system and was responsible for intimidation.

No reasonable person could form the opinion that Mr Sibotho's detention was necessary, Mr Kellerman said.

In an opposing affidavit, Lieutenant Oeloff Steyn of Mossel Bay said there were good grounds for Mr Sibotho's detention.

He said Mr Sibotho had incited and intimidated black residents to commmit violence and had sought confrontation with the authorities

The application, brought by Mr Sibotho's brother Mr Nelson Sibotho, against the Minister of Law and Order and six others, was postponed for trial.

Rights Bill ideas needed

By Estelle Trengove STAR 20/11/86

The Association of Law Societies has urged attorneys to contribute to the investigation into the viability of a bill of rights for South Africa.

The South African Law Commission is looking into the possibility of a bill to protect human and group rights

The Association of Law Societies, in an editorial in its official magazine *De Rebus*, said a bill of rights was so important for stability, peace and individual liberties that attorneys and other lawyers were duty bound to contribute to the SA Law Commission's investigation

"The adoption of such a bill can be seen as a prerequisite for a just system and a stable South African community," it said.

The Department of Justice has defined the Law Commission's project as an investigation into the role of the courts in protecting group rights and human rights and the possible extension of that protection, including the necessity for and the desirability of the introduction of a bill of rights.

The role which the courts played in protecting individuals' rights could not be underestimated, De Rebus editorial said. The protection of individuals should be the most important requirement of a bill of rights

Lawyers were, however, not unanimous in their support for a bill of rights A spokesman for the Law Commission said there was great interest in the project and contributions were streaming in, many containing very valuable input.

The Law Commission sent out about 6 000 letters to individuals, companies and organisations, including church bodies and lawyers' associations

Any comment on the issue of a bill of rights can be sent before November 28 to The SA Law Commission, Private Bag X668 Pretoria 0001.

SUSPENDED

Sowetan 20/11/86

252

LEGGY Shirley Rakgomotsi told to choose between her job and the Miss NSL contest.

A BEAUTY queen When she told him

Described as an untruthful witness

A NATALSPRUIT magistrate who was recently described as "an untruthful witness" by the judge in the Duduza terrorism trial has been suspended from his official duties.

The Minister of Justice, Mr H J Coetsee, in a statement issued in Pretoria yesterday, announced that he had also requested the Judge President of the Transvaal, Mr Justice H H Moll, to launch an investigation into the remarks made by Mr Pieter Hendrik Marx during the trial

Cosas

Mr Marx and two other officials, Warrant Officer Karel van Dyk and Mr Boy William Mabena, were described as untruthful witnesses by Mr Justice Stafford during the trial of seven alleged members of the banned Congress of South African Students appearing in the Pretoria Supreme Court on charges of terrorism, attempted murder and possession of handgrenades and a bomb

To Page 2

Sowetan 20/11/86

252

Magistrate suspended

From Page 1

The three officials were involved when statements were obtained from two of the accused, Mr Joseph Titus Mazibuko (18) and Mr John Mlangeni (21) — while at the Natalspruit Hospital in June last year

Both accused had their right hands amputated during alleged handgrenade explosions in Duduza at midnight on June 25 and 26 last year

Mr Mazibuko, whose statement was ruled to be inadmissible as evidence, said during his evidence in chief that he twice refused to make a statement to Mr Marx "because I was too sick"

He agreed to make a statement on the third consecutive day "to get rid of the magistrate who was teasing me"

Under cross examination by Advocate Nick de Vos on October 21, Mr Marx said it was not "part of my duty to have looked into the medical condition of Mr Mazibuko at the time he made the statements"

Mr Marx, cross examined by another defence advocate, Mr Eric Dane, said even if an accused showed signs that he had been assaulted but told him he was not, while obtaining a statement from him, he would still not institute further investigations

He said he would stick to the reply given by the accused He also told the court that he made a note saying he found Mr Mazibuko eating on the third day, June 28, "to while away time"

His remarks caused a stir in court and Mr Justice Stafford asked him to "dink 'n bietjie" (think a little)

At the end of the trial within a trial, the judge found that Mr Marx was an untruthful witness and that his interpreter, Mr Mabena, was not candid while giving evidence

20/11/88 STAR 252

'Courts moving towards human rights'

By Jo-Anne Richards

South African judges have moved in the past year from upholding the State's will at the expense of human rights, to decision-making which protects the individual, according to Professor Dion Basson.

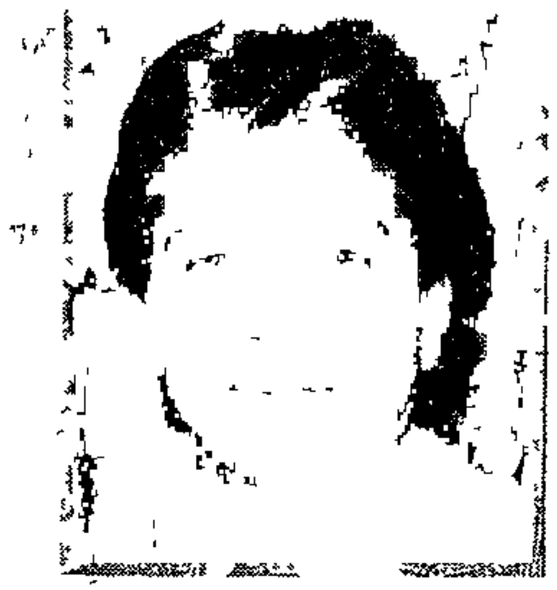
Professor Basson, of the Department of Public Law at the University of Pretoria, has researched court decisions and has interpreted them in terms of "a new and welcome trend".

But an "opposite and damaging trend" has also emerged. While judges have been interpreting or, to an extent, creating law in favour of individual rights, the Government has followed up by changing the law, he says.

Studies covering legal decisions between 1910 and last year show the judiciary generally gave executive-minded decisions — those which favoured the Government rather than the individual — "even though they had the choice to rather protect individual rights and freedom".

But recent decisions show the court has exercised its choice in favour of protecting human rights.

"The Government seems intent on destroying the beneficial effects of these concerned



Professor Dion Basson ... has researched court decisions.

judgments," Professor Basson says. "If this dangerous trend continues it will have disastrous results."

If the courts were to be ousted altogether from the constitutional arena, "uncontrolled and arbitrary" infringements of human rights would result "Today some vestiges of democratic control on the exercise of Government power remain and find expression in the concerned judgments by the judiciary."

On the one hand, these judgments should not be overesti mated, he says. "Due to the steady erosion of human rights, they operate only in the very restricted and sometimes even highly-technical area of judicial review of executive actions."

But on the other hand, they "form the only legitimate basis from which to move to the ideal democratic position where human rights in South Africa will be adequately protected — in all probability by a judicially-enforced Bill of Rights".

And "dire consequences" would result if courts were to return to their former executive-minded rulings. The previous decisions led to large numbers of people seeing the courts as "maintaining the unjust legislative programme of the status quo".

"Unless it retains the confidence of the people, the legal system loses its legitimacy and the result of the distrust will almost certainly be anarchy and revolution."

In his research, Professor Basson has identified certain specific areas where the courts have been able to swing the balance slightly in favour of human rights, and where the authorities have changed the law to circumvent this

● In the case of the Minister of Law and Order and Others vs Hurley, the court spoke out on the ability of a police officer to detain someone in terms of Section 29 of the Internal Security Act.

The Act required that the police officer must have "reason to believe" the person had committed a prescribed action. The court stated that this meant the "reason to believe" should be based on objective facts which could be shown in court.

● The law was then changed, making it possible for someone to be detained if, in the subjective opinion of the arresting officer, it was necessary. Even so, the courts declared he had to form the opinion "properly" — he could not be male fide, have an ulterior motive or have failed to "apply mind to matter".

"It is of course, much more difficult to prove the absence of an honestly-held opinion than it is to prove the absence of objective grounds."

The changed law also moved the onus from the arresting officer to the person arrested. Instead of the officer having to prove the necessity of an arrest to the court, the onus was on the arrestee to show it was unnecessary.

● In Buthelezi and Others vs the Attorney-General of Natal, the court ordered the Attorney-General could not — in terms of Section 30(1) of the Internal Security Act — prevent the court from granting bail to an accused, unless the accused had been given notice of the step and an opportunity to put his case.

● During the state of emergency of July last year, the authorities changed the regulation dealing with continuation of detention "to expressly preclude" a person having the right to put his case before his detention was extended.

● In Omar and Others vs The Minister of Law and Order and Others the majority of the court reluctantly decided that ... (the State President) did not act ultra vires when he issued the new regulation."

But in the case of Momoniat and Naidoo vs Minister of Law and Order, a full Bench declared the regulation could not stop a detainee making representations after his continued detention had been ordered. "The denial of the prior right does not carry with it the denial of the subsequent right."

● This year's emergency regulations again expressly denied a detainee's right to put his case before his detention was extended And the courts again declared the detainee could make written representations to the Minister after the order was issued. This meant he had to be given writing materials and information about his continued detention

● Regulations providing for severe infringements of individual rights such as the right to legal representation and the freedom of speech and the Press, were found by the courts to be ultra vires and invalid.

Reasons for this were either that the responsible official did not stay within the Act enabling him to make the regulations, or that the regulations were void for uncertainty or unreasonableness.

● Even in cases where clauses were introduced "ousting" the court's right to inquire into executive actions, the courts decided the clauses could not stop them exercising control over executive actions which were invalid or ultra vires.

● In certain cases, the courts found some measures were invalid on the basis of improper delegation of powers. But the regulations were then amended to provide for the necessary delegation

(b) the emission of sound takes place in the execution of work during emergencies

(2) A person may apply to the council in writing, with a statement of reasons, for exemption from the provisions of these regulations

(3) Exemption shall, if granted, be in writing with an explanation of the conditions under which and period for which it is granted

(4) No exemption shall take effect before the applicant has accepted in writing all conditions imposed in terms of sub-regulation 3 Provided that if activities and work are commenced with before such acceptance has been submitted to the noise control officer, the exemption shall lapse

(5) If any condition of exemption is not complied with, the exemption shall lapse forthwith

6 TEMPORARY ATTACHMENT

A vehicle attached in terms of regulation 2 (10), shall be kept in safe custody by the council until such time as the driver or owner of such vehicle had made arrangements to the satisfaction of the noise control officer for the repair of the vehicle, after which the vehicle shall be handed over to the owner or driver by the noise control officer Provided that the vehicle may be required to be made available for further tests within a time prescribed by the noise control officer Should the sound level of the vehicle be within the limits prescribed in regulation 3 (16) (a), the attachment must be lifted

7 PENALTIES

A person contravening any provision of these regulations shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding two (2) years or to both such fine and such imprisonment or, in the event of a continuing contraventions to a fine not exceeding R10 or to imprisonment for a period not exceeding five (5) days or to both such fine and such imprisonment for each day on which such contravention continues

(b) die uitstraling van klank geskied in die uitvoering van werksaamhede in tye van nood

(2) 'n Persoon kan skriftelik, met opgaaf van redes, by die raad aansoek doen om vrystelling van enige bepaling van hierdie regulasies

(3) Vrystelling moet, indien toegestaan, skriftelik verleen word met 'n uiteensetting van die voorwaardes waaronder en tydperk waarvoor sodanige vrystelling geld

(4) Geen vrystelling word van krag nie alvorens die applikant skriftelik ingestem het om alle voorwaardes wat in subregulasie 3 gestel is na te kom Met dien verstande dat indien werksaamhede of bedrywighede 'n aanvang neem voordat sodanige skriftelike instemming by die geraasbeheerbeampte ingehandig is, die vrystelling verval

(5) Indien enige vrystellingsvoorwaarde nie nagekom word nie, veral die vrystelling onmiddellik

6 TYDELIKE BESLAGLEGGING

'n Voertuig waarop daar ingevolge regulasie 2 (10) beslag gelê is, moet deur die raad in veilige bewaring gehou word totdat die bestuurder of eienaar van sodanige voertuig tot bevrediging van die geraasbeheerbeampte reelings getref het vir die herstel van die voertuig waarna die geraasbeampte die voertuig aan die eienaar of bestuurder moet oorhandig Met dien verstande dat vereis kan word dat die voertuig binne 'n voorgeskrewe tydperk deur die geraasbeampte bepaal vir verdere toetse beskikbaar gestel moet word Indien die voertuig se klankpeil binne die perke beskryf in regulasie 3 (16) (a) is, moet die beslaglegging opgehef word

7 STRAFBEPALING

Iemand wat enige bepaling van hierdie regulasies oortree is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R1 000 of met gevangenisstraf vir 'n tydperk van hoogstens twee (2) jaar of met sodanige gevangenisstraf of, in die geval van 'n voortdurende oortreding, met 'n boete van hoogstens R10 of met gevangenisstraf vir 'n tydperk van hoogstens vyf (5) dae of met sodanige boete sowel as sodanige gevangenisstraf vir elke dag waarop sodanige oortreding voortduur

DEPARTMENT OF JUSTICE

No. R. 2415 **21 November 1986**

RULES REGULATING THE CONDUCT OF THE ADMIRALTY PROCEEDINGS OF THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE SUPREME COURT OF SOUTH AFRICA

The Chief Justice of South Africa, after consultation with the judges president of the several divisions of the Supreme Court of South Africa has, in terms of section 43 (2) (a) of the Supreme Court Act, 1959 (Act 59 of 1959), read with section 4 of the Admiralty Jurisdiction Regulation Act, 1983 (Act 105 of 1983), and with the approval of the Minister of Justice, made the rules contained in the Annexure hereto regulating the conduct of the amiralty proceedings of the provincial and local divisions of the Supreme Court of South Africa, with effect from 1 December 1986

DEPARTEMENT VAN JUSTISIE

No R. 2415 **21 November 1986**

REËLS WAARBY DIE ADMIRALITEITSVERRIGTINGE VAN DIE VERSKILLENDE PROVINSIALE EN PLAASLIKE AFDELINGS VAN DIE HOOGGEREGSHOF VAN SUID-AFRIKA GEREEL WORD

Die Hoofregter van Suid-Afrika het, na oorlegpleging met die regters-president van die onderskeie afdelings van die Hooggeregshof van Suid-Afrika, kragtens artikel 43 (2) (a) van die Wet op die Hooggeregshof, 1959 (Wet 59 van 1959), gelees met artikel 4 van die Wet op die Reëling van Admiraliteitsjurisdiksie, 1983 (Wet 105 van 1983), en met die goedkeuring van die Minister van Justisie, die reels vervat in die Bylae hiervan, waarby die admiraliteitsverrigtinge van die provinsiale en plaaslike afdelings van die Hooggeregshof van Suid-Afrika gereël word, met ingang van 1 Desember 1986 uitgevaardig

ANNEXURE

INDEX

RULE 1

DEFINITIONS

1 (1) In these rules, unless the context otherwise indicates—

"Act" means the Admiralty Jurisdiction Regulation Act, 1983 (Act 105 of 1983),

"admiralty proceedings" means proceedings before the court,

"court" means a court exercising admiralty jurisdiction under the Act,

"summons" includes edictal citation,

"Uniform Rules" means the rules made under section 43 of the Supreme Court Act, 1959 (Act 59 of 1959), regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa,

"pleading" includes particulars of claim, plea, claim in reconvention, third party notice and pleadings consequent upon the foregoing, but excludes a request for particulars or answer thereto,

"warrant" means a warrant of arrest

(2) In the computation of any period of time expressed in days, whether prescribed by these rules, fixed by any order of court or otherwise determined, only court days shall be included

(3) The definitions in rule 1 of the Uniform Rules shall apply to any word or expression not defined in this rule

RULE 2

SUMMONS

2 (1) A summons shall be in a form corresponding to Form 1 of the First Schedule and shall contain a statement of the nature of the claim and of the relief or remedy required and of the amount claimed, if any

BYLAE

INHOUDSOPGAWE

REËL 1

WOORDOMSKRYWING

1 (1) In hierdie reels, tensy uit die samehang anders blyk, beteken—

"admiraliteitsverrigtinge" verrigtinge voor die hof,

"dagvaarding" ook ediktale sitasie,

"Eenvormige Hofreëls" die reels uitgevaardig kragtens artikel 43 van die Wet op die Hooggeregshof, 1959 (Wet 59 van 1959), waarby die verrigtinge van die verskillende provinsiale en plaaslike afdelings van die Hooggeregshof van Suid-Afrika gereel word,

"hof" 'n hof wat admiraliteitsjurisdiksie uitoefen kragtens die Wet,

"lasbrief" 'n lasbrief vir inbeslagneming,

"pleitstuk" ook besonderhede van vordering, verweerskrif, teeneis, derdepartykennisgewing en daaropvolgende pleitstukke, maar uitgesonderd 'n versoek om besonderhede of antwoord daarop,

"Wet" die Wet op die Reeling van Admiraliteitsjurisdiksie, 1983 (Wet 105 van 1983)

(2) By die berekening van 'n tydperk van dae by hierdie reëls voorgeskryf, deur 'n hofbevel vasgestel of andersins bepaal, word slegs hofdae ingesluit

(3) Die woordbepalings in reel 1 van die Eenvormige Hofreels is op enige woord of uitdrukking wat nie in hierdie reel omskryf word nie, van toepassing

REEL 2

DAGVAARDING

2 (1) 'n Dagvaarding moet in 'n vorm wees wat ooreenstem met Vorm 1 in die Eerste Bylae, en moet 'n uiteensetting bevat van die aard van die eis en van die regshulp of remedie wat aangevra word en van die bedrag wat geëis word, as daar is

(2) Subject to the provisions of subrule (3), the summons shall set forth the matters referred to in rule 17 (4) of the Uniform Rules

(3) (a) The owner of a ship, cargo or other property in respect of which a maritime claim is made may sue or be sued as such

(b) Parties may sue or be sued jointly and may, in that event, be described as the owners of a named ship or of the cargo in or formerly in a named ship, or as the owners, master and crew of a ship, or otherwise in like manner, and in any such case the parties need not be further named or described in the pleadings

(4) In the case of an action *in rem* the property in respect of which the claim lies as set forth in section 3 (5) of the Act, shall be described as the defendant

(5) Where proceedings are taken in respect of a maritime claim referred to in paragraph (u) of the definition of "maritime claim" in section 1 (1) of the Act for the distribution of any fund or where property is deemed to have been arrested or attached in terms of section 3 (10) of the Act, the fund or the security or the property in respect of which an undertaking is given may be described as the defendant

RULE 3

ARREST IN ACTION *IN REM*

3 (1) An arrest in an action *in rem* shall be effected by the service of a warrant in accordance with these rules

(2) (a) A warrant shall be issued by the registrar and shall be in a form corresponding to Form 2 of the First Schedule

(b) The registrar may refer to a judge the question of whether a warrant should be issued

(c) Any such question shall be so referred if it appears from a certificate contemplated in rule 3 (3), or if the registrar otherwise has knowledge, that security or an undertaking has been given in terms of section 3 (10) (a) of the Act to prevent arrest or attachment of the property in question

(d) If a question has been so referred to a judge, the judge may authorise the registrar to issue a warrant, or may give such directions as he thinks fit to cause the question of whether a warrant should be issued to be argued

(e) If a question has been so referred to a judge, no warrant shall be issued unless the judge has authorised the registrar to issue the warrant

(3) Save where the court has ordered the arrest of property, the registrar shall issue a warrant only if summons in the action has been issued and a certificate signed by the party causing the warrant to be issued is submitted to him stating—

(a) that the claim is a maritime claim and that the claim is, or that on the effecting of the arrest the claim will be, one in respect of which the court has or will have jurisdiction,

(b) that the property sought to be arrested is property in respect of which the claim lies or, where the arrest is sought in terms of section 3 (6) of the Act, that the ship is an associated ship which may be arrested in terms of the said section,

(2) Die dagvaarding moet, behoudens die bepalings van subreel (3), die aangeleenthede vermeld in reel 17 (4) van die Eenvormige Hofreels, uiteensit

(3) (a) Die eienaar van die skip, vrag of enige ander goed ten opsigte waarvan 'n maritieme eis ingestel word, kan as sodanig dagvaar of gedagvaar word

(b) Partye kan gesamentlik dagvaar of gedagvaar word en kan, in so 'n geval, beskryf word as die eienaars van 'n genoemde skip of van die vrag aan boord of voorheen aan boort van 'n genoemde skip, of as die eienaars, gesagvoerder en bemanning van 'n skip of andersins op soortgelyke wyse, en in enige sodanige geval is dit nie nodig dat die partye verder in die pleitstukke benoem of beskryf word nie

(4) In die geval van 'n aksie *in rem* word die goed ten opsigte waarvan geeis word, soos in artikel 3 (5) van die Wet uiteengesit beskryf as die verweerder

(5) Waar geregtelike stappe gedoen word ten opsigte van 'n maritieme eis bedoel in paragraaf (u) van die omskrywing van 'maritieme eis" in artikel 1 (1) van die Wet, vir die verdeling van enige fonds, of waar goed ingevolge artikel 3 (10) van die Wet geag word in beslag geneem of op beslag gelê te wees, kan die fonds of die sekuriteit of die goed ten opsigte waarvan n onderneming gegee word, as die verweerder beskryf word

REEL 3

INBESLAGNEMING IN 'N AKSIE *IN REM*

3 (1) 'n Inbeslagneming in 'n aksie *in rem* word deur die betekening van 'n lasbrief ooreenkomstig hierdie reels uitgevoer

(2) (a) 'n Lasbrief word deur die griffier uitgereik en moet in 'n vorm wees wat ooreenstem met Vorm 2 in die Eerste Bylae

(b) Die griffier kan die vraag of 'n lasbrief uitgereik moet word, na 'n regter verwys

(c) Enige sodanige vraag moet aldus verwys word indien dit uit 'n sertifikaat beoog in reël 3 (3) blyk, of indien die griffier andersins kennis dra, dat sekuriteit of 'n onderneming kragtens artikel 3 (10) (a) van die Wet gegee is om inbeslagneming van of beslaglegging op die betrokke goed te voorkom

(d) Indien 'n vraag aldus na 'n regter verwys is, kan die regter die griffier magtig om 'n lasbrief uit te reik of die lasgewings gee wat hy goeddink vir die beredenering van die vraag of 'n lasbrief uitgereik moet word

(e) Indien 'n vraag aldus na 'n regter verwys is, word geen lasbrief uitgereik tensy die regter die griffier daartoe magtig nie

(3) Behalwe waar die hof 'n beslaglegging beveel het, reik die griffier 'n lasbrief uit slegs indien dagvaarding in die aksie uitgereik is en 'n sertifikaat aan hom voorgelê word wat onderteken is deur die persoon wat die dagvaarding laat uitreik het, en waarin verklaar word—

(a) dat die eis 'n maritieme eis is en dat die eis 'n eis is of, by die uitvoering van inbeslagneming, 'n eis sal wees ten opsigte waarvan die hof jurisdiksie het of sal hê,

(b) dat die goed ten opsigte waarvan inbeslagneming beoog word, goed is ten opsigte waarvan die eis ingestel kan word of, waar inbeslagneming ooreenkomstig artikel 3 (6) van die Wet verlang word, dat die skip 'n geassosieerde skip is waarop kragtens genoemde artikel beslag gelê kan word,

(c) whether any security or undertaking has been given in respect of the claim of the party concerned, or to procure the release, or prevent the arrest or attachment of the property sought to be arrested and, if so, what security or undertaking has been given and the grounds for seeking arrest notwithstanding that any such security or undertaking has been given, and

(d) that the contents of the certificate are true and correct to the best of the knowledge, information and belief of the signatory and what the source of any such knowledge and information is

(4) Before any ship, other than a South African ship, is arrested in respect of any maritime claim referred to in paragraph (n) of the definition of "maritime claim" in section 1 (1) of the Act, notice of the intention so to arrest the ship shall be given to the consular representative, if any, of the country where the ship is registered at the port where the ship is to be arrested or, if there is no such representative at the port in question, to the chief representative of that country in the Republic and in the certificate contemplated in subrule (3) it shall be stated that the said notice has been given and when and to what person such notice was given

(5) (a) Subject to the provisions of this rule any person desiring to obtain the release of any property from arrest may obtain such release with the consent of the person who caused the said arrest to be effected, or on giving security in a sum representing the amount of the value of the relevant property or the amount of the plaintiff's claim, whichever amount is the lower, which amount shall be deposited as security with the registrar and be dealt with in terms of rule 19

(b) Any person who intends to institute an action *in rem* against any property which has been arrested or attached may file with the registrar and serve, in accordance with the provisions of rule 5 (2), a notice of the said intention

(c) When any such notice has been filed, the property shall not be released from arrest or attachment unless the person desiring to obtain the release of the property has given notice to the person who has filed any such notice that he so desires to obtain the said release

(d) Where any notice under paragraph (b) has been given and the person concerned has not consented to the release of the property or, in any other case, if the person who has procured the arrest of the property has not consented to the release of the property, the property shall not be released unless the court so orders

(e) Where a dispute arises as to the value of any property or as to its release, the court shall give such directions as may be appropriate for the resolution of the dispute

(6) Any person giving security or an undertaking in terms of section 3 (10) of the Act to prevent the arrest or attachment of property, shall give an address contemplated in rule 19 (3) of the Uniform Rules at which any summons or warrant in an action *in rem* against the property may be served

RULE 4

ATTACHMENT TO FOUND OR CONFIRM JURISDICTION

4 (1) An application for the attachment of property to found or confirm jurisdiction may be made *ex parte*, unless the court otherwise orders

(c) of enige sekuriteit gestel of onderneming gegee is ten opsigte van die eis van die betrokke party, of om die vrystelling te verkry of om inbeslagneming of beslaglegging te voorkom van die goed wat beoog word in beslag geneem te word, en, indien wel welke sekuriteit of onderneming gegee is en wat die gronde is waarop inbeslagneming verlang word nieteenstaande dat sodanige sekuriteit of onderneming gegee is en

(d) dat die inhoud van die sertifikaat na die beste kennis, inligting en wete van die ondertekenaar waar en juis is, en wat die bron van sodanige kennis en inligting is

(4) Alvorens n skip, uitgesonderd n Suid-Afrikaanse skip, ten opsigte van 'n maritieme eis bedoel in paragraaf (n) van die omskrywing van maritieme eis in artikel 1 (1) van die Wet, in beslag geneem word moet kennis van voorneme om die skip aldus in beslag te neem aan die konsulere verteenwoordiger as daar is van die land waar die skip geregistreer is, gegee word by die hawe waar die skip in beslag geneem staan te word, of indien daar geen sodanige verteenwoordiger by die betrokke hawe is nie, aan die hoofverteenwoordiger van daardie land in die Republiek, en in die subreel (3) beoogde sertifikaat moet vermeld word dat bedoelde kennis gegee is asook wanneer en aan wie sodanige kennis gegee is

(5) (a) 'n Persoon wat die vrystelling wil verkry van enige goed wat in beslag geneem is kan behoudens die bepalings van hierdie reel sodanige vrystelling verkry met die toestemming van die persoon wat die inbeslagneming laat doen het, of deur sekuriteit te stel in n bedrag gelykstaande met die bedrag van die waarde van die betrokke goed of die bedrag van die eiser se eis wat ook al die laagste is, welke bedrag as sekuriteit by die griffier inbetaal en ooreenkomstig reel 19 mee gehandel moet word

(b) 'n Persoon wat van voorneme is om n aksie *in rem* in te stel teen enige goed wat in beslag geneem of waarop beslag gelê is, kan 'n kennisgewing van genoemde voorneme by die griffier indien en ooreenkomstig die bepalings van reel 5 (2) beteken

(c) Wanneer sodanige kennisgewing ingedien is, word die goed nie van inbeslagneming of beslaglegging vrygestel nie, tensy die persoon wat die vrystelling van die goed verlang, aan die persoon wat sodanige kennisgewing ingedien het, kennis gegee het dat hy aldus sodanige vrystelling verlang

(d) Waar kennis kragtens paragraaf (b) gegee is en die betrokke persoon nie tot die vrystelling van die goed instem nie of, in enige ander geval, indien die persoon wat die goed in beslag laat neem het, nie tot die vrystelling van die goed ingestem het nie, word die goed, tensy die hof anders beveel, nie vrygestel nie

(e) Indien 'n geskil oor die waarde van enige goed of oor die vrystelling daarvan ontstaan, moet die hof gepaste lasgewings vir die besleging van die geskil gee

(6) 'n Persoon wat kragtens artikel 3 (10) van die Wet sekuriteit stel of 'n onderneming gee om die inbeslagneming van of beslaglegging op die goed te voorkom, moet 'n adres bedoel in reel 19 (3) van die Eenvormige Hofreels verskaf waar 'n dagvaarding of lasbrief in 'n aksie *in rem* teen die goed beteken kan word

REËL 4

BESLAGLEGGING OM JURISDIKSIE TE VESTIG OF TE BEVESTIG

4 (1) 'n Aansoek om beslaglegging op goed om jurisdiksie te vestig of te bevestig, kan *ex parte* gedoen word, tensy die hof anders beveel

(2) The applicant shall, in addition to any other requirement for such an application, satisfy the court with regard *mutatis mutandis* to the facts and matters referred to in paragraphs (a) and (c) of rule 3 (3)

(3) The order of a court on an application contemplated in subrule (1), which shall be served in the manner set forth in the order, shall order the attachment of the property in question and shall further call upon all interested persons to show cause on a date stated in the order why the order for attachment should not be confirmed

(4) (a) A person desiring to obtain the release of property which has been attached to found or confirm jurisdiction may, subject to rule 3 (5) (c) and any order made in terms of section 5 (2) of the Act, obtain such release on giving security for the claim of the person causing the said property to be attached

(b) The provisions of rule 19 shall *mutatis mutandis* apply in respect of security given in terms of paragraph (a)

RULE 5

SERVICE

5 (1) Save with the leave of the court, no summons or warrant shall be served if more than one year has expired since the date when it was issued

(2) A summons in an action *in rem* shall be served on the property in respect of which the action is brought in the same manner in which a warrant is served in accordance with this rule

(3) A summons in an action *in personam* shall be served in the manner provided for the service of a summons in the Uniform Rules, or as may be ordered by the court

(4) A warrant in an action *in rem* shall be served—

(a) in the case of such an action against a ship, her equipment, furniture, stores or bunkers, by affixing a copy of the warrant to any mast, or on the outside, or to any suitable part of the superstructure, of the ship and by handing a further copy to the master or other person in charge of the ship,

(b) in the case of such an action against cargo, by handing a copy of the warrant to the person in charge of the cargo and, unless the said person will not permit access to the cargo, or the cargo has not been landed, or it is not practicable so to do, by affixing a further copy to the cargo,

(c) in the case of such an action against freight, by handing a copy of the warrant to the person by whom the freight is payable,

(d) in the case of such an action against property deemed to have been arrested in terms of section 3 (10) (a) of the Act, by serving the warrant upon the address for the service given in terms of rule 3 (6), or

(e) in any other manner ordered by the court

(5) If property has been sold, service shall be effected on the person having custody of the proceeds

(6) The deputy sheriff shall forthwith notify a port captain of any arrest or attachment of any property within the port of which he is port captain and the registrar shall forthwith notify the port captain of any release of any such property from arrest or attachment

(2) Die applikant moet, benewens enige ander vereiste vir sodanige aansoek, die hof *mutatis mutandis* ten opsigte van die feite en aangeleenthede bedoel in paragrawe (a) en (c) van reël 3 (3) tevrede stel

(3) Die bevel van 'n hof by 'n aansoek beoog in subreël (1), wat op die wyse in die bevel voorgeskryf, beteken moet word, moet die beslaglegging op die betrokke goed beveel en moet verder alle belanghebbende persone aansê om op 'n dag in die bevel vermeld, redes aan te voer waarom die bevel tot beslaglegging nie bekragtig moet word nie

(4) (a) 'n Persoon wat vrystelling verlang van goed waarop beslag gelê is om jurisdiksie te vestig of te bevestig, kan, behoudens reel 3 (5) (c) en enige bevel kragtens artikel 5 (2) van die Wet gegee, sodanige vrystelling verkry by die stel van sekuriteit aan die persoon wat op die goed beslag laat lê het

(b) Die bepalings van reel 19 is *mutatis mutandis* van toepassing ten opsigte van sekuriteit wat ingevolge paragraaf (a) gestel is

REËL 5

BETEKENING

5 (1) Geen dagvaarding of lasbrief word, behalwe met die verlof van die hof, beteken nie indien meer as een jaar verloop het sedert die datum van uitreiking daarvan

(2) 'n Dagvaarding in 'n aksie *in rem* word op dieselfde wyse as 'n lasbrief kragtens hierdie reel aan die goed ten opsigte waarvan die aksie ingestel word beteken

(3) 'n Dagvaarding in 'n aksie *in personam* word beteken op die wyse wat vir die betekening van 'n dagvaarding in die Eenvormige Hofreëls voorgeskryf is, of soos die hof beveel

(4) 'n Lasbrief in 'n aksie *in rem*—

(a) word, in die geval van 'n sodanige aksie teen 'n skip, sy toerusting, meubels, voorrade of bunkers, beteken deur 'n afskrif van die lasbrief aan enige mas of aan die buitekant of enige geskikte deel van die bobou van die skip aan te bring, en deur 'n verdere afskrif aan die gesagvoerder of enige persoon in beheer van die skip te oorhandig,

(b) word, in die geval van 'n sodanige aksie teen vrag, beteken deur 'n afskrif van die lasbrief aan die persoon in beheer van die vrag te oorhandig en, tensy bedoelde persoon nie toegang tot die vrag wil verleen nie of die vrag nog nie afgelaai is nie of dit onprakties is, 'n verdere afskrif aan die vrag te heg,

(c) word, in die geval van so 'n aksie teen vraggeld, beteken deur 'n afskrif van die lasbrief aan die persoon deur wie die vraggeld betaalbaar is, te oorhandig,

(d) word, in die geval van so 'n aksie teen goed wat kragtens artikel 3 (10) (a) van die Wet geag word in beslag geneem te gewees het, beteken deur die lasbrief by die adres wat kragtens reel 3 (6) vir betekening aangegee is, te beteken, of

(e) word beteken op die ander wyse deur die hof beveel

(5) Indien goed reeds verkoop is, geskied betekening van die lasbrief op die persoon wat in beheer van die opbrengs daarvan is

(6) Die adjunk-balju moet 'n hawekaptein onverwyld van enige inbeslagneming van of beslaglegging op enige goed binne die hawe waarvan hy die kaptein is, in kennis stel, en die griffier moet die hawekaptein onverwyld van die vrystelling van enige sodanige goed van inbeslagneming of beslaglegging in kennis stel

RULE 6

NOTICE OF INTENTION TO DEFEND

6 (1) The provisions of rule 19 of the Uniform Rules, other than the proviso to rule 19 (1) of the Uniform Rules, shall, subject to rule 20, *mutatis mutandis* apply to a notice of intention to defend an action in admiralty proceedings

(2) Where summons has been issued in an action *in rem*, any person having an interest in the property concerned may, at any time before the expiry of 10 days from the service of the summons, give notice of intention to defend and may defend the said action

(3) A person giving notice of intention to defend an action *in rem* shall not merely by reason thereof incur any liability and shall, in particular, not become liable *in personam*, save as to costs merely by reason of having given such notice and having defended the action *in rem*

(4) Notice of intention to defend may be given when a summons has been issued, notwithstanding that the summons has not been served upon the person giving notice of intention to defend, or any other person

RULE 7

GENERAL RULES AS TO PLEADINGS

7 (1) No pleading shall be required in an action unless notice of intention to defend is delivered therein

(2) (a) In every action in which notice of intention to defend has been delivered, the plaintiff shall within 10 days thereafter deliver particulars of claim

(b) The defendant shall within 10 days after delivery of the particulars of claim deliver a plea

(c) A party may, consequent upon a pleading filed by another party to the action, deliver any further pleading within 10 days after the delivery of the preceding pleading Provided that no replication or subsequent pleading which would be a mere joinder of issue or bare denial of allegations in the previous pleading shall be necessary

(3) (a) Every pleading shall contain a clear and concise statement of the material facts upon which the party relies for his claim, defence or answer as therein set forth, with sufficient particularity to enable the opposite party to reply thereto

(b) Every plea and subsequent pleading shall either admit, or deny, or confess and avoid all the material facts alleged in the pleading preceding it, or state which facts are not admitted and to what extent

(c) It shall not be an objection to any further pleading after a plea, that it raises new matter, or that it constitutes a departure from a previous allegation made by the same party and any such departure shall be deemed to be in the alternative to any such previous allegation

(4) Where damages are claimed, it shall not be necessary to state particulars of damage Provided that—

(a) the amount and nature of the damages claimed shall be stated, and

(b) the amount of any consequential loss claimed and the alleged basis therefor shall be stated

REËL 6

KENNISGEWING VAN VOORNEME OM TE VERDEDIG

6 (1) Die bepalings van reel 19 van die Eenvormige Hofreels uitgesonderd die voorbehoudsbepaling by reël 19 (1) van die Eenvormige Hofreels is, behoudens reël 20, *mutatis mutandis* van toepassing met betrekking tot 'n kennisgewing van voorneme om n aksie in admiraliteitsverrigtinge te verdedig

(2) Waar 'n dagvaarding in n aksie *in rem* uitgereik is, kan n persoon wat n belang by die betrokke goed het, te eniger tyd voor die verstryking van 10 dae vanaf die betekening van die dagvaarding kennis gee van sy voorneme om die aksie te verdedig en kan hy sodanige aksie verdedig

(3) 'n Persoon wat in n aksie *in rem* kennis gee van voorneme om te verdedig loop nie bloot op grond daarvan enige aanspreeklikheid op nie en uitgesonderd ten opsigte van koste, loop in die besonder nie aanspreeklikheid *in personam* op bloot op grond van sodanige kennisgewing en omdat hy die aksie *in rem* verdedig het nie

(4) Kennis van voorneme om te verdedig kan gegee word waar 'n dagvaarding uitgereik is, nieteenstaande dat die dagvaarding nie op die persoon wat kennis gee van voorneme om te verdedig, of enige ander persoon beteken is nie

REËL 7

ALGEMENE REËLS BETREFFENDE PLEITSTUKKE

7 (1) Geen pleitstuk word in n aksie vereis tensy kennisgewing van voorneme om te verdedig daarin afgelewer is nie

(2) (a) Die eiser moet in 'n aksie waar kennisgewing van voorneme om te verdedig afgelewer is binne 10 dae daarna besonderhede van eis aflewer

(b) Die verweerder moet binne 10 dae na die verstrekking van die besonderhede van eis n pleit aflewer

(c) 'n Party kan, nadat n ander party in die aksie n pleitstuk afgelewer het, enige daaropvolgende pleitstuk binne 10 dae na die aflewering van die vorige pleitstuk aflewer Met dien verstande dat geen replikasie of daaropvolgende pleitstuk wat n blote ingedingtreding of blote ontkenning van die bewerings in die vorige pleitstuk is, nodig is nie

(3) (a) Elke pleitstuk moet 'n duidelike en bondige stelling bevat van die wesenlike feite waarop die party sy eis, verweer of antwoord soos daarin uiteengesit, grond, met voldoende besonderhede om die teenparty in staat te stel om daarop te antwoord

(b) Elke pleit en daaropvolgende pleitstuk moet al die wesenlike feite wat in die voorafgaande pleitstuk beweer word, erken, ontken of met teenwerping erken, of meld welke feite nie erken word nie en in watter mate

(c) 'n Verdere pleitstuk na 'n verweerskrif is nie vatbaar vir beswaar op grond daarvan dat dit 'n nuwe bewering bevat of dat dit 'n afwyking behels van 'n vorige bewering deur dieselfde party gemaak nie, en so 'n afwyking word geag 'n alternatief vir enige sodanige vorige bewering te wees

(4) Waar skadevergoeding geëis word, is dit nie nodig om besonderhede van die skade uiteen te sit nie. Met dien verstande dat—

(a) die bedrag en aard van die skadevergoeding wat geëis word, gemeld word, en

(b) die bedrag wat weens enige gevolgskade geëis word en die beweerde grond daarvan gemeld word

(5) (a) No further particulars may be requested for the purposes of pleading and no exception may be taken to any pleading on the ground that it is vague and embarrassing

(b) (i) Where any pleading lacks averments which are necessary to sustain an action or defence, the opposing party may within 10 days after receipt of the pleading deliver an exception thereto and may cause it to be set down for hearing

(ii) The notice of exception shall clearly and concisely specify the grounds upon which the exception is founded

(6) A party who, despite due enquiry and endeavour, is unable to provide the requisite particularity in a pleading shall be entitled to state that fact in the pleading Provided that—

(a) the party shall in the pleading specify the respect in which he is unable to furnish such particularity,

(b) the party shall by way of an addendum to the pleading provide such particularity as soon as it comes to his knowledge, but in any case not later than six weeks before the date of the trial and

(c) a party who improperly claims in a pleading that he is unable to furnish such particularity shall be liable for costs to the extent which the court may order

(7) The provisions of this rule shall not affect the powers of a court in terms of rule 18

(8) A court may in its discretion order, or the parties concerned may agree, that any action be tried without pleadings Provided that the issues shall be defined in any such order or agreement

RULE 8

CLAIM IN RECONVENTION

8 A defendant may claim in reconvention against the plaintiff, either alone or with any other person

RULE 9

THIRD PARTIES

9 (1) If a party alleges that he is entitled to claim a contribution or indemnification against any other person not a party (hereinafter called a "third party") or that any issue or question in the proceedings to which he is a party has arisen or will arise between him and the third party and should be determined in the proceedings, he may cause a third party notice to be issued and served upon the third party

(2) In any third party notice the said question or issue and, if any relief is claimed against the third party, the grounds upon which such relief is claimed shall be stated in the same manner as such grounds would be stated in particulars of claim

(3) A third party notice may, after the close of pleadings, or where the claim against or the issue or question with regard to the third party is not a maritime claim, or the third party is not otherwise amenable to the jurisdiction of the court, be issued only with the leave of the court

(4) A third party notice shall be accompanied by copies of all the pleadings issued to date, but the pleadings shall not be annexed to the third party notice

(5) (a) A third party shall be deemed to be a defendant to any claim in the third party notice and may deliver any pleadings accordingly

(b) A third party may in any such pleadings raise any plea with regard to the claim of the plaintiff in the action

(5) (a) Geen verdere besonderhede kan vir die doeleindes van pleit gevra word nie, en geen eksepsie kan teen 'n pleitstuk opgewerp word op grond daarvan dat dit vaag en verwarrend is nie

(b) (i) Waar 'n pleitstuk bewerings kortkom wat nodig is om die aksie of verweer te staaf, kan die teenparty binne 10 dae na ontvangs van die pleitstuk 'n eksepsie daarteen aflewer en dit vir verhoor ter rolle laat plaas

(ii) Die kennisgewing van eksepsie moet duidelik en bondig die gronde waarop die eksepsie berus, aangee

(6) 'n Party wat, ten spyte van behoorlike ondersoek en bewering, nie die vereiste besonderhede in 'n pleitstuk kan verskaf nie, kan so 'n bewering in sy pleitstuk maak Met dien verstande dat—

(a) die party in die pleitstuk moet aandui in welke opsig hy nie sodanige besonderhede kan gee nie,

(b) die party in 'n bylae by die pleitstuk sodanige besonderhede moet gee sodra dit tot sy kennis kom maar in elk geval nie later as ses weke voor die verhoordatum nie, en

(c) 'n party wat onbehoorlik in 'n pleitstuk beweer dat hy nie sodanige besonderhede kan verskaf nie, vir koste in die mate wat die hof bepaal, aanspreeklik is

(7) Die bepalings van hierdie reel raak nie 'n hof se bevoegdhede ingevolge reel 18 nie

(8) 'n Hof kan volgens sy diskresie beveel, of die betrokke party kan ooreenkom, dat 'n aksie sonder pleitstukke verhoor word Met dien verstande dat die geskilpunte in die bevel of ooreenkoms omskryf word

REËL 8

TEENEIS

8 'n Verweerder kan afsonderlik of saam met 'n ander persoon 'n eis in rekonvensie teen die eiser instel

REËL 9

DERDE PARTYE

9 (1) Indien 'n party beweer dat hy teenoor iemand anders wat nie 'n party is nie (hieronder 'n "derde party" genoem), op 'n bydrae of vrywaring geregtig is, of dat enige vraag of geskilpunt in die verrigtinge waarin hy 'n party is tussen hom en die derde party ontstaan het of sal ontstaan en in die verrigtinge beslis behoort te word, kan hy 'n derdepartykennisgewing laat uitreik en aan die derde party laat beteken

(2) In 'n derdepartykennisgewing word bedoelde vraag of geskilpunt en, indien enige regshulp van die derde party geeis word, die gronde waarop sodanige regshulp geeis word, op dieselfde wyse as die gronde in die besonderhede van eis uiteengesit

(3) 'n Derdepartykennisgewing kan, na sluiting van die pleitstukke, of waar die eis teen of die geskilpunt of vraag met betrekking tot die derde party nie 'n maritieme eis is nie, of waar die derde party nie andersins aan die jurisdiksie van die hof onderworpe is nie, slegs met die toestemming van die hof uitgereik word

(4) 'n Derdepartykennisgewing moet vergesel gaan van afskrifte van al die pleitstukke tot op datum uitgereik, maar die pleitstukke word nie by die derdepartykennisgewing aangeheg nie

(5) (a) 'n Derde party word by enige eis in die derdeparty-kennisgewing geag 'n verweerder te wees en kan as sodanig pleitstukke aflewer

(b) 'n Derde party kan in enige sodanige pleitstukke enige pleit ten opsigte van die eis van die eiser in die aksie aanbied

(c) Unless a third party in his pleadings expressly states the contrary, he shall be deemed to have agreed to be bound by any admission, agreement or compromise made by the defendant with regard to the claim of the plaintuff against the defendant

(6) A third party or a defendant in reconvention may in like manner bring in further parties to be appropriately described as, for instance, a fourth party or third party in reconvention and for the purposes of the proceedings any such further party shall be deemed to be a third party

RULE 10

CLOSE OF PLEADINGS

10 Pleadings shall be closed when the time has expired for the delivery of any further pleading and no such pleading has been delivered, or when a pleading has been filed joining issue without the addition of any further pleading

RULE 11

REQUEST FOR FURTHER PARTICULARS

11 (1) At any time after the close of pleadings a party may deliver a request for further particulars with regard to the pleading of any other party to the action for the purpose of enabling the party delivering the request to prepare for trial

(2) (a) Particulars may be requested of a denial or with regard to any matter deemed to have been put in issue

(b) It shall not be an objection to any such request that the purpose of the request is to obtain an admission of a matter placed in issue

(3) Any answer to a request for further particulars shall bind the party giving the answer as against all parties to the action and not only as against the party requesting the particulars

RULE 12

PRELIMINARY PROCEDURES

12 (1) A court may at any time, whether before or after the issue of summons—

(a) make an order under section 5 (5) of the Act,

(b) make an order for the taking of the evidence of any person named or otherwise identified (whether by description or otherwise) in the order, with regard to any matter which may be relevant in any action contemplated or pending and may in the said order define the issues on which such evidence may be given and prescribe the procedure for the giving of such evidence

(2) (a) (i) A plaintiff or a defendant, whether in convention or reconvention, or any third party may, after being served with a summons or giving or receiving notice of intention to defend, or receiving a claim in reconvention or a third party notice, request the party issuing or delivering such document and any other opposite party to attend a conference in terms of this rule

(ii) For the purposes of this rule, any plaintiff, any defendant who has given notice of intention to defend or any third party who has delivered any pleading shall be deemed to be an opposite party

(b) At the said conference—

(i) the party requiring the conference may require any opposite party to disclose and make available all documents and give such particulars as the opposite party is then able to make available or give as to the claim or defence upon which the opposite party relies,

(c) 'n Derde party word geag in te gestem het om gebonde te wees deur enige erkenning, ooreenkoms of skikking deur die verweerder gemaak of aangegaan ten opsigte van die eis van die eiser teen die verweerder, tensy hy in sy pleitstuk uitdruklik 'n bewering tot die teendeel maak

(6) 'n Derde party of 'n verweerder in rekonvensie kan op soortgelyke wyse verdere partye bybring wat gepas as byvoorbeeld 'n vierde party of derde party in rekonvensie beskryf kan word, en vir die doeleindes van die verrigtinge word elke sodanige verdere party geag 'n derde party te wees

REEL 10

SLUITING VAN PLEITSTUKKE

10 Pleitstukke word gesluit wanneer die tyd toegelaat vir die aflewering van 'n verdere pleitstuk verstryk het sonder dat sodanige pleitstuk afgelewer is, of waar n pleitstuk waardeur in geding getree is sonder dat 'n verdere pleitstuk toegevoeg is afgelewer is

REEL 11

VERSOEK OM VERDERE BESONDERHEDE

11 (1) 'n Party kan te enige tyd na die sluiting van pleitstukke n versoek om verdere besonderhede ten opsigte van die pleitstuk van enige ander party in die aksie aflewer, ten einde die party wat die versoek aflewer, in staat te stel om hom vir die verhoor voor te berei

(2) (a) Besonderhede kan met betrekking tot 'n ontkenning of 'n aangeleentheid wat geag word in geskil geplaas te wees, gevra word

(b) Daar word nie teen enige sodanige versoek beswaar gemaak op grond daarvan dat die doel van die versoek is om 'n erkenning van 'n geskilpunt te verkry nie

(3) 'n Antwoord op 'n versoek om verdere besonderhede bind die party wat die antwoord verskaf, teenoor alle partye in die aksie en nie slegs teenoor die party wat die besonderhede versoek het nie

REEL 12

VOORLOPIGE PROSEDURES

12 (1) 'n Hof kan te enige tyd, hetsy voor of na die uitreiking van 'n dagvaarding—

(a) 'n bevel kragtens artikel 5 (5) van die Wet gee,

(b) 'n bevel gee vir die afneem van getuienis van enige persoon in die bevel genoem of andersins geïdentifiseer (by wyse van beskrywing of andersins), met betrekking tot enige aangeleentheid wat relevant kan wees in enige beoogde of hangende aksie, en kan in genoemde bevel die geskilpunte bepaal waaroor getuienis gegee kan word, en ook die prosedure vir die afneem van sodanige getuienis voorskryf

(2) (a) (i) 'n Eiser, of verweerder in konvensie of rekonvensie, of 'n derde party kan, nadat 'n dagvaarding aan hom beteken is of kennis van voorneme om te verdedig gegee of ontvang is of 'n teeneis of derdepartykennisgewing ontvang is, die party wat sodanige stuk uitgereik of afgelewer het en enige ander teenparty versoek om 'n samespreking ingevolge hierdie reël by te woon

(ii) By die toepassing van hierdie reel word 'n eiser, 'n verweerder wat kennis van voorneme om te verdedig gegee het, of 'n derde party wat 'n pleitstuk afgelewer het, geag 'n teenparty te wees

(b) By bedoelde samespreking—

(i) kan die party wat die samespreking versoek het, enige teenparty versoek om alle dokumente bloot te lê en beskikbaar te stel en om sodanige besonderhede te verskaf as wat die teenparty dan beskikbaar kan stel of kan verskaf aangaande die eis of die verweer waarop die teenparty steun,

(ii) any opposite party may in like manner require the party requiring the conference and any other opposite party present at the conference to disclose and make available all documents and give such particulars as he is then able to make available or give concerning his claim or defence,

(iii) any party may require any other party to disclose and make available any documents and give any information available which might be relevant to a submission of the matter in dispute to arbitration

(3) If any party fails to attend a conference pursuant to a notice given in terms of subrule (2), any other party may apply to court for an order that the said party attend such conference

(4) At the said conference the parties shall disclose and make available all the said documents and give the said information

RULE 13

DISCOVERY OF DOCUMENTS

13 (1) A party shall make discovery of documents—

(a) if any other party in an action so requires it after the close of pleadings, or

(b) if so ordered by a court in an application or an action, whether before or after the close of pleadings in the action

(2) Any such notice or order—

(a) may specify the document or category or type of document to be disclosed,

(b) may limit the disclosure required thereby to documents of a class stated therein or relating to issues stated therein

(3) Discovery of documents shall be made by the service on the parties of an affidavit describing with such particularity as may be necessary to identify the documents which are relevant to the matters in issue then or which previously were in the possession of the party making discovery or his agent

(4) Documents may be described as being contained in a bundle referred to therein, in which case the pages of the bundle shall be numbered consecutively and the number of pages stated as part of the description

(5) After receiving a discovery affidavit, a party may likewise require further and better discovery to be made in accordance with this rule

(6) Any document discovered may be inspected and copied by any party to the action

RULE 14

PRE-TRIAL PROCEDURE

14 (1) A court may from time to time on the application of any party make an order or orders with regard to any one or more of the following matters and may give directions for the more effectual carrying out of its order

(a) Requiring any person to answer any question on oath either before a person to be nominated in the order, or on affidavit, or otherwise as the court may order—

(i) arising from the failure to answer, the inadequacy of any answer to any request for further particulars, or the failure to make any admission requested in such a request, or for the purpose of amplifying any such answer;

(ii) kan 'n teenparty insgelyks die party wat die samesprekings versoek het en enige ander teenparty wat by die samesprekings teenwoordig is, versoek om alle dokumente bloot te lê en beskikbaar te stel en om sodanige besonderhede te verskaf as wat hy dan beskikbaar kan stel om kan verskaf aangaande sy eis of verweer,

(iii) kan enige party enige ander party versoek om enige dokumente bloot te lê of beskikbaar te stel en om enige beskikbare inligting te verskaf wat by die verwysing van die aangeleentheid in geskil na arbitrasie relevant kan wees

(3) Indien 'n party versuim om 'n samespreking uit hoofde van 'n kennisgewing ingevolge subreël (2) by te woon, kan enige ander party by 'n hof aansoek doen om 'n bevel dat die genoemde party die samespreking bywoon

(4) Die partye moet by die bedoelde samespreking al die bedoelde dokumente blootlê en beskikbaar stel en die bedoelde inligting gee

REEL 13

BLOOTLEGGING VAN STUKKE

13 (1) 'n Party moet stukke blootlê—

(a) indien 'n ander party in 'n aksie dit na die sluiting van die pleitstukke verlang, of

(b) indien 'n hof in 'n aansoek of 'n aksie hetsy voor of na die sluiting van die pleitstukke aldus gelas

(2) Enige sodanige kennisgewing of bevel—

(a) kan die dokument, klas of soort dokument wat blootgelê moet word, spesifiseer,

(b) kan die verlangde blootlegging beperk tot dokumente in 'n klas daarin vermeld of tot geskilpunte daarin vermeld

(3) Blootlegging van dokumente geskied deur aan die partye 'n beëdigde verklaring te beteken wat 'n beskrywing met die nodige besonderhede bevat om die dokumente te kan identifiseer wat relevant by die geskilpunte is en wat dan of voorheen in die besit van die party wat die blootlegging doen, of sy agent is of was

(4) Dokumente kan beskryf word as 'n deel van 'n pak dokumente waarvan daarin melding gemaak word, in welke geval die bladsye van die pak agtereenvolgens genommer moet word en die aantal bladsye as deel van die beskrywing vermeld moet word

(5) 'n Party kan, nadat 'n blootleggingsverklaring ontvang is, op soortgelyke wyse verlang dat verdere en beter blootlegging kragtens hierdie reël gedoen word

(6) 'n Dokument wat blootgelê is, kan deur enige party in die aksie ingesien en gekopieer word

REEL 14

VOORVERHOORPROSEDURE

14 (1) 'n Hof kan van tyd tot tyd op aansoek van enige van die partye 'n bevel of bevele met betrekking tot een of meer van die volgende aangeleenthede gee, en kan lasgewings aangaande die doeltreffender uitvoering van sy bevele gee

(a) Die beantwoording van enige vraag deur 'n persoon onder eed òf voor 'n persoon in die bevel aangewys, òf by wyse van beëdigde verklaring, òf op 'n wyse deur die hof bepaal, wat ontstaan—

(i) uit 'n versuim om te antwoord of die ontoereikendheid van 'n antwoord op 'n versoek om verdere besonderhede of die versuim om 'n erkenning te doen wat in so 'n versoek versoek word, of vir die doeleindes van aanvulling van sodanige antwoord,

(ii) arising from any dispute as to the adequacy of any discovery of documents,

(b) ordering any person who is not a party to the action to produce any document relating to any question which may arise in the action which may be in his possession and to permit the same to be copied,

(c) the admission of evidence in terms of section 6 (3) of the Act,

(d) the taking of evidence on commission,

(e) the reference of any matter to arbitration or to a referee in terms of section 5 (2) (e) of the Act,

(f) the holding of any conference in accordance, subject to any modifications set out in the order or agreement, with rule 37 of the Uniform Rules, in connection with any matters set out in the said rule or in the order or the agreement of the parties,

(g) the restating or clarification of the issues, and

(h) the papers to be placed before the court for the purpose of the hearing

(2) The parties may without any order agree on any matter referred to in paragraph (a), (c), (f), (g) or (h) of subrule (1)

(3) Any answer in terms of subrule (1) (a) (i) shall be admissible against but not in favour of the party giving it, unless the court at any time orders otherwise

(4) An order with regard to any matter referred to in paragraph (a), (d) or (f) of subrule (1) shall be made only after the close of pleadings, unless the court in its discretion is of the opinion that an order should be made before the close of pleadings

(5) Any agreement in terms of this rule and the proceedings of any conference held in terms of rule 12 shall be recorded in writing and signed by the parties

RULE 15

TRIAL

15 The procedure in respect of setting down and hearing of any trial shall be in accordance with the procedure regulated in the Uniform Rules and any rules regulating the conduct of proceedings in the division in respect of which the court is constituted, or as ordered by the court save that the registrar, if he thinks fit, or with the authority of a judge in chambers, may assign fixed dates for any trial

RULE 16

APPLICATIONS

16 (1) Subject to the provisions of this rule the provisions of rule 6 of the Uniform Rules shall apply to applications

(2) A notice of motion in an application on notice shall state—

(a) the time within which the respondent shall deliver any affidavits,

(b) the date for the hearing of the application.

(3) Unless otherwise stated in any rule *nisi*, the affidavit of any respondent or person called on to show cause shall be filed at least 10 days before the return date and any affidavit of the applicant shall be filed at least five days before the return date

(ii) uit 'n geskil oor die toereikendheid van enige blootlegging van dokumente,

(b) 'n bevel dat 'n persoon wat nie 'n party in die aksie is nie, 'n dokument voorlê betreffende 'n vraag wat in die aksie ter sprake kan kom wat in sy besit kan wees, en toelaat dat afskrifte van sodanige dokument gemaak word,

(c) die aanvaarding van getuienis kragtens artikel 6 (3) van die Wet,

(d) die afneem van getuienis op kommissie,

(e) die verwysing van enige aangeleentheid na arbitrasie of na 'n skeidsregter kragtens artikel 5 (2) (e) van die Wet,

(f) die voer van 'n samespreking, ooreenkomstig reël 37 van die Eenvormige Hofreëls maar behoudens veranderings uiteengesit in die bevel of ooreenkoms, in verband met enige aangeleentheid in genoemde reël of die bevel of ooreenkoms tussen die partye uiteengesit,

(g) die herformulering of opheldering van die geskilpunte, en

(h) die stukke wat vir verhoordoeleindes voor die hof geplaas moet word

(2) Die partye kan sonder enige bevel oor enige aangeleentheid bedoel in paragrawe (a), (c), (f), (g) of (h) van subreël (1) ooreenkom

(3) 'n Antwoord ingevolge subreël (1) (a) (i) is, tensy die hof te enige tyd anders beveel as getuienis teen maar nie ten gunste van die party wat dit gee nie toelaatbaar

(4) 'n Bevel ten opsigte van 'n aangeleentheid in paragrawe (a), (d) of (f) van subreël (1) word, tensy die hof volgens sy diskresie van oordeel is dat 'n bevel voor die sluiting van die pleitstukke gegee moet word, slegs ná die sluiting van die pleitstukke gegee

(5) 'n Ooreenkoms kragtens hierdie reël aangegaan en die verrigtinge van enige samespreking kragtens reël 12 gehou, moet skriftelik genotuleer en deur die partye onderteken word

REËL 15

VERHOOR

15 Die prosedure ten opsigte van terrolleplasing en die hou van verhoor word gereël ooreenkomstig die prosedure ten opsigte daarvan in die Eenvormige Hofreëls en enige reels waarby die verrigtinge in die afdeling waarvoor die hof ingestel is, voorgeskryf word, of soos deur die hof bepaal, behalwe dat die griffier, indien hy dit goeddink of met die magtiging van 'n regter-in-kamers, spesifieke datums vir enige verhoor kan vasstel

REEL 16

AANSOEKE

16 (1) Die bepalings van reel 6 van die Eenvormige Hofreels is, behoudens die bepalings van hierdie reël, op aansoeke van toepassing

(2) 'n Kennisgewing van mosie in 'n aansoek met kennisgewing moet—

(a) die tydperk waarbinne die respondent beëdigde verklarings moet aflewer, en

(b) die datum waarop die aansoek aangehoor word, vermeld

(3) Die beëdigde verklaring van 'n respondent of persoon aangesê om gronde aan te voer, moet minstens 10 dae voor die keerdatum en 'n beëdigde verklaring van die applikant minstens vyf dae voor die keerdatum geliasseer word, tensy in 'n voorlopige bevel anders beveel is

RULE 17

VARIATION OF PERIODS OF TIME AND NON-COMPLIANCE

17 (1) On the application of any person the court may abridge or extend any period of time and may advance or postpone any date in respect of any matter for which a time or date is laid down in these rules, the Uniform Rules as applicable to admiralty proceedings, any notice, order of court or otherwise

(2) If any person has not complied with a notice given in terms of these rules or the Uniform Rules, any interested party may apply for an order that there be compliance with the notice

(3) (a) If any party has not complied with an order of court, any interested party may apply for an order that the claim or defence or participation in the action of any person not so complying be set aside and struck out and that the said person be dealt with as being in default

(b) On any such application the court may so order, or make such other order as to the court seems meet

RULE 18

VEXATIOUS OR IRREGULAR PROCEEDINGS

18 (1) The court may strike out any proceedings which are vexatious or an abuse of the process of the court

(2) If it appears to the court on application that there have been any irregular proceedings by any party or a non-compliance with the rules or any order of court, the court may make such order as appears to it to be just with regard to the said proceedings or non-compliance, including an order that any such party be deemed to be in default, or that judgment be given against any such party

RULE 19

PROPERTY ARRESTED OR ATTACHED

19 (1) Any property arrested or attached shall be kept in the custody of the sheriff or his deputy, who may take all such steps as the court may order or as appear to him to be appropriate for the custody and preservation of the property, including the removal and storage of any cargo and the removal, disposal and storage of perishable goods which have been arrested or attached, or which are on board any ship which has been arrested or attached

(2) In acting under subrule (1), the sheriff or his deputy shall consult any person or persons who have procured the arrest or attachment of the property and shall act in accordance with any relevant order of court

(3) (a) The deputy-sheriff shall be entitled to reasonable remuneration for effecting any arrest or attachment to found or confirm jurisdiction and for any act done by him in terms of this rule

(b) Any such remuneration may be less or greater than the corresponding remuneration in any tariff prescribed in the Uniform Rules or elsewhere

(4) Any property sold in terms of section 9 of the Act shall be sold by such persons and on such terms and in such manner as the court may order

(5) The proceeds of any sale and any amount paid as security or otherwise into court shall be invested in such manner as the parties may agree or as the court may order, which order may be made notwithstanding the fact that the parties have agreed otherwise

(6) (a) Any such proceeds or amounts shall be paid out in such manner as the court may order

(b) The court shall make such order as to it seems meet with regard to parties and procedure Provided that any such proceeds or amounts shall be paid out in accordance with the priorities provided in the Act

REËL 17

WYSIGING VAN TYDPERKE EN NIE-NAKOMING

17 (1) Die hof kan op aansoek van enige persoon enige tydperk verkort of verleng, en kan enige datum betreffende enige aangeleentheid waarvoor 'n tyd of datum in hierdie reëls, die Eenvormige Hofreëls, soos van toepassing op admiraliteitsverrigtinge, en enige kennisgewing, hofbevel of andersins vasgestel is, vervroeg of uitstel

(2) 'n Belanghebbende party kan, indien 'n persoon nie aan 'n kennisgewing ooreenkomstig hierdie reëls of die Eenvormige Hofreëls voldoen nie, aansoek doen om 'n bevel dat aan die kennisgewing voldoen word

(3) (a) 'n Belanghebbende party kan, indien enige party nie 'n hofbevel nakom nie, aansoek doen om 'n bevel dat die eis of verweer of deelname aan die aksie van die persoon wat nie die bevel nagekom het nie, ter syde gestel en geskrap word en dat met sodanige persoon gehandel word asof hy in verstek is

(b) Die hof kan by enige sodanige aansoek aldus beveel of die bevel gee wat hy goeddink

REEL 18

KWELSUGTIGE OF ONREELMATIGE VERRIGTINGE

18 (1) Die hof kan verrigtinge wat kwelsugtig is of misbruik van die hofprosedure behels, skrap

(2) Die hof kan, indien dit by aansoek blyk dat daar onreelmatige verrigtinge deur 'n party was of dat die reels of enige hofbevel nie nagekom is nie, 'n bevel wat hom billik voorkom, gee met betrekking tot die verrigtinge of nie-nakoming, met inbegrip van 'n bevel dat sodanige party geag word in verstek te wees of dat vonnis teen sodanige persoon gegee word

REËL 19

GOED IN BESLAG GENEEM OF OP BESLAG GELÊ

19 (1) Goed wat in beslag geneem is of waarop beslag gelê is, word in die bewaring van die balju of adjunk-balju gehou, wat die stappe wat die hof beveel of wat hom paslik voorkom, kan doen vir die bewaring en behoud van die goed, met inbegrip van die verwydering en opberging van die vrag, en die verwydering en opberging van en beskikking oor bederfbare goed wat in beslag geneem of waarop beslag gelê is, of wat aan boord is van 'n skip wat in beslag geneem of waarop beslag gelê is

(2) Die balju of adjunk-balju moet, wanneer hy kragtens subreël (1) handel, met die persoon of persone wat die inbeslagneming of beslaglegging bewerkstellig het, raadpleeg en moet ooreenkomstig 'n toepaslike hofbevel optree

(3) (a) Die adjunk-balju is geregtig op redelike vergoeding vir die uitvoering van inbeslagneming of beslaglegging om jurisdiksie te vestig of te bevestig en vir enige handelinge kragtens hierdie reël verrig

(b) Sodanige vergoeding kan meer of minder wees as die ooreenstemmende vergoeding voorgeskryf in 'n tarief in die Eenvormige Hofreëls of elders

(4) Goed wat kragtens artikel 9 van die Wet verkoop word, moet deur sodanige persone, op sodanige voorwaardes en op sodanige wyse as wat die hof beveel, verkoop word

(5) Die opbrengs van enige verkoping en enige bedrag wat as sekuriteit of andersins by 'n hof inbetaal is, moet belê word op sodanige wyse as waarop die partye ooreenkom of wat die hof beveel, welke bevel gegee kan word nieteenstaande dat die partye anders ooreengekom het

(6) (a) Enige sodanige opbrengs of bedrae word op sodanige wyse as wat die hof beveel, uitbetaal

(b) Die hof gee 'n bevel wat hom gepas voorkom met betrekking tot die partye en prosedure Met dien verstande dat sodanige opbrengs en bedrae ooreenkomstig die rangorde in die Wet bepaal, uitbetaal word

(c) Any person who has filed with the registrar a notice that he desires to be heard on an application for the paying out of such proceeds shall be entitled to notice of any application relating to any such payment

RULE 20

FILING, DELIVERY AND PREPARATION OF PAPERS

20 (1) The registrar shall cause records to be kept in a convenient form showing, separately from any records relating to any other proceedings in the division of which he is registrar

(a) Summonses and warrants issued in and applications which are, or are made with regard to, admiralty proceedings,

(b) orders made in admiralty proceedings,

(c) any security or undertaking given in terms of section 3 (10) of the Act,

(d) any notice under rule 3 (5) (c),

(e) any notice under rule 19 (6) (c),

(f) generally, the records of proceedings pending or proceeding before the court

(2) (a) The attorney for a party obtaining the issue of a summons, warrant of arrest or third party notice, or giving notice of intention to defend, shall file a power of attorney only if notice is given by any party requiring that such a power be filed

(b) The filing of any written or telex authority shall be a sufficient compliance with such notice, but a formal power of attorney shall be filed within 30 days of the filing of any such authority

(3) Every summons, third party notice and warrant—

(a) shall be signed by the attorney for the party causing it to be issued or, if the party is not represented by an attorney and is a natural person, by the party and thereafter be signed and issued by the registrar,

(b) shall contain an address of the attorney or party such as is referred to in rule 17 (3) of the Uniform Rules

(4) (a) If the parties are described as set forth in rule 2 (3) or if notice of intention to defend is given in an action *in rem*, the power of attorney may describe the parties as they are described in the action, but in that event there shall be filed with the power of attorney an undertaking by the attorney to pay any costs awarded against the party represented by him and any damages awarded against the said party under section 5 (4) of the Act, which shall be enforceable by the other parties to the action

(b) (i) If any party is described as set forth in rule 2 (3), any other party may, by notice, require the plaintiff or any defendant or third party who has given notice of intention to defend, to give particulars of the identity of the party or parties so described

(ii) The party receiving the said notice shall within 15 days of the receipt thereof give particulars of the parties so described by him, or of his identity if he is the party so described, but, subject to any order of the court, the action shall proceed notwithstanding the fact that the notice has not been complied with

(c) The court may at any time order that security be given in respect of any undertaking under paragraph (4) (a)

(c) Enige persoon wat by die griffier 'n kennisgewing inasseer dat hy verlang om by 'n aansoek om die uitbetaling van sodanige opbrengs aangehoor te word, is geregtig op kennisgewing van enige aansoek met betrekking tot sodanige uitbetaling

REËL 20

LIASSERING, AFLEWERING EN VOORBEREIDING VAN STUKKE

20 (1) Die griffier moet toesien dat rekords in 'n geneflike vorm gehou word wat, afsonderlik van enige rekords betreffende enige ander verrigtinge in die afdeling waarvan hy griffier is, die volgende toon

(a) Dagvaardings en lasbriewe uitgereik in admiraliteitsverrigtinge en aansoeke wat sodanige verrigtinge is of wat met betrekking tot sodanige verrigtinge gedoen word,

(b) bevele gegee in admiraliteitsverrigtinge,

(c) enige sekuriteit of onderneming kragtens artikel 3 (10) van die Wet gegee,

(d) enige kennisgewing kragtens reel 3 (5) (c),

(e) enige kennisgewing kragtens reel 19 (6) (c),

(f) in die algemeen, die rekords van die verrigtinge wat hangende of voor die hof is

(2) (a) Die prokureur van 'n party wat die uitreiking van 'n dagvaarding lasbrief tot beslaglegging of n derdepartykennisgewing verkry of wat kennis van voorneme om te verdedig gee, moet 'n prokurasie inasseer slegs indien kennis deur enige party gegee is dat vereis word dat sodanige prokurasie geinasseer word

(b) Die inassering van 'n geskrewe of teleksmagtiging is genoegsame voldoening aan sodanige kennisgewing , maar 'n formele prokurasie moet binne 30 dae na die inassering van sodanige prokurasie geinasseer word

(3) Elke dagvaarding, derdepartykennisgewing en lasbrief moet—

(a) deur die prokureur vir die party wat dit laat uitreik of, indien die party nie deur 'n prokureur verteenwoordig word nie en hy 'n natuurlike persoon is, deur die party onderteken word en daarna moet dit deur die griffier onderteken en uitgereik word,

(b) 'n adres van die prokureur of party soos in reël 17 (3) van die Eenvormige Hofreëls bedoel, bevat

(4) (a) Die prokurasie kan, indien die party beskryf is soos in reel 2 (3) bedoel of indien kennisgewing van voorneme om te verdedig in 'n aksie *in rem* gegee is, die partye soos hulle in die aksie beskryf is, beskryf, maar in so 'n geval moet die prokureur, tesame met die prokurasie, 'n onderneming inasseer om enige koste toegeken teen die party wat hy verteenwoordig en enige skadevergoeding wat teen die genoemde party kragtens artikel 5 (4) van die Wet toegeken is, te betaal, en sodanige onderneming is deur die ander partye in die aksie afdwingbaar

(b) (i) Indien 'n party beskryf is soos in reel 2 (3) bedoel, kan 'n ander party by kennisgewing vereis dat die eiser of enige verweerder of derde party wat kennis van voorneme om te verdedig gegee het, besonderhede verstrek van die identiteit van die party of partye aldus beskryf

(ii) Die party wat sodanige kennisgewing ontvang, moet binne 15 dae na ontvangs daarvan besonderhede verstrek van die partye aldus deur hom beskryf, of van sy identiteit indien hy die party is wat aldus beskryf is, maar behoudens enige bevel van die hof gaan die aksie voort nieteenstaande dat daar nie aan die kennisgewing voldoen is nie

(c) Die hof kan te eniger tyd beveel dat sekuriteit ten opsigte van enige onderneming kragtens subreël 4 (a) gestel word

(5) The title of the proceedings shall consist of a heading indicating the nature of the document, the name of the division of the Supreme Court of South Africa concerned, the number assigned thereto by the registrar, the name of the ship and the names of the parties and, if the proceedings are or are in connection with an action, shall state whether the action is an action *in rem* or *in personam* or *in rem* and *in personam*

(6) All documents filed shall bear the title of the proceedings and shall be filed with a filing sheet stating the nature of the document filed

(7) Any pleading and any request for further particulars and any reply thereto shall be signed by the party (if a natural person) or an attorney and shall, if signed by an attorney, also be signed by an advocate

(8) (a) When any document is filed as part of the pleadings, or as a request for particulars or reply thereto, in an action or as part of the affidavits and papers in an application, it shall be accompanied by an index and the papers delivered shall be numbered in accordance with the index

(b) When a previous index has been filed in the proceeding, the person responsible for the delivery of the documents shall continue the index as a running index in connection with the documents delivered by him, so that all papers filed and delivered shall, at all times, constitute a paged and indexed series of documents

(9) When any amendment is deemed to have been agreed to, or has been ordered to be made by the court in terms of rule 28 of the Uniform Rules, the pleadings shall forthwith be deemed to have been so amended notwithstanding the fact that the amended page has not been delivered in terms of rule 28 (9) of the said Rules

(10) (a) Subject to the provisions of this rule, pleadings, affidavits and a response to any notice shall be delivered or made within 10 days after the pleading, affidavit or notice to which they are an answer or response or, in the case of a plea, after the giving of notice of intention to defend

(b) The said time may be extended or abridged by agreement or by an order of the court

(c) Any party unreasonably refusing to agree to an extension of time shall be liable to pay the costs occasioned by any application arising out of any such refusal

(d) A pleading or affidavit delivered out of time shall not merely on that account be refused by the registrar or any other party unless the court orders it to be struck out

RULE 21

REPRESENTATIVE ACTIONS AND LIMITATIONS OF LIABILITY

21 (1) For the avoidance of a multiplicity of actions the court may, as to it seems meet, make an order that any action pending before it be regarded as a test action and that any other action to which one or more of the parties to the action so pending are parties and in which the same questions would arise, abide the result of the test action and may make any order as to the procedure and representation in the said action as to the court seems meet

(2) Where any person claims to be entitled to a limitation of liability referred to in paragraph (t) of the definition of "maritime claim" in section 1 (1) of the Act, the court may

(5) Die titel van die verrigtinge bestaan uit 'n opskrif wat die aard van die betrokke dokument aandui, die naam van die betrokke afdeling van die Hooggeregshof van Suid-Afrika, die nommer deur die griffier daaraan toegeken, die naam van die skip en die name van die partye, en moet, indien die verrigtinge 'n aksie is of met 'n aksie in verband staan, verklaar of die aksie 'n aksie *in rem* of *in personam* of *in rem* en *in personam* is

(6) Alle dokumente wat geliasseer word, moet die titel van die verrigtinge dra, en moet gelïasseer word met 'n dekblad wat die aard van die dokument aldus gelïasseer, aandui

(7) Enige pleitstuk en enige versoek om verdere besonderhede en enige antwoord daarop moet deur die party (indien hy 'n natuurlike persoon is) of 'n prokureur onderteken wees en, indien deur 'n prokureur onderteken, moet dit ook deur 'n advokaat onderteken wees

(8) (a) Enige dokument ingedien as deel van die pleitstukke of van 'n versoek om besonderhede of 'n antwoord daarop in 'n aksie, of as deel van die beedigde verklarings en stukke in 'n aansoek, moet vergesel gaan van 'n inhoudsopgawe en die stukke wat afgelewer is, moet volgens die inhoudsopgawe genommer word

(b) Waar 'n vorige inhoudsopgawe in die verrigtinge gelïasseer is, moet die persoon verantwoordelik vir die aflewering van die dokumente die inhoudsopgawe voortsit as 'n lopende inhoudsopgawe van die dokumente deur hom afgelewer, sodat al die stukke wat gelïasseer en afgelewer is, te alle tye 'n gepagineerde en geindekseerde reeks dokumente uitmaak

(9) Pleitstukke word, wanneer enige wysiging geag word op ooreengekom te wees of deur die hof kragtens reël 28 van die Eenvormige Hofreels beveel is om gemaak te word, nieteenstaande dat die gewysigde bladsy nie kragtens reel 28 (9) van genoemde Reëls afgelewer is nie, onverwyld geag aldus gewysig te wees

(10) (a) Pleitstukke, beedigde verklarings en 'n antwoord op enige kennisgewing moet, behoudens die bepalings van hierdie reël, binne 10 dae na die pleitstuk, beedigde verklaring of kennisgewing waarop geantwoord word of, in die geval van 'n verweerskrif, nadat kennis gegee is van voorneme om te verdedig, afgelewer of verskaf word

(b) Genoemde tydperk kan by ooreenkoms of hofbevel verleng of verkort word

(c) 'n Party wat onredelikerwys toestemming tot verlenging van die tydperk weier, is aanspreeklik om die koste veroorsaak deur 'n aansoek voortspruitend uit sodanige weiering, te betaal

(d) 'n Pleitstuk of beedigde verklaring wat buite die voorgeskrewe tydperk afgelewer word, kan nie bloot op grond daarvan deur die griffier of 'n ander party geweier word nie tensy die hof beveel dat dit geskrap word

REËL 21

VERTEENWOORDIGENDE AKSIES EN DIE BEPERKING VAN AANSPREEKLIKHEID

21 (1) Die hof kan na goeddunke, ten einde die vermenigvuldiging van aksies te vermy, 'n bevel gee dat enige hangende aksie voor die hof beskou word as 'n toetsaksie en dat enige ander aksie waarin een of meer van die partye in die aldus hangende aksie partye is en waarin dieselfde vrae sal ontstaan, die uitslag van die toetsaksie afwag, en kan na goeddunke enige bevel betreffende die prosedure en verteenwoordiging in die aksie gee

(2) Die hof kan, waar 'n persoon eis dat hy geregtig is op beperking van aanspreeklikheid in paragraaf (t) van die omskrywing van "maritieme eis" in artikel 1 (1) van die

give such directions as to it seems meet with regard to the procedure in any such claim, the staying of any other proceedings and the conditions for the consideration of any such claim, which may include a condition that such amount as the court may order be paid to abide the result of the consideration of the said claim, or that the claimant be required to admit liability for all or any claims made against him, or any other condition as to the court may seem meet

RULE 22

EXCLUSION OF CERTAIN OF THE UNIFORM RULES

22 Rules 8, 9, 13, 17, 18, 20–23, 25, 26, 29, 30, 32, 35, 43–46 and 50–57 of the Uniform Rules shall, subject to the provisions of these rules, not apply to admiralty proceedings

RULE 23

DIRECTIONS BY THE COURT

23 (1) The court may in any admiralty proceedings *mero motu* or on the application of any party or other person having a sufficient interest give any directions which to it appear proper for the disposal of any matter before it

(2) Any such direction may deviate from or supplement any provision of these rules, or of the Uniform Rules, or of any other rule relating to the division in question

RULE 24

REPEAL OF RULES

24 (1) The rules made in terms of the Vice-Admiralty Courts Act, 1863, and in force in terms of the Colonial Courts of Admiralty Act, 1890, read with section 4 (2) of the Act, are hereby repealed

(2) These rules and the Uniform Rules shall apply to admiralty proceedings to the exclusion, but subject to the provisions of these rules, of any other rule of court, and to the conduct after the commencement of these rules of proceedings started before such commencement

FIRST SCHEDULE—FORMS

FORM 1

SUMMONS

IN THE SUPREME COURT OF SOUTH AFRICA

DIVISION

EXERCISING ITS ADMIRALTY JURISDICTION

CASE No

NAME OF SHIP:

IN THE MATTER BETWEEN

PLAINTIFF

AND

DEFENDANT

Admiralty action *in rem*/*in personam*/*in rem* and *in personam*

To the above-named defendant

TAKE NOTICE that the plaintiff claims against the defendant

(Concise terms of the cause of action of the plaintiff)

Wet bedoel, na goeddunke lasgewings gee betreffende die prosedure in enige sodanige eis, die opskorting van enige ander verrigtinge en die voorwaardes vir die oorweging van so 'n eis, welke voorwaardes 'n voorwaarde kan insluit dat 'n bedrag wat die hof beveel, betaal moet word om die uitslag van die oorweging van genoemde eis af te wag, of dat van die eiser vereis word om aanspreeklikheid in alle of enige eise teen hom te erken of, na goeddunke van die hof, enige ander voorwaarde

REEL 22

UITSLUITING VAN SEKERE VAN DIE EENVORMIGE HOFREELS

22 Reels 8, 9, 13, 17 18, 20–23, 25, 26, 29, 30 32 35 43–46 en 50–57 van die Eenvormige Hofreels is, behoudens die bepalings van hierdie reëls, nie op admiraliteitsverrigtinge van toepassing nie

REEL 23

LASGEWINGS DEUR DIE HOF

23 (1) Die hof kan *mero motu* in enige admiraliteitsverrigtinge of by aansoek van enige party of ander persoon met genoegsame belang enige lasgewing gee wat vir die hof paslik voorkom vir die afhandeling van so n aangeleentheid

(2) Enige sodanige lasgewing kan enige bepaling van hierdie reels, of van die Eenvormige Hofreëls of van enige ander Reel met betrekking tot die betrokke afdeling wysig of aanvul

REEL 24

HERROEPING VAN REELS

24 (1) Die reels uitgevaardig kragtens die Vice-Admiralty Courts Act 1863, en van krag kragtens die Colonial Courts of Admiralty Act 1890, gelees met artikel 4 (2) van die Wet, word hierby herroep

(2) Hierdie reels en die Eenvormige Hofreëls is met uitsluiting van enige ander hofreel maar behoudens die bepalings van hierdie reëls, op admiraliteitsverrigtinge van toepassing, asook op die voortsetting ná die inwerkingtreding van hierdie reels van verrigtinge wat voor sodanige inwerkingtreding 'n aanvang geneem het

EERSTE BYLAE—VORMS

VORM 1

DAGVAARDING

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

AFDELING

IN DIE UITOEFENING VAN SY ADMIRALITEITSJURISDIKSIE

SAAK No

NAAM VAN SKIP

IN DIE SAAK TUSSEN

EISER

EN

VERWEERDER

Admiraliteitsaksie *in rem*/*in personam*/*in rem* en *in personam*

Aan die hierbovermelde verweerder

NEEM KENNIS dat die eiser van die verweerder eis

(Bondige besonderhede van eiser se vordering)

If you wish to defend the action, you must within days give notice of your intention so to defend That notice must be served on the registrar and on the plaintiff's attorney and must contain an address in accordance with rule 19 of the Uniform Rules

If you do not give that notice within the time set out, or within any extended time which the court may allow if you make application for an extension of time, or if you do not thereafter deliver your plea or a claim in reconvention as provided by the rules regulating the conduct of the admiralty proceedings, proceedings may continue and judgment may be given against you without further reference to you

DATED at . this day of 19

[Address in terms of Rule 17 (3) of the Uniform Rules]

. . .

Plaintiff's Attorney

To the sheriff or his deputy

You are to effect service of this summons and return the original to the registrar with your return of service

.. ..

Registrar

(In case of edictal citation the note to the sheriff or his deputy should be omitted and the registrar's signature should follow immediately on that of the plaintiff's attorney)

FORM 2

WARRANT OF ARREST

IN THE SUPREME COURT OF SOUTH AFRICA

. . . . DIVISION

EXERCISING ITS ADMIRALTY JURISDICTION

CASE No

NAME OF SHIP

IN THE MATTER BETWEEN

PLAINTIFF

AND

DEFENDANT

Admiralty action *in rem/in personam/in rem* and *in personam*

To the above-named defendant

TAKE NOTICE that summons has been issued in the above-named action, and that by the service of this warrant the

. . . .

[here set out property—section 3 (5) of the Admiralty Jurisdiction Regulation Act, 1983]

is arrested and is to be kept in the custody of the sheriff or his deputy in terms of rule 19 of the rules regulating the conduct of the admiralty proceedings

If you wish to obtain the release of the property from arrest, you may do so by giving satisfactory security for the amount of the claim or the value of the property arrested, whichever is the lesser In the event of a dispute as to the security, you may make application to court for the resolving of that dispute You are also entitled to ask that the court impose conditions with regard to the arrest

Plaintiff's attorney

To the sheriff or his deputy

You are authorised by the warrant of arrest to arrest and keep under arrest the property named herein and you are hereby required duly to serve this warrant and return the original to the registrar with your return of service

Registrar

Indien u wens om die aksie te verdedig, moet u binne . dae kennis gee van u voorneme om aldus te verdedig Daardie kennisgewing moet op die griffier en die eiser se prokureur bestel word en moet 'n adres ooreenkomstig reel 19 van die Eenvormige Hofreels bevat

Indien u nie aldus kennis gee binne die tydperk wat gestel word, of binne enige verlengde tydperk wat die hof toelaat indien u aansoek om verlenging van die tydperk doen, of indien u nie daarna 'n pleit of teeneis soos bepaal in die reels waarby die admiraliteitsverrigtinge gereel word, aflewer nie, kan die verrigtinge voortgaan en vonnis teen u gegee word sonder dat verder na u verwys word

GEDATEER te , op hede die . ... dag van .. 19

[Adres kragtens reel 17 (3) van die Eenvormige Hofreels]

..... .

Eiser se prokureur

Aan die balju of sy adjunk

U moet hierdie dagvaarding beteken en die oorspronklike saam met u relaas aan die griffier terugbesorg

. .....

Griffier

(In geval van ediktale sitasie moet die nota aan die balju of sy adjunk weggelaat word, en die griffier se handtekening moet onmiddellik onder dié van die eiser se prokureur verskyn)

VORM 2

LASBRIEF TOT INBESLAGNEMING

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

AFDELING

IN DIE UITOEFENING VAN SY ADMIRALITEITSJURISDIKSIE

SAAK No

NAAM VAN SKIP

IN DIE SAAK TUSSEN

EISER

EN

VERWEERDER

Admiraliteitsaksie *in rem/in personam/in rem* en *in personam*

Aan die hierbovermelde verweerder

NEEM KENNIS dat dagvaarding in die hierbovermelde aksie uitgereik is, en dat deur die betekening van hierdie lasbrief

. . . . . .

[meld goedere—artikel 3 (5) van die Wet op Admiraliteitsjurisdiksie, 1983]

in beslag geneem word en deur die balju of sy adjunk kragtens reël 19 van die reels waarby admiraliteitsjurisdiksie gereel word, in bewaring gehou sal word

Indien u vrystelling wil verkry van die goed wat in beslag geneem is, kan u dit doen deur sekuriteit te verskaf vir die bedrag van die eis of die waarde van die goed wat in beslag geneem is, wat ook al die minste is U kan in geval van 'n geskil oor die sekuriteit by die hof vir die beslegting van die geskil aansoek doen U is ook daarop geregtig om die hof te versoek om voorwaardes met betrekking tot die inbeslagneming te stel

Eiser se prokureur

Aan die balju of sy adjunk

U word deur die lasbrief tot inbeslagneming gemagtig om die goed hierin vermeld in beslag te neem en in beslag te hou, en daar word hierby van u vereis om hierdie lasbrief behoorlik te beteken en die oorspronklike saam met u relaas aan die griffier terug te stuur

Griffier

252 N/M 22/11/86

Councillor guilty of culpable homicide

Court Reporter

AN UMLAZI town councillor and Inkatha member who fired three shots into a platform crowded with Cosatu supporters after May Day celebrations earlier this year was found guilty in the Durban Supreme court yesterday of culpable homicide and fined R1 000 or a year's imprisonment

Appearing before Mr Justice Kumleben, Zithathele Amony Ngcobo, 62, was found guilty of culpable homicide following the death of Phanakusho James Ntuli on May 1 this year

He was found not guilty of attempting to murder Cyril Cele at the same place and on the same date

Handing down judgment, Mr Justice Kumleben said it was the majority decision of the Court that in firing the three shots, Ngcobo had acted negligently and unlawfully

'A member of Inkatha and Umlazi town councillor for the past nine years, the Court heard Ngcobo was regarded by Cosatu as an enemy and before the incident on May 1, his life had been threatened

He had been shot at and injured while at home and what he described as a petrol bomb, thrown at his home

On May 1, Ngcobo was returning to Umlazi after attending the founding of a new trade union supported by Inkatha, the United Workers' Union of South Africa

When the train stopped at the Durban station, a crowd of people had begun stoning it

A stone was thrown at the window through which Ngcobo was looking, shattering the glass and cutting his face

Ngcobo said he had fired the three shots in succession with the intention of frightening the people

He said he did not report the matter to the police because he did not know anybody had been injured

Mr Justice Kumleben said there were features of the accused's evidence which cast doubt in certain respects

He said he was bound to concede Ngcobo had embellished on what took place and had to a certain extent exaggerated the danger which confronted him

According to the Judge, although the accused's conduct could not be excused, there were extenuating circumstances

In passing an appropriate sentence, the Court found Ngcobo had acted negligently and that he did not have the intention of killing the deceased

Ngcobo admitted five previous convictions involving assault which took place 30 years ago and another which occurred 13 years ago

'Although the accused has a number of previous convictions, these must be seen in perspective'

Certificate

He said they were not of a serious nature judging by the fines imposed and were of limited significance

A medical certificate handed to the Court stated the accused suffered from high blood pressure

According to this certificate, the accused would be more prone to take 'abrupt offensive action'

Ordinarily, Mr Justice Kumleben said he would have acceded to the State's request for a fine coupled with a suspended sentence

He said had it not been for the fact that Ngcobo had been subject to threats on his life, this would have been the case

Miss Colleen Thomas appeared for the State and Mr Gideon Scheltema, instructed by Friedman and Friedman, for Ngcobo

Inkatha man fined over death

AN Inkatha member and Umlazi town councillor, convicted of culpable homicide for fatally shooting a Confederation of South African Trade Unions (Cosatu) member during a clash after a May Day rally this year, was fined R1 000 (or one year) in the Supreme Court, Durban, on Friday.

SOWETAN CORRESPONDENT

Zithathele Ngcobo (62) killed Mr Phanakusho Ntuli when he fired three shots into a crowd trying to board the train he and other Inkatha members were travelling on on May 1 this year

Mr Ntuli had attended a Cosatu meeting at Currie's Fountain that day while Mr Ngcobo had gone to a meeting convened at Kings Park to form a rival union

Threats

Passing sentence, Mr Justice M E Kumleben said he ordinarily would have agreed with the State's submission that a suspended sentence coupled with a fine would be appropriate had Ngcobo not been subjected to threats and attacks on his home before the incident on May 1

Ngcobo had pleaded not guilty to murdering Mr Ntuli and attempting to murder Mr Cyril Cele, saying he had acted in self-defence

The court found he was guilty of culpable homicide in that he acted negligently but not with wrongful intent

He was acquitted on the attempted murder charge

The majority decision of the court was that Ngcobo had acted unlawfully and was not justified in shooting at people on the platform when he did

Statement: state withdraws

Dispatch Correspondent
PIETERMARITZBURG — The state yesterday withdrew its application in the College Road Supreme Court to have a statement made by an accused in the trial of twelve people charged in connection with bombings in Durban declared admissible as evidence

The unexpected move follows three days of evidence by accused, Mr Vusumuzi Mahlobo and a security policeman, Sergeant Andre Alberts, during a trial within a trial to decide on the admissibility of the statement before Mr Justice Thirion

The state prosecutor, Mr Bennie Schonfeldt, yesterday did not give reasons for withdrawing the application

The trial was adjourned until tomorrow

DD 26/11/86 (252)

Three apply for release

Court Reporter 25 J/M 28/11/86

AN APPLICATION for the release of three detainees who have been detained under the emergency regulations was adjourned by consent in the Supreme Court, Durban, yesterday.

The application concerning Muziwandile Wiseman Mkhize, 22, Bonginkosi Gumede, 22, and Nduduza Mdeletse, 16, will be heard December 3.

The three were arrested in September and July this year and are being detained in the Westville Prison.

Is a fair trial possible in apartheid society?

Cape Times 28/11/86

Z52

D M DAVIS comments on the report of the International Commission of Jurists on the Pastoors trial and the South African judicial system

ON JUNE 28, 1985, Helene Pastoors, a 43 year-old Dutch national, was arrested and detained in terms of Section 29 of the Internal Security Act. Some eight months later she appeared at a preliminary hearing before the Johannesburg Regional Court where an indictment was served on her Pastoors was charged with the common law offence of treason and alternatively with the crime of terrorism as defined in the Internal Security Act.

The trial in the Supreme Court began on April 14, 1986 and one month later the saga ended when Mr Justice Spoelstra sentenced Pastoors to 10 years' imprisonment

The trial aroused considerable attention in the international legal community A number of foreign lawyers attended the trial as observers, including Mr W C van Manen of the Amsterdam Bar, who observed the proceedings on behalf of the International Commission of Jurists As a consequence of his visit he wrote a 162 page report on the Pastoors trial, which was recently published For any South African concerned with the future of our legal system, the report comes to a number of disturbing conclusions

For Mr Van Manen the question of whether the Pastoors trial was fair in terms of the legal procedure adopted and the manner in which it was conducted is irrelevant He contends that irrespective of whether the procedures followed are fair, no trial in South Africa can in reality be considered to be fair The reason — apartheid As Mr Van Manen puts it "To maintain apartheid naturally requires unfair laws and a judiciary willing to enforce these laws No trial of a person accused of having infringed such laws can ever be called fair"

For me this is the major difficulty concerning the Van Manen report. The advantages of a procedurally fair trial should not be underesti mated For example, we have seen how the case against 16 UDF leaders in Maritzburg collapsed as a result of the scrupulous fairness of the presiding judge and the good fortune of the accused being represented by an outstanding senior counsel

Procedural fairness

In similar fashion a number of judges have insisted recently on procedural fairness on the part of the police in using their emergency powers, with the result that some detainees have been released Did the Pastoors case fall into this category? On the positive side, she was defended by a dedicated, highly respected attorney and a most distinguished senior counsel Most of the trial took place in open court.

As another observer at the Pastoors trial, Professor Van den Wyngaert of Belgium wrote "The conviction was supported by the evidence, and the penalty, according to the same standards, was not excessive The fact that she was convicted of high treason and not terrorism, to some extent silences the critics of South African criminal law, at least as far as this trial is concerned It would have been different had the conviction been based on the generally criticized Internal Security Act, with its vague incriminations and its, for Western criminal lawyers, unacceptable reversal of the onus of proof"

Now for the negative side Pastoors was held by the police in solitary confinement for eight months She had a nervous breakdown, which led to her hospitalization in a psychiatric clinic To the extent that any trial is based on evidence gained by the police from someone in solitary confinement, a trial cannot be said to be fair There is a considerable body of psychological literature to support the conclusion that such evidence must be treated with the utmost caution In other systems, including the US, and in the European Court of Human Rights, such evidence would be excluded as inadmissable The record of security police treatment of detainees, proven in court cases and research, tends to support a conclusion that cases cannot be considered to be fair

In the Pastoors case the state made use of a witness whose identity was given as Mr Z He gave his evidence in camera, owing to the state's argument that if his identity were known he would be a target for an ANC attack. By sheer luck Pastoors's attorney also acted for accused at the Delmas treason trial and thus was able to identify Mr Z as someone who had also given evidence at the Delmas trial After some difficulty the defence gained an order from the judge of the Delmas trial enabling the leader of the defence team to know Mr Z's real identity and gain access to the evidence given at Delmas With this knowledge counsel was able to destroy Mr Z's credibility by proving to the court that his evidence contradicted that given by him at Delmas

Substantive unfairness

Without the coincidence of the attorney being involved in both cases, it would have been extremely difficult to cross examine Mr Z effectively In short, trials in which secret witnesses give evidence cannot be considered to be completely fair

As to the charge of substantive unfairness made by Mr Van Manen, it cannot be said that every trial in South Africa including, for example, contractual or company litigation, is unfair However, when it comes to trials involving political activity, Mr Van Manen's point has much to commend it. One cannot isolate the activities of ANC members from the oppression of South African society In many ways we are a country at civil war and in such a situation a substantial proportion of the population will consider Pastoors as a hero of the struggle rather than a traitor who failed to give allegiance to the South African state If such a conclusion sounds irresponsible to white ears, then reference should be made to the recent Human Sciences Research Council (HSRC) study which indicated massive support among blacks for the ANC (D J van Vuuren et al SA A Plural Society in Transition)

A legal system can only operate fairly in a society in which there is a broad consensus concerning the values on which society is based Alas, we are not that kind of society It is therefore not surprising that even the Hoexter Commission noted the lack of confidence which so many South Africans have in our legal system Until our society is based on true power-sharing, our legal system will continue to be seen by many as a mechanism to criminalize genuine opposition to an iniquitous political system In this sense Mr Van Manen's charge against our legal system has considerable validity

(Professor Davis teaches in the department of commercial law at the University of Cape Town)

DD 29/4/81 (252)

Sparg refused leave to appeal

JOHANNESBURG — An African National Congress member, Marion Monica Sparg, 28, was refused leave to appeal by the Rand Supreme Court yesterday against her 25-year jail sentence

Mr Justice P J van der Walt refused Sparg leave to appeal, saying he did not believe another court would come to a different conclusion

Explaining why he had imposed such a heavy sentence on Sparg, the judge said her case was a highly exceptional and regrettable one

"It was the first and hopefully the last case of this nature in our country of a white woman who joined a black terrorist organisation and came back into the country as a soldier, quite prepared to die

"She was sentenced for her lack of repentance and for what she did Rehabilitation is out," Mr Justice van der Walt said

This month he sentenced Sparg, formerly of East London, to an effective 25 years in prison — 20 years for treason, five years each on two counts of arson and three years for attempted arson The arson and attempted arson sentences were to run concurrently

Sparg's first crimes of petrol bombing three Progressive Federal Party offices in 1981 were committed when she was still a "confused political fledgling but later she became an unrepentant terrorist," the judge said — Sapa

Sparg refused leave to appeal

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Weekly Mail 5/12/88

252

OTHER PEOPLE

Why we chose prison

By the six demonstrators who wouldn't pay their fines

By JO-ANN BEKKER

"THE whole concept of civil disobedience is difficult for some to understand It's a foreign concept for whites"

Adele Kirsten, a 28-year-old Johannesburg speech therapist, had three days in Johannesburg Prison (Diepkloof) to think about the concept

She was one of six women who last week chose prison rather than pay a fine for taking part in an illegal demonstration outside the Witwatersrand Command of the South African Defence Force

"People believe there are other channels for whites, that you can go through parliament or write a letter to the authorities. But those avenues are closed to us, too. Our representations have had no effect," Kirsten said this week

The six were among a group of 15 women who brought lunchtime traffic in central Johannesburg to a halt on October 28 when they converged on Witwatersrand Command to deliver a letter to the head of the military headquarters calling for an end to military violence

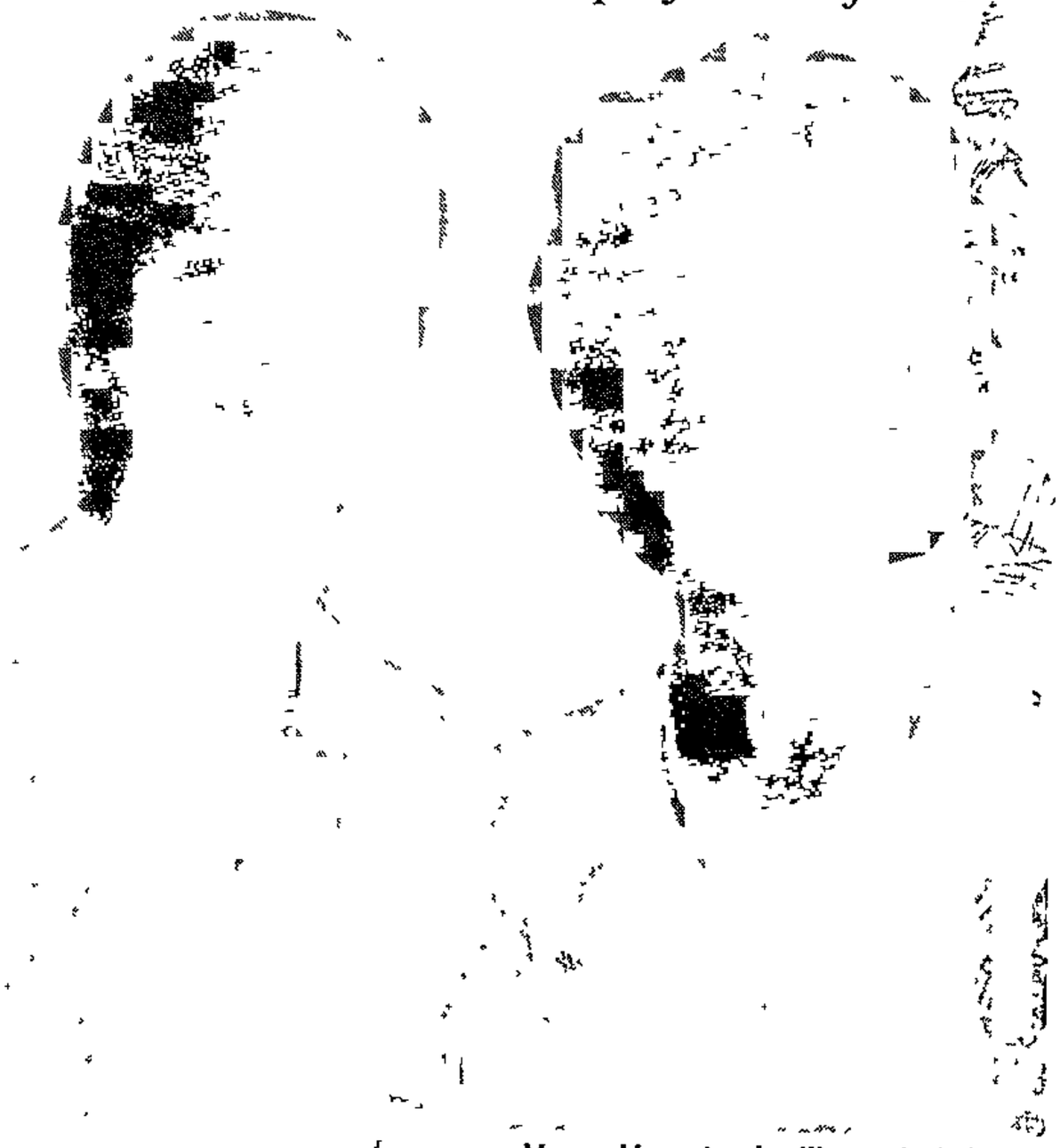
When they appeared in court at the end of last month, they pleaded guilty but stated: "We do not consider ourselves morally guilty since we believe that we were obliged to act in accordance with certain moral principles even where those conflict with the laws of the government of the Republic of South Africa"

The six who chose to go to jail for five days (reduced to three days after automatic remission) said they felt imprisonment to be the final step of the action. And their three days in prison had an indelible effect".

"Everything became much stronger and clearer," said Sheila Brokensha, 29, a trainee nurse, said of the prison experience "I can't go on without saying something about the people in detention I feel compelled to put myself in the way (of the government) and say deal with me, because I will not take what's going on anymore"

Brokensha herself spent six weeks in solitary confinement when she was detained shortly after the Emergency was imposed in June But for the others, last week was their first taste of jail

"Prison was not unbearably uncomfortable and it was perfectly clean, but there was this feeling of being isolated," said Roz Monat, 33, an actress "The scary thing was not being in control And we knew how long we would be in there — unlike those taken from their homes at night



Vera Henstock (l) and Adele Kirsten soon after their release — legally, but not morally guilty

Picture ANNA ZIEMINSKI, Afrapix

troops from the townships Henstock also participated in this protest

Kirsten said she felt more and more people were willing to make a public show of their concern

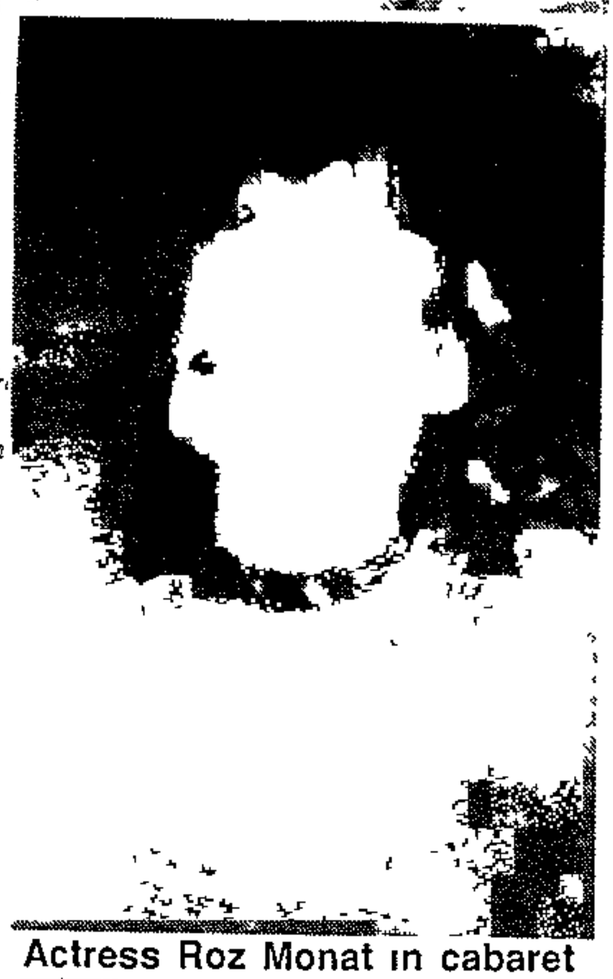
But, according to Kirsten and Henstock, many friends and family members were critical of their decision to go to jail, rather than pay a fine.

"Many whites just condemn those with criminal records They don't look at what kind of laws are in existence and whether they should be obeyed," Hensock said.

The demonstration was a public statement by the group in response to a call from the End Conscription Campaign for action against military violence, but McGregor said: "There comes a stage where it becomes an utterly personal thing Going to prison for me was a statement that I don't like what's happening Because I have children I'm concerned about the kind of future they'll have"

"There was a morality about it for me," said Henstock "By going to jail I wanted to say I didn't feel guilty"

Her sentiments were echoed by Brokensha who added "as a nurse on the one hand you're caring for people, while on the other hand thousands are



Actress Roz Monat in cabaret

McGregor, who added that her husband, 11-year-old daughter, 15-year-old son and in-laws were "wonderfully supportive

"I was glad to leave the sound of two doors slamming on you at 4 30 in the afternoon when you have had supper and are locked in until breakfast at seven o'clock the next day."

and detained indefinitely [illegible]

Apart from Brokensha and Monat, those who went to jail were Adele Kirsten, 28, a speech therapist and audiologist, Vera Henstock, 40, a teacher at a coloured school, Judith Soal, 20, a third year student at the University of the Witwatersrand, and Joan McGregor, 38, who is married with two children and works part-time at Wits.

Henstock was held in isolation, away from other prisoners and her fellow protestors, who were placed in a wing of six single cells. They were all stripped of their watches, jewellery and clothes and given floral crimplene prison dresses to wear.

"Three days was not a long time but I'm glad it wasn't longer," said [illegible]

The six women's decision to go to prison came a year after Johannesburg northern suburban housewife Marion Crawford went to jail rather than pay a fine for refusing to register her domestic worker.

Their action followed a similar protest by 26 women outside Soweto's Moroko police station at the end of last year to call for the withdrawal of

being massacred."

"Going to prison was a stronger statement," said Monat. "I wanted to see the action right through. We were really a cross-section of women, all ages, all feeling very strongly about the issue of military violence. When an action can bring together people like that it's an incredibly wonderful thing."

WEEKLY MAIL

5/12/86

252

LRC to take council to court over notices

CP Correspondent

PORT ELIZABETH'S Legal Resources Centre is planning to take the Ibhayi town council to court over eviction notices which Walmer residents were allegedly tricked into signing.

The forms designated them for removal to Motherwell.

A resident, who does not want to be named, claims that he and others were visited by the municipal guards and told they would be given "proper housing" if they signed the forms.

Last month, after 15 years of uncertainty, Constitutional Development and Planning Minister Chris Heunis announced that Walmer was to stay. He also announced a R1-m grant for upgrading the area.

City Press has a copy of the eviction notice which orders residents to remove their "unauthorised structures within 10 days".

Failure to do so will result in prosecution, the form states.

The notice is identical in format to those issued to about 3 000 residents of Red Location.

Last week Red Location area manager Peter Mundell managed to diffuse a potentially explosive situation when thousands of residents confronted a convoy of five council trucks, two SADF buffels, four council bakkies and a carload of security police at the Red Location Wellington Booi.

Municipal guards and council workers were removing a shack and were about to move another one.

Mundell, who was supervising the removal, called them off. He told a group of women that they would not be moved if they didn't want to.

The council told a Press conference before the removal that Red Location required total redevelopment and not upgrading.

It has been reliably learnt that council has a plan to redevelop the area.

Red Location resident Ivy Mani (front) in a pensive mood.

Operation upgrade, but first 40 000 must move

CP Correspondent

A CONTROVERSIAL plan to upgrade East London's Duncan Village will involve the removal of two thirds of the present population – about 40 000 people.

According to figures supplied by government officials, the township will have about 3 700 sites for houses once the upgrading program has been completed. This means there will be space for some 23 000 people, while the current population is estimated at 60 000.

Those to be removed include some 3 000 families in the area known as C Section – an area of emergency housing and shacks with a reputation of being the most militant in the township.

It is still not clear where the "excess population" will be moved to. Government officials said an alternative site was still to be found, and depended on the drawing up of a master-plan for the area.

However, the Duncan Village Residents Association has already distanced itself from the upgrading proposals, calling them "a new form of forced removal". No development should take place without full consultation with residents, DVRA said.

Duncan Village is suffering from over 20 years of complete neglect. Since the mid 1960s, when it was decided that the whole township would be removed to Mdantsane, in the Ciskei, no money has been spent on improvements or necessary repairs in Duncan Village.

Only in 1983 did the government announce that part of the township would be allowed to remain. But residents continued to campaign against removal.

As recently as August 1985, some two weeks after violence erupted in Duncan Village, it was announced that the whole area would be retained.

Now, while most of the DVRA leadership is under emergency detention, the upgrading plan is being put into action.

About 150 new houses are almost complete in the area where the Ndende shack settelement once was.

Most of these are to be made available to people whose houses have fallen prey to the new bypass road, but 20 of them have been set aside for "community officials".

These are the former community councillors, now styled members of the Gompo Town Committee, who have not been back to Duncan Village since they fled the violence last August.

Koos Theron, the Cape Provincial MEC under whose responsibility the project falls, justified the removal by saying the township was overcrowded.

"It is just not possible to house all the people currently in Duncan Village in the area available," he said. He assured residents that nobody would be forced to move until alternative sites had been found.

In terms of government policy, the cost of the upgrading will have to be borne by the residents themselves, and there are fears that the rentals will be high, effectively functioning as a barrier against the majority of poor and unemployed people.

The DVRA charged: "Duncan Village is going to be made a 'town' for the well-off, the so-called black middle class.

"The poor and unemployed will be buried in an underdeveloped bantustan with a galloping rate of unemployment, and be forgotten."

OTHER PEOPLE

At dawn, among the lettuce leaves, the singing counsel

For a change this week, advocate George Bizos was doing the judging, not the cross-examining when he presented a strongly-worded report on the causes of campus violence JO-ANN BEKKER profiles one of the Bar's most colourful figures

ONE of the country's best-known political advocates rises at dawn to tend his lettuces, brings home-grown salads to court for his colleagues and sings Greek folk songs to his clients

But this generous side to George Bizos is unknown to hundreds of state witnesses who have been subjected to his rigorous cross-examination during the 30 years he has fought political cases

To chart the career of the 58-year-old lawyer is to track some of the major events in South Africa's recent history

He represented Sophiatown priest Trevor Huddleston in the Fifties, African National Congress leader Nelson Mandela in the Sixties, and now is senior counsel in the ongoing Delmas treason trial

Bizos once again came into the public eye this week, with the publication of the findings of an independent commission, which he headed, into unrest at the University of the Witwatersrand Less widely reported was his appointment to the Botswana judiciary

And although he turned down Weekly Mail's request for an interview, citing the South African Bar Council's prohibition on lawyers publicising themselves or their colleagues, fellow lawyers were willing to speak at length about the man who arrived in Johannesburg at the age of 13, unable to speak a word of English

Bizos — the eldest in a family of three sons and a daughter — grew up in Koroni, a village in south-west Greece where his farmer-father was mayor His childhood on the Greek islands was cut short when World War Two broke out and he and his father left their Nazi-occupied homeland in a small boat.

Bizos's colleagues said his eventful sea journey included being picked up by Lord Louis Mountbatten's flotilla and travelling to Egypt In August 1941 he and his father sailed into Durban on board the Ile de France troop ship

After the war Bizos and his father were joined by the rest of the family in Johannesburg, where they ran a small corner café

A Johannesburg attorney said Bizos might have remained a shopkeeper had a Jewish teacher not spotted the alert boy and induced his father to send him to school She also gave him extra lessons, helping him with his studies in a language he could barely speak

While many of Bizos s future legal colleagues were attending private schools, he matriculated from the lower-middle class Athlone Boys' School After school he enrolled at Wits where he did a Bachelor of Arts and Bachelor of Law degree

A senior advocate who attended Wits at the same time said Bizos was prominent in student affairs and the National Union of South African Students and was a member of the Wits Students Representative Council

"He always held his views very strongly and fiercely — almost passionately," the advocate said

Bizos's work as a political lawyer began almost immediately he was admitted to the Johannesburg Bar in 1954.

One of his first cases involved defending the women of Zeerust, who were protesting the extension of the pass laws to women He acted for teachers who opposed the introduction of Bantu Education and for Sophiatown priest Trevor Huddleston, who set up independent schools in opposition to the government's new scheme

Bizos also defended the Sekhukuniland (now Lebowa) tribal authorities who were deposed after they rebelled against the new Bantu Authorities

One of the landmarks in his career was his role as junior counsel in the Rivonia treason trial of Nelson Mandela and other top African National Congress leaders Since then, lawyers said, Bizos had been Mandela's chief legal confidant and has acted for Winnie Mandela on many occasions

Other prominent political figures whom Bizos has represented either as senior or junior counsel include the families of Steve Biko and Neil Aggett, who died in detention; South West African People's Organisation leader Hermann Toivo ja Toivo, and white treason trialists Barbara Hogan and Rob Adam.

He is presently a senior counsel in the treason trial arising out of the 1984 Vaal uprising Delmas treason trial and has been travelling the 70 km between Johannesburg and the East Rand town of Delmas for the entire year

"George has been in court virtually every day throughout the trial," a Johannesburg advocate said "To find senior counsel prepared to devote that amount of time and energy is rare"

"His stamina is renowned," another colleague remarked "He just gets stronger as the court battle goes on."

Bizos is also noted for his skill as a cross-examiner, facilitated by what is described as his "remarkable memory" He often questions policemen in Afrikaans, which he speaks with a heavy Greek accent

"He uses a standard technique in cross-examination — he leads witnesses down the garden path — he just does it better than anyone else," an attorney explained

"George has a feeling for which questions to ask, he just seems to understand how people work," a senior advocate added

Bizos's colleagues point out that besides his high-profile cases, he has represented hundreds of ordinary black people in remote areas

"George practises law like he lives his life, very passionately," a senior counsel who has known him for 30 years said "He gives of himself completely, he is totally committed to his work He is very painstaking, he is so thorough, he's actually tedious"

Silver-haired and portly, Bizos is described by friends as compassionate, engaging and a wonderful story teller, his stories emphasised by his expressive face and mannerisms He once broke a cufflink when he brought his fist down on the table to emphasise a point during a dinner party

Another anecdote told about Bizos is of the time he was rocking back on his chair, in his usual habit, when the chair legs broke He landed on the floor without spilling a drop from his wine glass

Bizos, according to friends, is also a devoted family man He married Arathe Daflos in the same year he was called to the Bar They have three sons, two are qualified doctors and one an industrial engineer

Much of his energy is also devoted to the Greek community He was one of the initiators of the non-racial Greek Saheti School in Johannesburg and is chairman of the school board.

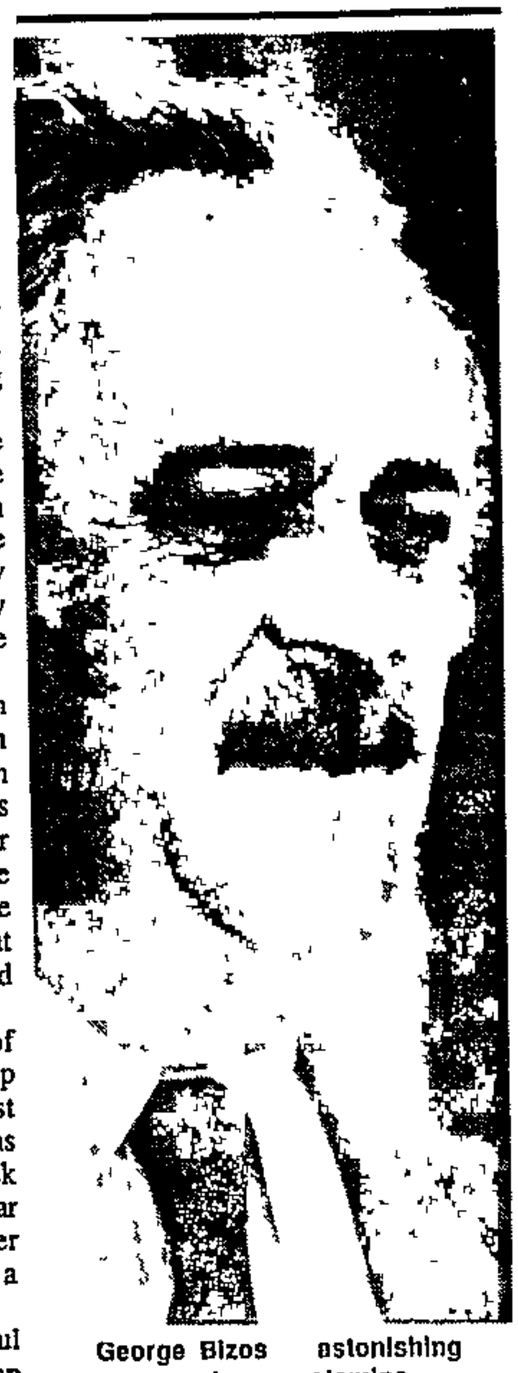
Bizos — an ardent student of Greek language, literature and politics — still has close ties with Greece, where his mother lives For many years he was prevented from visiting his homeland because the government refused him a passport

George Bizos's personal politics are most vocally expressed in his human rights work He is a member of the board of the Centre for Applied Legal Studies at Wits University and on the national council of Lawyers for Human Rights

On ethical points he is fond of quoting Greek philosophers An essay by him published in a Johannesburg newspaper a year ago is as apt today.

"Others say that there are forces wanting to make the country ungovernable and the (Emergency) measures are therefore necessary," he wrote

"To them Aristotle has given the answer: 'Inequality in goods and honours leads to seditions'."



George Bizos astonishing courtroom stamina

BY GARRY TRUDEAU

YEAR IN REVIEW

The state's attorneys redo their homework

Following the Supreme Court knockdowns of several Emergency curbs, the state's men have gone back to the drawing board. CARMEL RICKARD reports

WHATEVER else you may want to say about them, those who draft South Africa's security laws have worked hard and learned a lot this year

With the re-imposition of a State of Emergency in June, the courts took on a new significance Test cases were fought in Supreme Court divisions all over the country, some of them had the effect of modifying certain aspects of the curbs

However, when the new restrictions were introduced last week, it was clear the drafters had been doing their homework

They seem to have studied closely the judgements in those cases which successfully challenged aspects of the Emergency, the new regulations take into account the judges' criticism of the wording in the initial regulations, and the rules are reworded accordingly

This makes the situation far more difficult for lawyers wanting to test the new rules in the courts

A similar situation arose earlier in the year with an Appellate Division decision in the Hurley case In terms of the judgement, the police could be called on to spell out their "reasons for believing" it necessary to hold a detainee under section 29 of the Internal Security Act

This judgement won important ground for detainees held under this section, which allows for indefinite detention for the purposes of interrogation

But on the very day the decision was announced, the state law drafters once again showed they could learn fast, and new legislation was introduced with different wording to "plug the gap" which the case had exposed

The Hurley judgement seemed, at the time, to confirm a trend by some judges towards favouring individual rights over the interests of the executive, when the language of the original legislation gave them the right to choose between the two

But it has become clear during the months since then that this "trend' is not yet secure, that the courts, in the words of security law expert Professor Tony Mathews, are still giving "mixed judgements"

He gives the example of the Appellate Division judgement, delivered only a few months ago, in the case of the Control Magistrate of Durban versus Azapo (the Azanian

● To PAGE 14

252

Two cases open the state witness debate

Weekly Mail 19/12/86

Two prominent UDF leaders broke the activist 'taboo' against state evidence, renewing the debate over the value of blanket non-collaborationist policies
JO-ANN BEKKER reports

A SURPRISING development in political trials heard this year was the decision by two prominent United Democratic Front activists to give evidence as state witnesses

For years it has been unspoken policy in extra-parliamentary organisations that testifying for the state is taboo — a stance in keeping with activists' "anti-collaborationist" stand, which effectively outlaws participation in government structures

The two high-ranking officials, the UDF's eastern Cape vice-president Henry Fazzie and the founding chairperson of the UDF-affiliated Vaal Civic Association (VCA), the Reverend Lord Righteous McCamel, are not the first activists to have given evidence for the prosecution Nor can their example be taken as an indication that the unspoken policy has altered

But their actions have opened, once again, the debate about giving state testimony

Often the basic question of whether evidence will favour or count against the accused is clouded by the black population's perception of the judicial system as being weighted in favour of the government

It is further muddied by legislation which forces people to testify Hundreds of witnesses — ranging from priests to mothers of the accused — have been jailed over the years for refusing to give evidence The maximum sentence for the offence has been increased steadily and today stands at five years

The Internal Security Act makes special provision for the detention of potential state witnesses The attorney general can order their imprisonment until court proceedings end or for six months, if the trial has not begun

McCamel was detained for more than a year before he was called in February to gave state evidence in the Delmas treason trial. Fazzie was subpoenaed in September, while he was held in terms of the Emergency regulations, to testify in the murder trial of the UDF's eastern Cape president Edgar Ngoyi

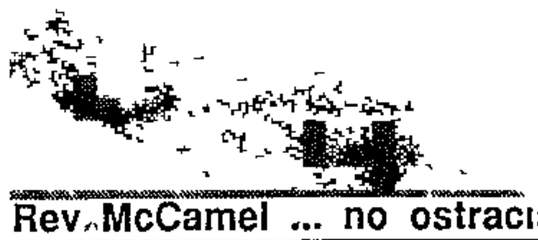
The trials are still in progress, and while speculation on the effect of the men's evidence would be premature, the significance of their testimony is self-evident

McCamel was listed as one of the 800 co-conspirators in the marathon Delmas hearing, in which the state claims the UDF, conspiring with the African National Congress, engineered the unrest which began in the Vaal Triangle in 1984 and spread throughout the country The UDF's plan, it is alleged, was to overthrow the government by revolution

But McCamel told the court the UDF and VCA had never discussed violence Neither had residents been stirred up to commit violence at the meetings The VCA's aims, the founding chairman said, were to tackle residents' problems of high rents, corrupt councillors and to oppose the government's new constitution, which excluded blacks

Fazzie told the Port Elizabeth Supreme Court he went to fetch Edgar Ngoyi on the morning after the "necklace" murder with which Ngoyi and eight others are charged. The state's case is that Ngoyi presided at a "people's court" in which the death sentence was passed on the victim

Fazzie, who agreed to give evidence only after he was allowed to consult with his lawyer, said he had come across a body lying near a burning heap on his way to fetch Ngoyi The UDF president had asked him how "these bad things could be stopped". He seemed to have no knowledge of the murder and, Fazzie said, had



Rev McCamel ... no ostracism

appeared shocked to hear of what had happened

Fazzie said, like the UDF, Ngoyi had always condemned violence against any person and had expressed a desire for methods which would end violence

A number of human rights lawyers have welcomed McCamel and Fazzie's decision

"From a lawyers' point of view, this blanket attitude that you never give evidence is dangerous," a senior advocate noted "Often you get the situation where evidence could be used to the advantage of the accused"

The UDF's acting publicity secretary, Murphy Morobe, said the Front had no fixed policy on giving state evidence

But Morobe himself was sent to jail for six months in 1977 for refusing to testify against 12 people charged with furthering the aims of the ANC

On his release he was charged with sedition, in one of many cases arising from the 1976 youth uprising One of his closest student friends gave evidence against him

"It is terrible when the one who's been with you through thick and thin is suddenly in the witness box"

Activists say McCamel has been reintegrated into the Vaal community He has suffered none of the ostracism or threats of violence state witnesses cite when requesting to give evidence *in camera*

When three of the original 22 Delmas trialists were released last month, he was among the first in line to give congratulatory hugs

Fazzie is still in Emergency detention, but activists say it is unlikely his testimony will affect his political leadership

ANC member fined

MBABANE — An African National Congress member who asked a court for leniency because he was "a member of a well-behaved organisation" has been fined R1 100 for illegal possession of arms.

Khaya Mhlongo was appearing before Mbabane magistrate Mr Stanford Ginindza He had pleaded guilty to being in possession of four hand grenades, one pistol, eight rounds of ammunition and four detonator pins for the grenades He was found guilty on two counts, and sentenced to a fine of R700 or nine months in prison on the first count and R400 fine or 400 days in prison on the second

Mhlongo told the court that if officials would help him get in touch with ANC headquarters in Lusaka they would produce the money for the fine

Earlier a police officer had told the court that he searched the house Mhlongo was staying at Luvumisa, in the extreme south of Swaziland and had found the arms

The police officer said "Mhlongo told me he was a member of the ANC and was on his way to South Africa with the weapons "

Mhlongo originally appeared with a second man, Vusumuzi Moses Dlamini Dlamini pleaded not guilty to the arms charges and will be tried separately later

Human rights 'inevitably violated in consolidation'

By Kym Hamilton, Pretoria Bureau

One of the inevitable consequences of the consolidation of the homelands was the violation of certain basic rights, Mr I W B de Villiers submitted in argument in the Pretoria Supreme Court

He was appearing at an application to declare invalid the proclamation passing control of Moutse to kwaNdebele

Mr de Villiers (for the South African Government) argued that the tampering with these fundamental rights, including the voting and citizenship rights of people, was sanctioned by the legislature.

The South African Government and the kwaNdebele authorities are opposing the application brought by Moutse community leader Mr Gibson Tlokwe Mathebe to have the proclamation invalidated

Moutse is situated in the Groblersdal/Marble Hall district The population is estimated at about 124 000, and most are North Sotho

Moutse formed part of the Lebowa homeland until 1980 and its representatives served on the Lebowa Legislative Assembly until December last year

Mr de Villiers added that the plan to excise Moutse from Lebowa was first mooted in 1975. Nothing was done until 1979 when the South African Government began consultations with various members of the Lebowa and Moutse cabinets

He rejected an earlier submission that the plans were given the go-ahead despite opposition from Moutse He also denied that the feelings of the Moutse community were ignored They were consulted on several occasions, he said

One of these occaisiong was during the Commission of Co-Operation and Development, which investigated homeland consolidation

Mr Justice T T Spoelstra reserved judgment

Oom Sporie lives to fight another

Municipal Reporter

Johannesburg city councillor Mrs Sheila Camerer denies she will replace sitting MP Mr H M J "Sporie" van Rensburg as National Party candidate in Rosettenville in the general election

Speaking as chairman of the divisional committee of the NP in Rosettenville she said: "There is no 'twis' in our ranks We passed a vote of confidence in Oom Sporie at the October meeting in the constituency."

Earlier this month Mr van Rensburg telephoned newspapers to deny rumours he was to resign

In 1984 Mrs Camerer defeated Mr Clive Derby-Lewis by 1 800 votes for the Rosettenville seat She says new NP branches have been formed in Rosettenville and she has signed up hundreds of new members.

Govt 'interfering in open courts', lawyers warn

By Colleen Ryan

The Government's emergency regulations have eroded another basic freedom in South Africa by interfering with the principle of open courts, leading lawyers have warned

The national vice-president of Lawyers for Human Rights, Mr Barry Jammy, said the regulations issued last week prevented publication of court proceedings dealing with evidence relating to the arrest, circumstances or treatment of emergency detainees until final judgment was given

"It is an infringement of the principle of open courts and it means these kind of applications will be held in camera," he said

Mr Jammy said many applications would probably never be heard since these were frequently settled out of court.

"Claims for damages are invariably settled out of court. A claim for assault in detention, for example, might never be made known."

Mr Jammy said proceedings were normally held in secret when it was deemed in the public interest.

"The publication restrictions relate to the treatment of individuals, which is something the public should know about.

"It would seem that they (the Government) are concerned about publication because they are worried about public reaction. It is one erosion after another of basic freedoms.

"The Government view seems to be that publication of these matters would endanger the security of the State — I cannot see how this can be."

Mr Tony Matthews, Professor of Law at the University of Natal, said he was strongly opposed to the restrictions

"I think the courts should be open and all evidence given should be freely available."

The president of the Law Society of the Transvaal, Mr Stan Treisman, said he took a more conservative view

"It is part of our legal system that court proceedings are open to the public and it is an exception that cases are heard in camera or there are restictions on what the media can report.

"The restrictions in the Gazette are very limited and then only until judgment is given. Presumably, the intention is to avoid accusations being made and reported on, which subsequently prove to be unfounded or unproved"

Mr Treisman said while any restriction on reporting court proceedings was undesirable it should be noted the ban was not total.

"The effect is to delay reporting, rather than prevent if all together You can report once judgment is given

"That being so, this aspect in not too severe if you take it in the context that they have not been as severe as they might otherwise have been," he said

Mr Treisman said if the Government felt this step was necessary in the interests of the security of the State, "then reluctantly we must accept this."

Mr Geoff Budlender, a lawyer with the Legal Resources Centre, said the restrictions were a serious infringement of the principle of open courts

"The principle is that the courts should at all times be open and be seen to be open Part of that openness is that the public must know what is going on in the courts without having to be there

"The courts always have had the power to order that the proceedings should not be disclosed The Minister has effectively said he can't trust the courts to exercise this decision

"Under the exisiting laws, the police have always been able to ask for the proceedings to be closed sometimes this was granted, sometimes not. Now the courts do not have a choice"

Mr Nicholas Haysom, of the University of the Witwatersrand's Centre for Applied Legal Studies, said there could be long delays before cases relating to detentions or arrests could be published

● See Page 13.

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17/12/86 BUSDAY 252

Coetsee, Mandela talk

JUSTICE Minister Kobie Coetsee has held "confidential" talks with ANC leader Nelson Mandela

Coetsee confirmed the meeting in an interview published in the latest issue of *Leadership* magazine.

Asked why he had met Mandela, Coetsee replied "I have a function, as Minister responsible for prisons, to relate to any prisoner in cases where circumstances dictate such contact."

He said "My impression of Mr Mandela is that it is most unfair to him that he remains incarcerated by his own people through their pursuit of violence, and that they expect him to remain in prison because they do not wish to give up violence themselves.

"He is carrying this burden in an admirable manner."

Asked if he was implying Mandela had made an undertaking which satisfied the conditions for his release, but that he remained in jail because the ANC continued with its programme of violence, Coetsee replied: "No, I

Own Correspondent

am not implying anything."

He added "I think the ANC's communist wing under Joe Slovo is planning a take-over at the right moment, using the ANC as a front because of its appeal as a nationalist movement."

☐ In the same interview, Coetsee said the number of emergency detainees varied from 6 000-7 000 and more.

"In many cases, detention is in the nature of preventive detention" and no charges would be put to detainees unless it was proved, after investigation, they had committed an offence.

"If they are detained in terms of security legislation, or under the state of emergency, there are certain prohibitions. I concede that immediately but, as a general rule, people have access to our courts," he said.

Even those affected by the security laws were entitled to be dealt with according to certain rules of common justice or natural justice.

By ROGER WILLIAMS
Chief Reporter

Prof challenges 'unfair' charge on SA courts

A DUTCH advocate's statement to the International Commission of Jurists (ICJ) that no trial of a person accused of having infringed unfair "apartheid" laws can in itself ever be called fair was yesterday described by the Dean of the Faculty of Law at UCT, Professor R Zimmermann, as "far too sweeping".

Mr Willem van Manen, a member of the Amsterdam Bar who attended the Passtoors treason trial in Johannesburg earlier this year as an observer, made the "unfair" accusation in a 160-page report on the trial to the ICJ and its Dutch section, the NJCM.

Ms Helene Passtoors, a 43-year-old Dutch/Belgian national, formerly married to Mr Klaas de Jonge who took refuge in the Dutch Embassy in Pretoria, was sentenced to 10 years' imprisonment after being found guilty, among other things, of involvement in the establishment of an arms cache for the ANC.

Mr Van Manen says in his report to the ICJ that the way the law is administered and developed by the courts cannot be isolated from underlying politics and social circumstances.

"Thus, the Passtoors trial cannot be judged in isolation from its socio-political context. That context is apartheid.

"The system of apartheid is unfair. To maintain it naturally requires unfair laws and a judiciary willing to enforce these laws. No trial of a person accused of having infringed such laws can ever be called fair."

Mr Van Manen says white South Africans in general hold their judicial system and its traditions in high esteem.

"Prominent lawyers concede, however, that it is no use to argue before a South African court that by standards of international law the armed struggle against apartheid is lawful. The same applies to arguments refuting the doctrine of treason followed by the South African courts.

"It would not seem to be a lawyer's prerogative to appreciate the irony in judgments finding that black people owe allegiance to the very same State that is denying them the most fundamental civil rights.

"However, such arguments are not advanced, as they could only irritate the court and therefore would not be in the interest of the accused."

● Reacting to Mr Van Manen's report, Professor Zimmermann said it was "far too sweeping" to suggest that a judiciary called on to enforce "unfair" laws was incapable of conducting fair trials.