

PUBLIC SECTOR - GOVT. JUSTICE

1987

JANUARY — JUNE.

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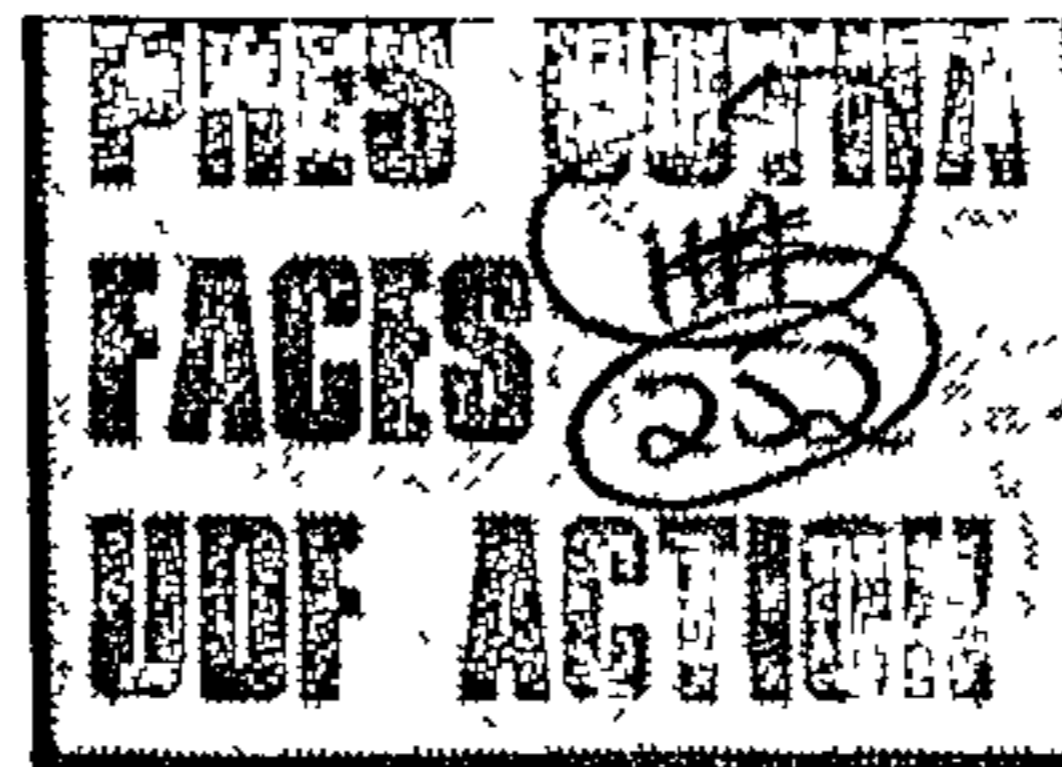
page 8 and 9

THE (UDF) and the Re- lease Mandela Campaign will bring an action against President Botha and the government on Tuesday in the Natal Supreme Court.

Lawyer Amichand So- man told *City Press* this week that the two organisa- tions' action would chal- lenge the government's re- striction regulations.

The other respondents in the action are the Minis- ters of Home Affairs and Law and Order, and SA's Commissioner of Police.

The UDF's Curnick Ndlovu and the RMC's Aubrey Mokoena are the



applicants. CITY PRESS

In papers filed in court Ndlovu submits that the regulations are invalid and of no force and effect in law. 4/1/87

● First, they contain provisions which are *ultra vires* because they could never have been contem- plated by the enabling leg- islation.

● Second, they contain provisions which are void for vagueness in that no reasonably ascertainable meaning could be given to them.

● Third, they purport to confer upon officials such wide discretion as in effect to make such officials take the position of a legislator without giving to the offi- cials concerned any direc- tions or guidelines as to how they should exercise their delegated powers.

non-violent struggle against apartheid," says the UDF.

The Release Mandela Campaign has reiterated its call for the uncondition- al release of Nelson Man- dela and the unbanning of the African National Con- gress as a pre-condition for any negotiated political settlement.

Meanwhile, incidents from beyond South Afri- ca's borders also give little hope of a peaceful, pros- perous 1987.

The announcement of the withdrawal of the world's largest oil com- pany, Exxo, from South Africa, was bad news for the government, following similar withdrawals by General Motors, IBM and Barclays Bank.

What South Africans believe 1987 holds for them was revealed in a poll conducted by Markinor. According to the poll, only 18 percent of blacks expect 1987 to be better than the past year, compared with 41 percent of whites.

Women kill soldier

A SOLDIER was stoned and beaten to death with bricks and stones by an angry crowd of women at Bagani in Namibia last Friday, Windhoek police said.

Soldier Jose Manuel, 26, of 32 Battalion had fired with his R1 rifle, injuring three people, among them a woman, and killing another soldier, Jose Saharias, 20. It was understood Manuel suspected his wife of having an affair with Saharias and could not find her when he came home on Friday. The soldier opened fire with his automatic rifle and was then set upon by the women.

In another incident, Swakopmund resident Ben Duven- dyck, 25, was kicked to death in a brawl outside a beer tent on Friday. Police are investigating. — Sapa

Soweto 'camp' case dismissed with costs

By MNCEDISI SALISO

AN application by a salt-manufacturing company calling on the Administrator of the Cape and the Ibhayi Town Council to remove the sprawling Soweto squatter camp was dismissed with costs in the Port Elizabeth Supreme Court today.

The application was brought by Swartkops Sea Salt (Pty) Ltd.

In papers before court the applicant, which manufactures and refines salt by evaporating brine in certain pans situated at Swartkops, complained that certain developments on the land adjoining its salt pans, particularly pan number 7, had caused an abnormal flow of rainwater into the salt pans and pollution.

It alleged that the combined effect of extra water and pollution was to reduce the brine content and to interfere with the natural process of evaporation.

The application also alleged that the cause of extra flow of rainwater and pollution was the creation of a squatter shanty town on erven 487 and 488, Bethelsdorp, which was called Soweto.

In his opposing affidavit, Mr Pieter Steenkamp, a civil engineer employed by the then East Cape Administration Board, said only about 5% of the problem came from the squatter area.

While the first respondent did not dispute that algae growth had been caused by pollution and that rainwater reached the salt pans, it denied that the material source of such water and pollution was the cited area.

In his judgment, which was handed down today, Mr Justice Kannemeyer said that before the abatement of a nuisance was ordered, the applicant had to show that the interference with his rights had been unreasonable. It had to be material or substantial.

The order could be considered in terms of rural and not urban tenements.

The judge said the applicant did not apply for a prohibitory interdict only, but also for one which required the respondents to remove the squatter shacks. He said if the applicant had to be granted any relief, it would be in terms of preventing interference with its salt pans as damages were not claimed.

The result of the granting of such an interdict would compel the respondents to remove the shacks.

Mr G Myburgh, for the applicant, noted an appeal against the court's finding.

Application challenging emergency regulations postponed

7/1/87
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DURBAN — An urgent application in the Maritzburg Supreme Court yesterday challenging the Government's latest emergency regulations was adjourned to January 29.

The application is being brought by the United Democratic Front (UDF) and the Release Mandela Campaign (RMC) against the State President, the Government, the Minister of Home Affairs, the Minister of Law and Order and the Commissioner of Police

UDF executive chairman Mr Curnick Ndhlovu, and Mr Aubrey Mokoena of the RMC, asked in papers that all the regulations promulgated on December 11 be declared null and void, alternatively, that key sections be declared unlawful

The application was provisionally set down for January 29 and 30 for hearing by a Full Bench, and to allow the respondents time to file affidavits

In his founding affidavit, Mr Ndhlovu said the UDF sought an order declaring the December 11 regulations to be of no force and effect. Alternatively, the UDF challenged the validity of regulations 3(1), 4(1), 5, 7, the definition of "security action" in 1(1), the definition of "subversive statement" in 1(1) and regulation 1(2)

He said the applicants considered it "fundamental that they should have the right to be vigorously critical of (the Government's) policies and to organise and conscientise public opinion against such

policies without the inhibitions sought to be prescribed

"It is the belief of the applicants that the present state of unrest and tension will continue in the country and that the state of emergency will not be terminated unless and until (the Government) radically changes and amends its present policies and permits those who disagree with such policies to make manifest their views in terms of structures which are legitimate and credible"

The regulations contained provisions which were "void for vagueness in that no ascertainable meaning can be given to them", Mr Ndhlovu submitted

An attorney for the applicants, Mr Amichand Soman, said in a supporting affidavit that the regulations constituted "serious invasions into the applicants' right of free expression and comment", and that they impeded their activities and publications

Mr Mokoena said in his affidavit that the RMC and its supporters believed there could be no lasting peace or reconciliation in South Africa until and unless the socio-political causes which gave rise to conflict were addressed

"The effect of the regulations has been substantially to paralyse many of the activities of (the RMC), which has prepared literature and statements which cannot be distributed if the regulations are indeed valid," he said — Sapa

BUS DAY FILE

Challenge to govt adjourned

Own Correspondent

AN application challenging government's emergency regulations was adjourned in the Maritzburg Supreme Court yesterday to January 29 and 30.

Mr Justice Wilson adjourned the case for hearing before a full bench and to allow the respondents to file answering affidavits.

The application was brought by the UDF and the Release Mandela Campaign (RMC) against the State President, the government, the Minister of Home Affairs, the Minister of Law and Order and the Commissioner of Police.

The UDF and RMC are asking the court to find that the emergency regulations, or alternatively certain key sections of the regulations, which were promulgated on December 11 last year, are of no force and effect in law.

The grounds for the application are that the regulations contain provisions that are *ultra vires* and could never have been contemplated by the legislature, they contain provisions which are void for vagueness, they confer such wide discretion on officials that they take the position of legislator without giving them any directions or guidelines on how to exercise their delegated powers.

The applicants submit in papers that they, and similar organisations in their position, conducting a "contemporane-

● To Page 2 →

Challenge to govt adjourned

ous, vigorous and daily campaign of opposition to the basic objects of government policy in South Africa" find it quite impossible to conduct their affairs with the "ever looming threat of administrative and other action in terms of the regulations, which are wide and uncertain in their meaning".

Attorney Amichand Soman submitted in papers that the regulations constituted serious invasions of the applicants' right of free expression and comment.

Curnick Ndlhovu, executive chairperson of the UDF, said it was the belief of the applicants that unrest and tension would continue and that the state of emergency would not end unless and until government had radically changed and amended its policies and allowed those who disagreed with its policies to make manifest their views in terms of structures which were both legitimate and credible.

BUS DAY FILE

Both applicants had consistently and publicly reacted to and commented on the socio-political realities in SA, he said, and they wished to continue their deep-felt opposition to what they believed to be the unwise policies of government and the legislation it had adopted to curb opposition.

Aubrey Mokoena of the RMC said the organisation had focused its campaign on the political injustices of SA society and the release of political prisoners and detainees.

Supporters and officials of the organisation firmly believed there could be no lasting peace or reconciliation unless the socio-political causes giving rise to these conflicts were attended to.

The effect of the regulations was to paralyse many of the activities of the RMC, he said.

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WEEKLY MAIL
9/1/87
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Christmas Eve order to halt cell beatings

By CARMEL RICKARD, Durban
AN urgent Christmas Eve Supreme Court application by an Umlazi widow has barred the police from assaulting her detained son

Victoria Mabaso brought an urgent appeal for an interim interdict, claiming that her 16-year-old boy, Fakazi Masondo Mabaso, was in hospital, having undergone emergency surgery to his testicles after alleged police assaults during interrogation

Mabaso brought the application against the Minister of Law and Order and it was granted in chambers by Justice Leon

Emergency regulations forbid the publication of details of the conditions of Emergency detainees, even if revealed in court. Mabaso's case can only be reported because he is held under "normal", non-Emergency security legislation

In her affidavit, Mabaso said her son "disappeared" from home on November 26 and on Monday December 15 she was telephoned by a member of the Security Police whose name she did not know

He said her son was being held at CR Swart Police Station under Section 29 of the Internal Security Act, and he informed her of clothing she should bring for him

Before she could take the clothes, she was contacted by a woman who said she was a nurse at Shifa Hospital,

The nurse told Mabaso that Fakazi was in the hospital and had asked that she contact his mother

She told Mabaso that he had had an operation "as a result of injuries he allegedly sustained when he was subjected to electrocution to his testicles by members of the Police Force during interrogation"

The nurse also said the boy had serious injuries on other parts of his body, "which injuries he had allegedly sustained when he was assaulted

during interrogation

Victoria Mabaso went to the hospital the next day, December 23, accompanied by the Director of Durban's Legal Resources Centre (LRC), Chris Nicholson, and an LRC attorney, RJ Purshotam. They saw the boy but he was under police guard and they were not allowed to speak to him

However, they spoke to a nurse who told them the boy had undergone an emergency operation the previous day "to correct a disorder of the testes" and that he had told her he had been kicked in the testicles

The lawyers asked for a copy of the boy's medical record, but were told this could not be given them other than on an order of the court. They then spoke to Dr IS Vawda, the surgeon who operated on the detainee

He told them Fakazi was referred by a district surgeon, who had told him the boy was forced to eat his own hair. Mabaso said that when she saw her son in the ward she noticed that part of his hair was cut shorter

The surgeon said he had operated to "correct torsion of the testes", but admitted that he had not asked the boy the circumstances which caused the "torsion" and said "the police guards insisted that they be present while the doctor examined the patient"

Vawda also told the lawyers that torsion could occur naturally.

Victoria Mabaso said the matter was of "extreme urgency", that, from the information available to her, she feared her son had been assaulted and that this could happen again.

The court order places a bar on unlawful police interrogation and rules that a district surgeon is to examine the boy and submit a detailed report to the court and a magistrate is to visit the detainee, inform him of the court action, and ask whether he was assaulted

The Minister of Law and Order has until February 11 to file answering affidavits.

HISTORIC CASE POSTPONED

11/18/72



Advocate Ismail Mohamed (right) with his legal team after the hearing was postponed.

REVELATION NTOLU
 STATE President PW Botha and three of his top government executives were not represented in court this week when an attempt was made in the Natal Supreme Court to declare the latest emergency regulations invalid.

The executives are Minister of Home Affairs Stoffel Botha, Minister of Law and Order Adriaan Vlok, and the Commissioner of Police, General Johan Coetzee.

Two days - January 29 and 30 - have provisionally been set aside by Justice Wilson for the historic hearing when the United Democratic Front and the Release Mandela Campaign will seek to have the latest emergency regulations declared unlawful.

In an urgent application made before Justice Wilson in the Maritzburg Supreme Court, Ismail Mohamed SC, for

CITY PRESS
 The applicants, said the application to nullify or declare unlawful the powers conferred on the officials was a matter of extreme urgency.

He also urged the judge to consider having a full bench of three judges hear the application in view of the gravity of the case.

Justice Wilson said the Judge-President of Natal had already agreed to the case being heard by a full bench but that it would only be possible some time next month.

Justice Wilson, however, said an attempt would be made to have the case heard on January 29 and 30.

In his affidavit, UDF executive chairman Curnick Ndlovu - who represented the organisation in the application - said the body sought an order declaring the December 11 regulations to be of no force or effect. Alternatively, the UDF challenged certain sections in the regulations and the definition of the phrase "security action" and the use of "subversive statements".

Top SAP man after killers of Ribeiros

By SOL KOLATHI

INVESTIGATIONS into the fatal shooting of Mamelodi medical practitioner Dr Fabien Ribeiro and his wife, Barbara, in December, have been intensified with the appointment of a "top" investigating officer.

Brigadier Daan van Wyk, head of Pretoria Police Headquarters' special investigations unit attached to the Riot Squad, has been appointed to investigate the killings. Before Van Wyk took over, police indicated that their investigations into the shootings were hampered by the hostile attitude of Ribeiro family members and lack of cooperation from witnesses.

Meanwhile, the owner of the vehicle apparently used by the men who shot Ribeiro and his wife is reported to be missing from his Schoemansville home. Neighbours said Noel Robey, a former Selous Scout whose landrover was spotted near the scene of the shooting, headed for an "unknown destination" with his family a few days after the shooting.

Witnesses at the scene of the shooting said Ribeiro's assailants escaped in a maroon Opel Kadett with an NPN registration prefix. They then swapped the car with two men in a landrover, registration KYK 899T, at the entrance to Mamelodi.

Investigations have revealed that the vehicle belonged to Robey. Soon after the shootings, his wife allegedly told reporters that Robey was a security consultant with a Pretoria firm.

Ndlovu further stated that the UDF considered it "fundamental that it should have the right to be vigorously critical of policies and to organise and conscientise public opinion against such policies without the inhibition sought to be prescribed by the regulations."

"It is the belief of the applicant that the present state of unrest and tension will continue and that the state of emergency will not be terminated unless and until the government radically changes and amends its present policies and permits those who disagree with such policies to manifest their views in terms of structures which are legitimate and credible."

Representing the RMC, Abrey Mokoena said the organisation and its supporters believed that there could be no lasting peace or reconciliation in South Africa until and unless the socio-political causes which gave cause to them were addressed.

They failed to identify the playing every trick in the book of totalitarian governments.

They may have banned the ANC, but they did not destroy its dream. That dream - the desire for freedom and justice - is deeply rooted in mankind.

From its early inception, the ANC has had nothing but good intentions for this nation. Their philosophy of nonviolent confrontation with the system, coupled with passive resistance, was followed with meticulous dedication by thousands of people in this land.

Every peaceful overture was met with brutal institutionalised violence on the part of the government.

Yet those founding fathers persevered with determination in the face of provocation and suffering. They did so in the belief that one day we will all be free. Not only black people will be free - but in the process white people will also be free.

It is this, more than anything else, that should make the government aware of the acute and urgent importance of negotiating with the ANC. They cannot indefinitely bury their heads in the sand and hope to wish away the ANC. The movement won't vanish.

The prevailing crisis demands sane heads to negotiate a future based on the universally accepted norms of negotiation. It is our only hope for survival.

RELEASE MANDELA CAMPAIGN



"The People Shall Govern" NEW YEAR MESSAGE TO ALL THE PEOPLE OF SOUTH AFRICA

INTRODUCTION
 Throughout the history of mankind, there are only seven internationally recognized acts of admiration or miracles known as the SEVEN WONDERS OF THE WORLD, namely, the Temple of Artemis at Ephesus, the Statue of Zeus at Olympia, the Mausoleum at Halicarnassus, the Colossus of Rhodes, the Pharos Light House at Alexandria, Egyptian Pyramids and the Hanging Gardens of Babylon.

However, the Nationalist government through its oppressive misrule, hopes to create the eighth wonder of the world! In our case the minority, white, oppressive, exploitative and (internal) colonialist regime fervently hopes to impose its will over the vast, freedom-loving majority until the cows come home.

1. WHAT THE RMC STANDS FOR
 THE RELEASE MANDELA CAMPAIGN is a campaign that involves all peace-and freedom-loving people of S.A. regardless of race, colour, sex, age or creed, who cherish a vision of a non-racial democratic S.A. More Specifically, the RMC demands and works for

- 1 1 The unconditional release of the people's leader, Nelson Mandela, and all other political prisoners
- 1 2 The unconditional and safe return of all exiles.

notably the African National Congress

(252)

State lawyers return to the drawing board

Weekly Mail
14/12/26

People's Organisation)

● From PAGE 15

In that case, Natal Judge John Didcott held that a search warrant issued by the magistrate, apparently without any satisfactory reasons being given, was invalid.

The Appellate Division held otherwise, virtually saying that the magistrate was not obliged to give reasons and that he would be ill-advised to do so.

"This is one of the really disappointing judgements of the year. It seems to make magistrates proof against challenge when they issue warrants," Mathews says.

The first attack on the Emergency itself was bought by the Metal and Allied Workers Union (Mawu). While it failed in its attempts to have the Emergency set aside, it won the important ruling that Emergency detainees must be allowed access to their lawyers — on the same basis as any other person held by the police.

A month later there was a flurry of activity with a series of cases in the Natal courts testing the validity of Emergency detentions.

Faced with two opposing judgements from the Natal courts, the Appellate Division decided in favour of a Pietermaritzburg ruling which held the detention provisions were valid.

Durban Legal Resources Centre director Chris Nicholson said the judgement might have provided serious problems to the state had the regulations been set aside.

However, the judgement that the detention clause was not *ultra vires* was not, in itself, evidence of a change in the overall trend by the courts towards rulings favouring individual liberty.

As evidence of this "trend" he quoted the Hurley judgement, the outcome of the Mawu case, the partially-successful challenge to press curbs brought by most of the English language newspapers, and two cases in which Emergency detainees were released on the order of the court.

Nicholson said the releases in the cases of a Cape Town nun (Dempsey versus the Minister of Law and Order), and the case of a TV cameraman (Radebe versus the Minister of Law and Order), showed judges were prepared to intervene even if the wording giving police power to detain was wider than in the Hurley case.

He said these cases indicated the courts were increasingly reluctant to give up their power of reviewing executive action relating to arrest and detention of individuals.

"This reflects the trend in Western democracies for the courts to decide whether they can intervene, by considering what the law deals with, rather than by nit-picking about

whether the wording entitles them to act.

"For example, judges might feel unwilling to interfere on an issue such as dredging a harbour, and might say this was an issue best dealt with politically, by lobbying. Whereas the question of the conduct of a person — whether allegedly negligent or criminal, for example — is the substance of the courts' work and they are in the best position to decide the legality of police action."

With each legal gain during the Emergency, there has been a feeling by some that though the lawyers might be "winning battles", the outcome of the "war" to establish civil rights was far from settled.

This pessimistic view seemed to be confirmed by the latest media muzzling, which, in addition to tightening the existing restrictions, introduces new curbs which infringe reporting on court cases, a situation condemned by lawyers as well as civil rights activists.

But Mathews feels there are still important battles to be fought.

The Progressive Federal Party, the United Democratic Front and other groups are already investigating legal tests of the new regulations, but Mathews stresses a new challenge — this time to judges themselves.

"There is still a lot judges can do," he said. "In the area of statements by detainees for example, they are not compelled to accept such evidence."

"The judges have to decide when such evidence is reliable and this gives some scope for judicial activism."

"They also have the opportunity to extend the 'Hurley principle' to other kinds of wording, making it possible for the courts to examine actions of the police even when the wording is more subjective, such as when action is allegedly necessary 'in the opinion' of the officials involved."

"The new restrictions with their curbs on court reporting put the onus on the judges to investigate all allegations of abuse of Emergency detainees properly."

"They have to take such allegations seriously; there is no longer any other independent party able to do so."

Legal watchdog's work grows as SA unrest spirals

By Sheryl Raine

Difficult and unhappy conditions in South Africa led to a growth in the demand for free legal services from the Legal Resources Centre (LRC) in recent months, says the LRC's latest annual report.

The LRC, which was first established in 1979 to give free legal advice to those who could not afford it, employs 23 attorneys and advocates and a sizeable support staff to keep going its five branches in major cities around the country.

Its major fields of work in the year ended March 31 1986 involved labour matters as well as housing, residence, influx control, human rights, citizenship, consumer abuses and the abuse of power vested in public officials. In addition a new and

demanding set of issues relating to the state of emergency have taxed the resources of the LRC, an organisation dependent entirely on donations for funds.

of the Legal Resources Trust which controls the funding of the LRC. "For most of the year under review a large part of the country was subject to a state of emergency.

Since then a nationwide state of emergency has been declared and this is still in force," said national director of the LRC, Mr Arthur Chaskalson SC.

Under the state of emergency wide powers of arrest, detention, search, seizure and censorship have been conferred upon and used by the police and military.

Ultimately a just society depends upon a legal system which functions openly and fairly in Bophuthatswana. The office refused to process the application because Mrs Y was not a citizen of the homeland.

The Johannesburg authorities refused to process the application because she was a citizen of Bophuthatswana and required approval from the homeland labour office.

Every day the offices of the Legal Resources Centre are crowded with people tangled in the legal red tape which rules their lives. Here are just a few of the human stories told to the Centre:

● The Development Board at Paarl told Mr X's employer that his contract as a migrant labourer would not be renewed because he had brought his family with him to the Western Cape without a permit.

In fact, Mr X had brought his three-year-old son to stay with him for a month for

medical treatment. Mr X was arrested for having the child with him. He paid an admission of guilt fine.

The LRC appealed against the ruling, which ended his migrant labour contract, and was successful in winning Section 10 (1)(b) rights for Mr X under the influx control laws.

Mrs Y wanted to work in Johannesburg and the West Rand Development Board approved, sending the required form to the local labour office

and which is readily accessible to all who wish to make use of its institutions.

"The work of the LRC, which is directed to this goal, is therefore of fundamental importance and is indeed made more urgent by unrest and conflict within the country."

He said the emergency had added considerably to the LRC's workload.

"Suddenly there are a large number of people wanting information about where their friends and relatives are being detained, about what rights detainees have, what can be done for people in detention and what can be done to get people out of detention."

Following several court challenges to the emergency regulations a substantial number of people had been released.

Mr Chaskalson welcomed vigorous protests from the legal profession against the emergency.

"It is important that this should be done, otherwise the courts cannot perform their historic role of providing protection to individuals against unlawful conduct of the State or its officials."

Reports compiled from the regional offices of the LRC said the first state of emergency had "serious and alarming consequences on the protection afforded by an independent judiciary to an individual."

"The numbers suffering under arbitrary action by the police and the army are high."

Call for more cash to fund legal aid

By Sheryl Baine

15/11/87
A massive shot in the arm was needed from the Government to increase State funding of legal aid to ensure fair trials for those who could not afford their own lawyers, said a leading advocate

In his annual report for the year ending March 31 1986, the national director of the Legal Resources Centre (LRC), Mr Arthur Chaskalson, said South Africa spent only about R5 million a year on State-funded legal aid

Mr Chaskalson said Britain with double the population of South Africa spent R1 400 million on legal aid in 1986/87.

"The comparison indicates just how inadequate is the South African legal aid system," said Mr Chaskalson

HUGE PROBLEM

"Although South Africa cannot hope to match the scope of legal aid services offered by Britain, and has neither the trained lawyers nor the financial resources to do so, it is surely time that something is done to meet the huge problem of legal aid in criminal cases

"A process whereby unrepresented and often ignorant accused persons are required to stand trial — conducted in many cases in a language which they do not understand and which has to be interpreted to them — and are then sentenced to long periods in prison cannot be characterised as a fair trial.

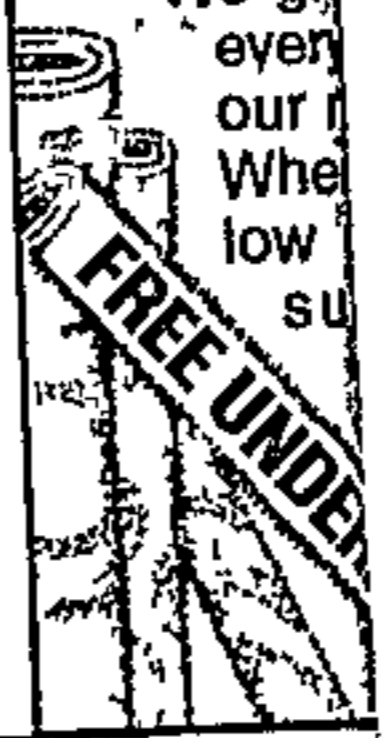
"It is necessary for legal aid to be made more freely available in criminal cases and for the principle to be accepted that accused persons facing serious cases involving the possibility of long jail sentences would be entitled to legal aid and advised of such entitlement before being asked to plead to the charge"

● See Page 15.

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Minister agrees to pay R15 000 damages

CAPE TOWN — The Minister of Law and Order has agreed to pay damages of R15 000 to a Guguletu man who lost his left eye after being struck by a rubber bullet in August 1985

The out-of-court agreement was reached after Mr Khumbulele Victor Nolebe sued the Minister for damages of R17 000

Describing events leading up to his injury, Mr Nolebe told the Cape Town Supreme Court that he was sitting with a friend outside the KTC Bazaar, where he worked, on August 28 1985, waiting for the owner of the the store

The owner had decided to close the shop that day because of a call for all Guguletu

residents to join a march to Pollsmoor Prison, led by Dr Allan Boesak, to demand the release of ANC leader Nelson Mandela

TWO CASSPIRS

Security forces in two Casspirs stopped to ask the two men what they were doing and, apparently satisfied, they left

Mr Nolebe said he turned, saw his friend duck and the next thing he knew a rubber bullet had struck his eye

Counsel for the Minister, Mr J Slabbert, admitted at the mandatory pre-trial conference between legal representatives of both sides that if Mr Nolebe had indeed been shot, police were responsible.

In court, however, he applied for leave to withdraw the admission

He applied for leave to change the Minister's plea to claim that Mr Nolebe was injured when police legitimately fired on a crowd of about 600 people "throwing stones and bottles" near the corner of NY78 and Terminus Road.

Alternatively, the Minister claimed if Mr Nolebe was injured outside KTC Bazaar, it was not police who caused the injury

Mr Justice Berman reserved judgment in October last year on whether the amendment would be allowed

In the interim, the Minister had decided to settle — Sapa.

Press curbs hearing later

By MARTIN NTSOELNGOE

THE hearing into the Press curbs which was to be held this week has been postponed to January 23

PC Van der Byl, assisted by R Kemp, for the Law and Order Minister and the police commissioner, told acting Judge Irving Styen his team had not had enough time to file replying affidavits

The Press curbs - which have caused a countrywide uproar - are being contested in the Rand Supreme Court by two leading English newspaper groups

The application was brought after Argus lawyers Weber and Wentzel and SAAN lawyers Bell, Dewar and Hall had consulted senior counsel and confirmed that the order could be invalid

Dennis Kuy, assisted by G Magus, for both Argus and SAAN, agreed on the new date

In terms of the new notice, it is an offence to "commend, to defend, to explain, or to justify any action, policy or strategy" of organisations such as the African National Congress or Pan Africanist Congress which have been declared unlawful

The new curbs prohibit papers from publishing any ad or report calculated to improve or promote the public image or esteem of an organisation deemed to be unlawful under the Internal Security Act.

COPY PRESS

18/1/87

First Indian acting judge

DURBAN — South Africa's first Indian acting judge, Mr Hassan Mall, a former banned person, will sit on the Durban Supreme Court Bench during February while another judge is on long leave. Mr Mall was banned for five years in 1962 under the Suppression of Communism Act while joint honorary secretary of the South African Indian Congress. In 1978, he became the first advocate of colour in Natal to be appointed senior counsel.

CHP 7/15
19/10/7
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Detainee 'in ANC cell' Court told

Court Reporter

AN APPLICATION for the release of Durban detainee Shamir Shaik was turned down in the Supreme Court, Durban, yesterday in spite of Mr Justice D B Friedman saying Section 29 of the Internal Security Act was 'an incredible invasion of public rights'

Before dismissing the application with costs, Mr Justice Friedman said 'By its very nature it (Section 29) deprives a person of his liberty'

The application for the release of the 27-year-old engineering student from Clare Estate was brought by his brother, Mr Fazil Ali Shaik, against the Commissioner of Police and the

Minister of Law and Order

Mr Justice Friedman said the effect of his judgment was to prove that a security policeman, Lt Col Jacobus Hendrik Buchner, had reasonable grounds for ordering Mr Shaik's detention and also to question the reasonableness of the belief that he should be detained

He said Col Buchner had filed a lengthy affidavit giving reasons for ordering the detention but that he did not make clear which offences he believed the detainee had committed or intended to commit

'It would have been unfair and unsafe to have relied on the affidavit,' he said, and he had therefore

ordered Col Buchner to testify last Friday

Justice Friedman said Col Buchner's evidence was candid and frank

Col Buchner testified that some time ago the ANC had set up certain cells to support and assist terrorists and in the middle of 1985 he ascertained that Mr Shaik was active in such a cell

Col Buchner said that in July 1985 Mr Shaik was arrested and detained for providing assistance and transport to trained terrorists

He said Mr Shaik had admitted his involvement but denied knowing that the person was a terrorist. He was not charged and was released on July 15

On November 24 last year Col Buchner received information that Mr Shaik was still actively involved in the cell's activities and that funds had been allocated to the cell by the ANC

Mr Shaik has been in detention since December 12

Release hearing adjourned

AN application for the release of a Durban detainee was brought by the Azanian Peoples' Organisation and the detainee's father, Mr Subrayan Moody, in the Supreme Court, Durban, yesterday.

The application against the Minister of Law and Order, the Minister of Police and the Divisional Commis-

sioner of Police for Port Natal, called for the court to order that the arrest and detention of Mr Pathmanathan (Patrick) Moody in terms of Section 29 of the Internal Security Act be declared unlawful, null,

void and of no effect. It also called for Mr Moody's immediate release and for the respondents to restore his possessions.

Among the possessions seized on the day of his arrest last month

were various pamphlets of organisations such as Azapo, Solidarity the UDF and Azaso. Other documents taken were entitled 'Black Resistance Apartheid', 'No 46 Steve Biko', 'Black Power in South Africa'

and "Nelson Mandela — the Struggle is My Life". Mr Moody has served as resources director of the Frank Talk Editorial Collective since February 1985.

The internal director of the magazine Mr Ar-

ran Sagren Arran, said in an affidavit that he had been authorised to bring the application by Azapo at its last national congress in Port Elizabeth on December 15 last year. He said four po-

licemen under the command of Major Benjamin Randall had arrested and detained Mr Moody at his home in Moberi Heights, Chatsworth at 5am on December 12.

The matter was adjourned by Mr Justice J M Didcott to January 26. — Sapa

Voters for House of Delegates 'gave false names'

Three State witnesses, one a former secretary of the Progressive Independent Party, gave evidence before a Johannesburg magistrate yesterday against a member of the House of Delegates concerning irregularities in the 1985 by-elections.

Progressive Independent Party member Mr. Faiz Mohamed Kahn (58), of 12 Saffier Street, Extension 5, Lenasia, pleaded not guilty to three counts of fraud relating to the voters' roll during the Lenasia by-elections in June 1985, at a previous hearing on Tuesday.

Mr. G.A. Ebrahim and Mr. M.H. Chotia gave evidence to support State allegations that Mr. Kahn had influenced unregistered voters to impersonate registered voters and vote for him as a candidate for the Lenasia Management Committee.

An affidavit signed by Mr. Kaisavel Kistasamy and submitted before Mr. I.J.J. Luther stated that on the day of the elections Mr. Kistasamy had been approached by a man with a piece of paper on which was written the name of Dedat Suleman Ismail, an identity number and an address.

Mr. Kistasamy was unable to find the name Ismail on the voters' roll. Later the man returned with Mr. Shabir Kahn and said he was voting under the name of Dedat.

CONVICTED

"I again queried his identity. He has subsequently been convicted under the name of Sayed Iqbal Hoosen."

A former secretary of the Progressive Independent Party, Mr. Randolph Moonian, said he had not realised Mr. Kahn was implicated until he had phoned him after having been detained in connection with the matter.

A transcript of the telephone conversation between Mr. Kahn and Mr. Moonian was read. The defence, arguing "a background of conspiracy", said the accuracy of the transcript should be proved before the court heard it.

The hearing continues today. Mr. L. van Vuuren appeared for the state, Mr. M. Hodes SC and Mr. S. Joseph for the defence.

Advocate criticised by DLA

STW
By Toni Younghusband

23/1/87 252
The first non-white person to be appointed to the Bench of the Supreme Court of South Africa, Mr Hassan Mall, has been criticised for accepting his appointment.

Mr Mall — an Indian advocate practising in Durban and a former banned person — will join the Bench as an acting judge for February.

Mr Mall's continued membership of the Democratic Lawyers' Association (DLA) is now under scrutiny after his appointment.

A statement released by the DLA said Mr Mall's acceptance of the appointment was in conflict with the principles for which the DLA stood.

"The committee of the DLA is of the firm view that with the present political, social and economic structures existing in this country and the vast number of repressive laws, it is not proper for any of its members to serve in any judicial capacity."

Mr Mall told the Press he was "not in a position to comment".

NM

23/1/87

Detainee faces long wait for result of opposed plea

Court Reporter

A PRISONER will probably have to wait two months to hear the outcome of his application for an interdict restraining the Minister of Law and Order and people under the minister's control from interrogating and assaulting him.

The application brought by Mr Victor Ntshalintshali was opposed by the respondents.

Mr Justice van Heerden

yesterday ordered in the Supreme Court, Durban, that answering affidavits be filed before February 10 and replying affidavits by March 10. The matter was adjourned to March 20.

In an affidavit Mr Ntshalintshali of Lamontville said he and a friend, Mr Seni Khoza, were in Magabheni township in Umkomaas on November 28 last year when they were arrested.

Mr Ntshalintshali is be-

ing detained in the Westville Prison under proclamation R109 of June 12, 1986, in terms of sections 3 (1)(a) of the Public Safety Act no 3 of 1953.

A policeman informed him that he was suspected of participating in the bombing of the Magabheni mayor's house.

He denies any such participation and denies being a member of any organisation.

sunrise

Curbs on reports vague, say Press

By Lesley Cowling

If the Commissioner of Police addressed his recruits on the strategies of the African National Congress (ANC) would he contravene his own order and notice restricting reporting on any actions of an unlawful organisation?

This was discussed in the Rand Supreme Court yesterday during the hearing of The Argus and South African Associated Newspapers (SAAN) challenge to restrictions on the reporting on unlawful organisations.

The newspaper groups have asked that the order and notice be set aside and declared unlawful. Mr Denis Kuy SC, counsel for the newspapers, said the order and notice were vague and uncertain, making it difficult for editors to interpret.

He used many examples to prove his point, one of which Mr Justice H Daniels put to counsel for the Minister of Law and Order and the Commissioner Mr P.C van der Byl.

Mr van der Byl appeared to have difficulty deciding whether the Commissioner, in addressing his own recruits on the ANC, would be contravening his restrictions preventing the explanation of the strategy of an unlawful organisation.

He said if the explanation was negative to the security of the State, it would contravene the order. If it was positive to State security, it would not. The test to be applied would be what the intention of the explanation was, he said.

Mr Justice Daniels, however, remarked there was still a difficulty in interpretation.

Argument also centred on the meaning of the word "support" in the notice. The notice states that a statement is subversive when it has the effect of inciting or encouraging members of the public to "support" any unlawful organisation.

Mr van der Byl said the meaning the newspapers placed on "support" went too far and to say it meant "sympathy for" was a very unusual meaning.

The newspaper groups have also attacked the order and notice on the grounds that they go beyond the powers vested in the Commissioner by the emergency regulations and are unreasonable. The hearing continues.

Judgment soon on media challenge

star 2/1/87

Judgment in the challenge by the Argus Company and South African Associated Newspapers (Saan) to an order and notice restricting reporting on unlawful organisations is expected to be given in the Rand Supreme Court tomorrow.

By Lesley Cowling

The newspaper groups have asked the court to set aside both the order and the notice, issued by the Commissioner of Police in December.

Yesterday Mr Justice H Daniels heard the last arguments from Mr P C van der Byl, SC, counsel for the Minister of Police and the Commissioner, and Mr Denis Kuny, SC, for the newspapers.

'TOO WIDE'

The newspaper groups' challenge has been on four broad grounds: that the commissioner is not empowered to issue such an order; that the order is too wide; that both order and notice are grossly unreasonable; and both are vague and uncertain.

On the point that the commissioner had exceeded his powers, Mr Kuny argued that the order restricted newspapers throughout the country, but the emergency regulations on which the commissioner had relied granted him powers only in a "particular area".

"Particular area" referred to parts of South Africa only. It was not in the commissioner's power to make the order so geographically sweeping.

Mr van der Byl argued that "particular area" referred both to parts of the country and South Africa as a whole.

Mr Kuny said the State President had promulgated a separate set of emergency regulations dealing with the media. This implied that orders

to do with the media should be issued in terms of these "media regulations", but the commissioner had used the original regulations to do this.

Mr van der Byl replied that the fact that the State President had promulgated separate regulations for the media did not mean he meant to exclude the power to control the media from the original regulations.

On the point that the order was too wide, Mr Kuny said it was so sweeping that it affected situations that could have no influence on the maintenance of public order.

On the point that the order and notice are grossly unreasonable, Mr Kuny said the order discriminated against the print media; made unwarranted inroads into freedom of expression; and halted a vital debate.

Mr van der Byl said the commissioner had the right in terms of the emergency regulations to discriminate.

INTERPRETATION

On the point that the order and notice are vague and uncertain, Mr Kuny said editors were having a great deal of trouble interpreting the order.

Confusion surrounded the meaning of the word "support". The notice said that a statement was subversive when it had the effect of inciting or encouraging members of the public to "support" any unlawful organisation.

Mr van der Byl said the word had an ordinary and definite meaning.

Jan. 1987

Judge declares police gag on Press reporting invalid

252

THE Commissioner of Police had exceeded his jurisdiction when he issued an order on January 8 banning the Press from reporting on unlawful organisations. The order was therefore ultra vires and invalid.

This was the finding of Mr Justice H Daniels in the Rand Supreme Court yesterday.

The Argus Printing and Publishing Company and South African Associated Newspapers (SAAN) had asked the court to declare both the order and a notice, issued simultaneously, void and without force and effect in law.

The judge said it was his prima facie view that regulation 7 (1)(b)(ii) under which the commissioner had purported to make the order could not be used for imposing some form of censorship.

The order prohibited newspapers, magazines and periodicals from publishing anything calculated to promote the image or esteem of an unlawful organisation or explain, commend, justify or defend any of their actions, aims or policies.

The judge ruled that the notice was valid. The notice, issued under the media regulations, extended the

SUSAN RUSSELL

meaning of a subversive statement as defined under the emergency regulations to include support for an unlawful organisation.

The judge said the attack on the notice as vague and uncertain was unwarranted. "The terms of the notice are clear and unequivocal."

Both the order and notice were issued after an advertisement calling for the unbanning of the ANC had been placed in various newspapers by the UDF, NECC and SACC.

The judge said in the regulations the State President had, by implication, imposed some limitation on the area for which the commissioner could make orders by use of the word "particular".

He said it seemed to him the State President had wanted the commissioner to be able to impose orders for particular areas and circumstances but not to give him carte blanche to issue orders.

He said he agreed with a full bench decision of the Natal division that declared that sub-regulation ultra vires.

"Regulation 7 (1)(d) which, to a

limited extent, dealt with the control of the media, was deleted on December 11 when a new set of regulations were promulgated to deal with the media.

"It is inconsistent with the scheme of the regulations to extend to the commissioner power to exercise some form of control over the media when the State President specifically promulgated a new set of regulations for that contingency."

The Minister and the commissioner were ordered to pay the costs of the applications except for the court appearance on January 14 when no order as to costs was made.

After the judgment, legal representatives for Argus and SAAN said the Press would now have greater freedom to report on unlawful organisations as the prohibitions of the order had been far wider than those of the notice.

Commenting on the judgment, SAAN MD Stephen Mulholland said: "It's gratifying that in our country we can still take government to court and get judgment in our favour."

"This is evidence that we remain basically a rational state."

A white customer in a cafe allegedly referred to emergency regulations, said

Ex-policeman fined R200 for 'joke'

Star West Rand Bureau 25/11/77 (252)
An ex-policeman was convicted by a Roodepoort magistrate yesterday of disguising himself with the possible intent of committing a crime.

The magistrate, Mr S B Bezuidenhout, said the excuse that the accused, Cornelis Tobias Venter (22), a first offender, had disguised himself as a joke to see people's reactions did not "hold water" with him.

Venter, who was fined R200 (or three months' imprisonment), was stationed at the Honeydew Police Station when he committed the offence in March last year.

He told Mr Bezuidenhout that he and a fellow officer had stopped at a Weltevreden Park Shopping Centre while off-duty to buy cigarettes.

He said that he had worn the disguise — a false beard, a pair of "mirror" sunglasses and a woollen cap —

to the police station in the morning.

Venter said he was in front of the building society, but did not enter it. He bought cigarettes and left in the car.

Three witnesses for the State said he had pushed the door of the building society open and then turned and walked back to the car.

Mr Bezuidenhout said that he could not see the funny side of wearing a disguise to "see people's reactions".

The accused had not cross-questioned the witnesses and therefore accepted their version. Also he had not proved that he did not have the intention of committing an offence and, especially because of the nature of his work at the time, should have known that a disguised man near a building society would look highly suspicious.

3 plead not guilty to defaming minister

DURBAN — Three coal merchants yesterday pleaded not guilty in the Durban Regional Court to defaming the Minister of Mineral and Energy Affairs, Mr Danie Steyn, the director and deputy director of the department and other coal merchants and coal firms

Mr Abdool Haq Limalia, 43 and Mr Ismail Limalia, 29, both of El-rays Wood and Coal, and Mr Balgoeind Ramlall, 33, of Singh's Wood and Coal reserved their defence when they appeared before Mr H W Weitz

The state alleges that during November 1984 they had had a pamphlet printed and this they distributed in Durban and Pietermaritzburg in January 1985

According to the State, the pamphlet falsely alleged, implied or insinuated that Mr Steyn; a Mr van den Berg, director of the department, a Mr Roets, the deputy director, Mr Rob Taylor and Mr Fowler, directors of coal companies and five companies had given or accepted bribes

The state also alleges that the statements in the pamphlets were defamatory to the people and the companies

The case was adjourned to February 5

— Sapa

Bodies contest Govt clamps

Pietermaritzburg
Bureau

THE United Democratic Front and the Release Mandela Campaign are expected to make a second application in the Supreme Court here today asking that a Government order prohibiting publications 'calculated to improve or promote the public image or esteem' of any unlawful organisation be declared invalid.

An application by the two organisations challenging key sections of the Government's latest emergency regulations got under way yesterday.

The application has been brought against the State President, the S A Government, the Minister of Home Affairs, the Minister of Law and Order and the Commissioner of the S A Police.

Mr Ismail Mahomed SC, appearing for the UDF and RMC, argued before Mr Justice Galgut and Mr Justice

Page that the emergency legislation was 'oppressive'.

He attacked the regulations on the grounds that they were ultra vires the powers of the State President and could never have been contemplated by Parliament.

In papers before the Court the applicants have submitted that they and similar organisations which conducted a daily campaign in opposition to the Government found it impossible to conduct their affairs with the looming threat of administrative and other action in terms of the regulations which were 'wide and uncertain' in their meaning.

The Minister of Law and Order, Mr Adriaan Vlok, said a situation of unrest and violence had arisen in the country.

He said the revolutionary elements relied ultimately on the media in order to achieve their goals.

Court upsets order placing nationwide curb on media

By Lesley Cowling

The Rand Supreme Court yesterday set aside an order issued by the Commissioner of Police, General P J Coetzee, in terms of the emergency regulations but upheld the validity of an accompanying notice

This was the decision of Mr Justice H Daniels in an urgent application brought by The Argus and South African Associated Newspapers (SAAN) against the commissioner and the Minister of Law and Order, challenging the legality of both order and notice

Mr Justice Daniels also awarded costs — with the exception of the costs of one day — to the newspaper groups.

The order, which applied countrywide, prohibited editors from publishing any advertisement and report calculated to improve the image of any unlawful organisation or any report which explained or defended any unlawful organisation's resistance strategies

The accompanying notice declared subversive — and therefore unlawful — any statement made by any member of the public which was likely to encourage or incite members of the public to support an unlawful organisation

The order was issued in terms of the security regulations — the emergency regulations which were promulgated at the start of the second state of emergency.

A second set of emergency regulations, dealing with the media, were promulgated in December last year. The notice was issued in terms of these "media" regulations.

Commissioner exceeded powers

Mr Justice Daniels yesterday ruled that the commissioner had exceeded the powers granted him by the security regulations. He had made the order applicable to the whole of South Africa, which he was not empowered to do

The regulation in terms of which the order was made — regulation 7(b) — empowered the commissioner to forbid the actions of any person in a "particular area", he said

But this did not mean the entire Republic.

He said it appeared to him that the State President had intended regulation 7 (b) to grant the commissioner the power to control situations that might arise in a definite area or district.

He rejected an argument by Mr P C van der Byl, SC, for the commissioner, that "particular area" referred both to definite areas within South Africa and the entire Republic.

Having invalidated the order on those grounds, it was not necessary to go into the other arguments about the order's lawfulness, he said

But, he said, on the face of things it seemed to him the order would also be invalid because the commissioner was not empowered by security regulation 7 to make censorship provisions. Controls on the media were provided for by the media regulations

The judge rejected the newspaper groups' argument that the notice should be set aside because it was vague and uncertain

He said the notice was not concerned with the objects of unlawful organisations but with the unlawful organisations themselves

It was quite easy to determine what unlawful organisations were, he said

It was, therefore, quite clear what the notice referred to

In determining what "supporting" would be, he said the ordinary meaning must be given to the word, defining it as "to actively promote the interests of", "stand by" or "back up".

He could not say with conviction that the whole notice was too vague and could only set a regulation aside if it created substantial uncertainty

The commissioner had acted within the scope and limitations of the regulations. There was no reason to believe and no evidence submitted that the commissioner had acted in bad faith, Mr Justice Daniels said

● The Star yesterday reported that Mr Justice Daniels "dismissed the newspapers' submission that the ORDER was so vague as to be incapable of reasonable interpretation". This was incorrect. It was the notice that the judge was referring to. He did not refer to the question of vagueness in relation to the order at all. The Star apologises for the error

People's courts: 52 appear

Court Reporter

FIFTY-TWO people who have been in detention for almost eight months appeared in Mitchells Plain Magistrate's Court yesterday on charges of sedition and assault as a result of allegedly attending or conducting "people's courts".

The detainees, whose ages range from 17 to 37, are from Guguletu, Nyanga Bush and KTC. They appeared in three groups and were not asked to plead.

One of the groups appeared in camera as three of them were minors and only the parents of the 17-year-olds were allowed in-

side. The first group was Moses Faku, Aubrey Matrose, Lulame Matabeni, Tlabo Mangeni, Mongezi Mavata, Vukile George, Shadrack Somo, Michael Mduzulwana, Patrick Ncapayi, Solomon Numi, James Mngqibisi, Zangisele Myekiso, Patrick Eleke, Getwa Pheni, William Kompeni, Vuysile Mephi, Gerald Boo, Peter Menye, Bala Mfungusa, Gilbert Bala, Ngeba Godwana and three 17-year-olds.

The second group was Khuselwa Vata, Mvusyisi Mhlanga, Nomasoni Jacobs, Philip Mnitshane, Layiso Ngqolo, Lizo Nqcuka, Bongile Siwahle, Lindile Jokwe, Nceba Chagne, Su-

minsene Zondo, Ntinbetle Sema, Tsusita Zihyithle, Headman Choldize, Mchezonzi Mpunzi, Zomseti Maweya, Kutwana Mtuzaheli, Muthazeli Madikane, Monde Felike, Zola Bljhina and Zinzaheli Tshanbe.

The third group was Andile Sweni, Vuyisile Grotelo, Ntu Yakwe Daweti, Loyiso Ngqolo, Lutouba Zithouphite, Nuloseleli Mpunzi, Kutwana Mpayitheli and Nieba Chagwe.

The hearing was postponed to February 27.

Mr W B Monk was the magistrate. Mr S Duffett prosecuted Mr B Waglay, Mr E Daniels and Mr L Padayachi appeared for the detainees.

CAPE
TIMES
30/1/87

The Law Society has been giving serious thought to the principle of 'contingency fees'. By Staff Reporter ANTHONY DOMAN

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'No win, no pay' could mean easier access to legal help

GROWING pressure for a "no win, no pay" deal between clients and lawyers in civil trials is set to force a rethink on the legal fee structure — hopefully unlocking the door to legal help for the masses.

The details will be thrashed out at top-level meetings of the legal profession within the next few months.

"The entire profession is looking at it very hard. We must provide greater access to legal help," said the president of the Law Society of the Cape of Good Hope, Mr Mervyn Smith.

Mr Smith, a Bellville attorney, was responding to reports that the executive council of the General Council of the Bar of South Africa was studying the new deal — the so-called "contingency fees".

The Law Society has been giving serious thought to the idea since its last annual conference.

"But we haven't yet taken a decision. We will have the opportunity for discussing it on a national level for the first time when the Association of Law Societies meets in Cape Town in March," said Mr Smith.

Under the contingency fee system, fees are paid only if the case is won.

According to the Bar Council executive, the concept "is one which the bar has long since accepted, subject to control by bar councils."

However, the American style whereby lawyers can lay claim to part of the damages awarded to their clients by the court "could lead to grave abuses and can never be supported by the bar," the executive warned.

The other option — evidently the approved one — allowed for proper legal fees to be paid by the client only in the event of a claim succeeding.

Contingency fees had been

discouraged through a centuries-old legal ethical ruling which has been honoured in most western jurisdictions, Mr Smith said.

If the Bar Council supported contingency fees it was a "major step forward".

Asked how long it might take to reach a decision acceptable to all branches of the profession, he said "I think I would know after March."

A further top-level legal gathering of takes place in Johannesburg from May 18 to 20 at the SA Law Conference.

"It will be open to all lawyers, and deals with major current issues facing the law in South Africa today," said Mr Smith.

He described it as "very up-market", adding that it featured local and foreign speakers.

Contingency fees, he said, were "top priority on the agenda."

NEWSPAPERS can once again report the actions and strategies of the African National Congress, following a Rand Supreme Court ruling yesterday which struck out a police order imposing harsh restrictions on banned organisations

But statements which encourage support for an unlawful organisation remain illegal, the court ruled

Judge H Daniels's ruling came at the end of an urgent application brought by the largest English newspaper groups, Saan and Argus

The judgement, lawyers said, means newspapers are effectively back where they were before the Commissioner of Police issued an order three weeks ago imposing new restrictions on unlawful organisations permanent legislation on the statute books still restricts reporting on bodies like the ANC

The application contested an order and notice issued by Commissioner of Police PJ Coetzee on January 8, one day after at least 11 newspapers carried full-page advertisements calling for the unbanning of the ANC

Daniels struck out the order — which prohibits newspapers from carrying advertisements or reports promoting banned organisations and

Press can report on ANC under old restrictions

By JO-ANN BEKKER

forbids articles explaining or justifying the actions, policies or strategies of banned organisations — on the grounds that Coetzee was not empowered to issue orders for the entire country.

The judge said it was not necessary for him to rule on the other arguments advanced by Denis Kuny, SC, for the applicants

But Daniels indicated he was not convinced the Emergency's security regulations could be utilised to censor the press. He said a new set of press regulations were promulgated last December specifically to deal with censorship

'It seems inconsistent with the scheme to extend to the Commissioner

the power to obtain some form of control of the media, when the State President has promulgated regulations to deal specifically with censorship"

He added that the security regulations might be wide enough to cover this

Although the order was struck out, Daniels upheld the validity of the notice issued by the Commissioner on the same day. The notice extended the definition of a 'subversive statement' to include statements which "support any organisation which is an unlawful organisation"

He said the question of whether banned organisations' objectives were legitimate or 'laudable', as Kuny had submitted, was of no consequence. There was no evidence that the Commissioner of Police had acted in

- bad faith when issuing the notice

The judge stressed he had not been requested to rule on the validity of the Emergency regulations, or the Emergency censorship regulations imposed in December last year which defined "subversive statements"

Although the advert calling for the unbanning of the ANC gave rise to the order and subsequent urgent application, there was no ruling on the advertisement itself

However, as the judge defined support as being active support, rather than mere tolerance, lawyers believe it is again legal to publish the advert

At the outset of his judgement, Daniels rejected Van der Byl's contention that the court was prevented from inquiring into the validity of the Commissioner's Notice and Order by an "ouster clause" in the regulations. He was the 17th judge to make this finding

Daniels ordered the Minister of Law and Order and the Commissioner of Police to pay Saan and Argus's costs, including those of two counsel. He ruled that costs for the first day of the trial, in which the matter was postponed, would be paid by the applicants and respondents themselves

● Today's judgement followed more than a week of speculation that the Commissioner of Police would draft new regulations to close gaps in the January 8 order

Legal experts yesterday said they believed it would be difficult for the Commissioner to re-regulate the order in the light of Daniels' intimation that the appropriate place for censorship regulations was in the Emergency's press — and not security regulations

Cape Times 4/2/87 252

Mediation urged to settle disputes

Supreme Court Reporter

TWO of the oldest devices known to man for settling disputes could solve the "major social problem" caused by the fact that the Supreme Court is beyond the pocket of ordinary people, a law professor suggests.

Writing in the latest edition of the attorneys' journal *De Rebus*, Professor D Scott-Macnab of the University of Durban-Westville urges "a radical change of approach".

What is needed, he says, is wide-scale use of mediation and arbitration to resolve disputes cheaply, effectively, informally and privately.

He says that even the introduction of Small Claims Courts in 1984 — "received with enthusiasm and a naive joy just as they were received in the United States 65 years ago" — has not and will not solve the problem.

There are not enough of them, they are likely to become overcrowded and have difficulties with enforcement.

Arbitrators provided

Mediation is a process of bringing together the warring parties, identifying problems they may not have recognized, draining the "well of ill-will" and bringing about a degree of conciliation. Later arbitration is used to settle those areas which cannot be resolved by the parties themselves.

In the US, the American Arbitration Association today provides arbitrators to settle rows about custody and maintenance between divorcing and divorced partners.

There are also numerous US states which require mediation before small claims suits are launched.

"The basis of a process like mediation is to settle disputes in a manner which causes the least expense, the least ill-will and the greatest satisfaction within the community. One of the cornerstones is informality, with the parties on first-name terms."

The professor urges the establishment of mediation centres at South African universities where a multi-disciplinary approach to dispute resolution could be developed and taught.

Victim tells of trial by 'People's Court'

A Soshanguve resident yesterday described in a Pretoria Magistrate's Court how he was brought before a Comrades "People's Court" and sentenced to 400 lashes with a whip in May last year.

Six of those who allegedly lashed Mr Humphrey Mkhize appeared in court and pleaded not guilty to charges of attempted murder. They are: Mr Morris Ngobeni (32), Mr Stephens Msiza (17), Mr Amos Mahkuga (18), Mr Ephraim Mgidi (46), Mr Wilson Mgidi (21) and Mr Lucas Sibanyoni (41).

Mr Mkhize said the six accused and other Comrades took him to the home of one of the accused where he was tied to a pole, hit and accused of burning Comrades' tyres, of stealing alcohol and of killing someone.

He was then taken to the Letabong School in Soshanguve where a court hearing was held. He and three others were sentenced and lashed.

Mr Mkhize said he was forced to take off his pants and lie on his stomach on a table and the six accused among others gave him 400 lashes.

The case was postponed to today. — Sapa.

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337
points by Jo-Anne Bekker

You may, said the judge. You may not, said the minister

FOR a few hours last week, South Africans enjoyed a fraction more freedom than they have become accustomed to of late.

Then normality was restored.

On Thursday afternoon, a judge overturned an order issued three weeks earlier, on January 8, by the Commissioner of Police. The victory must rank as one of the shortest-lived in legal history. Before midnight, two new Government Gazettes had appeared.

The January 8 order had prohibited reports or advertisements giving a favourable impression of a banned organisation, and reports, setting out their policies or strategies.

The court, however, upheld the validity of a notice expanding the definition of a subversive statement to include supporting an unlawful organisation. (See last week's Weekly Mail for full details).

Last week's gazettes, first announced on the 8.00pm news by the Minister of Law, and Order, Adriaan Vlok, have limited media reporting in three ways, according to a press lawyer:

1. The government has scrapped the January 8 notice and order. But a similar notice has been promulgated introducing a new category of subversive statement which prohibits encouraging support for unlawful organisations.

However, the government seems to have accepted that it cannot prohibit all material which might improve the esteem of the African National Congress and other



Vlok — the man behind the latest assault on media freedom

banned organisations, and has not replaced the order as such.

2. The State President has given awesome powers to the commissioner, allowing him to prohibit any publication containing any news, comment or advertisement, in the interests of public safety.

"It is questionable whether a court will uphold this massive abdication of authority or even agree that the President has the power to delegate to this extent in the first place, under the relatively limited ambit of the Public Safety Act," the lawyer said.

"This delegation of power will almost certainly be challenged in court. If it is thrown out it is likely to be followed by an attempt in parliament to replace or amend the Public Safety Act."

3. The commissioner has used his new powers to prohibit any advertisement on or in connection with any unlawful organisation, "defending, praising, or endeavouring to justify any of these organisations' campaigns, projects or actions".

Unobtrusively slipped into these new regulations is an amendment to legislation restricting photographs, television, film and sound recordings.

The media regulations of December 11, strangely, only made it an offence to "take a photograph" of security action and unrest — thus allowing old photographs from library files to be used.

But the new regulation prohibits publication of any photograph, television, film or sound recording made in contravention "of a regulation which has been repealed by these regulations."

This prevents the publication of photographs taken from the beginning of the June 12 Emergency.

EMERGENCY LAWS F/M 6/2/87

More challenges

While two newspaper groups may have won a pyrrhic victory in the latest court battle against the State, in the Maritzburg Supreme Court the United Democratic Front and the Release Mandela Campaign continue to press home their assault on the emergency regulations

The applicants have cast their net extremely wide in seeking to get all the regulations promulgated on December 11 voided or, alternatively, having key aspects declared invalid. The order prohibiting newspapers from publishing anything deemed to promote the interests of the African National Congress, which was invalidated in the Rand Supreme Court on Friday, was also argued in Maritzburg. But in the light of the Johannesburg judgment, the court will not be asked to find, merely to apportion costs.

Deputy counsel Amichand Soman, who is assisting Ismail Mahomed, SC, for the applicants, says he has studied the amendments to regulations issued in the wake of last Friday's judgment and is convinced they can be challenged. Further applications in respect of the amendments, he says, can be expected to be served.

Mahomed, now two days into his argument, is attacking the regulations on what has become familiar terrain — that they are vague, embarrassingly unclear, ultra vires, and that parliament could never have intended to bestow the powers vested in certain State officials as a consequence of the emergency. Further, he argues there was irrelevant consideration on the part of the State President.

The matter, being heard by Justice Page and Justice Galgut, has been provisionally adjourned to February 9 for further argument.



Theologian Dr Richard Stevens embraces his teenage daughter Annette, after being acquitted

Picture TERRY SHEAN

That's my Dad!

MAN WHO SHIELDED DAUGHTER CLEARED

By EUGENE ABRAHAMS

A TOP academic told a court this week how he shielded his daughter from the blows of a quirt-wielding policeman

Dr Richard Stevens of the department of biblical studies at the University of the Western Cape, told magistrate Mr M J van Graan

"My words to the police were 'I don't hit my daughter and neither will you'

"I reacted as a father would
"It was wrong of the police to hit the children and I am sure any parent would have acted in the same way"

Dr Stevens and Mr Steve Louw, a teacher had been charged with convening or organising a demonstration within 500m of the Goodwood Magistrate's Court, in Cape Town, last May

But the magistrate found the pair not guilty

The State said Mr van Graan, had failed to prove that a demonstration had taken place outside the court

Dr Stevens, a prominent Dutch Reformed Church theologian, had explained that when he saw his daughter Annette, who was part of a "small peaceful group", being hit by police, he intervened

"All I did was make hand movements towards the police when I was protecting my daughter"

He had gone to the court that day to pay bail for a pupil, Neville Naidoo

Support

About 150 pupils from a Belhar school, including Dr Stevens' 16-year-old daughter, had gone to the court to give Naidoo, a fellow pupil, "moral support", the magistrate was told

After the case, a relieved Dr Stevens, said "It proves that there is still some justice in this land but it is an indictment against this country that a person can still be surprised with such an outcome"

"If the court had found me guilty and imposed a fine of say R100 or 100 days, I would have gone to prison"

"Before going to court I told university administrators that if I was found guilty, I would be absent from my classes for a couple of months"

"Jail is no stranger to me I've been there so many times I've lost count"

Happy

Said a happy Annette "I'm glad my father was acquitted. All he did was protect me"

Dr Stevens was last jailed when police swooped on a church gathering in Bellville early last year and arrested the entire congregation

In August 1980 Dr Stevens — then a reverend — was held for five months at the Victor Verster Prison in Paarl under Section 10 of the Internal Security Act

He later went on a hunger strike but ended it when the prison authorities changed his diet

He left shortly afterwards for the USA where he was granted political asylum after the SA consulate in New York refused to renew his passport, and returned in 1985 with a PhD in theology from Princeton

A SOSHANGUVE resi-
dent this week told a Pretoria
Magistrates' Court he
was brought before a "peo-
ple's court" organised by
"comrades" and sentenced
to 400 lashes with a whip
last May.

Six of those who alleged-
ly "lashed" Humphrey
Mkhize appeared on a
charge of attempted mur-
der Morris Ngobeni, 32,

^{q/ves}
**'People's
court
lashed me'**

^{8/2/8}
Stephens Msiza, 17, Amos
Mahkuga, 18, Ephraim
Mgidi, 46, Wilson Mgidi,
21, and Lucas Sibanyoni,
41, pleaded not guilty.
Mkhize said the six and

many other comrades tied
him to a pole, hit him and
accused him of burning
tyres belonging to the com-
rades, stealing alcohol and
killing someone. He was
then taken to a "court" in a
Letabong School-classroom
where he and three others
were sentenced and lashed,
he said.
The case was postponed
to today - Sapa

Court rules UDF leader must stand trial for murder

By MNCEDISI SALISO

AN application for the discharge of the regional president of the United Democratic Front, Mr Edgar Dumile Ngoyi, 59, on a charge of murder, was refused in the PE Supreme Court today

However, Mr Justice Solomon granted an application for the discharge of Mr Ngoyi's wife, Mrs Eunice Tenjiwe Ngoyi, 58, Mr Steven Qwelela Dzedze, 30, and a 15-year-old boy

The judge found there was no evidence implicating them in the killing of Mr Pakamisa Nogwaza, 24, in Kwazakele on June 8, 1985

The application was also refused for the discharge of Mr Lulamile Cyril Mkalipi, 22

As in Mr Ngoyi's case,

the court found that evidence could emerge to supplement State evidence during the defence case

The court took into account that Mr Ngoyi was regional president of the UDF and that Mr Mkalipi was a self-confessed "comrade" who admitted being present during the murder

Mr Justice Solomon said Mr Ngoyi was at his house when Mr Ngwaza was questioned as to which organisation he belonged

There was a disputed incident when Mr Ngoyi allegedly went to Mr Dokota's house to answer a telephone call shortly before the murder of Mr Nogwaza

Mr Justice Solomon said Mr Dokota and his wife testified and rebutted Mr Ngoyi's evidence

Mr Mkalipi, who had admitted in a statement that he was a "comrade", held a significant position in that he gave the "comrades" instructions

He admitted responsibility for gathering the "comrades" at Mr Ngoyi's house

While he admitted being present during the killing of Mr Nogwaza, but denied participation in the killing, he did nothing to stop the attack on Mr Nogwaza

(Proceeding)

Inquiry: Call to Munnik to step down

By ANTHONY JOHNSON
Political Correspondent

THE Judge President of the Cape, Mr Justice George Munnik, yesterday rejected a call for him to step down from the commission of inquiry appointed by President P W Botha to look into the financing of ANC advertisements

The call was made by Mr Boris G Savvas, a former member of the Pretoria Bar, in a letter to the Sunday Star.

In the letter, Mr Savvas asked Mr Justice Munnik to "decline from accepting or continuing" with his appointment because "his office is being used for political purposes which have a dubious character and which can only serve to demean it as well as the established legal institutions of South Africa"

Mr Justice Munnik said yesterday that Mr Botha had given him a job to do and it was of "no interest" to him what Mr Savvas had to say about this

"I don't know who Mr Savvas is and it is of little consequence to me what he says"

Incriminate

He also said he was not prepared to submit to "trial by newspaper"

In his letter, Mr Savvas



Mr Justice Munnik

said that unless Mr Botha had information which would incriminate Barclays chief executive Mr Chris Ball "in a treasonable or triable offence, then the inquiry can serve no purpose other than to indulge in police work by fishing for information which does not exist at the moment and is not in Mr Botha's possession".

Mr Savvas said that "no one single comprehensive, justifiable or valuable result can be found in the creation of this commission".

He noted that in a court of law, the authorities would have to establish a prima facie case, at least "Now there is nothing save the say-so

of the executive which will or will not disclose the commission's findings as it deems fit

"And this occurs when every ounce of logic and reason points to the absence of wrongful conduct.

Docket

"In my submission, the only plausible factors are that Mr Botha has no, or insufficient, grounds on which to accuse Mr Ball or is acting with total disregard for the laws of South Africa, and that by establishing the commission he is creating a mode whereby he can escape public accountability during the election campaign for the accusations he has made," Mr Savvas said

□ Sapa reports that a docket relating to the placing of the "Unban the ANC" advertisements by attorney Mr Krish Naidoo has been handed to the Witwatersrand local division attorney-general, Mr Klaus von Lieres, to decide whether he intends prosecuting.

Mr Von Lieres said yesterday that police had given him the docket, but he had not yet made any decision

The United Democratic Front earlier stated that it had paid for the advertisements

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250
30/11
CMB Times 10/2/87

Order is invalid, Minister and police admit to court

MARITZBURG — A United Democratic Front and Release Mandela Campaign challenge to a Government order was withdrawn in the Maritzburg Supreme Court yesterday when the Commissioner of Police and Minister of Law and Order conceded the invalidity of the order in the light of a recent Rand Supreme Court decision.

The order was promulgated on January 8, and followed publication of full-page advertisements in a number of English-language newspapers calling for the unbanning of the African National Congress.

The court ordered that the costs of the application be paid by the respondents. But the UDF told the court it would challenge an order promulgated on January 29, after the Rand Supreme Court decision, which empowered the Commissioner of Police to censor "any news, comment or advertisement".

Earlier the court was told that if the public arrest of a gang of bag snatchers looked like an unrest incident to a passerby, the arrest could not be reported by the media.

Jan 11/2/87 

RESPONDING TO APPLICATION

This example of what could not be reported was given by Mr Jan Combrink SC, for the State President and the Government. He was responding to an application by the UDF and the Release Mandela Campaign for the new emergency regulations promulgated on December 11 to be declared null and void, alternatively that key regulations be declared unlawful.

Mr Combrink said the State President could prohibit reporting on security action or anything which would appear to a bystander to be security action. The issue, he said, was "not over the truth ..."

"It is concerned with what image is created," he said.

Referring to regulations prohibiting media reports on detainees, he said reports on the circumstances or the treatment of a detainee which arose from judicial proceedings were also forbidden in terms of the regulations until the court had passed judgment.

This was necessary, he said, to prevent unbalanced reporting.

The hearing was adjourned to April 2. — Sapa.

Judge orders release of Azapo member

13/2/87
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Court Reporter

A DURBAN judge yesterday ordered the release of a man who had been detained because it was thought he was a 'secret' member of the ANC

His release was the result of an application brought by the Azanian People's Organisation against the Minister of Law and Order in the Supreme Court, Durban

Mr Justice Didcott ordered the release of Mr Pathmanathan (Patrick) Moodley from detention as well as the return of certain documents which had been seized from him at the time of his arrest

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in these increases
fact there is no
having been made

debate for such an
invited by election

and as the needs of
political football
movement in Febru-
ary during the next
election in October.

Hopeful

politician

to have

another go

Political Reporter

MR CHRIS Strauss, who failed to launch the Christian Democratic Party of South Africa when three people turned up at the inaugural meeting in the Durban City Hall four months ago, says he plans to hold 'another mass meeting'

Mr Strauss, 70, whose beliefs are based on fundamentalist Christianity and Verwoerdian apartheid, admits his October 8 meeting at which the audience was outnumbered three to one by municipal security

It was heard that Mr Moodley was detained on December 12 last year in terms of the Internal Security Act

An office-bearer and active member of Azapo, Mr Moodley was detained on the supposition that he was a member of a cell of the ANC

In his judgment Mr Justice Didcott made the observation that there had been a considerable measure of friction between the ANC and Azapo and that the two organisations differed from each other quite strongly

He found it unlikely that an apparently enthusiastic and energetic member of Azapo should be a clandestine member of the ANC

Mr Justice Didcott said although it was possible that somebody like the detainee was a secret member of the ANC who had been sent to infiltrate Azapo to obtain information, it was unlikely in the case of Mr Moodley

EDGAR Dumile Ngoyi, president of the United Democratic Front's East Cape region, has told a judge that despite the pain inflicted on black people in Port Elizabeth by the SA Police he would help with investigations into a political killing

The 62-year-old painter was testifying at the end of two days in the witness box in the Port Elizabeth Supreme Court — eventually a stool had to be brought for him

Ngoyi, Lulumile Mkalipi, 22, Fumanekile Sinyoni, 21, Xolile Pete, 20, and a 17-year-old youth have pleaded not guilty to a charge of murdering alleged Azapo member Pakamusa Nogwaza, 24, on June 8, 1985. The killing took place during violent clashes between supporters of the UDF and Azapo, which started in April that year.

The accused are all currently detained under the Emergency regulations.

On Monday three accused were acquitted — among them Ngoyi's 58-year-old wife Eunice.

One accused, a 17-year-old youth, failed to appear in court when the case resumed 11 days ago. The youth's

Two days in box for UDF leader on murder charge

By MIKE LOEWE, Port Elizabeth

father said he last saw his son when the case was postponed last year.

The state was forced to close its case last Wednesday when the investigating officer, Lt William Dennis, told the court the state's witnesses — five in all — had failed to turn up.

He said he did not know if they had been subpoenaed — a situation Judge Solomon described as "very serious".

The judge ordered police to investigate if any subpoenas had been issued, as this was why the case was postponed on September 16 last year.

The trial is the second murder charge the former ANC leader has

had to face. During the bail application on June 24, 1985, Dennis said Ngoyi was unsuccessfully prosecuted on a similar charge of murder involving an alleged informer in 1963. Ngoyi denied this, however, saying the charges had actually been withdrawn.

Ngoyi was released on bail of R500 on December 24 after 198 days in custody. Bail was granted under strict conditions — including reporting to the police daily — which he kept up until his detention under the Emergency on June 12 last year.

Ngoyi spent 17 years on Robben Island after being found guilty of being a member of the ANC in 1964. He was released in 1981.

On Wednesday, during cross-examination, he recalled how he had met Nogwaza, his mother and sister at the Ngoyi home on June 7, at the height of the violence. However, Ngoyi said he had been unable to discuss their problem as he was on his way to attend a UDF sub-committee meeting set up to investigate the mysterious disappearance on May 8 of PE Black Civic Organisation executives Siphon Hashe, Qaqawuli Godolozu and Champion Galela.

The next day, while the Nogwazis were again at the Ngoyi home, Ngoyi said he was called to a neighbour's phone three houses away by a young boy he had never seen. It was some time after this that the killing had taken place.

On Tuesday, Ngoyi described the UDF in the Eastern Cape as a democratic body in which nearly 60 area committees were represented on the regional council.

No organisation known as the "comrades" was represented.

The UDF detested the violence between supporters of the two organisations and had tried to end it.

His house had been petrolbombed twice — on May 1 and June 6 — and the "comrades" had volunteered to guard it.

Under cross-examination, when accused of having direct control of the "comrades" by virtue of his position, Ngoyi denied having ever instructed them and disputed that they would always listen to him.

State evidence by a neighbour to the effect that that no phone call was ever made had been submitted at the request of the police who, Ngoyi said, had instructed the witnesses to lie under oath.

He said the investigating officer had told him during questioning that he would ensure there would be evidence against him.

At one stage during his cross-examination, Ngoyi was asked about his views on the police. Questioned whether he would actually help the police investigate a political killing, Ngoyi replied that, for the purpose of argument, he would — East Cape News Agency

UDF drops case

13/2-19/2 By JOHN GULTIG, Maritzburg

THE joint United Democratic Front-Release Mandela Campaign challenge to the January 8 Emergency regulations was withdrawn this week — but the two groups are preparing to challenge another set of regulations.

The initial application was dropped on Tuesday because of a Rand Supreme Court ruling in favour of a similar application by the Saan and Argus newspaper groups. The UDF and RMC were awarded costs.

They have now applied to challenge regulations introduced by the government on January 29, after it lost the Rand Supreme Court case. The application will be heard on April 2.

Sisulu appeal this week

UNITED Democratic Front president Albertina Sisulu could be jailed after next Friday.

On that day, the appeal court is scheduled to hear an application to overturn a two-year sentence handed down in 1984.

Sisulu, whose husband Walter is serving a life sentence at Pollsmoor Prison, was sentenced to four years' jail, two of them suspended, for furthering the aims of the African National Congress in a funeral speech in Soweto in 1984. Her appeal — in which she will be represented by George Bizos — against both conviction and sentence will begin in Bloemfontein next Friday, February 20.

If she is jailed, 68-year-old Sisulu will be the second of the UDF's three founding presidents in prison. Ageing trade unionist Oscar Mpetha was jailed early last year, when a similar appeal against a sedition conviction was turned down by the Appellate Division.

She will also be the fourth member of the Sisulu family currently behind bars — after her husband, former ANC secretary-general; her son, New Nation editor Zwelakhe, detained since early December under

W/Mail 13/2-19/2/87

By MONO BADELA

Emergency regulations; and her nephew Jongumzi, jailed for five years last year when he was found guilty of treason.

Jailed in the Fifties for her leadership of the Federation of SA men's anti-pass campaigns, repeatedly detained, and banned or house arrested for 17 of the 26 years since the banning of the ANC, Sisulu has for years kept one packed suitcase at home and another at work, to ensure that her next detention doesn't catch her unprepared.

The Sisulu home, now occupied only by Sisulu and her three grandchildren, has twice been the target of arsonists in the past fortnight. Two Fridays ago an attempt was made to set fire to her son's car, which was parked outside, and last week, unknown attackers attempted to set fire to the house. They were apparently scared off and succeeded only in blackening a wall, and lightly singeing a curtain.

Sisulu's attorney, Priscilla Jana, said this week she was hoping for a postponement of the appeal hearing — TOPS

Truth not the point of press curbs — state

WEEKLY MAIL REPORTER,
Maritzburg

THE Emergency regulations muzzling press coverage of security action are not concerned with the truth — they're aimed at preventing the public from hearing about anything which appears to be unrest.

This frank admission was made by counsel for the State President and the government, Jan Combrink, in response to the joint United Democratic Front-Release Mandela Campaign application to the Maritzburg Supreme Court for the new December 11 Emergency regulations to be declared null and void.

The regulations; the two organisations claim, are unreasonable, vague, and give officials unfettered discretion without the proper guidelines. They are "clumsy, hopelessly terrifying and oppressive, and would fail any legal test," counsel for the UDF and RMC, Ismael Mohamed, argued.

He said the argument that the regulations were necessary to protect the government from an alleged campaign to estrange it and isolate it from its supporters was "a wrong and impermissible approach."

The state disagreed, though Combrink insisted the regulations were necessary to end the Emergency and maintain public order.

He admitted the regulations dealing with security action could be interpreted as being "wide."

But he explained, the issue is not what the truth is — it is the image that is created.

The hearing was adjourned to April 2.

Meanwhile, another UDF challenge to Emergency press restrictions — this one aimed at the January 6 regulations — has been postponed.

● See PAGE 6

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Azapo wins court order to free detainee

DURBAN — A Durban judge yesterday ordered the release of a man who had been detained because it was thought he was a "secret" member of the ANC.

His release was the result of an application brought in the Supreme Court by the Azanian Peoples Organisation (Azapo) against the Minister of Law and Order.

Mr Justice Didcott ordered the release of Mr Pathmanathan (Patrick) Moodley from detention as well as the return of certain documents seized from him.

An office-bearer and active member of Azapo, Mr Moodley was detained in terms of the Internal Security Act on December 12 last year on the supposition that he was a member of an ANC cell.

Mr Justice Didcott said there had been a considerable measure of friction between the ANC and Azapo. The two organisations differed strongly in policy and strategy.

He found it unlikely that an apparently enthusiastic member of Azapo should be a clandestine member of the ANC.

Although it was possible that the ANC could be infiltrated by someone like the detainee to obtain information for Azapo, this was unlikely in the case of Mr Moodley — Sapa

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w/MCA
252

Detainee walks free after major court win

By CARMEL RICKARD, Durban
THE release of a Durban detainee held under security laws was ordered by the Supreme Court yesterday in a judgement which breaks new ground for prisoners held under Section 29 of the Internal Security Act

Patrick Moodly, a senior member of Azapo, was detained in mid-December. When his lawyers asked the reason for his detention, they were told the police believed he was a member of a secret ANC cell.

This was challenged by Moodly's lawyers, who said it would be incompatible with his position in Azapo for him to be a member of the ANC.

Judge John Didcott ruled the state had provided insufficient grounds to justify Moodly's detention and ordered that he be released — and that all the unbanned documents confiscated from his home at the time of his detention be returned.

This was the first Section 29 case in which a judge, giving reasons for holding a detainee, nevertheless ruled these grounds insufficient.

Counsel for the state conceded that the only grounds advanced by the state were "bald". The police had said all they could reveal was that Moodly was a member of an underground ANC cell, engaged in gathering information and distributing propaganda.

Didcott commented that the state was asking the court to accept it was bound by the mere word of a police officer.

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63 **Crossroads/KTC: unrest**
 Mr S S VAN DER MERWE asked the Minister of Justice

Whether any persons have been prosecuted for (a) arson, (b) theft, (c) malicious damage to property, (d) assault with intent to do grievous bodily harm, (e) common assault, (f) murder and (g) attempted murder in connection with unrest in (i) Crossroads in May 1986 and (ii) the KTC area in June 1986, if so, (aa) how many in each category and (bb) what was the outcome in each case?

THE MINISTER OF JUSTICE

The Attorney-General concerned has studied his records in an attempt to obtain the required information. On account of the large number of cases which are dealt with in the courts daily and the fact that it is almost impossible to identify cases as being related to an unrest situation in an area which does not necessarily correspond with a magisterial district, it is not possible to furnish precise information. He cannot identify any prosecutions as being related to unrest mentioned by the Honourable Member. If the Honourable Member requires information with regard to a specific incident, I shall on receipt of further particulars readily try to obtain the information which he requires.

Kabokwem: deaths

47 Mr P G SOAL asked the Minister of Justice

(1) Whether, with reference to the reply of the Minister of Law and Order to Question No 3 on 26 August 1986, the decision of the Attorney-General has been made known in regard to the deaths of persons at the Kabokwem magistrate's court near White River in the Eastern Transvaal on 11 March 1986, if not, when is it anticipated that his decision will be made known, if so, (a) when and (b) what was that decision,

(2) whether any inquest has been held

into this matter, if not, why not, if so, what were the findings,

(3) whether the findings relating to the investigation into this incident have been made public, if not, why not, if so, when,

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

THE MINISTER OF JUSTICE

(1) Yes

(a) During July 1986

(b) The Attorney-General instructed that an inquest be held from 4 to 6 May 1987 in the Magistrate's Court, Witvriev

(2) and (3) Fall away

(4) A statement is not necessary

Detainees

50 Mrs H SUZMAN asked the Minister of Justice

(a) How many persons have been detained in terms of section 31 of the Internal Security Act, No 74 of 1982, since 12 June 1986 and (b) in respect of what date is this information furnished?

THE MINISTER OF JUSTICE

(a) 63 persons

(b) 12 June 1986 till 31 January 1987

Detainees

51 Mrs H SUZMAN asked the Minister of Justice

How many females (a) were detained in 1986, and (b) had been detained as at the latest specified date for which figures are available, in terms of section 31 of the Internal Security Act, No 74 of 1982?

THE MINISTER OF JUSTICE

(a) 22

(b) 7 on 31 January 1987

Bankrupt persons

97 Mr H H SCHWARZ asked the Minister of Justice

How many persons were declared bankrupt in each Division of the Supreme Court in 1986?

THE MINISTER OF JUSTICE

Division	Persons
Transvaal Provincial Division	3 000
Cape of Good Hope Provincial Division	539
Orange Free State Provincial Division	662
Eastern Cape Division	311
Northern Cape Division	128
Natal Provincial Division	319

Liquidation

98 Mr H H SCHWARZ asked the Minister of Justice

How many companies were placed under compulsory liquidation in the area of each Master of the Supreme Court in 1986?

THE MINISTER OF JUSTICE

Division	Companies
Transvaal Provincial Division	1 450
Cape of Good Hope Provincial Division	246
Orange Free State Provincial Division	103
Eastern Cape Division	115
Northern Cape Division	24
Natal Provincial Division	365

Motor vehicles stolen

99 Mr H H SCHWARZ asked the Minister of Justice

Whether any (a) prosecutions were in-

stituted and (b) convictions were obtained in respect of motor vehicles reported stolen to the South African Police in 1985 and 1986, respectively, if so, how many in each category as at the latest specified date for which figures are available?

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 was obtained from the Central Statistical Services

1 For the period 1 July 1984 to 30 June 1985

(a) 7 619 prosecutions instituted

(b) 4 937 convictions obtained

2 For the period 1 July 1985 to 30 June 1986

(a) 7 131 prosecutions instituted

(b) 4 730 convictions obtained

Corporal punishment

135 Mr S S VAN DER MERWE asked the Minister of Justice

(1) How many males (a) under the age of 18 years, (b) aged 18 to 20 years and (c) aged 21 years and over in each race group were sentenced to corporal punishment in 1986,

(2) how many strokes were inflicted in respect of each category of persons?

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

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following information was obtained from the Central Statistical Services:

Race	Corporal punishment coupled with imprisonment	Corporal punishment not coupled with other sentences
Whites	110	1 566
Coloureds	734	13 875
Indians	5	468
Blacks	1 508	22 389
Total	2 357	38 298

147 Mr D J DALLING 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 1986 and (b) still awaiting trial at the end of 1986?

The MINISTER OF JUSTICE

The given statistics are in respect of persons charged with the offence of sabotage

- (a) (i) None
- (ii) 10
- (iii) None

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148 Mr D J DALLING asked the Minister of Justice

Whether any persons were convicted in 1986 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. However, the Attorneys-General have furnished the following statistics regarding

HoA

cases which have been referred to them. In this regard it must, however, be pointed out that not all cases are referred to the Attorneys-General

Province	The statistics are not readily available
Pretoria	—
Johannesburg	— 6 Black persons
Cape Town	— 11 Black persons and 2 Coloured persons
Kimberley	— 5 Black persons
Pietermaritzburg	— None
Grahamstown	— 25 Black persons

Corporal punishment

153 Mr D J DALLING asked the Minister of Justice

How many persons of each race group were sentenced to corporal punishment during the period 1 July 1985 to 30 June 1986?

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 was obtained from the Central Statistical Services

Race	Corporal punishment coupled with imprisonment	Corporal punishment not coupled with other sentences
Whites	110	1 566
Coloureds	734	13 875
Indians	5	468
Blacks	1 508	22 389
Total	2 357	38 298

Death sentences

243 Mr D J DALLING asked the Minister of Justice

How many death sentences in each race group were commuted in 1986?

HoA

The MINISTER OF JUSTICE

Blacks	18
Coloureds	4
Total	22

TUESDAY, 17 FEBRUARY 1987

†Indicates translated version

For oral reply

General Affairs

Deputy ministers

*1 Dr W J SNYMAN asked the State President †

What is the estimated total amount that the State will have to spend per financial year in respect of the appointment of the 12 new deputy ministers with effect from 1 December 1986?

†The MINISTER IN THE STATE PRESIDENT'S OFFICE ENTRUSTED WITH ADMINISTRATION AND BROADCASTING SERVICES (for the State President)

With the appointment of the twelve Deputy Ministers, only ten new posts were filled. At the same time, I reduced the number of Ministers in the Cabinet by two. In addition, a retiring Minister in the Ministers' Council of the House of Assembly was not replaced. All considered, including the fact that the Deputy Ministers concerned previously received the salaries and allowances due to ordinary members of parliament, the annual additional expenditure in respect of salaries and allowances amounts to R80 970.

Mr D J DALLING Mr Charman, arising from the reply given by the hon the Minister, could he tell us whether that figure includes the cost of two official residences,

motorcars, extra secretaries and offices required by those Deputy Ministers?

The MINISTER (for the State President) Mr Charman, the hon member will have to give notice of that question [Interjections]

Ministers

Questions standing over from Tuesday, 10 February 1987

Handwritten: 16/2/87 Detainees

*2 Mrs H SUZMAN asked the Minister of Law and Order

(a) What total number of persons had been detained under the emergency regulations since 12 June 1986 as at the latest specified date for which figures are available and (b) how many of these persons were under the age of 18 years?

†The MINISTER OF LAW AND ORDER

Before answering this specific question, I would like to make the following related introductory and general remarks

Having regard to the maintenance of democratic values and a democratic system of government in the country, the South African Parliament

Mr G B D McINTOSH Mr Charman, on a point of order. Would you rule whether the hon the Minister should answer the question or is permitted to make a speech and statement at the same time? [Interjections]

The CHAIRMAN OF THE HOUSE In all fairness to the hon the Minister, he has hardly started his reply

Mr G B D McINTOSH Mr Charman, on a point of order. The hon the Minister prefaced his reply by saying that he was first of all going to make a series of introductory remarks before answering the question. With all due respect, that is not in accordance with the rules of the House [Interjections]

HoA

Handwritten: P.M. 20/2/88
 (252)

Prison disorder

In a surprisingly candid reply to a question in parliament last week, Justice Minister Kobie Coetsee disclosed that there had been widespread disturbances in South African prisons among detainees held under the emergency regulations

Answering a question from the PFP MP for Claremont, Jan van Eck, Coetsee said detainees had attacked prison officials and had gone on hunger strikes, and that teargas had been used on 20 occasions since last July to restore order in prisons

He said that since the State of Emergency was imposed on June 12 last year, 1 456 detainees held in prisons had been involved in hunger strikes. In reply to a separate question, Law and Order Minister Adriaan Vlok refused to disclose how many detainees held in police cells had been involved in hunger strikes. He did not consider the information to be in the public interest

Coetsee said teargas was used against detainees on 19 occasions in 13 different prisons across the country between July 7 last year and January 24 this year. On only one occasion were detainees injured, and only slightly, with two being treated by a doctor

The minister gave details of each incident and the circumstances that led to the decision to use teargas to restore order. In all

cases detainees allegedly refused to obey orders and disregarded warnings

The incidents included detainees shouting slogans, refusing to return to their cells, attacking prison staff with utensils and wooden planks taken from a building site in the prison, hammering against doors and windows, fighting among themselves, and setting blankets and clothing alight in their cells

Coetsee said detainees were allowed to play sport and move freely under supervision in prison courtyards. However, they sometimes refused to return to their cells when ordered to do so and adopted "threatening and aggressive" attitudes towards officials

"To restore order in such cases and to prevent a situation from developing to the point where personnel and detainees may be seriously injured or even killed, the SA Prison Service staff is committed to and also trained in the use of minimum force

"Tear smoke, which is used in such cases after requests to calm down have been ignored, is the most effective alternative to the application and deployment of more stringent means," Coetsee said

Referring to the hunger strikes, Coetsee said in some cases the refusal of food seemed to be the start of "a so-called hunger strike," but food was then taken by the detainee at the next meal. In other cases, meals were refused but other food was bought by detainees with cash

Deterioration of SA human rights — US Congress report

WASHINGTON — The past year brought "a major deterioration of human rights in South Africa," the US State Department says in an annual report to Congress

The country's black majority, making up 72 per cent of the population, "continues to suffer from pervasive, legally sanctioned discrimination based on race and is excluded from even the limited political changes" of South Africa's 1984 constitution giving representation to whites, coloreds and Asians

Describing an atmosphere of violence and unrest in the country, it attributed deaths and other casualties both to harsh government action and terrorism waged in the name of the struggle against apartheid

Despite reforms for blacks such as expanded land ownership rights and abolition of pass laws, "race still remains the fundamental basis for the organisation of South African society" "Discriminatory laws and practices remain throughout the fabric of South African life"

In South Africa, the report said, the deteriorating situation took the form of numerous arrests carried out under the state of emergency imposed last June

Emergency proclamations permitting arbitrary arrest brought an estimated 20 000 people into detention during 1986 and a majority were believed never formally tried or charged, the report said.

"The Internal Security Act effectively places the burden of proof of innocence on an accused for a number of offences"

The banned African

National Congress, which openly advocates overthrow of the government, "encouraged violent activity throughout the year but often equivocated or was silent on the question of responsibility for individual terrorist incidents".

"In a notable change from previous years, there were no reports of political killings by government security forces," it added — Sapa-AP

Argument over oral evidence in court

The question whether a person detained under the state of emergency regulations was entitled to give oral evidence in court was the subject of argument in the Rand Supreme Court yesterday.

The argument arose from an urgent application by the father of a detainee for an interdict restraining the Officer Commanding Krugersdorp Prison, the Minister of Law and Order and the Minister of Justice from allowing him to be assaulted.

Mr Harrison Zali has alleged his son, Edward Zali, and other emergency detainees have been systematically beaten and brutalised.

The authorities have denied the allegations, but have objected to the court hearing oral evidence by the detainees, saying this would contravene Regulation 3 (10).

This prevented emergency detainees from seeing anyone other than a Minister, his authorised representatives or legal representatives.

Counsel for Mr Zali, Mr J Viljoen SC, assisted by Mr J Suttner, argued yesterday that "legal representation" implied access to the courts.

Regulation 3 (10), when originally promulgated, prevented detainees having access to anyone other than a Minister or his authorised representatives. This was unlawful, Mr Justice JM Diccott of Natal ruled, because detainees were not allowed access to legal representatives. He ordered emergency detainees be allowed this access.

Mr Justice R Goldstone reserved judgment.

Detainees

165 Mr P H P GASTROW asked the Minister of Law and Order:

(1) (a) How many persons have been detained under Proclamation No R103 of 1973, as amended by Proclamation No R226 of 1978, in each magisterial district since its promulgation in 1973 and (b) in respect of what date is this information furnished,

(2) whether any persons are being detained under this proclamation at present, if so, (a) how many, (b) for what alleged offences and (c) for how long has each been in detention?

The MINISTER OF LAW AND ORDER

(1) (a) and (b) 286 persons in the Ladysmith district during the period 1 May 1984 until 21 January 1987
1 573 persons in the Greytown district during the period 31 May 1973 until 9 February 1987

(2) (a) 126 persons

(b) Faction fighting

(c) Since 21 January 1987

Note The figures do not include the number of detentions in terms of the proclamation in Kwazulu

Trade union movements

166 Mr P H P GASTROW asked the Minister of Law and Order

(1) (a) How many (i) Blacks (ii) Whites (iii) Coloureds and (iv) Indians involved in trade union movements were detained in each month in 1986 (b) how many such persons were still in detention as at the latest specified date for which figures are available

and (c) in terms of what legislation were they so detained,

(2) whether any of those detained were released without charges being brought against them, if so, how many?

The MINISTER OF LAW AND ORDER

(1) and (2) No person has been detained for his or her involvement in bona fide trade union activities Where detentions whether under the Internal Security Act, 1982 or the Emergency Regulations promulgated in terms of the Public Safety Act, 1953 or other legislation, of members of trade unions did occur, it was as a result of activities extraneous to such membership
As is the case with all detainees of the various categories, detention cease as soon as the reason therefor disappears

Lawsuits against Minister

167 Mr P H P GASTROW asked the Minister of Justice

(1) Whether any lawsuits were brought against him in 1986 in his capacity as Minister of Justice by members of the public, if so, (a) how many 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 that year?

The MINISTER OF JUSTICE

(1) Yes The given statistics include letters of intention to institute action
(a) 48

Cause of action

(b)	(i) Number	(ii) Cause of action	(iii) Number
	6	unlawful arrest	
	13	unlawful detention	
	2	malicious prosecution	
	1	sale of vehicle whilst appeal was pending	
	1	alleged defamation by an official	
	1	prescription of MVA-fund claim	
	1	crimen injuria because of alleged insensitive search	
	1	insufficient medical treatment	
	1	injuries	
	1	death of a prisoner because of a motor vehicle accident	
	20	assault	
		claims not furthered by the plaintiff	8
		claims settled out of court	4
		claims pending	36

(2) (a) No
(b) Yes R12 350,00

The amounts include settlements reached pursuant to letters of intention to institute action

Germiston offences

168 Mr B B GOODALL asked the Minister of Law and Order

The MINISTER OF LAW AND ORDER

	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Germiston	49	21	213	300	37	322	918	320	1 179	—
Kathlehong	316	66	1 869	1 283	274	894	375	1 319	542	—
Primrose	7	5	52	129	13	67	512	174	698	—
Alberton	31	39	287	362	43	262	1 817	351	2 279	—
Bedfordview	14	39	77	121	20	82	620	125	567	—
Edenvalle	5	29	59	127	12	58	610	142	953	—
Elsburg	15	11	79	144	5	44	305	102	596	—

Note Statistics are given for the period 1 July 1985 until 30 June 1986
Because statistics for the period 1 July 1986 until 31 December 1986 are not yet programmed, the particulars for the period are not readily available

I wish to point out to hon members that should the above-mentioned figures be brought into perspective, it will be noticed that crime tendencies fluctuate In some instances crime reflects drastic increases and in others it reflects similar decreases Crime tendencies differ from one area to another, while the population density is also an important contributing factor Increases in crime can mainly be ascribed to

(a) The economical recession,
(b) resulting unemployment, and
(c) the abuse by criminal elements of unrest situations to commit crime

The increase in crime is an universal tendency, and even causes great concern during international crime conferences

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The MINISTER OF JUSTICE

(1) Yes The given statistics include letters of intention to institute action
(a) 48

sentences for crimes against the security of the State as at the latest specified date for which figures are available?

The MINISTER OF JUSTICE

On 31 January 1987 the figures were as follows

- (a) Whites 15
- (b) Coloureds 8
- (c) Asians 1
- (d) Blacks 285

Awaiting-trial prisoners

150 Mr D J DALLING asked the Minister of Justice

What was the average number of awaiting-trial prisoners in custody on the last day of each month in 1986?

The MINISTER OF JUSTICE

The figures concerning awaiting-trial prisoners who were incarcerated in South African prisons on the last day of each month during 1986, were as follows

- 31 January 1986 20 686
- 28 February 1986 20 187
- 31 March 1986 19 682
- 30 April 1986 20 293
- 31 May 1986 21 168
- 30 June 1986 19 712
- 31 July 1986 19 760
- 31 August 1986 19 774
- 30 September 1986 19 151
- 31 October 1986 19 193
- 30 November 1986 18 388
- 31 December 1986 20 584

Detainees

151 Mr D J DALLING asked the Minister of Justice

Whether any persons were detained in 1986 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) 24

(b) and (c)

Number of persons

Period

Crime

- 1 1 day Murder
- 1 5 days Murder
- 1 13 days Murder, Robbery, Violating a dead body
- 1 20 days Murder
- 6 1 month and 19 days Murder, Robbery, Violating a dead body
- 1 2 months and 18 days Murder
- 2 2 months and 25 days Murder, Robbery, Violating a dead body
- 1 3 months and 20 days Arson
- 1 4 months and 17 days Arson
- 1 5 months and 9 days Murder
- 1 6 months and 19 days Murder
- 2 8 months and 16 days Murder
- 3 10 months and 16 days Murder

Prisoners: unit cost

152 Mr D J DALLING asked the Minister of Justice

What was the unit cost per prisoner per day in 1986?

The MINISTER OF JUSTICE

As the 1986-87 financial year has not been closed, it is not possible to calculate an exact figure at this stage. At present the estimated cost per prisoner per day is R10,86

Crimes against security of State

154 Mr D J DALLING asked the Minister of Justice

(1) How many (a) males and (b) females serving sentences for offences against the security of the State were released in 1986?

(2) whether any of these persons were released as a result of the State President's offer of freedom to long-term prisoners on condition that they renounce violence, if so, (a) how many and (b) in respect of what date is this information furnished?

The MINISTER OF JUSTICE

(1) (a) 56

(b) 1

(2) (a) Five of the persons who were released, renounced violence. The fact that they renounced violence was an important factor which was considered together with individual circumstances and all other relevant factors which are normally taken into account when the release of prisoners is considered

(b) 1 January 1986 to 31 December 1986

Crimes against security of State

155 Mr D J DALLING asked the Minister of Justice

How many (a) males and (b) females were serving sentences in 1986 for offences against the security of the State which exceeded (i) ten years, (ii) five years and (iii) two years?

The MINISTER OF JUSTICE

(a) (i) 152

(ii) 90

(iii) 53

(b) (i) 1

(ii) 5

(iii) 2

Internal Security Act

156 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 1986, 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) 169 persons

(ii) 36 persons

(b) (i) 96 persons

(ii) 17 persons

Internal Security Act

158 Mr P C CRONJÉ asked the Minister of Law and Order

(1) How many cases were referred to the

to, if not, why not, if so, (a) how many were acceded to and (b) what were the circumstances surrounding each of these cases?

The MINISTER OF DEFENCE

- (1) Yes, three
- (2) Yes

(a) Three

(b) The national servicemen requested not to do duty in Black townships for personal reasons. The requests were considered sympathetically and they were employed elsewhere in infrastructure posts.

Life sentences

206 Mrs H SUZMAN asked the Minister of Justice

(a) How many persons are at present serving life sentences for offences against the security of the State and (b) in respect of what date is this information furnished?

(a) 22

(b) 10 February 1987

Members killed/injured

207 Mrs H SUZMAN asked the Minister of Law and Order

How many policemen, excluding policemen killed or injured in vehicle accidents or outside the Republic, were (a) killed and (b) seriously injured in the execution of their duties in 1986?

The MINISTER OF LAW AND ORDER

- (a) 42
- (b) 52

Housing

208 Mrs H SUZMAN asked the Minister of Constitutional Development and Planning

What was the total number of houses built for Blacks in the 1985-86 financial year in each of the nine main urban areas in the Republic?

The MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING

Cape Town	557
Port Elizabeth	1 443
Kimberley	582
Bloemfontein	99
Witwatersrand	4 202
Pretoria	221
Pietermaritzburg	0
Durban	0
Vereeniging/Vanderbijlpark	917

Death sentence

209 Mrs H SUZMAN asked the Minister of Justice

(a) How many (i) males and (ii) females of each race group were executed in the Republic in 1986 and (b) for what crime or crimes had each death sentence been imposed?

The MINISTER OF JUSTICE

(a) (i) 88 Black men were executed after having been convicted and sentenced to death for crimes committed against the following victims

- 26 Black men
- 5 Black women
- 4 Coloured men
- 2 Coloured women
- 25 White men
- 16 White women
- 1 Indian man
- 1 Indian woman

(ii) 21 Coloured men were executed after having been convicted and sentenced to death

for crimes committed against the following victims

- 8 Coloured men
- 2 Coloured women
- 4 White men
- 3 White women

4 White men were executed after having been convicted and sentenced to death for crimes committed against the following victims

2 White men

In one case a Coloured man and a Coloured woman* were executed after having been convicted and sentenced to death for a crime committed against a White woman

In one case a Black man and a Coloured man were executed after having been convicted and sentenced to death for a crime committed against a White man. In one case two White men, a Coloured man and an Indian man were executed after having been convicted and sentenced to death for a crime committed against a White man.

(ii)* One Coloured woman (mentioned above). In total the numbers are as follows

- 89 Black men
- 24 Coloured men
- 6 White men
- 1 Indian man
- 1 Coloured woman

121

(b) (i) Murder

- 81 Black men
- 6 White men
- 19 Coloured men
- 1 Coloured woman
- 1 Indian man

(ii) Rape

Coloured men

2

(iii) More than one offence
Murder and robbery with aggravating circumstances

Black men
Coloured men

3
1

Murder, robbery with aggravating circumstances and the attempted robbery with aggravating circumstances

Black men

3

Murder and rape

Black men
Coloured men

2
2

South West African/Namibian prisoners in RSA

210 Mr S S VAN DER MERWE asked the Minister of Justice

How many South West African/Namibian prisoners in South African prisons were serving sentences for crimes against the security of the State as at the latest specified date for which figures are available?

The MINISTER OF JUSTICE

None

Dominique Souchon

214 Mr S S VAN DER MERWE asked the Minister of Justice

(1) Whether a certain person, whose name has been furnished to the Minister's Department for the purpose of his reply, was charged in court with any offence in terms of the Prisons Act, No 8 of 1959, during the last two months, if so, (a) when, (b) what was the charge and (c) what is the name of this person.

Orange Vaal	1 450
OFS	1 331
Natal	1 015
Cape	1 003
(b) Northern Transvaal	68
Highveld	57
Johannesburg	61
Orange Vaal	32
OFS	42
Natal	30
Cape	45

Figures as on 4 March 1986. Figures for 31 December 1986 are not available.

Identity documents

229 Mr D J N MALCOMESS asked the Minister of Justice

Whether any (a) White, (b) Black, (c) Coloured and (d) Indian persons were (i) charged with, (ii) convicted of and (iii) acquitted on a charge of not being in possession of an official identity document during the latest specified year for which figures are available, if so, (aa) how many and (bb) in terms of what statutory provision in each case?

The MINISTER OF JUSTICE

The information is not readily available in the Department

TBVC citizens-deported

239 Mr K M ANDREW asked the Minister of Home Affairs:

(a) How many citizens of (i) Ciskei, (ii) Transkei, (iii) Venda and (iv) Bophuthatswana were deported from the Republic in 1986 and (b) in terms of what statutory provisions were they deported in each case?

The MINISTER OF HOME AFFAIRS

(a) (i) None

(ii) 11

- (iii) None
(iv) None
(b) (i) Falls away
(ii) Nine were deported in terms of section 43 and two in terms of section 45 of the Admission of Persons to the Republic Regulation Act, 1972 (Act 59 of 1972) as amended
(iii) Falls away
(iv) Falls away

Salaries

240 Mr D J DALLING asked the Minister in the State President's Office entrusted with Administration and Broadcasting 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 as at the latest specified date for which information is available,

(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) what progress has been made with the plan to eliminate disparity in salaries?

The MINISTER IN THE STATE PRESIDENT'S OFFICE ENTRUSTED WITH ADMINISTRATION AND BROADCASTING SERVICES

Details as available on 1 February 1987 are as follows

(1) Coloured and Indian

Estate Controller and higher ranks, 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 Adviser and higher ranks, Regional Magistrate and higher ranks, President Divorce Court, Warden and higher ranks, Registrar's Clerk and higher ranks

Black

Magistrate and higher ranks, Court Interpreter and higher ranks, Senior Storekeeper and higher ranks, State Prosecutor and higher ranks, Warrant Officer and higher ranks up to Lieutenant Colonel

(2) Coloured and Indian
Black
2 827
1 161

(3) Coloured and Indian
None (enjoy full salary parity)

Black
Assistant Justice Administration Clerk and higher ranks, Sergeant, Warden, Storekeeper, Provisioning Administration Clerk, Assistant Provisioning Administration Clerk,

Accounting Clerk, Artisan, Musician, Typist

(4) Coloured and Indian
Black
Nil
6 752

(5) No fixed programme for the elimination of disparities in salaries simultaneously with general salary adjustments receives attention on a continuous basis during occupational specific maintenance investigations or when funds are made available specifically for this purpose in respect of particular groups. In the current financial year funds for this purpose were specifically made available in respect of the following groups

Social Worker and related groups, Educators in categories a3-B, Paramedical personnel, Nursing personnel

Disparities in salaries were also eliminated simultaneously with occupational specific adjustments in respect of the following groups

Driver, Driver/Operator, Telephonist (Only parity for Coloureds and Indian), Water Control Officer, Water Care Plant Superintendent, Fisheries Control Officer, Foreman General, Foreman Camping Site, Manager Camp Site, Buildings Caretaker, Headman Guano Islands, Compound/Town Manager, Military Terrain Officer, Shooting Rangeman, Superintendent Works, Handyman, School Caretaker, Foreman Forestry, Foreman Saw Mill, Foreman Cleaning Services, Foreman Grounds Maintenance, Gardener

Out of a total of 512 occupational groups full parity in salaries has been reached in respect of 304

Staff shortages

241 Mr D J DALLING asked the Minister of Justice

Whether the Prisons Service is experiencing staff shortages, if so, what (a) is the extent of the shortages and (b) is being done to remedy the situation?

The MINISTER OF JUSTICE

(a) The approved establishment of 20 652 posts was, with the exception of 222 vacancies, filled completely on 1 February 1987. This establishment does not make provision for identified needs towards expansion

(b) Efforts are made continually to fill existing vacancies by means of intensive recruiting within the framework of available funds. It is constantly endeavoured to increase existing efficiency as measured to accepted norms and special attention is given to the retention of manpower

(b) 14
(c) 1

(2)
(a) 0
(b) 0
(c) 0

The following information is also furnished for the Honourable Member's information

(a) There were also 6 Whites executed during 1986 due to crimes of violence committed against other Whites

(b) Number of Blacks executed for crimes of violence against the following race groups

Coloureds 3
Indians 4
Blacks 38

(c) 11 Coloureds were executed for crimes of violence against Coloureds

Crimes of violence

242 Mr D J DALLING asked the Minister of Justice

(1) How many (a) Blacks, (b) Coloureds and (c) Indians were hanged in 1986 for crimes of violence against Whites,

(2) How many Whites were hanged in 1986 for crimes of violence against (a) Blacks, (b) Coloureds and (c) Indians?

The MINISTER OF JUSTICE

(1) (a) 44

1 July 1983—30 June 1984

	(a) Whites
Durban/Pinetown	1
East Rand	2
West Rand	2

244 Mr D J DALLING asked the Minister of Justice

How many (a) Whites, (b) Coloureds, (c) Indians and (d) Blacks were convicted of trespass in 1984, 1985 and 1986, respectively, in (i) each of the main urban centres and (ii) the Republic?

The MINISTER OF JUSTICE

The information is not readily available in the Department. In an effort to be of assistance to the hon member, the following information was obtained from the Central Statistical Services

Trespass

	(b) Coloureds	(c) Indians	(d) Blacks	Total
(i) Main urban centres	—	1	7	9
Durban/Pinetown	—	—	2	4
East Rand	—	—	1	3
West Rand	—	—	—	—

(i) Main urban centres

	(a) Whites	(b) Coloureds	(c) Indians	(d) Blacks	Total
Vereeniging/V/d Bultpark	3	—	—	1	4
Pretoria	1	—	—	2	3
Cape Peninsula	—	6	—	1	7
PE/Uitenhage	—	—	—	4	4
Pietermaritzburg	—	—	—	4	4
Johannesburg	—	—	—	1	1
OFS Goldfields	9	6	—	1	16
Total	13	6	—	10	29
(ii) Remainder of RSA	18	44	2	89	153

1 July 1984—30 June 1985.

(i) Main urban centres

	(a) Whites	(b) Coloureds	(c) Indians	(d) Blacks	Total
East London	1	—	—	—	1
Durban/Pinetown	1	1	3	13	18
Johannesburg	1	—	—	1	2
Cape Peninsula	—	2	—	—	2
Bloemfontein	—	1	—	1	2
PE/Uitenhage	—	—	—	3	3
Pietermaritzburg	—	—	—	15	15
West Rand	—	—	—	3	3
Vereeniging/V/d Bultpark	—	—	—	6	6
Pretoria	—	—	—	1	1
OFS Goldfields	3	4	3	2	12
Total	9	41	4	45	55
(ii) Remainder of RSA	9	41	4	119	173

1 July 1985—30 June 1986

(i) Main urban centres

	(a) Whites	(b) Coloureds	(c) Indians	(d) Blacks	Total
West Rand	1	—	—	3	4
Cape Peninsula	—	8	—	—	8
East Rand	—	1	—	5	6
Bloemfontein	—	6	—	—	6
PE/Uitenhage	—	—	—	2	2
East London	—	—	—	1	1
Durban/Pinetown	—	—	—	2	2
Pietermaritzburg	—	—	—	1	1
Johannesburg	—	—	—	6	6
Vereeniging/V/d Bultpark	—	—	—	3	3
Pretoria	—	—	—	3	3
OFS Goldfields	1	15	—	2	18
Total	5	59	2	28	94
(ii) Remainder of RSA	5	59	2	102	168

New Year weekend, if so, (a) on what date, (b) what were the circumstances surrounding this incident and (c) what action was taken by (i) this gang and (ii) the South African Police on this occasion.

(2) whether the members of this gang have been arrested, if so, when, if not, what progress has been made in the investigation of this matter?

The MINISTER OF LAW AND ORDER

(1) No

(a) A national serviceman was wounded in the Alexandra Township on 1 January 1987. He is number 82274556BG Lance Corporal A W Pearce. He has already recovered totally and is not paralysed.

(b) Members of the South African Defence Force manned a routine roadblock in the Alexandra Township. Several shots were fired at these members from a nearby site during which Lance Corporal Pearce was wounded.

(c) (i) After the attack the persons escaped.

(ii) The South African Police conducted a follow-up operation and in the process shots were also fired at them. The attackers again escaped. Nobody was injured.

(2) No, but the investigation is proceeding.

Retired magistrate

431 Mr A B WIDMAN asked the Minister of Justice

(1) Whether, with reference to his reply to Question No 1 on 15 April 1986, the case concerning a retired magistrate who instituted a civil action

against his Department for allegedly withholding promotion from him has been concluded, if not, when is it anticipated that it will be concluded, if so, (a) when, (b) what was the outcome and (c) what were the circumstances surrounding this case.

(2) whether any steps were taken departmentally as a result of this case, if so, (a) when, (b) against whom, (c) what steps and (d) why.

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

The MINISTER OF JUSTICE

(1) Yes

(a) June 1986

(b) The plaintiff withdrew his claim.

(c) A civil action was instituted on 21 February 1984 because promotion was allegedly withheld from the plaintiff due to certain adverse remarks in reports concerning him. The plaintiff alleged that these remarks were not brought to his attention and that it was unjustified. He further alleged that he suffered damages to the amount of R125 282,92. In fact some of the adverse remarks had been expunged from the reports after an investigation in September 1983. As a result thereof the plaintiff's date of promotion has been back-dated. This resulted in an amount of R494,00 being due to him which amount was eventually paid over to him.

(2) No

(3) A statement is not necessary.

Citizen Force/Commandos

432 Mr A SAVAGE asked the Minister of Defence

(1) What percentage of Citizen Force

and Commando members called up to attend camps (a) applied for deferment in 1983, 1984 and 1985, respectively, and (b) (i) failed to report for service, and (ii) requested exemption from rendering service in townships, in each of these years.

(2) what total number of persons called up for military service in 1983, 1984, 1985 and 1986, respectively, requested exemption on (a) religious and (b) other specified grounds?

The MINISTER OF DEFENCE

(1) The honourable member is referred to the reply to section (2) and (3) of the written Question No 879 of 15 April 1986.

(2) The honourable member is referred to the reply to section (1) of the written Question No 879 of 15 April 1986.

Water from Natal for Transvaal

434 Mr G B D McINTOSH asked the Minister of Water Affairs

(a) How much water was obtained from Natal for use in the Transvaal in 1986, (b) what was the price charged per litre of water and (c) (i) who paid for this water and (ii) (aa) to whom and (bb) when was this money paid?

The MINISTER OF WATER AFFAIRS

(a) 440 million cubic metres

(b) The total cost for the State for the supply of Tugela River water, via the Sterkfontein Dam to the catchment area of the Vaal River, amounts to 0,015 cents per litre. In determining the Government water tariffs the total cost for providing all water supply components, as well as any other expenditure are taken into account, whereafter an average tariff for the supply of water is determined which tariff presently amounts to 0,0065 cents per litre for domestic and indus-

trial use and 0,0011 cents per litre for agricultural use.

(c) (1) The following institutions to whom the water was supplied, paid for the water and it was then, where applicable, recovered from the consumers concerned:

Rand Water Board
ESCOM
ISCOR
SASOL
OFS Goldfields Water Board
Western Transvaal Water Company
Municipality of Kimberley
Other small consumers
Irrigators

(ii) (aa) The Department of Water Affairs

(bb) Throughout the year

Lesotho Highlands Water Project

435 Mr G B D McINTOSH asked the Minister of Water Affairs

(1) When is it anticipated that the Lesotho Highlands Water Project will commence delivering water to the Republic.

(2) whether a price has been determined in respect of water so delivered, if not, why not, if so, (a) what is the proposed price per litre and (b) on what basis was this price calculated?

The MINISTER OF WATER AFFAIRS

(1) 1995

(2) Yes

(a) 0,07 cents per litre (provisionally)

(b) The price was calculated on the December 1985 cost of the first phase of the Project and determined for a 15% interest rate in

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nance of existing services. It is expected that a 4 016 line extension of the Benmore Gardens exchange and a 2 968 line extension of the Kelvin exchange will be taken into service during the second quarter of this year and all the applications will be met as soon as possible thereafter.

Patrol vehicles

349 Mr D J DALLING asked the Minister of Law and Order

How many serviceable patrol vehicles (a) with and (b) without radio equipment installed are stationed on a daily basis at the (i) Sandton, (ii) Bramley, (iii) Wynberg/Alexandra and (iv) Lombardy East police stations?

The MINISTER OF LAW AND ORDER

(a)	(b)
(i) 4	—
(ii) 2	—
(iii) 5	—
(iv) 2	2

Legal Aid Board

352 Mr D J DALLING asked the Minister of Justice

Whether any legal aid services were suspended by the Legal Aid Board in 1986, 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) Criminal and civil appeals, 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, cases in which the quantum of a claim is R1 200,00 or less, the legal costs in divorce actions and related actions are restricted on legal and tariff to a maximum of R500,00, the legal costs for the

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25/2/87
Husband

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defending of criminal cases are restricted on legal aid tariff to a maximum of R240,00 and R360,00 in respectively the magistrates' and regional court, the legal costs in matters where the death sentence has been imposed are restricted on legal aid tariff to a maximum of R360,00 per application or petition. The Director of the Legal Aid Board however retained the authority to grant legal-aid in deserving cases, to give instructions to advocates and senior advocates and to increase restrictions or to uplift it.

(ii) In respect of criminal and civil appeals, briefs to advocates and briefs to senior advocates and the restriction on the legal costs in divorce actions and related actions since 1 April 1986 till further notice. In respect of the other matters since 19 August 1986 till further notice.

(b) In order not to exceed the voted funds. In respect of cases in which the quantum of a claim is R1 200 or less, it should also be mentioned that legal aid services were suspended because small claims courts were originally introduced to be a forum for claims of this nature.

Films on Sundays

353 Mr D J DALLING asked the Minister of Justice

(1) How many applications were received by his Department in 1986 for permission to exhibit films on Sundays,

(2) how many of these applications were

for permission (a) in general, (b) in a particular case and (c) in cases of a particular nature,

(3) (a) how many of the applications in each category were (i) granted and (ii) refused and (b) what were the reasons for the refusal in each case?

The MINISTER OF JUSTICE

(1) 29

(2) (a) 18

(b) 2

(c) 9

(3) (a)

	(i)	(ii)
Applications in general	14	2
Applications in a particular case	2	0
Applications of a particular nature	9	0

(b) Applications in general 2 applications were refused because the applicants applied to exhibit the films in commercial theatres. 2 applications were not promoted as no answers were received from the applicants on further inquiries.

Note In so far as the above-mentioned classification is concerned, it is assumed that the words "applications in general" refer to those applications in respect of which consent was requested for general permission to exhibit films on Sundays, or on one or two Sundays per month. It is also assumed that the words "applications in a particular case" refer to applications to exhibit films on Sundays on specific dates and that the words "applications in cases of a particular nature" refer to applications to exhibit films of a particular category on Sundays, for example religious and cultural films and films in the Indian or Greek language.

Drunkness/vagrancy

354 Mr J J WALSH asked the Minister of Law and Order

How many (a) males and (b) females of each race group were arrested in 1986 for (i) vagrancy and (ii) drunkness in the (aa) Milnerton, (bb) Maitland and (cc) Pinelands police station areas?

The MINISTER OF LAW AND ORDER

(a)	(b)
(i) (aa) 27 Coloureds	13 Coloureds
4 Blacks	8 Blacks
2 Whites	—
(ii) 765 Coloureds	257 Coloureds
154 Blacks	4 Blacks
121 Whites	6 Whites
23 Coloureds	7 Coloureds
—	4 Blacks
(ii) 2 110 Coloureds	491 Coloureds
111 Blacks	77 Blacks
23 Whites	3 Whites
(i) (cc) 1 Black	—
236 Coloureds	32 Coloureds
270 Blacks	10 Blacks
8 Whites	—

Milk-powder

355 Mr D J N MALCOMMESS asked the Minister of Agriculture

(1) Whether milk-powder is being exported at a profit, if not,

(2) whether a levy is charged on fresh milk in order to recover the loss, if so, (a) what amount (i) had been recovered and (ii) remained to be recovered as at the latest specified date for which figures are available and (b) when is it anticipated that this levy will be discontinued?

The MINISTER OF AGRICULTURE

(1) No

(2) Yes

Delay by ministry lawyers 'disturbing' — judge

Affidavits on detainees took Govt five months

DURBAN — A Supreme Court judge, Mr Justice J M Didcott, yesterday strongly criticised the five months it had taken the legal representatives of the Minister of Law and Order to gather affidavits on 24 detainees.

He described the delay as "grotesque" and "disturbing"

The strongly worded statement was made in the Supreme Court, Durban, following an extension to June 3 of an application against the Minister of Law and Order by 24 detainees held under the emergency regulations

INTERIM INTERDICT

On September 12 last year an interim interdict was granted against the Minister of Law and Order restraining the South African Police from in any way assaulting the detainees, 19 of whom are minors

Replying to Mr Justice Didcott's surprise at the five-month delay in collecting affidavits, Mr R Hiemstra, appearing on behalf of the Minister of Law and Order, said the task had been difficult as many of the people had been in different parts of the country

"It is quite extraordinary in a matter of this kind that more than five months should go by without the affidavits being ready," said Mr Justice Didcott

"I find the delay in this case quite disturbing and hope it is an isolated matter"

He said the interests of justice required that these matters should be carried out without delay "In future matters I will not allow them to drag on," he said

Granting the extension to June 3, the judge ordered that the respondents' opposing affidavits be filed by March 13 and the applicants replying affidavits be filed and served by May 15 — Sapa

year's earnings of 12,700 (1985) surpassing the best expectations. — See report on Page 10.

Court to rule on key witness

SUSAN RUSSELL

THE RAND Supreme Court has been asked to determine whether a detainee, the key witness in allegations of torture against the Krugersdorp prison authorities, may be brought to court to give evidence.

The dispute over the courts' power to call a detainee to give evidence arises from an application by Harrison Zali to restrain prison authorities from allegedly assaulting his son, Edward.

The authorities have denied the allegations against them and the dispute can only be resolved by calling Edward Zali to give evidence. Counsel for the prison authorities have argued the emergency regulations prohibit a detainee from appearing in court.

Zali's counsel submitted that a Natal judgment last year giving lawyers access to detainees under the emergency regulations also allowed them to testify in court. Mr Justice Didcott ruled that regulation 3 (10) which prohibited access to detainees was ultra vires in so far as that prohibition included lawyers.

Judgment was reserved yesterday.

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The conversion price of 300c. Ye 185c.

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"Both men and

2 shot dead: defence cites emergency

Policeman claims he cannot be prosecuted

3/3/87

By Lesley Cowling

A policeman who shot dead two Soweto schoolboys today pleaded not guilty to murder and cited the emergency regulations in his defence.

Mr Jacobus Johannes Laubscher (22) of Esselen Street, Hillbrow, also pleaded not guilty to attempted murder for wounding a third child.

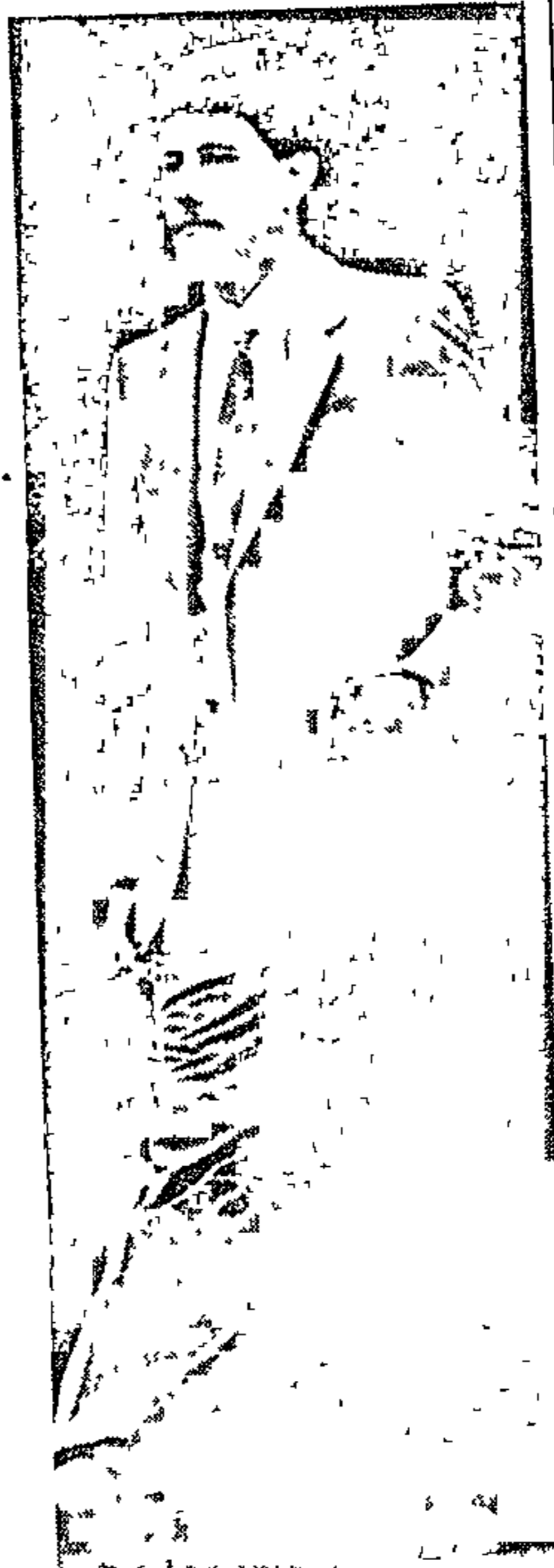
Today his defence counsel said the prosecutor was not empowered to proceed against Mr Laubscher because he was granted an indemnity by emergency regulation 11

Regulation 11 states that no civil or criminal proceedings shall be brought in any court of law against any member of a force who acts in good faith in the interests of the maintenance of public order and public safety.

Mr P A Hattingh, SC, for Mr Laubscher, said the basis of his defence was that the shots were fired during incidents of public violence in a state of emergency

He was also acting in self-defence, Mr Hattingh said

Mr Justice MJ Strydom made no ruling on the defence submission and the prosecution case continued



Mr Jacobus Laubscher . . . "shots were fired during incidents of public violence"

Died

The State alleges that Mr Laubscher, a police detective constable with the Riot Investigation Unit at Moroka, Soweto, was driving in a white car on August 28 1985 in Dlamini, Soweto, when he approached Ibhongo High School.

Two children, Spencer Simelane (17) and a 15-year-old youth were in the schoolyard. It is alleged he shot Spencer in the back and George under the right shoulder blade. Spencer later died of his wound.

The State alleges that Mr Laubscher was not in uniform at the time but used a service pistol.

The 15-year-old was later acquitted of a charge of public violence.

On September 1985 Mr Laubscher drove an unmarked white car past Jabula High School in Soweto, the State alleges.

Thuso Godfrey Phuroe (17) was on the school property. Mr Laubscher shot him three times with a police shotgun.

The hearing continues

Accused had arrested Bishop Tutu's son

Emergency cited as defence in pupil killing

By Lesley Cowling

The policeman charged with the murder of two Soweto schoolboys was the officer who had arrested Archbishop Desmond Tutu's son, Trevor, in Soweto during the first state of emergency, the Rand Supreme Court heard yesterday.

Mr Jacobus Johannes Laubscher (22), of Esselen Street, Hillbrow, yesterday pleaded not guilty to the murder of two children he allegedly shot dead, citing the emergency regulations in his defence. He also pleaded not guilty to attempted murder for allegedly wounding a third child.

Questioning a policeman yesterday who investigated the incidents, Mr Laubscher's defence counsel submitted that Mr Laubscher, at the time of the shootings, had been an important witness in a Supreme Court application for Mr Tutu's release. The policeman, Warrant Officer N J Visser, confirmed this. Mr

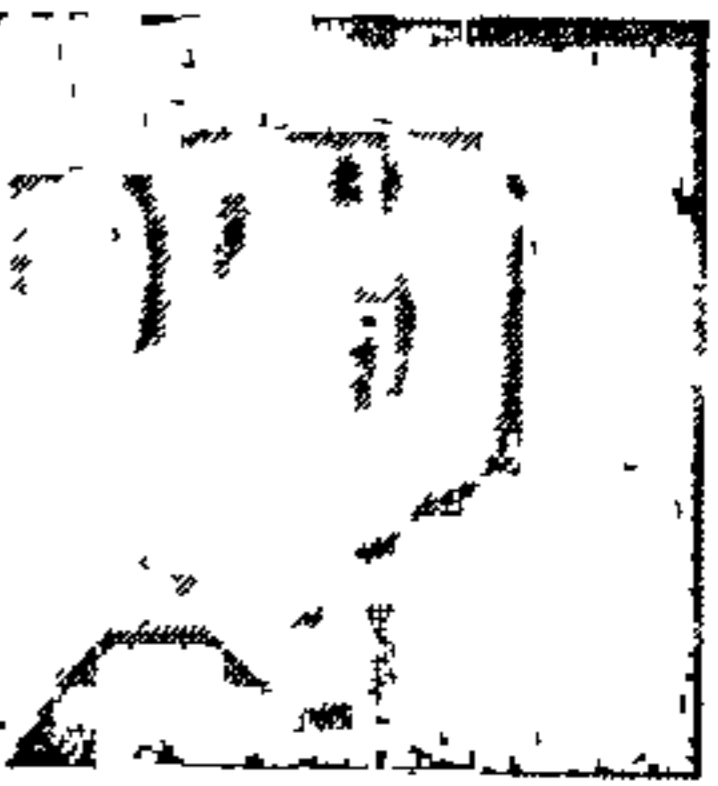
Tutu had been arrested by Mr Laubscher

Mr Tutu had been arrested at Protea Magistrates' Court on August 26 during a court hearing where more than 300 Soweto pupils faced charges under the emergency regulations. He was later detained under the regulations. The Rand Supreme Court had dismissed an urgent application for his release.

Mr Laubscher's counsel, Mr P A Hattingh, SC, has said the prosecutor was not empowered to proceed against Mr Laubscher because he was granted an indemnity by emergency regulation 11.

Regulation 11 states that no civil or criminal proceedings shall be brought against any member of a force who acts in good faith in the interests of the maintenance of public order and public safety.

The basis of Mr Laubscher's defence was that the shots had been fired during incidents of public violence in a state of emergency. Mr Laubscher had a duty to act to maintain public order and



Accused of killing two Soweto schoolboys: Mr Jacobus J Laubscher.

public safety and had done so. He had acted in self-defence.

State Prosecutor Mr J A Swanepoel said good faith was an important aspect. It could be decided only after all the evidence had been heard.

Mr Justice M J Strydom has made no ruling on the defence submission and the State is continuing to lead evidence.

Yesterday, the State handed in a number of written statements made by Mr Laubscher after the two incidents.

In one he said he had been driving past Ibhongo High School on August 28 1985 when he saw two children outside school premises. One ran back to the school, but another ran towards the houses. He stopped and put the child in his car.

"I saw the children running in my direction."

He jumped out and noticed a pupil in a blue shirt and pants bend and pick up a stone. "I fired a shot in his direction."

He left without seeing that he had hit the boy. In another statement he said he had fired at two children outside Ibhongo High School.

Two children, Spencer Simelane (17) and a 15-year-old were hit in that incident. Spencer died of his wound. The other was later acquitted of a charge of public violence.

The second incident occurred on September 18 1985, at Jabula High School. In one statement, Mr Laubscher said he was attacked by a group of schoolchildren who threw stones at the vehicle he was driving.

"In the middle of the violent stoning attack, I saw the big ringleader throw a stone at the vehicle which hit the left back door. In self defence, I fired three shots in his direction."

In another statement he said he had fired at the ringleader because "there was no other way to arrest him". Thuso Godfrey Phuroe (17) died from three shotgun wounds. The hearing continues.

500 trips to Protea later, Sylvia wins

By MONO BADELA

THE daughter of jailed ANC leader Andrew Mlangeni has spent almost every day of the past two years reporting to Protea police station in Soweto

This week, nearly 500 days after a regional court order requiring her to report daily while an appeal was pending, a Supreme Court judge reversed the order.

Sylvia Mkhize — second eldest daughter of Andrew Mlangeni, who is serving a life sentence for ANC activities — won her appeal in the Rand Supreme Court against the nine-month sentence handed down by a magistrate in June 1985.

She had been found guilty of being in possession of the ANC publication *Sechaba* and Communist Party literature, and was sentenced to 18 months, half of it suspended for four years

When she appealed against the sentence she was allowed bail of R500 on condition she report daily at Protea police station between the hours 7 and 8 am

"Rain or shine, I reported at the police station," she said this week "This included Sundays and public holidays

"It was a long distance from Dube where I stay to the police station; the daily trip took even longer in winter"

A representative of her lawyer, Ismail Ayob, said that in October last year they applied successfully for a relaxation of her bail conditions, she was required to report only once a week

In upholding the appeal this week, the judge said he took it into account that there was no indication Mkhize intended to distribute the literature, which included several copies of *Sechaba*. She was a first offender. That she was literate was proof, that she was a "good citizen", he said

THE Natal Supreme Court has upheld an order by the Industrial Court reinstating 113 employees of Natal Die Castings (NDC) in terms of Section 46 of the Labour Relations Act.

Court upholds Mawu judgment

ALAN FINE

The company has appealed against the judgment.

The Industrial Court case between NDC and the Metal and Allied Workers' Union (Mawu), concluded in January, was a landmark judgment in that it was the first time the courts decided to reinstate workers dismissed while participating in an unlawful strike.

The court also said the com-

pany's failure to negotiate in good faith constituted an unfair labour practice.

Mr Justice Kriek said yesterday the fact that the strike was unlawful might be relevant in determining the fairness or otherwise of the company's response, but it did not automatically deprive the Industrial Court of the jurisdiction to consider whether the company had acted fairly in all circumstances.

Soweto schoolboy victim shows his scar in court

By Lesley Cowling

A Soweto schoolboy, injured during the first state of emergency by a policeman who shot dead two other boys, took off his shirt in the Rand Supreme Court yesterday to show his scar

The boy, a 15-year-old who may not be named, was being cross-examined in the trial of Mr Jakobus Johannes Laubscher (22) for the murder of schoolboys Spencer Simelane and Thuso Godfrey Phuroe.

Mr Laubscher is also charged with attempting to murder the boy. He has pleaded not guilty to all charges, citing the emergency regulations in his defence.

Yesterday, the court heard the boy was wounded in his right side, under his arm, by a bullet fired from Mr Laubscher's service pistol.

He was asked to take off his shirt by counsel for Mr Laubscher, Mr P A Hattingh SC, who said he wanted to see the angle at which the bullet had entered and exited his body.

The boy agreed to do this. Mr Hattingh approached him and the boy moved his arm about at his instructions.

Earlier, he told the court that on August 28 he left the school building in the morning to play soccer outside. As he was crossing the yard, he heard a shot.

Children shouted, "Watch, watch," and he turned back towards the building to run. "As I turned, I felt a pain in my side I fell to the ground," he said.

There was no stone-throwing at the time the incidents took place, he said. He said he had made two statements to the police and denied he had said there was stone-throwing at the school.

He was taken to Baragwanath Hospital with Spencer Simelane, who died of his wound. Later, he was arrested by Mr Laubscher, who told him he was the person who shot Spencer, he said. He was tried for public violence and acquitted.

"Then, he (Laubscher) was in the witness box and I was in the dock," he said.

Earlier, Mr Justice M J Strydom questioned a policeman who worked with Mr Laubscher at Moroka Police Station, Soweto, on the circumstances in which he would fire on schoolchildren. Warrant Officer N J Visser said he would fire on schoolchildren stoning his vehicle "if his life was in danger".

He was unlikely to fire a warning shot "because we have found it has little effect in such circumstances", he said. However, if he was driving in a vehicle and was attacked with stones, he would keep driving rather than shoot.

Mr Laubscher's counsel, Mr Hattingh, has said his client could not be prosecuted because the policeman was granted an indemnity by emergency regulation 11 which states no civil or criminal proceedings shall be brought in any court of law against any member of a force who acts in good faith in the interests of the maintenance of public order and public safety.

The hearing continues.

ARGUS

6/3/87 (252)

Three more small claims courts for West Cape

Staff Reporter

THE Cape is to get three more small claims courts which could be working within six months, the Association of Law Societies has announced.

They will be in Stellenbosch, Bellville and Wynberg.

The director of the Cape Town Law Society, Mrs Ingrid Hoffman, said Cape Town's courts had proved "so successful" that it had been decided to open three more.

SATISFIED

The society was satisfied with the running of the city's two small claims courts and with the recent statement by the Minister of Justice, Mr Kobie Coetsee, that the court's jurisdiction could be raised from R1 000 to R1 500 or R2 000.

Mrs Hoffman said the Cape Town courts were limited to people living in the immediate magisterial district and the clerk of the court had many calls from outside the area.

VOLUNTEERS

There were 78 volunteer commissioners made up of attorneys, advocates and academics.

The clerk of the court, Mrs Kathy Williams, said a hearing in the small claims court cost only the fee for delivery of a summons by the messenger of the court and was free if the complainant served the summons himself.

The two courts sit weekly on Thursdays between 4.30 and 7pm. They hear about eight cases each evening.

'One of them will surely die there' Witness tells of police attack on mourners

By Adele Baleta

One of the policemen who dispersed mourners at a Sebokeng funeral in 1984 wiped the blood off the blade of a butcher's knife and said "Seker een van hulle gaan dood daarso" (one of them will surely die there) according to evidence in a treason trial at Delmas

Mr Morake Petrus Mokoena (48), one of 19 treason accused and a former community councillor, was testifying in his defence

He described the events on September 23 1984 at the funeral of Sebokeng resident Mr Joseph Sithole

He said the procession to the cemetery was led and followed by the police "Police in army Hippers were at the graveyard and before the diggers had finished shovelling earth into the grave they took up positions as if they were trying to encircle the mourners

"Before the people were able to reach their vehicles the police fired teargas There was confusion and shots could be heard from all directions," he said

An order was given that no one was to leave the cemetery

"Brigadier Viljoen (a State witness) arrived and as the police were busy sjambokking and firing rubber bullets at the mourners I heard him say 'Slaan die kaffirs'

"People were scattering in all directions and it seemed the police objective was just to hit them I got into my car and several other people climbed in but they were sjambokked out of it," he said

After people were rounded up near the police vehicles they were told to leave the cemetery. Mr Mokoena said he went to the house of the deceased.

High treason

He and his fellow 18 accused are being tried for high treason, murder, subversion and terrorism The charges arise from the countrywide unrest in 1984 and 1985 Mr Mokoena is the fourth accused to testify since the defence case began on January 20

Mr Mokoena, secretary of the Evaton Ratepayers' Association, was the master of ceremonies at the funeral where the Ministers Solidarity Group was launched, their function being to bury the dead

Fellow-accused and a member of the Azanian Youth Union, Mr Patrick Baleka, was a speaker at the funeral

Mr Sithole was allegedly beaten to death by a group of shopkeepers who said he had robbed their shops and worn a "Release Mandela" T-shirt.

Earlier Mr Mokoena said he knew nothing about the ill-fated march to the Houtkop Development Board offices and the stayaway on September 3 1984

He attended an ERPA meeting at the Roman Catholic church at Small Farms on the morning of August 26 1984 and not a later meeting when the march was decided on

On September 3 Mr Mokoena was at his home in Evaton

"At about 10 30am I noticed smoke coming from the direction of Zone 11 and 12 in Sebokeng

"I saw about 300 people running madly across the veld from Zone 11 in the direction of Small Farms, Evaton They attacked an Indian store which was closed," he said

Mr Mokoena said he had only heard about the deaths through his neighbours He had first met most of his fellow accused in prison and others were only known to him after May 1984

Results of appeals will decide level of human rights

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By Jo-Anne Richards

Judgment on three crucial human rights issues — reserved in the Bloemfontein Appellate Division this week — will have enormous implications for thousands of emergency detainees.

Three appeals, concerning specific detainees in different parts of South Africa, were argued on Tuesday. Each raised issues that not only affect individuals, but will determine the level of human rights in the country.

The decisions of the Appeal Court will determine whether detainees will have access to lawyers, be entitled to reasons for their detention, and can make representation to the Minister of Law and Order about their detention.

A Rand Supreme Court judgment previously granted a detainee, the Rev. Jean-Francois Bill, the right to make representations about his detention after being held for an initial 14 days, the right to legal representation, and to be given reasons.

One of the appeals was brought against this judgment by the State President, the Government, and the Minister of Law and Order.

Mr R Kruger, SC, for the State President, conceded that a detainee could make representations once his detention had been extended beyond a 14-day period. But he argued that a detainee did not need to hear reasons for his detention before making representation.

PRESIDENT'S ENORMOUS POWERS

Mr Kruger argued that many people knew why they were detained and therefore did not need reasons. He also argued that the Public Safety Act prevented the court from inquiring into the emergency regulations. And the State President, with his enormous powers, was entitled to exclude access to lawyers.

Mr A Chaskalson, SC, for Mr Bill's wife, submitted that so-called "ouster clauses" — preventing the courts from inquiring into regulations — applied only if the order was a lawful one and the courts could inquire into its legality.

He argued that discretionary powers, even those of the State President, had to fall within an enabling Act. He quoted a legal work. "Every legal power must have legal limits, otherwise there is dictatorship."

He added "The submission that many people know why they are detained is, with respect, repugnant to any society predicated on civilised legal norms."

"A reply of such a nature given to a person who is not charged with any criminal offence, and who does not enjoy the luxury of a trial in open court at which he can be defended and lead evidence and cross-examine witnesses, is all the more repugnant."

He said it was also inconceivable that a detainee could make representations to the Minister without knowing the reasons for his detention.

ASSISTANCE OF LAWYER

The right to representation was likewise meaningless without the assistance of a lawyer. The court should bear in mind that some detainees were illiterate, and others children.

Access was a fundamental right, without which someone was denied access to the courts. This created the potential for enormous abuse of power. A detainee could not challenge the legality of his detention, and could never seek redress if assaulted.

Mr Chaskalson also argued in the other two appeals, which followed the failure of an Eastern Cape Supreme Court action for the release of 10 detainees, and a Cape action for the release of an advocate, Mr A Omar, and others.

In both he argued that detainees were entitled to make representations concerning their detention, even before the Minister ordered detention beyond an initial 14 days. The regulation which stated the Minister could order someone's further detention "without hearing any person", did not — in its narrow sense — exclude the detainee's right to make written representation.

He submitted that the narrow meaning was the correct one. Taken in its wide sense, it amounted to giving an arbitrary power, in terms of which a person could act "arbitrarily and capriciously". This, he argued, must be beyond the contemplation of Parliament. Mr J Coetzee, SC, and Mr W Burger, SC, appearing for the Minister of Law and Order and others in the two appeals, presented similar arguments. They submitted that the emergency powers of the State President overrode the ordinary law of the land.

Accused: I only meant to scare her

Teenager found guilty of park death in Pretoria

A WHITE teenage boy from Pretoria, who drove over and killed a black woman who was sleeping in a park, was found guilty yesterday of culpable homicide by the Pretoria Magistrate's Court.

Johan Hendrik Breytenbach, 18, of Daspoort was found guilty after he admitted driving over Maria Rametsi, 58.

He said in a statement he had lost control of the car because the ground was wet, and that he did not mean to kill the woman but "only to scare her".

Giving evidence, a witness, Dewald Botha, who was in Breytenbach's car when the incident happened, told the court they had seen three black children in Monument Park.

"Breytenbach wanted to scare them. He drove towards them and the children ran away... Breytenbach came back to

see Maria Rametsi lying under the tree. He said he also wanted to scare her.

"He drove towards her at a speed of 30 to 40km an hour. She remained sleeping, and about five metres away from her he applied brakes, but the car slid on the wet ground, hitting her, and the front wheels running over her," Botha said.

"At this time the woman was lying between the two sets of wheels. Breytenbach accelerated and drove the back wheels over the woman, who did not cry but simply made some sounds," he said.

After this, Breytenbach drove off. Witnesses took Rametsi to Kalafong Hospital, where she died six days later. He gave himself up to police that afternoon.

Breytenbach was warned to appear again on March 16 for sentence.

SIPHO NGCOBO

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B/100
6/3/79

'R50 000 eye'

By MARTIN NTSOELINGOE

AZANIAN People's Organisation president Patrick Potjo Molala this week brought a R50 000 action against the Law and Order and Defence Ministers following an alleged assault by security forces last year

Molala lost an eye when a teargas cannister exploded in his face during a stampede at the funeral of White City shooting victims at Soweto's Avalon cemetery

Molala's lawyers served papers in the Rand Supreme Court after the Law and Order and Defence Ministers

failed to reply to letters of demand last year

The papers said Molala was wrongfully and unlawfully assaulted by police or soldiers in White City last September 4

The claim of R50 000 is made up as follows

● Medical and hospital expenses - R200

● Estimated future medical expenses - R5 000

● General damages, shock, pain and suffering, temporary disability, dis-



Patrick Molala.

comfort and disfigurement, permanent disability and disfigurement and loss of amenities of life - R35 000

● Humiliation, impairment of dignity and insult - R10 000

Molala spent seven years on Robben Island for sabotage

He was also a well-known soccerite who played for Pretoria Callies

Kitskonstabel abused power

CP Correspondent

AN Old Crossroads "kitskonstabel" was sentenced to R200 or two months in jail, with a further eight months conditionally suspended for four years, for aiming a firearm at a busdriver on February 8.

The Athlone Magistrates' Court also sentenced special constable Steelfas Nombewu, 25, to R150 or 75 days, conditionally suspended for three years, for unlawfully possessing a firearm on February 14.

The court had found Nombewu guilty of using his service rifle to hijack a bus in Nyanga because he was late for work.

He pleaded guilty to both charges but, after questioning him, a plea of not guilty was entered by Magistrate R Jaga.

Co-accused Christiaan Morris, 35, of Old Crossroads was acquitted of possessing an unlicensed firearm as there was no reason to doubt that he believed this was lawful because it was given to him for safe-keeping by a policeman.

Bus driver Abubaker Abrahams told the court that on February 8 he was on his way to the Nyanga bus terminal when a "kitskonstabel" wearing dark blue overalls and cap stopped the bus and asked for a lift, saying he was late for work.

Abrahams said bus drivers were not allowed to carry "kitskonstabels" free of charge.

"He refused to pay and I refused to move and then he cocked the rifle, lifted it and pointed it at my face."

Abrahams dropped Nombewu near the bus terminal.

"He showed me a white card and said, 'You be careful, I'm a policeman.'"

Nombewu told the court that at Koeberg training camp they were told that because "kitskonstabels" protected buses they could ride without paying.

He said he did not mean to point the rifle at Abrahams but was just showing him the serial number, "to motivate" him.

On the second charge of possessing an unlicensed firearm, Nombewu said he confiscated the gun from some "tsotsis" and was conducting an "investigation" into who the rightful owner was by "listening at dances".

Jaga said the court could not accept that two weeks of "listening" constituted an investigation.

"In any case, kitskonstabels are not investigating officers. It is clear that in both cases you abused your position as a policeman."

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Ngoyi freed on murder rap

CP Correspondent

9/25/87
8/3/87
UNITED Democratic Front Eastern Cape president Edgar Dumile Ngoyi and three others were yesterday acquitted in the Port Elizabeth Supreme Court on a charge of murder. Ngoyi, 62, Lulamile Mkaliphe, 22, Fumanekile Siyon, 21, and Xolile Bede, 20, were found not-guilty of murdering a member of the rival Azanian People's Or-

ganisation on June 8, 1985. But a 17-year-old youth was found guilty of murder and Siyon and Bede were convicted of culpable homicide.

The court found the youth set Phakamisa Nogwaza, 24, alight after petrol was poured on him and tyres were placed around his neck and that Bede and Siyon took part in the assault.

Judge Solomon said that though Ngoyi was in control of the "comrades" of the UDF and the situation in the township at the time, his failure to take steps to prevent the crime did not make him guilty.

He dismissed evidence by Ngoyi and his daughter that Ngoyi was called to a neighbour's telephone shortly before Nogwaza was dragged from Ngoyi's

home and killed. Solomon said the court believed Ngoyi's daughter, Mrs Madolo, realising that an attack on Nogwaza by the crowd which had gathered outside was imminent, had sent a message to him to get out.

The judge said he believed that a neighbouring couple "were told" to say a call had been made if questioned.

The judge found it hard to believe that a person in the "highest authority" who was in the vicinity at the time had seen nothing of the attack.

He found it strange that as "the leading personality in the area" Ngoyi did nothing about the problem.

However much the court might consider Ngoyi's acts to be morally reprehensible, he was still not guilty, the judge said.

W Kingsly prosecuted A Omar and C Pillay appeared for the accused.

head of the Anglican church in Southern Africa
is visiting Britain for the first time

local taxi.
No other details were given.

R15 000 for wounded boy

The Rand Supreme Court has awarded damages of R15 000 against the Minister of Law and Order to the family of a boy whose right eye was permanently damaged from shotgun wounds.

Mr Justice McCreath found last week that Mr Elijah Mngomezulu, who claimed the money on behalf of his son, Raymond, had proved the boy was shot in the face by police on August 24 1984.

The boy was 17 at the time. He was fired at with a shotgun after police fired teargas at a crowd of schoolchildren who had gathered at a school.

Police also sjambokked children to disperse them. No incidents of stonethrowing or public violence had taken place there.

The police had denied firing shotguns on that occasion, saying it had not been necessary to do so.

'Scissors murder' man weds

every programme.

into sea by rain

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9/3/87

Courts under fire (252)

9/3/87 B Day
THE decision by Mr Acting Justice Myburgh to dismiss last week's application for the release of a 14-year-old girl — detained for more than five months — would provide further ammunition for critics of SA's judiciary, legal expert John Dugard said yesterday.

Dugard, director of the Centre for Applied Legal Studies at the University of the Witwatersrand, said it was disturbing that judges were apparently unable to apply to politically sensitive cases the ordinary principle of judicial review which they apply in "non-political cases".

Dugard said the girl's father had, in applying for her release, presented an orthodox argument which deserved serious consideration.

The argument was that regulations were unreasonable as they failed to make special provision for the treatment of children and negated all the protection of common law and legislation provided for children.

Such regulations, it was submitted, could not have been intended by Parliament.

THELMA TUCH

Another legal expert, who did not wish to be named, said yesterday the courts had done nothing to place constraints upon detention of children.

"The courts appear to have forgotten that it is fundamental to all civilised legal systems that children require special protection and that it is the courts' duty to provide such protection where possible," he said.

He said one of the greatest travesties perpetrated during the states of emergency had been the detention of large numbers of children.

In other areas of the law, he said, the courts had consistently recognised that children were to be treated differently from adults.

□ Commissioner of Police General Johan Coetzee instructed a senior officer at the weekend to investigate "horrendous" claims about the ill-treatment of young detainees made in a newsletter distributed at a recent World Council of Churches Youth Congress in Harare.

COURT HALTS SEIZURE OF NEWSPAPER

THE Supreme Court in Johannesburg yesterday granted an order restraining police from seizing any editions of *The Star* containing a DPSC advertisement.

The temporary order also declared the advertisement did not contravene the emergency regulations.

The police have been given until March 24 to show why the order should not finally be granted.

Giving evidence the Editor of *The Star*, Mr Tyson said: "We have two concerns One is that having taken every possible step to ensure that the advertisement is legal in the eyes of the police we received this visit.

"More than that we believe our reputation is at stake. Not once in 80 years have we been stopped from reaching

our readers We believe we would lose readers if we couldn't give a daily reliable service "

He said that having removed all reference to the release of detainees in the advert, the matter had been taken up in an editorial on the front page

Debate

The editorial argued the emergency regulations referred to the release of a detainee and that he could not believe the legislator intended the public should not be allowed to debate the issue of detention without trial, said Mr Tyson

Mr D Kuny, SC, for *The Star* submitted before Mr Justice Donovan that references to the release of detainees had been removed from the advert These were the portions, he argued, that might have contravened the emergency

regulations.

The regulations provide that no publication should contain a call for the release of a detainee

A notice to seize *The Star* was handed to Mr Tyson this morning, Mr Kuny said, but the police were informed that the advertisement had been amended

"He (the policeman) indicated that he would have to go back and take instructions The threat has not been lifted," said Mr Kuny

Drastic

The seizure of the newspaper would be a "drastic and prejudicial step"

It would affect many thousands of copies and the resulting financial loss, as well as the reputation of *The Star*

The threat against the newspaper had not been withdrawn The matter was "under consider-

ation" The newspaper's main edition could be printed, distributed and then all copies taken off the street and out of shops by police

To obviate this, the application had been brought as a matter of urgency. — Sapa.



DEFENDING the public's right to know: Editor of *The Star*, Harvey Tyson.

...ence will be passed today.

Adjournment denied

Carl Times 12/2/42
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JOHANNESBURG. — Mr Justice Van Dijkhorst yesterday refused a defence application for a one-week adjournment in the Delmas treason trial. And Professor W A Joubert, dismissed as an assessor on Tuesday after telling the judge he had signed a petition for the United Democratic Front's million-signature campaign, took legal opinion on his position. Earlier, defence counsel argued that the decision to dismiss Prof Joubert could nullify the trial.

Court told of 'media slanting'

By JO-ANN BEKKER

"I HAVE shot a bit," the young not policeman told his headquarters in a radio message after firing the shots which killed a Soweto student in September 1985

The radio transcript was released in the Rand Supreme Court yesterday at the end of the state's case against Detective Constable Jacobus Johannes Laubscher, 22, of Hillbrow. He has pleaded not guilty to murdering two Soweto schoolboys but yesterday admitted firing the shots which killed Spencer Simelane and Thuso Godfrey Phuroe, both aged 17.

Laubscher's case is the first to test the Emergency regulation which indemnifies the Security Forces from prosecution, provided they act in good faith to quell unrest. The indemnity was cited by his lawyers at the beginning of his case.

Yesterday's hearing also focused on one of the central issues of the 1985 partial State of Emergency which saw the first media restrictions: allegations of foreign video crews slanting reports of unrest.

An alleged witness to Godfrey Phuroe's shooting, his 17-year-old brother Richmond, told the court he had embroidered on what he saw when interviewed by the video crew which filmed the controversial *Witness to Apartheid* film, directed by former SABC employee Kevin Harris, which has been nominated for an Oscar as "best documentary".

He said he had included hearsay evidence which he had omitted from his statement to the police.

A transcript of Phuroe's interview was placed before the court and he admitted he had told the film makers "I saw a man with a white car, Mazda, he crossed the school and come again. When he came he took out a gun and shoot".

But he told the court he had in fact not seen who had fired the shots.

"When he was shooting," the transcript continued, "I lay down, so lying on top of my brother".

But Phuroe told the court he had run away after the first shot.

Asked why he had made such a false statement he replied "I just said it. It was just a thing that came into my mind".

Challenged, by Laubscher's senior counsel PA Hattingh, that he was protecting the crew which had, in fact, instructed him on what to say, he denied this.

"They told me to talk like a story, they said I must talk as if I was there," he said.

Phuroe then denied that he had known the interview was being recorded and was accused by Hattingh of being stupid ("onnosel").

The judge, Justice MJ Strydom, said: "You make it more and more difficult to believe a word you say".

In his evidence in chief, Phuroe said he had attended a different school from his elder brother in 1985. On September 18, after missing his bus, he had gone with a friend to his brother's school Godfrey, he and about eight other students had been playing with a tennis ball on the school premises when he noticed a "traffic inspector" in a white Mazda drive along the side of the road past the school three times.

He said the Mazda had passed the school for the third time as Godfrey was running to retrieve the ball. At that time shots rang out, Godfrey had fallen to the ground, rolled twice and Phuroe had run away to the vicinity of the principal's office.

Hattingh put it to Phuroe that he had fabricated the entire account and that he had never been at his brother's school that day. He insisted there had been stoning at the time of the shooting.

Earlier last week the court heard Laubscher had made two statements about Phuroe's death, the first saying he had fired on a stone-throwing crowd to arrest the ringleader, the second saying he had opened fire in self-defence. The case continues.

Back to class — with a court's help

A STUDENT from the University of Durban-Westville (UDW), detained for two months under Emergency regulations, has had to get a Supreme Court order before the university would register him to study in 1987.

UDW claims a letter from the rector of Jabi Sikhosana's previous university is not acceptable as a certificate of conduct, and has refused either to release his results or to allow him to register for 1987.

Last Friday Sikhosana took the matter to the Supreme Court, asking for an order that UDW register him provisionally and release his exam

By **CARMEL RICKARD,**
Durban

results. However it took until yesterday for the university authorities to permit the registration.

Sikhosana challenged UDW's refusal to accept a letter from Professor A C Nkabinde, rector of the University of Zululand, as a certificate of conduct. This letter, which the University of Zululand claims is a standard one used whenever such a certificate is required by another institution including UDW, states his exam

results and adds, "I hereby recommend him to any education institution that may consider his application for admission as a student."

In his application Sikhosana pointed out that several colleagues, formerly of the University of Zululand, were accepted by UDW, with an identical letter from Nkabinde.

Sikhosana was detained under Emergency regulations from June 17 to August 18, and although he appeared in court, no charges were ever put to him and the state withdrew



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Court frees Ngoyi - then back inside

By MIKE LOEWE
in Port Elizabeth

EDGAR NGOYI, president of the United Democratic Front East Cape Region, was acquitted on a charge of murder yesterday — and immediately redetained under Emergency regulations.

Ngoyi, 62, and three others, Lulamile Mkalipi, 22, Fumanekile Siyon, 21, Xolile Pete, 20, were found not guilty of murdering a member of the rival Azanian People's Organisation on June 8, 1985.

However, a 17-year-old youth was found guilty of murder and Siyon and Pete were convicted on a count of culpable homicide.

The Port Elizabeth Supreme Court found that the youth set 24-year-old Pakamisa Nogwaza alight after petrol had been poured on him and tyres placed around his neck and that Pete and Siyon participated in the assault.

In his judgement, Judge Solomon said although Ngoyi was in control of the "comrades" of the UDF and of the situation in the townships at the time, his failure to take steps to prevent the crime did not make him guilty.

Ngoyi was redetained at the end of the trial, which continued yesterday afternoon with evidence in mitigation for those found guilty.

Time of charge queried

By MARTIN NTSOELINGOE

ARGUMENT between the State and defence in the Rand Supreme Court in the case of a former policeman who shot dead two Soweto pupils and wounding one seriously, centred on the state of emergency.

The prosecutor argued that Jacobus Laubscher, 22, of Hillbrow, was not charged under the state of emergency, but was charged when there was no state of emergency.

Mr. PA Hatting, SC, maintains that his client was charged under the state of emergency and is indemnified against prosecution by the emergency regulations.

This week the defence closed its case without calling Laubscher.

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1977/11/15

1977/11/15

... and South Africa of planning to dump
nuclear waste in the desert

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Delmas dismissal: Report

JOHANNESBURG. — Professor W A Joubert, dismissed as an assessor in the Delmas treason trial, is submitting a report to the State President, top individuals and organizations involved in the administration of justice in SA. Prof Joubert's attorney, Mr John Brand of Bowman Gilfillan, said the report dealt with the events surrounding his dismissal last week. Mr Justice Van Dijkhorst dismissed Prof Joubert after learning he signed a UDF petition in 1984.

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SA judges in the dock 'reluctant to resist State'

- W/K ARB 21/3/87 (252)

by MICHAEL MORRIS,
Weekend Argus Foreign Service

LONDON — South Africa's judges have been put in the dock by a team of foreign jurists who find the country's supreme arbiters of law "lending undeserved credibility to a legal system in which personal and political freedom are left unprotected"

The team, sent to South Africa in February by the International Commission of Jurists, questions the country's claim to an independent judiciary and the capacity of judges to administer it justly

The commission's key criticism concerns the judges' participation in a structure of an unjust design "which denies basic rights and personal liberty" and their apparent reluctance to resist the will of the government

A preliminary statement by

the four lawyers said "It is plain that an adverse decision will not be allowed to stand if it inhibits the government's freedom to detain whoever it wishes to detain"

"It is therefore obvious that the judges, however courageous and independent, can mitigate only marginally the impact of security laws. At the same time their presence on the bench lends undeserved credibility to a legal system in which personal and political freedom are left unprotected"

It adds that judges are "open to criticism not only on account of their participation" in this system, but in "administering the ordinary law, they have made decisions and imposed sentences which are appallingly harsh, particularly sentences on juvenile offenders"

In his London office last week, the British member of the delegation, solicitor Geof-

frey Bindman, pointed to a large pile of documents and computer printouts that account for a portion of three weeks' evidence-gathering in South Africa, and said "We did not go there to do a demolition job. It was an examination of the human rights situation"

Months of work remains to be done before the team's full report emerges, but Mr Bindman disclosed some of the thinking behind the the hard-hitting conclusions

"I have thought a lot about South Africa's judiciary and my view has shifted. Initially I tended to see it, superficially, as something that was not independent at all"

"My present position is that judges are independent in the sense that they do not take instructions from the government and feel themselves to be independent."

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B/Day 2/2/87

Star withdraws court application on ruling

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THE STAR yesterday withdrew an application for confirmation of a rule prohibiting the Commissioner of Police from seizing issues of the newspaper on March 10 carrying a Detainees' Par-

SUSAN RUSSELL

ents Support Committee advertisement.

The Star agreed to pay the costs of the court case

The police last week anticipated the return date of the rule

granted by Mr Justice B O'Donovan and opposed its confirmation, submitting that the newspaper had not been entitled to approach the court for an interdict because the police had not intended seizing *The Star*

The newspaper was only seeking confirmation of the first part of the rule which declared the advertisement, as it appeared in *The Star*, to be legal.

Yesterday S Kentridge, SC, informed the Deputy Judge President, Mr Justice G A Coetzee, that *The Star* intended withdrawing its application for confirmation

The costs include the costs of two counsel

Mr Justice Coetzee discharged the rule

He took over hearing the case last Friday when Mr Justice Le Grange recused himself after an application by counsel for the newspaper

Kentridge had argued for *The Star* on Monday that before the editor, Harvey Tyson, approached the court with an urgent application for an interdict against the Commissioner, he had been reasonable in fearing that his newspaper could be seized during the course of the day.

Objector Wilkenson on trial over camps

CONSCIENTIOUS objector Philip Wilkenson will be tried in the Port Elizabeth Magistrate's Court today for failing to report for an army camp, the ECC announced in Johannesburg yesterday.

His trial will be attended by international observers from the Catholic church and human rights organisations.

Wilkenson began his

national service in July 1981 at Kimberley and completed his training in June 1983.

The ECC said Wilkenson completed three of his army camps but, in 1985, when the troops first entered the Port Elizabeth townships, he decided he could no longer have anything to do with the SADF.

In June 1985, he applied to the Board for Religious Objectors to be classified as a religious objector (category 3). Despite being a practising Christian his application was refused because the board found his stand was not motivated solely by religious pacifism. — Sapa.

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B Day 25/3/87

Lawyer calls for discharge of 16 men

EP 25/3/87

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By MNCEDISI SALISO
Court Reporter

AN application was made in the Port Elizabeth Magistrate's Court today for the discharge of 16 men who are charged with attending an illegal gathering during a strike outside General Motors in Kempston Road last November.

Mr D Chetty, who appeared for the accused, made the application at the end of the State case and after the court had been shown a video film of the events of November 17 last year, which included the arrest of the accused.

Before Mr D P van Wyk

were Mr Lukas Pedro, 29, Mr Patrick Bazi, 34, Mr Livingstone Ramorara, 43, Mr Edwin Heyns, Mr Lungile Zicwele, 43, Mr Willard Goliath, 24, Mr Peter Hermanus, 21, Mr Louis Ferrison, 47, Mr James Mhambi Leve, 38, Mr Thembile Leon Gqomfa, 43, Mr Simon Mchunu, 26, Mr William van der Monie, 35, Mr Edward Manyela, 32, Mr Nicholas Tarentaal, 25, Mr Andrew Petrus, 29 and Mr Henry Isaac, 38.

The State alleges that they formed an illegal gathering during a strike outside GM's premises on November 17 last year.

The second charge

against them is that they refused or failed to disperse and leave the area when they were ordered to do so by the police.

Mr D Grobler, for the State, closed the State case after the viewing of a video film of the events of that day.

Mr Chetty made an application for the discharge of all the accused and submitted that the onus was on the State to prove beyond reasonable doubt that the accused had attended an illegal gathering on the day in question.

He said the court was dealing with an industrial strike and industrial relations required that the question of the strike be dealt with by an industrial court. He said the strike had not been declared illegal by the industrial court.

The State had not proved that the accused were workers on strike or job-seekers, he said.

(Proceeding)

Military funeral for two

Post Correspondent

JOHANNESBURG — Two Alberton policemen shot dead by a car thief on Sunday night, will be buried with full military honours on Friday.

Constable Marius Buys, 21 and Const Hannes Gloy, 23 were shot dead after confronting three men who had fled from a stolen car. One suspect was wounded but all escaped.

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A prolonged procedure of punishment by clerical delay

PUNISHMENT by process — the mark of the of adults and 22 percent of juveniles in the cases now-disbanded pass law courts — is continuing in hundreds of public violence trials being conducted throughout the country, according to the Black Sash

The organisation's Western Cape court monitoring group told the Sash's recent conference in Cape Town that apart from numerous allegations of torture in detention, those charged for unrest-related offences were often denied bail, their trials were postponed unnecessarily and their sentences were often disproportionately high.

The most startling finding of the monitoring group — which analysed the data collected by 30 volunteers who monitored 234 court cases in the Cape Town and Boland area from January to October last year — was that only 17 percent of those charged were found guilty. 83 percent had charges withdrawn or were acquitted.

A total of 42 percent of the accused were juveniles. But most of the adults were in their late teens or early 20s. The group said only 13 percent

of adults and 22 percent of juveniles in the cases monitored were found guilty.

Law and Order Minister Adriaan Vlok's official figures, however, stated that 40 percent of those charged with public violence had been found not guilty in the 1984-1985 period. He said 56 percent had been acquitted in 1985-1986.

The Sash said the discrepancy between Vlok's figures and their research could arise from the fact that the Sash usually monitored cases where the accused had lawyers.

"What is clear from our figures, where over 80 percent of those accused are either found not guilty or the charges against them are withdrawn, the Sash's court monitoring report states, "is that very large numbers of innocent people are arrested in random fashion and charged on flimsy evidence that cannot stand up to examination in court. They are thus made to endure a protracted period of punishment by process, with little hope of redress."

The report slams sentences imposed on those convicted of public violence as "often seem[ing] to be shockingly inappropriate and out of proportion to the act".

It cites the cases of minors, who are first offenders, being sentenced to cuts or prison terms without the option of a fine. According to the Sash, sentences of seven years were imposed on two juveniles found guilty of intimidation and assault during a school boycott.

In Johannesburg last week, by contrast, an 18-year-old Pretoria man, Johan Breytenbach, was sentenced to five years' imprisonment, half of which was suspended, after he was found guilty of running over and killing a domestic worker and convicted of culpable homicide.

In addition, the Minister of Justice has told parliament those convicted of unrest-related crimes would be refused remission or parole.

The report also commented on other trends the volunteers had observed while monitoring the courts.

● "It is appalling to notice the number of individuals who allege brutal violence on arrest, in Caspsus, and in police cells."

● Most cases are postponed a number of times when they come to court, and the accused are remanded in prison — in one case for 12 months.

Many remands were requested by the state because their witnesses, usually policemen, failed to appear. Frequently, the reason given was the charge sheet was not ready.

● "The whole process smacks of purposeful delay, or suggests that there is a very real problem in framing charges against people arrested in random fashion. The result is a prolonged, traumatic experience for the accused and their families. So much hardship is involved, in addition to the fundamental anxiety about the fate of the accused. There is the loss of schooling, possible loss of several days' salary, when leave has to be taken to attend court, actual loss of employment

when employers are unsympathetic, heavy expenses incurred in travelling — especially serious in rural cases which are often held in towns far removed from the trialists' homes."

● "Psychological and physical strains are marked. We have heard complaints of insomnia, headache, shingles, rashes, and of an epileptic who had a fit at each appearance."

● The bail situation is "confused and arbitrary and often excessive". While young children are generally given free bail in the custody of their parents, the Sash recorded a case of five scholars aged 15 to 17 who were refused bail for almost three months in 1985. They were released without being charged, detained again early in 1986 and refused bail for a further four months.

● "Clearly, bail may be seen as part of the punishment process."

The report concludes: "One thing emerges from our contacts. For most of these people there is no distinction between the departments involved in the legal process — the courts are perceived as an extension of the police and prison systems."

LAWYERS have managed to pierce the rigid legal cocoon isolating detainees held under Section 29 of the Internal Security Act.

The detainee in question is senior African National Congress member Ebrahim Ismael Ebrahim, 49, who was allegedly abducted from Swaziland at gunpoint by South African police last December.

The breakthrough — which came during a court application for Ebrahim's release — is the fact that he can get access to his lawyer to discuss his detention.

He will also be allowed to see papers filed during the application, and respond to the state's reasons for keeping him in detention.

The ruling — the first in South African legal history, according to civil rights lawyers — was made by Justice J Kriegler in the Pretoria Supreme Court this week.

Any visit to Ebrahim will be subject to conditions laid down by the Minister of Law and Order. But lawyer Priscilla Jana feels it is "some sort of conciliation for the time being".

"I hope to see him soon," she told the *Weekly Mail*.

"Then, we must fight hard to have him released from detention."

This week's application was filed by Ebrahim's brother, Essop, who wants the court to declare his brother's detention unlawful.

Alternatively, he wants the court to restrain the South African police from assaulting or interrogating him further.

This aspect of the application relates to a letter smuggled out of prison and handed into court as part of the application.

In it, Ebrahim says that while being held at John Vorster Square on January 13, 1987, he was put in a windowless "special-cell" with little air.

He wrote "I was then exposed to sharp, piercing noises/sounds. One evening it went on the whole night. It was mental torture. On the fourth day I was a mental wreck. I felt I was going off my head. I feel I shall not mentally survive this torture and what is due to come. There are times (when) I feel my mind is cracking."

During the application, a state psychiatrist recommended that Ebrahim should preferably not undergo further interrogation before his condition improves, that he should be provided with light, fresh air, contact with people, reading, and should be offered music he chooses.

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A tiny hole in the detentions cocoon

BY MONO-BADELA

In other papers before court, Ebrahim — also known as Roy and Ahmed Zaheer — said he was abducted at gunpoint from his Swaziland home in the presence of his employee, Dumusane Zwane, a Swazi national, on the night of December 15.

He was abducted by two black men who claimed they were working for the SAP. Blindfolded, and with his arms tied behind his back, he was taken across the Swazi border and handed over to the SAP.

In a replying affidavit, Brigadier Jan Hatting Cronje denied that the SAP abducted Ebrahim. He said two persons "with no contact with the SAP" told him Ebrahim was in Pretoria.

"I told them to bring him to my office. I found him there and I arrested him," Cronje said.

COURTS

Use of Delta 'had caused confusion'

26/3/87 B/Day 252

GENERAL MOTORS' use of the name Delta as a corporate logo, after it changed its name to Delta Motor Corporation (DMC), had created confusion in the financial community, the Pretoria Supreme Court was told yesterday.

This was submitted by counsel for Delta SA (Pty) Ltd and Delta Electrical Industries Ltd — the two applicants for an urgent interdict to prevent DMC from using the name Delta in the promotion of its corporate identity and as a logo.

D.A. Bregman, SC, submitted to Mr

Objector 'would have been chef'

PORT ELIZABETH — The Port Elizabeth Magistrate's Court heard yesterday that religious objector Phillip Gerard Wilkinson would have served as a chef when called up by Regiment Piet Retief last year.

That evidence was given by Commandant Bazil Dennis Turner, the regiment's chief administrative officer.

He was testifying in the case against Wilkinson, 22, of Robert Street, North End, Port Elizabeth.

It was alleged Wilkinson, who was classified as a religious objector and liable to render service (alternatively also to undergo training), failed to report for service when called up by Regiment Piet Retief on April 28, 1986.

He pleaded not guilty and said during April he had received a document dated March 25, 1986, which were call-up instructions for continuous training from Regiment Piet Retief. — Sapa.

THELMA TUCH

Justice Curlewis that the applicants had acquired substantial goodwill and reputation with the name Delta.

"We have a significant, established reputation arising out of a distinctiveness we have achieved. We are seeking to eliminate any risk of confusion in the financial community," Bregman said.

It was submitted that the respondent had become associated with incidents of unrest at its PE plant when GM in the US decided to disinvest from SA and sell all its operations to local shareholders.

The respondent's use of the name Delta could mislead the public into believing that its business was connected to that of the applicants, Bregman said.

At this stage, he said, it was not too late to put a stop to DMC's publicity campaign through the Press and radio.

There was no need, he said, for DMC to choose a new name, but it should refrain from using the name Delta as a logo or to promote its corporate image.

Counsel for DMC, B Southwood, submitted the applicants provided no evidence to prove the reputation they claimed to have established.

He said the Registrar of Companies had approved the name DMC on January 27 and DMC had allocated more than R1m towards a campaign to make the public aware of its new name.

Southwood denied that either of the applicants had established a corporate identity in the name Delta. He said there were more than 100 organisations listed in SA phone directories as having business names beginning with the word Delta. The second applicant, he said, was not even listed in the directory.

The hearing continues today.

Cricketers in loss

(252) 2613-114187

Police, the law and your rights

Q: How much force are police allowed to use when making an arrest?

A Police can use force against you only if you resist arrest, escape from arrest or threaten their safety. Even when police are allowed to use force the law is very strict about how much force they can use.

When resisting arrest police may not use more force than is necessary to overpower you. If a 10-year-old child struggles with two policemen, they should just hold or handcuff the child. They can't beat the child or use weapons.

If the police use more force than they should the person can lay a charge of assault against the police or sue the Minister of Law and Order.

If you try to escape after being arrested the police can shoot to try to stop you.

But police can only shoot if you committed a serious crime such as rape, murder, assault, robbery, arson and public violence.

Before they shoot, police must be sure that there is no other way of stopping the escape.

They must first warn you "Stop, or I'll shoot".

If you ignore the warning, they must fire a warning shot into the air and if you still run away, police can shoot at your legs.

Only if none of these things stop you, can the police shoot to kill.

All these rules also apply to municipal police.

TYPE	LAW	WHAT FOR	HOW LONG
Ordinary arrest	Criminal Procedure Act, Sec 50	As a suspect on a criminal charge example, theft, rape, public violence	Two days
Detention for interrogation	Internal Security Act, Sect 29	For interrogation as a suspect involved in "terrorism" or "subversion"	No time limit
Detention of State Witness	Internal Security Act, Section 31	To be used as a witness for the state in a political trial on charges such as arson and murder	Six months
Detention of State Witness	Criminal Procedure Act, Section 185	Unlike Section 29, this section is not meant to be used for interrogation. Here you are held to stop or prevent you from taking part in political activities	Six months
Long-term preventative detention	Internal Security Act, Section 28	You can be detained under this section if the arresting officer thinks that you are active in things like "disorder, riots or public violence" and that your detention is necessary to stop "public disturbances"	No time limit
Short-term preventative detention	Internal Security Act, Section 50	The reasons for your detention are much the same as Section 50. If the police officer thinks your detention will help to prevent "public disturbance, disorder, riot or public violence"	Fourteen days
Long-term preventative detention	Public Security Act (Regulation [3])	The maintenance of "public order", the "safety" of the public, for your own safety or to bring about the end of the state of emergency	For as long as the emergency lasts.

IF you have any problems regarding your health, the law, unemployment or repression write to SOUTH ADVICE, PO Box 13094, Sir Lowry Road, 7900. Experts in each field will answer your questions in upcoming issues of SOUTH

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A-team two jailed for necklacing

TWO men have been given lengthy sentences after conviction in Durban's first "necklace" murder trial.

Welcome Anderson and Frank Mnguni both pleaded guilty to killing Nkosimathi Hlongwane in May 1986 and were given 12 years each.

They said a quarrel developed early last year between themselves and their friends, on the one hand, and Hlongwane's group, described by them in a court statement as the "comrades".

The two accused said Hlongwane's group began referring to Anderson's group as the "A Team" and that Anderson's house was partly burnt

By CARMEL RICKARD, Durban
down by the "comrades".

Anderson and his friends kept watch at the house in case anyone returned to finish the job, and saw Hlongwane and his companions arrive at the house with a tyre, petrol and knives

There was a fight and all the attackers were driven off except Hlongwane who was overpowered, stabbed and set alight.

Judge John Didcott said the accused had faced great provocation, but they had no right to kill someone who was no longer a serious threat to them

"This was about as cruel a killing as one can envisage. Unfortunately this way of killing is by no means rare these days. It is quite impossible for any court, no matter how sympathetic towards accused who feel themselves in danger, to treat such a killing leniently. For all the provocation in the case, this remains a horrifying murder."

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WJ/Maj
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ASSAULTS and all allegations of assault by certain members of the South African Police on members of the public have risen dramatically in the past two decades. Similarly, payouts by the police to the public, compensating for injuries allegedly caused by the police, have also risen sharply in the same period. In 1969 there were 14 successful or settled actions and the total paid in settlement was R5 845. In 1983 there were 166 successful or settled actions and the amount paid out was a staggering R4 492 234.

FOCUS

ALLEGATIONS of South African Police brutality have never been out of the limelight.

In several cases over the past years the country has had to contend with adverse local and international attention concerning some highly publicised "assault" and death in detention issues.

Today the *Sowetan* focuses on six such cases: Steve Biko Imram Haron Hoosen Haffjee, Joseph Mdluli, Neil Aggett and the Wendy Orr Supreme Court application.

• On September 12, 1977, black consciousness leader Steve Biko died while in police custody.

Brain

According to pathologists' reports, Mr Biko had extensive brain injuries causing a reduction of circulation to other organs complicated by widespread intravascular coagulation.

It was also reported Mr Biko had sustained at least a dozen abrasions and bruises, including rib injuries. Reports said the injuries had been incurred over a period of between eight days and 12 hours before his death.

Deaths that hit the headlines

SOWETAN CONTINUED

A district surgeon told the Biko inquest that Security Police had prevented doctors from transferring him to a hospital three days before his death "because of the security risks involved".

He was later transported naked in the back of a Landrover from Port Elizabeth to Pretoria, where he later died.

His death was followed by an inquest which found nobody responsible and that his head injuries had probably been caused by a scuffle with the police.

Widow

The Minister of Police later agreed to pay R65 000 in an out-of-court settlement with Mr Biko's widow who had sued for R96 000.

• On September 27, 1969, Muslim leader Imram Abdullah Haron

died in police custody. He had been detained under the Terrorism Act. An inquest found he had died as a result of injuries caused in part by an "accidental fall down a flight of stairs". Later United Party MP Cathy Taylor alleged that a police assault had led to his death. She claimed in Parliament she had confidential information that an assault had been responsible for the subsequent decline in Mr Haron's physical condition which ultimately led to his death.

His wife Gabriela Haron, brought a civil action against the Minister but was later given an "ex gratia" payment by the State of R5 000. Mrs Taylor said the payment was tantamount to an admission on the part of the authorities that he did not die a natural death.

• On August 3, 1978, Dr Hoosen Haffjee, detained under the Terrorism Act, hanged himself with his trousers.

An inquest found that nobody was to blame for his death. There was never any explanation for the many bruises found on his body. The bruises were widely distributed but concentrated on the knees, elbows and back. Scalp tissue was also bruised. Police said he must have been bruised while they were struggling to get him into vehicles on two occasions. But several experts said this was highly unlikely. They remained mystified about many of the injuries, but believed some could have been caused by fists or boots.

• In 1979 the widow of Joseph Mdluli received

a R15 000 out-of-court settlement following his death in detention in 1976. The Minister of Justice Jimmy Kruger admitted liability for the death. Lydia Mdluli originally claimed R28 616. Mr Mdluli died less than 24 hours after being detained in March 1976. Four security policemen were later acquitted of culpable homicide. In acquitting the four the Judge President of Natal Mr Justice James strongly urged further investigations to ascertain how Mr Mdluli met his death. "This is important and should be solved." He said should it be established that police officers brought about his death they should be punished. He said on the evidence before the court, he had not been satisfied the four security policemen had been directly involved in Mr Mdluli's death.

Shock

• On February 2, 1982, trade unionist Dr Neil Aggett hanged himself at John Vorster Square while in police detention. An inquest magistrate decided no-one was responsible for his death. A fellow detainee, Maurice Smithers, said in evidence, however, he had watched Dr Aggett being made to strip and do exercises while a policeman hit him with a rolled up newspaper or a belt. Dr Aggett had also made a statement the day before he died complaining of assault, electric shock treatment and sleep deprivation. The Aggett family's case aimed to prove his suicide had been induced that it followed intensive police questioning which reduced him to a state where he believed death was preferable to more interrogation. The police denied these allegations. They told the inquest that the 62-hour interrogation had been requested by Dr Aggett who had decided to "open his heart and tell all".

Beer

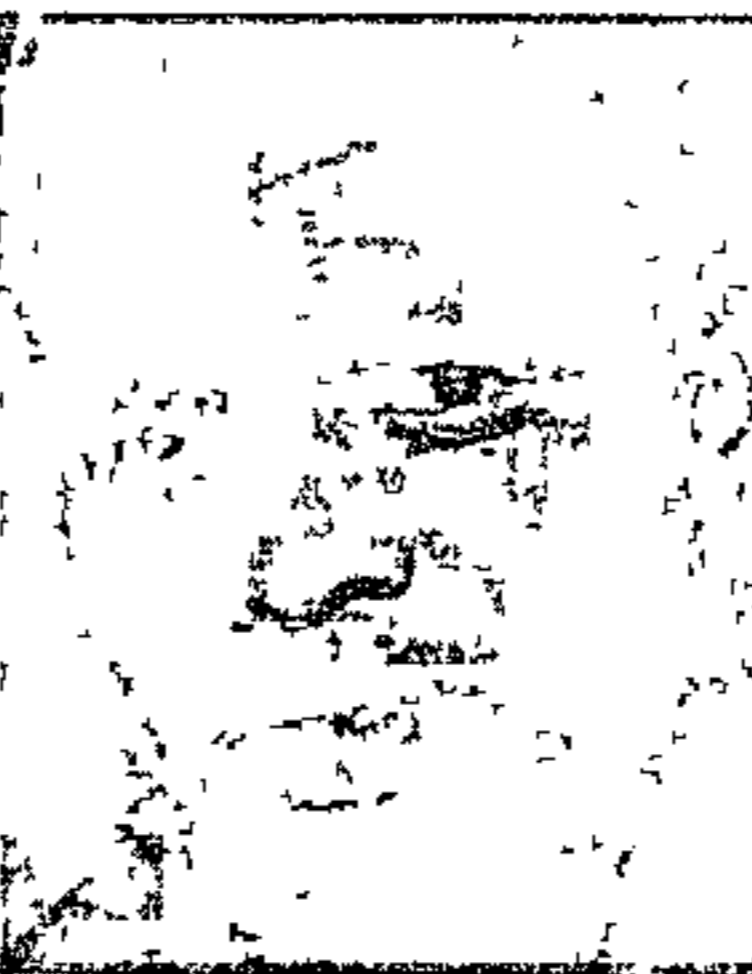
They also denied mistreating detainees. Some told of how they had taken their prisoners swimming or to a braai or drunk beer with them.

• September 25, 1985. In the Port Elizabeth Supreme Court a historic "restraining order" against the police was granted preventing them from assaulting detainees. The order was granted after a young district surgeon, Dr Wendy Orr, and 44 others brought the application. In papers she said "There seems to me to be an extensive pattern of police abuse upon detainees held under the emergency regulations. The overwhelming evidence presented to me convinced me that the detainees were being systematically assaulted and abused after their arrest and before being admitted to prison."

"Because the police were acting under the (1985) emergency regulations and apparently believed they had an immunity, some of them were quite unrestrained in the abuses they inflicted upon detainees."

Brigadier E S Schnitler, Divisional Commissioner of Police in the Eastern Cape, said in a replying affidavit the impression that there was general unlawfulness in the South African Police was unfounded. He added that allegations of assaults had been made from time to time but in most cases they were unfounded.

It was reported recently that the Minister of Law and Order will pay about R260 000 in costs for the application.

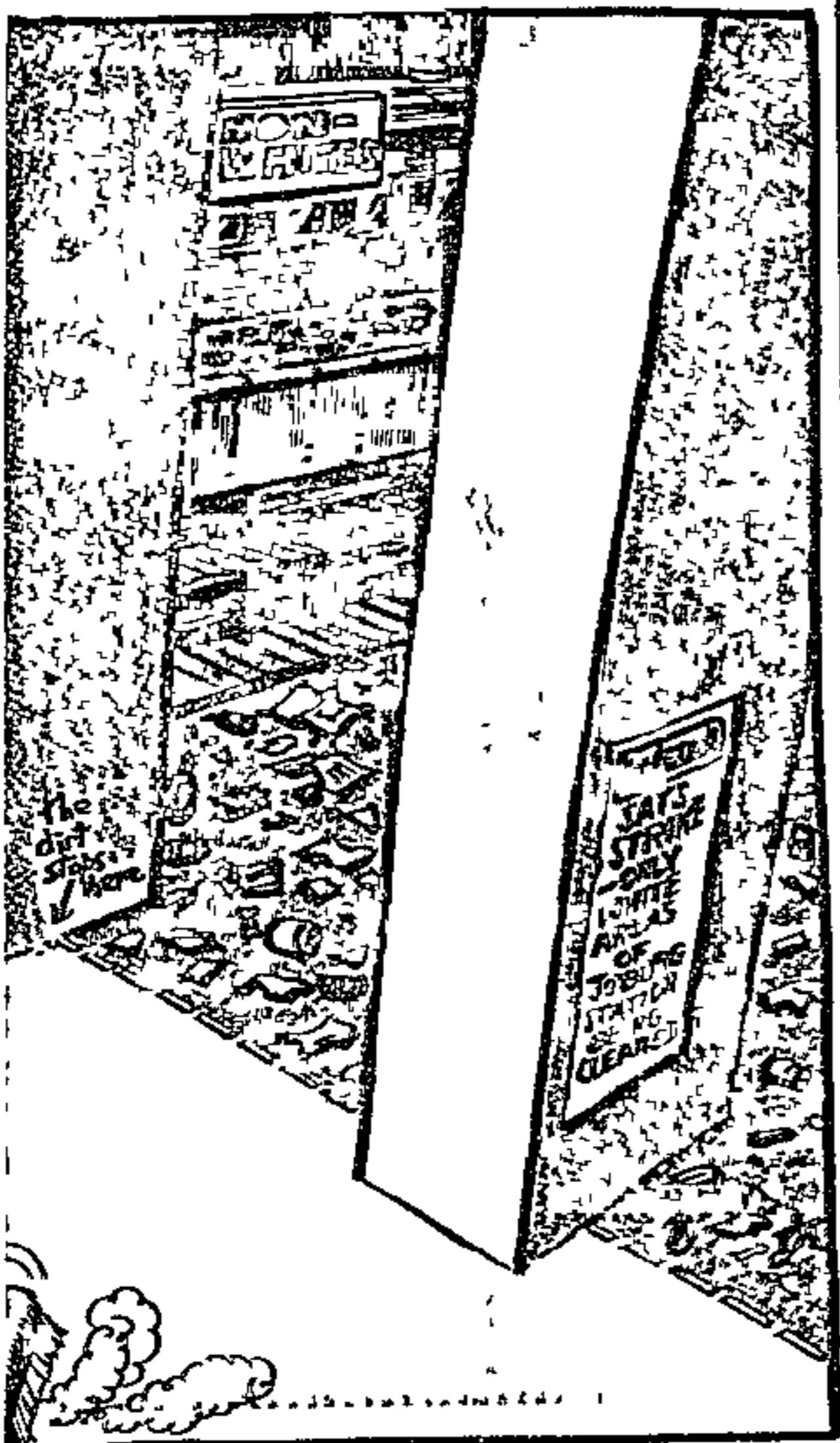


STEVE Biko ... died in detention.



Mr JIMMY Kruger - Minister of Justice at the time.

Sowetan
30/3/87
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Political content in this issue by J Latakgomo and A Klaaste. Sub-editing, headlines and posters by S Matlhaku. All of 61 Commando Road, Industria West, Johannesburg.

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2. Cape Times, Tuesday, March 31, 1987

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UDF trial judge 'not right-wing'

Own Correspondent

DELMAS — The judge in the 18-month-old treason trial here yesterday took the unusual step of denying he had "strong or right-wing" political views

Mr Justice Van Dijkhorst did so in a statement to the court in which he disclosed "with great reluctance" confidential details of political and legal disagreements between himself and the assessor he dismissed, Professor W A Joubert, a PFP candidate in Waterkloof in the 1981 general election

Prof Joubert was dismissed when the judge learnt he had signed the United Democratic Front's million-signature campaign

The State is attempting to

prove that at the introduction of the tri-cameral Parliament, the 19 accused had plotted violent revolution, of which the signature campaign was a part.

Counsel for the accused want the trial stopped because they allege Prof Joubert's dismissal was improper. They claim the judge and the second assessor, Mr W F Krugel, have formed opinions adverse to their case

Prof Joubert's allegations in a statement after his dismissal on March 10 had placed the "continuation of the trial in jeopardy", the judge said

Mr Justice Van Dijkhorst said he had found Prof Joubert's politics "opinionated and not open to reason. In fact I gained the impression that he totally associated himself with the defence case. On an occasion I admonished him by stating that he was going fur-

ther than being merely devil's advocate"

During an adjournment after cross-examination about the signature campaign, Prof Joubert had "blurted out that there was nothing wrong with the campaign. He had signed the form himself"

"My other assessor and I were dumbfounded, and just looked at each other"

Mr Justice Van Dijkhorst went on to answer allegations by the accused that the other assessor, W F Krugel, would be biased because of his membership of the Afrikaner Broederbond

"When approached to join the AB he explicitly asked whether his membership could directly or indirectly influence his functions as a judicial officer. He was told that it could not. That statement was correct," the judge said

The case continues

CASE TIME 1/4/87
DST

Delmas judge 'within rights'

Own Correspondent

JOHANNESBURG — The fate of 19 political activists charged with treason hung in the balance at Delmas yesterday as opposing lawyers argued the finer points of an unusual problem in SA legal history.

The accused have been charged with plotting a violent overthrow of the State. They want the proceedings quashed following Mr Justice Van Dijkhorst's unprecedented dismissal of assessor Professor W A Joubert, a signatory in 1983 of the UDF million-signature campaign.

Counsel for the State, Mr I W B de Villiers, SC, yesterday argued the judge had acted within his rights by dismissing what he considered an "unable assessor".

He contested the argument by Mr Arthur Chaskalson, SC, counsel for the accused, that SA law made no provision for a judge to dismiss another member of the court without consulting all the parties involved.

"No irregularity has been committed at all and there was no deviation from the standing rules of practice and procedure," Mr De Villiers said.

He argued that SA law had evolved in such a manner that Section 147 of the Criminal Procedure Act of 1963 allowed a judge independently to dismiss an assessor.

Earlier Mr Chaskalson closed the defence's argument in favour of the application by pointing out the unusualness of Prof Joubert's

dismissal, and the special circumstances it had created.

Mr Chaskalson said it was important that a case involving a charge as serious as treason be seen to be open and fair.

"No accused person should ever feel something happened at the trial that leaves him under the belief he has not had a fair trial. Where prejudice comes into it, the ordinary common law should apply and the court should be discharged."

"The dismissal of Joubert, the circumstances in which it occurred as described in the report made by him, and the not unreasonable response of the accused thereto, has created a situation in which it is not in the interest of justice that this trial be continued," he said.

The trial continues today.

SIX STAR

THE ULTIMATE

Error on

CAPL Tim's
2/4/87

Delmas judge warns defence

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DELMAS. — The judge in the treason trial here yesterday warned defence counsel Mr Arthur Chaskalson SC that he "might veer very close to contempt of court".

Mr Justice Van Dijkhorst had refused to accept a new report handed in to court yesterday by dismissed assessor Professor W A Joubert.

The report responds to the judge's replies to an earlier report by Professor Joubert protesting that his dismissal as an assessor was unlawful.

Mr Chaskalson argued that the trial would have to be stopped.

He submitted that the judge could not act as both witness and judge where members of the court disagreed.

"There is no procedure whereby members of the court can put themselves on trial," Mr Chaskalson said.

The State has opposed Professor Joubert's second report being admitted as evidence.

Mr Justice Van Dijkhorst has refused to accept the document tendered by Professor Joubert's attorney.

The defence team for the 19 accused has applied for the trial to be quashed on the grounds that the dismissal and the judge's ruling without hearing any submissions that the trial continue with one assessor — taken without hearing the accused, State or defence — was grossly irregular.

Alternatively, they have called for the judge's recusal or that of the remaining assessor, Mr W F Krugel.

When Mr Chaskalson applied for the report to be admitted the judge asked: "Are you attempting to contradict what the court has put on record?"

Mr Chaskalson: "My answer will be that I have a problem."

Mr Justice Van Dijkhorst: "I must warn you, you might veer very close to contempt of court."

Mr Chaskalson said it was his duty to raise information relevant to the case.

The judge said: "But then it is the duty of the court to set the record straight."

Mr Chaskalson said the judge should give him credit for the fearless carrying out of his duty. The judge replied: "I would have

liked to give you credit for knowing where to draw the line."

Mr Chaskalson: "Your Lordship may feel I have drawn the line in the wrong place. I feel I have drawn it in the right place."

He said the judge's inquiry into Professor Joubert had been conducted in private. He submitted that Professor Joubert's evidence was relevant in proceedings designed to show the inquiry had been irregular.

The judge said that if the new report was before court, he would make a statement contradicting it and would probably receive a further report saying the court was incorrect. "Where will this end?"

Mr Chaskalson said this was a difficulty.

Mr Justice Van Dijkhorst: "It's a problem arising from the way Professor Joubert conducts proceedings from outside court."

Mr Chaskalson replied that Professor Joubert was not permitted to do this from within court.

The judge said Professor Joubert was not entitled to do anything in that court. — Sapa

(52)

15 months on death row

Nightmare of gallows over for free man

Dispatch Correspondent

CAPE TOWN — Every morning for the past 15 months, Mr Pieter van Collen's first waking thought has been "They could hang me today".

Sentenced to death more than two years ago for the murder of Athlone shop keeper, Mr Victor Luyt, Mr Van Collen said the thing that troubled him most was that he would go to the gallows an innocent man.

But the nightmare is over Mr Van Collen was released from prison last week after an Appeal Court judge ruled that the confession on which his conviction and sentence were based may not have been freely made.

His co-accused, Mr Robert Pickering, who was also sentenced to death, was freed at the same time as Mr Van Collen when the judge ruled that his confession could also have been made under duress.

For Mr Van Collen and his family, his release has brought both joy and bitterness.

"I spent three years in prison for a crime I did

not commit," he said.

"For one year and three months I was alone in the death cell. Sometimes I used to have strange thoughts, and I thought I would go mad. It is easy to go mad in a place like that.

"But most of the time, I sat and thought about my wife and children and wondered if I would ever see them again."

His wife Annetta and aunt Mary Adams prompt him to talk about the "details" of life in prison.

"He's so thin," Mrs Adams says, closing her fingers around his wrist.

"He was such a frisky (sturdy) man before. Just look at him now."

Mr Van Collen, though shy and softly spoken, is clearly grateful for the opportunity to try and clear his name.

"I do not even know Robert Pickering — the man they say I committed the crime with. I

had never seen him before, but they said we were accomplices."

The first the family knew of Mr Van Collen's release was a front page report in last Saturday's Cape Times.

But the family's euphoria at having their husband and father back cannot mask their anxiety about the future. Mr Van Collen lost his vegetable hawking business when he went to jail.

He does not even have enough money to buy stock at the market to sell in the streets.

The family are taking legal advice in the hope of claiming compensation for their ordeal.

"We have suffered. We have no money. I have no clothes but the ones I am wearing. I have Annetta, Portia and my son Everil to look after. They have taken everything away from us, and they must give us something back."

Prize-winning article in court

LA/4/15-8
1/14/19/11
MSR

WEEKLY MAIL journalist Jo-Ann Bekker this week pleaded not guilty to a charge of contravening Section 27(b) of the Police Act

Bekker appeared briefly in the Cradock magistrate's court on Tuesday along with her former employer, the editor-in-chief of the *Eastern Province Herald, Evening Post* and *Weekend Post*, J C Viviers, and *Herald* reporter Debbie March

The charge arises from a front-page lead article in the *Herald* on February 4, 1985, about an outbreak of violence between police and residents in Cradock's Lingelihle township

The journalists are alleged to have reported the following statements about the police, which the state holds they did not have "reasonable grounds" to believe were true

●That police fired teargas canisters

By MIKE LOEWE
in Port Elizabeth

into a church

●That policemen aboard a Hippo threw stones at a house

●That Rev R M Obose went to the police station saying teargas had been fired into his church

●That chaos broke out when teargas was fired through the kitchen door of the church manse.

The case was postponed to June 8,

Bekker's reports of the conflict in Cradock in 1984 and 1985 won her the Stellenbosch Farmers' Winery award for excellence in journalism in the category of best investigative reporting under pressure of time or circumstance — East Cape News Agency

CP Correspondent

WILLIAM Cloete, 20, secretary of the UDF affiliated Atlantis Residents' Association, has been acquitted of possessing an ANC pamphlet.

Cloete was stopped at a roadblock in Mitchell's Plain while driving an association vehicle.

Police claim they found an ANC pamphlet in a

Pamphlet was not Cloete's

briefcase in the vehicle.

Cloete said the pamphlet must have been left there by someone else.

Magistrate N Jones said the State had not proved the pamphlet was Cloete's.

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SA polls now in Kei

CP Correspondent

TWO polling stations in the Albany constituency in the Eastern Cape have been incorporated into the Ciskei

But according to an election officer, South Africans living in the Ciskei would be able to vote

The Albany seat, presently held by the PFP's Errol Moorcraft, is being contested by the PFP, HNP and NP

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Visa disappointment

THE sister of exiled Afrikaans poet Breyten Breytenbach has expressed her disappointment at the South African authorities' refusal to grant him a visa

Rachel Breytenbach, who works at Rhodes University in Grahamstown, said she had expected it, but it was very difficult to accept

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252 (187)

Willem Joubert has long been a dissenter

Our Correspondent PATRICK BULGER outlines the life of Willem Joubert, who was dismissed from the Delmas treason trial last month.

WILLEM JOUBERT no longer sits as an assessor at the Delmas treason trial, but his absence dominated proceedings every day last week.

His sacking by Mr Justice van Dijkhorst has created a unique problem in South African legal history.

At the same time it has revived interest in the fate of 19 political activists to whom the platteland town has become a second home in the past 18 months.

Joubert's dismissal on March 10 after the judge learned he had signed the United Democratic Front (UDF) million-signature campaign led him to outline his background and his views in an affidavit he submitted to the court.

He was adamant Mr Justice van Dijkhorst had acted incorrectly in dismissing him.

"If my political dispositions, expressed openly to the presiding judge and others, constitute a reason why I should recuse myself then, for the same reason, the presiding judge should also recuse himself," he stated.

Joubert has a long history of dissent from the Afrikaner establishment.

He was born and educated at Stellenbosch where he gained an MA in classics in 1947. Three years later he obtained a doctorate. From 1952 until 1959 he was dean of the faculty of law at the University of the Orange Free State, and dean of law at the University of SA from 1960 to 1969. The author of dozens of legal works, he is also editor-in-chief of Joubert's *The Law of SA*.

Joubert, the court learned, has always had a keen interest in public affairs. This brought him into conflict with Afrikanerdom from an early stage.

For many years he played a prominent part in intellectual dissent by certain Afrikaner academics from the policies of apartheid.

He clashed with the NP from the early 1950s when he opposed the enlargement of the Senate to disenfranchise coloured voters. In 1961 he was expelled from the apartheid think tank the SA Bureau of Racial Affairs (SABRA) — at the behest, he believes, of then Prime Minister Hendrik Verwoerd.

In 1972 he founded "a non-partisan public interest pressure group called Verligte Action in order to provide an initiative for enlightened changes to the racial and constitutional structure of South Africa."

Five years later he was a founder member of the Progressive Federal Party, and in 1981 he stood unsuccessfully as a candidate in Waterkloof.

Joubert said he signed the million-signature campaign in 1983 because he felt "the new constitution would be a disastrous step because it would permanently alienate the black majority in this country."

On the Delmas trial, Joubert noted that in relation to Mr Justice van Dijkhorst "there continued to be very great differences in our political perceptions and in our approach to political issues in this country."

His presence as an assessor "acted as an important counter-veiling influence to balance the orientation of the judge towards various issues of great importance."

Almost exactly a year before being dismissed as an assessor, Joubert received an Honorary Doctorate in Law from the University of the Orange Free State.

UDF in court over affected funds ruling

W/Mau
252-814187
By CARMEL RICKARD, Durban
A CHALLENGE to last year's declaration of the United Democratic Front as an "affected organisation" opened yesterday in the Supreme Court, Durban with an action brought against the state president, the government of the Republic, the ministers of justice and of law and order and the registrar of affected organisations

The declaration, issued by State President PW Botha on October 9, 1986, has prevented the UDF from receiving foreign funds

The court action has been brought by the UDF, the Durban Housing Action Committee, the Natal Organisations of Women and UDF executive chair Curmick Ndhlovu

In affidavits, Ndhlovu said the chief sources of UDF funding were the Swedish labour movement and Novib, a church agency in the Netherlands.

It was of crucial importance to the UDF that they should be free to receive financial assistance

Ismail Mahomed, SC for the UDF, said the state president had to comply with certain preconditions before a declaration of an organisation as "affected" was valid.

These were that the minister of justice had to appoint a committee of three magistrates, this committee had to make a "factual report" on the organisation in question and then the minister of justice had to give consideration to this report.

The UDF claimed the declaration was not valid because not all these technicalities were observed: the committee of magistrates was appointed by the "wrong" minister and the "wrong" minister considered the magistrate's report

Candidates support call for SA bill of rights

Dispatch Reporter

EAST LONDON — Candidates in the May 6 general election have expressed support for a bill of rights being incorporated into the South African constitution

Responding to a call by a member of the University of Transkei's law department, Professor A. Naidu, that a legally enforceable bill of rights be built into South Africa's constitution, a Progressive Federal Party candidate said the inclusion of such a bill was "a basic part of PFP policy".

A National Party candidate also indicated support for a bill of rights "if the people involved subscribed to it" and it applied to South Africa's circumstances

In the latest edition of the Association of Law Societies journal, *De Rebus*, Prof Naidu quoted the Universal Declaration of Human Rights and the American Declaration, which each included a clause ruling that no one should be subjected to torture or to cruel, inhuman or degrading punishment or treatment

"All declarations and conventions indicate that one of the motives for torture is the extraction of information. The serious problem here is how to enforce the prohibition of the practice," he said

"Ill-treatment under interrogation would seem to be prevalent worldwide but the prohibition against torture is and must continue to

remain absolute," Prof Naidu said

States should be encouraged to keep interrogation methods and practices under systematic review while arrangements for the custody and treatment of people deprived of their liberty should also constantly be reviewed.

"Because the right to humane treatment is a fundamental human right it should be incorporated in any future bill of rights

"We can put to effective practical use the United Nations General Assembly's Declaration on Torture and the Convention on the Elimination of Torture, together with the many decisions from the European Commission and the European Court of Human Rights on this fundamental right," Prof Naidu said

The PFP/NRP alliance's candidate in East London North, Mr Errol Spring, said a bill of rights was a basic principle of the PFP as it was fundamental to the protection of the rights of the individual in a multi-racial society

The PFP had been fighting for a bill of rights since its existence and would continue its fight until it was included in the statute books

Mr Spring said a bill of rights would have to be designed to suit the reality of South African society but should not differ greatly from that of the United States as it "will seek to entrench the rights of the individual"

The NP candidate for East London City, Mr Peet de Pontes, said a bill of rights could serve a useful function if it was suitably adapted to South Africa's own particular circumstances and was subscribed to by the majority of people.

The government had already taken the lead in respect of a bill of rights by having asked the Law Commission to look at the possibility of a bill of rights suitable to South Africa's circumstances

A bill of rights in South Africa would have to differ from that of the United States, for example, as "our circumstances are totally different," he said

"We are a totally heterogeneous society, which they are not. We are a number of minority groups, each group being a minority against the rest. Each of these groups have rights to self determination and this would have to be protected," Mr De Pontes said

The NP candidate for Albany, Mr Jannie van der Vyver, and the Albany alliance candidate declined to comment

The King William's Town NP candidate, Mr Ray Radue, and the East London City alliance candidate, Mr Gwyn Basingthwaigthe, said they would comment at a later stage

Other Border candidates were not available

(Report by Barbara Hart, 33 Caxton St, East London)

By Lesley Cowling

Damages for man who was called 'kaffir'

A black musical director was awarded damages of R2 000 by the Rand Supreme Court yesterday because he had been called a "kaffir" by the caretaker of a city block and struck in the face.

Mr Justice R Goldstone and Mr Justice J.P. Roux, hearing a civil appeal from the Johannesburg Magistrates' Court, found that a magistrate had erred in dismissing Mr Moss Hamilton Nzimande's case for damages.

Mr Nzimande, a musical director at a record company, had sued caretaker Mr Gilbert Daniels and his employers, Nukerk, for R5 000.

He told the magistrates' court he was waiting for the lift in the building where he worked when

a cleaner spoke to him. Just then Mr Daniels came out of the lift and told them to stop making a noise.

Mr Nzimande said he answered that they were not making a noise. Mr Daniels then said "You are a kaffir".

Mr Nzimande said he became angry and grabbed the caretaker, pulling him forward, so that others could hear what he was saying. Mr Daniels called him a "kaffir" twice more.

Somebody had grabbed him by the arm at the entrance and then Mr Daniels hit him in the face and walked away.

Mr Daniels denied calling Mr Nzimande a "kaffir" and said he struck him in self-defence. In the absence of an independent eye-witness, the magistrate ruled that Mr Nzimande had not proved he had been called by the derogatory term and found that Mr Daniels had acted in self-defence when striking him.

However, the Supreme Court judges decided otherwise. They rejected Mr Daniels' version that he had not called Mr Nzimande a "kaffir" but said "You are not at home now. Behave like a Bantu."

"Behave like a Bantu" was a

meaningless statement which could not have provoked the angry reaction from Mr Nzimande, Mr Justice Goldstone said.

Mr Daniels' explanation in court that he meant "sophisticated person" when he used the word "Bantu" bordered on the absurd, he said.

Referring to the assault, Mr Justice Goldstone said that although Mr Nzimande had dragged Mr Daniels towards the entrance, an independent witness had told the magistrate's court that both his hands were being held behind his back when Mr Daniels hit him in the face.

This constituted an assault, he said.

Mr Daniels and Nukerk were ordered to pay R2 000 damages to Mr Nzimande and costs.

Judge awards R2 000 after 'kaffir' jibe

RS2 SUSAN RUSSELL 11/18/77

RECORD producer Moso Hamilton Nzimande, who was called a "kaffir" and struck by the caretaker of the building in which he works, was awarded R2 000 damages by a Rand Supreme Court judge yesterday.

Nzimande, of Johannesburg, took his case on appeal to the Supreme Court after a magistrate found he had not proved his case against the caretaker, Gilbert Daniels.

Mr Justice Goldstone with Mr Justice Roux concurring, ordered Daniels and the owner of the building where he works, Nukerk (Pty) Ltd, to pay the money plus interest and costs after overturning the magistrate's decision.

The judge said he granted the order having regard to all the circumstances — particularly the hurtful remark made to Nzimande by Daniels.

He rejected the caretaker's version of what had happened and his claim that he had hit Nzimande in self-defence.

Nzimande said he was in the foyer of the building talking to a cleaner when Daniels got out of a lift. The caretaker told them to stop making a noise. Nzimande said when he protested, Daniels said "You are a kaffir".

In his evidence before the magistrate, Nzimande said he grabbed the caretaker and pushed him towards the door of the building so people there could hear what Daniels said to him. Daniels called him a kaffir twice more, he said.

Two men grabbed hold of Nzimande and it was then that Daniels struck him.



The legal fraternity has welcomed a city judge's decision to use community service as an alternative to imprisonment for public violence, writes Supreme Court

Reporter, SUE LUPTON

ARGUS 9/4/87

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Sentence aimed at reconciling community

A Cape Town judge's use of community service as an alternative to imprisonment for public violence has caused a stir in legal circles

In the Supreme Court last week Mr Justice Williamson imposed suspended jail terms on four Zolani men convicted of damaging a house and two cars, the property of vigilantes, or Amasolomzi.

The judge also ordered them to pay R8 500 compensation and to do two years community service from 8am to 4pm every Saturday

The service is to include removing litter in the township and is to be carried out in terms of a report by a Nicro social worker, who recommended that the four grass a soccer pitch in Zolani

Since unrest swept the Western Cape in 1985, hundreds of people, including many juveniles, have been jailed for public violence, usually for stone-throwing or petrol-bombing.

Sentences of 12 and 18 months were common for first offenders as young as 17

Few appeals against sentences imposed by magistrates have succeeded and public violence offenders are apparently not considered for parole, which can reduce a jail term by half

A team sent to South Africa in February by the International Commission of Jurists said in its preliminary report "Many of the sentences imposed recently in public violence cases are unreasonable to the point of barbarity"

Against this background, last week's

community service sentences were welcomed by advocates and attorneys involved in similar trials

These were the comments of lawyers who did not wish to be named

● "This is a brilliant sentence, the first consistent with the principles of sentencing, which require that the crime, the criminal and community interests are taken into account"

● "Imprisonment brings young first offenders into contact with hardened criminals, therefore the use of alternative sentences is welcomed"

● "This has caused a great deal of excitement because it is a deviation from the trend of heavy jail sentences"

● "We hope judicial officials take note of these sentences, which are a precedent and in sharp contrast to cases where juveniles are jailed"

Professor Dennis Davis, associate professor of law at the University of Cape Town said "Community service is a useful alternative to imprisonment if used correctly in projects to benefit the community.

"It is clearly a form of sentence that works in other parts of the world

"Public violence charges have been used mainly to show political activity as criminal and many sentences were shocking"

However, a spokesman for the Democratic Lawyers' Organisation which represents all black lawyers and some white lawyers in the Western Cape warned that the sentences had to be seen in perspective

"They remain harsh. Perhaps a lesser evil than the barbaric jail sentences for public violence, but must that be our standard?"

"The case must be viewed in context — the Amasolomzi, who committed unlawful acts in a planned and organised way, were never charged or brought to court Why not?"

"Victims of the Amasolomzi were hauled before courts and found guilty, but not the Amasolomzi who, though acting unlawfully, appear to have enjoyed the protection of the police," said the spokesman

During the eight-month trial, a picture emerged of Zolani, a community torn by the violence of vigilantes, or "Amasolomzi", who were allegedly assisted by police

Passing sentence, the judge said he was impressed by the evidence of community worker Mr Dawie Bosch, who said a large section of the community was frustrated at not being able to curb the excessive zeal of the vigilantes.

The judge was left with the "uneasy impression" that the authorities may have been "reluctant" to act on complaints against the vigilantes

A spiral of violence ensued and the four acted in revenge and retaliation for their grievances against the vigilantes

The sentence, which did not involve the "destructiveness of prison", was aimed at effecting reconciliation in the community, the judge said

ARGAS 10/4/87
252

Community work more constructive than jail

By SUE LUPTON
Staff Reporter

1 COMMUNITY work was
2 far more constructive
than a jail sentence, said a
Cape Town man convicted of
starting a fire on Devil's
Peak in 1982.

The man, who agreed to be interviewed on condition he was not named, said he served his 200-hour sentence at Kirstenbosch Botanical Gardens where he worked in the nursery and patrolled the grounds at weekends.

"I don't consider myself a criminal. I may have been negligent, that is all. I think I gained a lot more by working at Kirstenbosch than I would have sitting in jail," he said

"I made the suggestion to the court after a few alternative sentences were considered

"Learn something positive from it"

"When I was given the sentence, I decided that I would try to learn something positive from it I was seconded to the nursery, where I learned all about seedlings, cultivating new plants and cuttings.

"I have used the knowledge I acquired at Kirstenbosch in my own garden. I also

learned a lot about Kirstenbosch," he said.

"Most of the time I worked with the labour force or did patrols to ensure that the public were not disorderly in the gardens

"I used to phone the controlling officer and tell him when I would be working On the day I would report to the duty officer who would assign me to a specific task

"Clerk of the court"

"At the end of the day he would sign the book, which was kept at the gardens. During my holidays I worked for a full week.

"When I had logged up my time, a report was drawn up and passed on to Nicro (National Institute for Crime Prevention and Rehabilitation of Offenders) which was given to the clerk of the court.

"It must have been successful. I haven't heard anything from them since," he said.

In the Supreme Court last week four Ashton men, found guilty of public violence, were sentenced to a suspended jail term, to pay compensation and do community service for eight hours every Saturday for two years

The community service

was to be carried out in terms of a report by Nicro social worker Mrs Gladys Hancock, who recommended grassing a soccer pitch in Zolani township and upgrading changerooms as their first task.

The judge ordered the service to include removing litter from Zolani.

Answering the judge's questions about the implementation of the sentence, Mrs Hancock said the Rev Andrew Hunter, an Anglican priest in Ashton, was prepared to supervise the service

Recorded on timesheets

The hours the men worked would be recorded on timesheets handed to Mrs Hancock every month.

The court would be informed if any problems arose.

Mr Mervyn Smith, president of the Law Society of the Cape of Good Hope said. "We discussed and proposed that community service be introduced as an alternative to jail sentences in 1982."

"We put our suggestions forward and think they were responsible in helping new legislation which was passed in 1985," he said

membership

7 000

7 097

4 097

FORMER guerrilla Sias Mogotsi, one of the first South Africans ever convicted under the Terrorism Act, was threatened with "deportation" to Bophuthatswana when he was released from Robben Island two weeks ago after 18 years in prison.

Yesterday a representative of the Department of Home Affairs said 46-year-old Mogotsi would not be "deported" after all.

Mogotsi was sentenced in the Maritzburg Supreme Court with 10 others in a trial which marked the first time South Africans had been charged under the Terrorism Act. The chief minister of KwaZulu and president of Inkatha, Mangosuthu Buthelezi, testified for the state against one of his co-accused, Dorothy Nyembe, who was sentenced to 15 years in jail.

Mogotsi fled the country in 1963 for military training in the Soviet Union under the auspices of the ANC.

He was one of four Umkhonto weSizwe combatants found by the court to have engaged Rhodesian security forces in Wankie on their return home from abroad.

Mogotsi was released from Robben Island two weeks ago with three of his

Robben Islander wins battle against deportation to Bop

By THAMI MKHWANAZI

co-accused, Matthew Ngcobo, Lenox Dlamini and Patrick Mathanjane.

A fourth man, also a Wankie Operation guerrilla, Lawrence "Phoks" Phokanoka, was released on the same day from Project Three, Johannesburg Prison.

"Prior to our release we were summoned to the prison administrative office to be furnished with train ticket warrants, but I was excluded from this arrangement," said Mogotsi this week. He was informed at Robben Island that he would be released into the hands of Home Affairs officials, who would give him a train ticket home.

therefore I belonged to Bop," he says. He explained that though he was born in Zeerust, he had had no contact whatsoever with Zeerust.

Although they let him go "unconditionally," he said, he continued to fear "the authorities will get rid of me in one way or the other".

He was not given a train ticket but dropped off at Cowley House, an SA Council of Churches residence in Cape Town. Officials of the Sacc's Dependents Conference arranged for his ticket with Robben Island prison authorities.

Department of Home Affairs representative JC Pretorius said yesterday Mogotsi had been referred to his department after the Prisons Services had expressed doubts about his status. "After investigating his case, we were satisfied he would not be deported to Bophuthatswana, and the position still remains the same," he said.

Others sentenced with Mogotsi in 1967 were Amos Lengisi, 20 years; the late Thwelimfene Joye, five years; Ezra Segwele, 10 years, Daluxolo Luthuli, 10 years; Dorothy Nyembe, 15 years; and Johannes Seleke, 18 years.

It is stated in the release certificate issued by the Prisons Service that:

"Gev moet oorhandig word aan dept Binnelandsesake . . . Observatory" (The prisoner should be handed over to the Dept of Internal Affairs . . . Observatory).

Odessa-trained Mogotsi sent telegrams to two attorneys instructing them to meet him at the docks after his disembarkation on the morning of his release. He was duly met at the docks by attorney R Vassen of Cape Town and Home Affairs officials who, he said, told Vassen they would take Mogotsi to their offices for a few questions.

"During interrogation the officials claimed I was born in Zeerust and

NECC MAN'S APPLICATION DISMISSED WITH COSTS

Cypress 12/4/87 (252)

By **MARTIN
NTSOELENGOE**

AN urgent application brought before the Rand Supreme Court by a high-ranking official of the National Education Crisis Committee, was this week dismissed with costs.

Judge Gordon said that there were no good reasons provided for the release of

Vusi Khanyile

Khanyile, who holds a BComm degree (accountancy) from the University of Birmingham in the United Kingdom, was detained a few days before he was to start lecturing at the University of Cape Town on December 12 last year.

In papers before the court, he stated that his

detention was wrong and unlawful.

At the height of the school boycott in Soweto, he joined the Soweto Civic Association in December 1984 and became an executive member later the same year.

He was also a member of the Soweto Parents' Crisis Committee, which gave birth to the NECC.

According to papers in court, the aim of the SPCC was to restore normality in black education.

In October the same year, he was elected chairman and travelled with other members of the NECC to Lusaka where they held talks with the African National Congress.

Khanyile added that to defuse the alarming school boycott in Soweto, he and other members of the NECC held many meetings with deputy Department of Education and Training chief, Sam De Beer and Law and Order Minister Adriaan Vlok.

He was detained during the 1985 state of emergency and was held at the Diepkloof Prison.

The NECC held a conference in March 1986 in Durban where a resolution was adopted to find ways and means of implementing "people's education".

CP Reporter

A CARETAKER of a building who called a senior official of a recording company a "kaffir" and then assaulted him, was ordered this week in the Rand Supreme Court to pay the man R2 000.

The court order followed after Moso Hamilton Nzimande, a music director of Gallo Recording Company, took his claim on appeal to the Rand Supreme Court. His claim against Gilbert Daniels and Daniels' em-

Insult costs R2 000

ployer, the Nukerk Company, failed earlier in the Johannesburg Magistrates' Court.

It was testified that the incident took place in the foyer of the Nukerk Building in Johannesburg where both men were employed.

On December 4, 1984,

while Nzimande was talking to a cleaner, Daniels came out of an elevator and said that Nzimande was making a noise. He repeatedly referred to him as "kaffir" and also assaulted him by hitting him.

Judge Goldstone said the use of the word was unwarranted and unjustified.

It was aggravating to have said this to somebody who held a senior position in a large company and in the presence of a cleaner in a building where Nzimande was employed, he said

Man has no ties with Uwusa

THE deputy secretary-general of the Inkatha-backed United Workers' Union of South Africa, PS Ndlovu, sent a complaint regarding the council land sales story in last week's first edition of *City Press* which referred to Peter Davidson as the treasurer of Uwusa

Ndlovu brought it to the attention of *City Press* that Davidson resigned as Uwusa treasurer on August 16, 1986

Ndlovu said in a telex note "He was replaced as treasurer by NS Thabethe. We would appreciate it if you would print the correction in the same prominent position as the original article

Ndlovu's note concluded "Uwusa has nothing to do with land sales"

City Press ran a story exposing certain KwaZulu MPs, councillors and senior Inkatha officials for having allocated themselves land in Umlazi

The report mentioned Davidson as Uwusa's national treasurer and KwaZulu delegate to the Umlazi Township Council



Johannesburg Station as strikes continue.

Zambian strike ends

ZAMBIAN post and telecommunications workers ended a two-day strike this week after management offered to pay a daily transport allowance in place of the free transport the workers were demanding

A statement from the State-owned Posts and Telecommunications Corporation said that after discussions the corporation had agreed to pay the allowance, back-dated to November 1

The statement made no mention of the demand for salary increases

Postal Workers on the northern copperbelt also went back to work after the new agreement was announced - Sapa

Webster was to be the beginning with

Tukkies law men call for a Bill of Rights

By DE WET POTGIETER

LEADING academics from the University of Pretoria's law faculty have called for a Bill of Rights and condemned the Group Areas and Population Registration Acts.

The 16 — 13 of whom are law professors — also voiced grave concern over the country's present security situation.

Sources said academics from other faculties at the

university shared the concern of their law colleagues.

And it is believed that law students are also busy rallying support for such a comprehensive and broadly acceptable Bill of Rights.

According to a reliable source at the university, the law students are considering the formation of an organisation on the campus promoting the idea of a Bill of Rights and constitutional, judicial and socio-economic reform for South Africa.

The centre for human rights research of the Tukkies law faculty recently made representations to the South African Law Commission regarding a Bill of Rights.

Freedom

They were made under the direction of Prof Johann van der Westhuizen and signed by the 16 Tukkies law academics.

The academics make clear that the Bill of Rights cannot

co-exist with apartheid. It must enshrine the right to political freedom of association.

The Bill of Rights must be accepted and trusted by all people. Ideally it should be arrived at through negotiation by all relevant parties.

If this cannot happen, say the academics, the worth of a unilaterally-created Bill should be clearly demonstrable.

They warn that a Bill of Rights created for "cosmetic purposes" would be disastrous.

A valid Bill of Rights should be enforceable by an independent judiciary and should not be subject to parliamentary edict.

The KwaZulu-Natal Indaba's Bill of Rights showed numerous aspects worth following up, while the Freedom Charter, which had its deficiencies, had legitimate and emotional following among many South Africans.

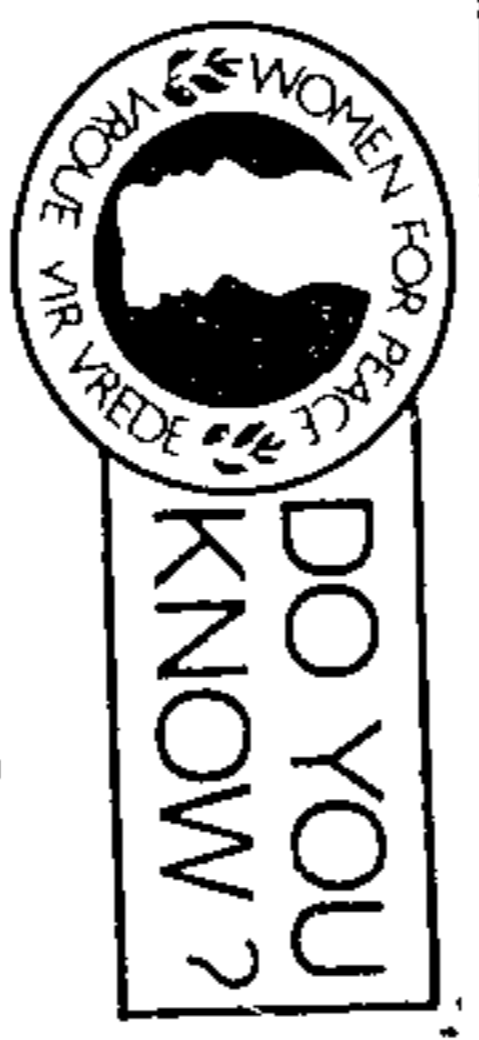
(News by De Wet Potgieter, 11 Diagonal Street, Johannesburg.)

We must pull SA back from the abyss

Perfect justice may be unattainable, but minimum standards of justice which acknowledge and respect fundamental freedoms are well within our reach and now, more than ever before, governments are being called upon to account for the manner in which the legal system meets and responds to the basic needs of individuals and groups within society.

Fundamental freedoms are respected in most developed legal systems not only because of the ethical belief that people are entitled to live in dignity and freedom, to establish and enjoy self-esteem and a sense of self-worth, but also because of the practical consideration that a denial of such freedoms will always threaten the safety and security of the society as a whole.

Under emergency rule our legal system which already denied fundamental freedoms to large sections of our community has become even



There is a shortage of about 169 218 houses in the "non-independent" homelands, no figures are available for the "independent" homelands. It has been reliably estimated by the Urban Foundation that there is a current housing shortage of 700 000 homes in the rest of South Africa. It says about 516 000 homes are needed for blacks in white designated areas.

At the end of 1984 the Department of Local Government said 62 997 housing units were needed for Indians and 67 000 for whites (which includes thousands of "welfare cases"), 54 003 coloured families needed homes.

Government expenditure once again shows the discrepancy between real need and ideological fantasies. Its allocation for 1985/86

Guest speaker at last week's graduation ceremony at the Wits University Faculty of Law was Mr Arthur Chaskalson SC, director of the Legal Resources Centre. These are excerpts from his address.

more rigid and unyielding. The solutions to our problems do not lie in harsher laws or in the curtailment of fundamental freedoms. They lie in the creation of a just society. This is not disputed even by the government which has imposed the emergency.

We in this country have lost many of our liberties. We have recently gone backwards and now we must undertake not only the painful process of retracing our steps and reclaiming the liberties that we have lost, but also the essential process of eradicating the disparity between races and creating a just society.

These steps will have to be taken in an atmosphere of suspicion, fear and anger. I think that we should be particularly concerned about the anger. It exists throughout our society and it is likely to escalate if the violence continues.

Killing people and damaging property in time of conflict has happened all over the world. We know that government forces in different parts of the world shoot and kill strikers and protesters at times of crisis.

After World War 2, angry crowds in different parts of Europe lynched people believed to be collaborators and we know only too well the anger of people and the violence in places such as Ireland and Lebanon.

I mention this, not because, I believe that violence and destruction are inevitable and that we can do nothing about them. On the contrary, I believe they can be prevented, and that a failure to do so has writhing into the awful possibility of a slide into anarchy and lawlessness.

I mention it because the anger is

to be years of great social and political change, they are also likely to be years of uncertainty, years of turbulence and years of conflict. We are on the brink of a civil war. Indeed, some would say the war has already started and that may be correct, though its full fury has not yet been unleashed.

It is a war which has within it the potential for creating even greater divisions within our society than exist at present; it has also the potential for tearing the country apart and leaving it divided and impoverished. All of us have a responsibility to drag the country back from the abyss, and to lead it in a direction in which justice can emerge and flourish.

There is too much at stake for any



Chaskalson . . . call for a just society . . .

It is not easy to plan for a future in which we are not aware of this, to deal with each other not judgmentally but in the knowledge that anger and fear exist. And most urgently we need to eradicate the causes of the anger and the fear.

mourning over what might have been if things had been different. We can, however, be vigilant in regard to what is happening around us and respond to the realities of the situation in which we find ourselves.

Those of you who are graduating, tonight as lawyers are particularly well placed to play a constructive role in the future of South Africa. By the application of your skills and energies you can help to build a just legal system in this country. An essential part of that system will have to be the recognition of and respect for fundamental freedoms and the provision of access to the courts in an effective and not merely formal way to all who wish to turn to the courts in order to assert or defend their rights.

There can be no freedom without justice, nor justice without freedom. It is here that the legal profession has an important part to play, not only in helping to formulate the system but also in enforcing it by responding to the needs of all sections of the community.

R42,5 million for blacks, R97,4 million for coloureds, R53,8 million for Indians and R54,3 million for whites	Estimated Need Units	Expenditure
	675 218	R42 505 000
	54 003	R97 467 000
	62 997	R53 797 000
	67 000	R54 358 000

It is not easy to plan for a future in which we are not aware of this, to deal with each other not judgmentally but in the knowledge that anger and fear exist. And most urgently we need to eradicate the causes of the anger and the fear.

It is not easy to plan for a future in which we are not aware of this, to deal with each other not judgmentally but in the knowledge that anger and fear exist. And most urgently we need to eradicate the causes of the anger and the fear.

Handwritten signature/initials

CME TIMES 20/4/87

Utasa condemns pupils' jail terms

252
Staff Reporter

THE Union of Teachers' Associations of South Africa, Utasa, has condemned the spate of "harsh sentences" imposed on Peninsula school pupils.

Eight pupils, whose ages range from 14 to 19, have been convicted of public violence and other similar charges arising out of the student revolt in 1985.

They are Wayne Jordaan, 19, who was sentenced to five years, with two years suspended. Dee Dicks, 18, Venecia de Klerk, 19, Naasir Masoet, 18, Showqie Enous, 18, Julian Stubbs, 18, and a 17-year-old boy were all sentenced to three years, with two years suspended.

Sentence on a 14-year-old girl was suspended for five years. The pupils were at least a year younger at the time of being sentenced.

Deterrent effect?

At an emergency meeting of the 26 000-member Utasa held in the city yesterday, delegates from the various provinces resolved to "express deep dismay at the harsh sentences imposed by the courts on the eight pupils from high schools" and also on Gregory Arthur and Michael Carstens, Peninsula pupils who were both recently jailed.

Utasa said they believed that such convictions and "harsh sentences create the impression in the community in general and our union in particular that these young people might have been singled out as a deterrent to others and that the effect has in fact been the opposite".

The organization noted the anxiety of teachers that the "imprisonment of young people will do irreparable harm to these students at a very sensitive period of their development" and at the same time cause agony for parents and the community.

"In the light of the above Utasa further resolved to lend its full support to the parents in their appeal that the sentences be set aside," it said.

Police use dogs in Supreme Court

CAP 1/11/87 23/4/87 252

By SHAUNA WESTCOTT
Supreme Court Reporter

POLICE brought leashed dogs into the Supreme Court building yesterday afternoon after the 15 men accused of terrorism joined people in the public gallery in singing a freedom song after the court adjourned.

Policemen tried to hasten the pace of the accused down the stairs to the cells, but were defeated by the fact that the 15 are still in leg irons.

The Bench has not yet ruled on a defence plea that the accused be unchained while in court.

Security arrangements for the trial — which included a police helicopter on Tuesday — appear to have eased. There was no helicopter yesterday and fewer uniformed policemen were outside the court.

The accused, who refused to return to court on Tuesday afternoon in protest at the official lunch of slabs of dry bread with or without jam, were reported to be "happier" with yesterday's lunch of meat pies, hot chips, fruit juice and milk supplied by a local cafe.

In terms of an agreement between the State and the defence team, a policeman will accom-

pany attorney Mr Ramesh Vassen — the defence team member "in charge of lunch" — to the cafe each day to pick up food.

Most of yesterday's hearing was taken up by evidence from Lieutenant William Liebenberg of the Cape Town security police who gave details about the arrests of most of the accused and the alleged pointing out of three hidden limpet mines.

Lieut Liebenberg said accused number seven, Mr Joseph Mkhulhwa, 30, took police to "a certain address" in Langa where they dug up a wooden box containing a limpet mine.

Another limpet mine and a mini-limpet mine were found hidden under dry grass in the Langa stadium after accused number two, Thembinkosi Mzukwa, 22, took police there.

A piece of paper alleged to show detonation times for limpet mines or hand-grenades was allegedly found in the house of accused number 10, Mr Quentin Michels, 24.

ANC and SACP literature was allegedly found at the house of accused number 11, Mr Cecil Esau, 22, while number 12, Mr Neville van der Rhee, 26, was the alleged possessor of a copy of Congress Review and Mr

Mkhulhwa of a green, black and yellow flag "similar to the colours of the ANC".

Four AK-47 magazines with 119 rounds were allegedly found concealed in the bed of accused number five, 32-year-old Mr Sazi Veldtman, while eight limpet mine detonators were allegedly found in a tissue box on his dressing table.

He was also the alleged possessor of a Luger pistol and magazine while number six, 35-year-old Mr Mthetho Myanya, allegedly revealed a hidden AK-47 to police after his arrest.

Lieut Liebenberg said Mr Myanya fell when he was "grabbed" by himself and a Warrant-Officer Nel at the time of his arrest. "There was a scratch on his forehead, I think, but there wasn't really a lot of blood."

Earlier, Lieutenant Michael Fryer denied under cross-examination that a group of people in the Langa single quarters were assaulted when Mr Mkhulhwa was arrested.

The trial continues.

Mr Justice H C Nel presided with Mr L P Francis and Mr W R Vivier as assessors. Mr W C Viljoen appeared for the State with Mr M Stowe. Mr D A Kuy SC, with Mr J R Whitehead, Mr A M Omar and Mr S Desai and instructed by E Moosa and Associates and R Vassen and Co appeared for the defence.

Sjambok suit settled out of court

CAPE TOWN — A Nyanga East resident allegedly beaten up in his home by a policeman has won an out-of-court settlement of R3 500 plus legal costs

The settlement follows the launching of a Supreme Court suit against the Law and Order Minister by Mr Cecil Wana (25). Mr Wana withdrew the suit after the agreement.

He alleged an unidentified policeman punched, pushed, kicked and sjamboked him while another pointed a gun at him.

A doctor who examined Mr Wana six months later said he had scars on his scalp, back and left upper arm.

The doctor believed they resulted from deep weals.

Mr Wana said he was in pain for weeks. He initially claimed R20 000 — Sapa

23/4/83
SAPA

Bail application fails

A BAIL application by Andile Gusha, sentenced to five years imprisonment recently for attempting to join a PAC military camp in Lesotho, was turned down in the Cape Town Regional Court this week.

Gusha is appealing against his conviction on two charges of terrorism.

Gusha told the court he would respect whatever bail conditions were imposed.

The magistrate, in dismissing the application, said Gusha had previously attempted to leave the country and there was no reason to believe that he would not do so again.

Handwritten notes: "KING" and "RJR" in a circle, with "23-2/8-3" written below.

Jurists lash out at SA legal system

By MOIRA LEVY

MANY of the sentences imposed recently on public violence cases are unreasonable and harsh to the point of barbarity, according to representatives of the International Commission of Jurists.

South African judges, by their very presence on the Bench, "lend undeserved credibility to a legal system in which personal and political freedoms are left unprotected".

These are the chief findings of the preliminary report of a four-man team that was sent by the ICJ to South Africa in February to investigate the legal situation in the country.

The final report will take months to complete, but in a preliminary statement the jurists concluded: "In administering the ordinary law, (judges) have made decisions and imposed sentences which are appallingly harsh, particularly sentences on juvenile offenders.

"We found this even among judges whom we met and who were eminently civilised and sensitive in conversation."

The four jurists question the country's claim to have an independent judiciary.

The British member of the team, solicitor Geoffrey Bindman, said judges were left only limited areas to protect individual liberty, "and these are becoming

more limited all the time".

"When the court finds loopholes to favour individual liberty, the government tries to change the law if it considers it important enough."

Judges 'ignorant'

He said judges, who were usually white, tended to be ignorant of black attitudes.

"They are too ready to believe what the police tell them. The judges are frightened people in many cases, unable to escape from their personal interest as members of an embattled white community."

He said judges tended to "hide behind" the notion that they should not get involved in politics. They should be more open in criticising the government and its legislation.

"Judges, you see, are necessarily involved in politics, whether they like it or not."

He said they had "an almost pathetic faith" in the the legal system.

"But at the end of the day how much do they achieve?"

The Cape Town branch of the Democratic Lawyers Organisation has welcomed the preliminary report as "a breath of fresh air."

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Prison commissioner criticised

By THAMI MKHWANAZI

THE Commissioner of Prisons, General WJ Willemse, has been criticised for making a decision that should legally have been made by the courts.

Professor John Dugard, director of the Centre for Applied Legal Studies at the University of the Witwatersrand, condemned the commissioner for saying mitigating evidence of ANC leader, Nelson Mandela, in the Maritzburg Supreme Court trial in which an accused has been convicted of terrorism, would be irrelevant.

Sibusiso Ndlazi, one of nine people convicted of terrorism last week, made an urgent application to subpoena Mandela whom he believed would convince the court that it was reasonable for blacks to believe that violence was the only option left to them.

The matter was postponed for the defence to renew its application to the Commissioner of Prisons for permission to consult the ANC leader.

Dugard said it was for the court, not the commissioner to decide whether Mandela's evidence would be relevant.

The court, he added, would consider whether the argument made by the commissioner for refusing to allow Mandela to give evidence was reasonable.

Willemse is reported to have argued that Mandela was a martyr and allowing him to defend his views in the present political and violent climate would endanger public safety and order.

Willemse also pointed out that bringing Mandela to court was likely to trigger large-scale demonstrations.

Dugard said it was not legal procedure for the commissioner to decide for the court the relevance of any one party in this matter.

A defence lawyer has reportedly said it was possible for Mandela's evidence to be heard in Pollsmoor Prison if the court so ordered.

SAP chief challenged

By REVELATION NTOLU

THE Commissioner of Police, General Johan Coetzee, is to be challenged in the Maritzburg Supreme Court next Tuesday in an attempt to strip him of his newly acquired powers concerning detainees.

The case, which was partly heard last week, is being brought by the Black Sash and the Detainees Parents' Support Committee.

Meanwhile, the Opposition PFP has also instituted proceedings

against Coetzee's new powers, which forbid campaigning for the release of detainees.

Announcing the PFP's Supreme Court bid to set aside the notice promulgating the ban, Ken Andrew, chairman of the party's federal executive, said the State had indicated it was going to defend the action.

The commissioner's powers have been widely criticised by political and civil rights organisations as a denial of fundamental political

rights and freedom of speech, and blocking criticism of the State's use of detention to neutralise political opponents.

In terms of the ban, issued on April 10, it is illegal to participate in any campaign, project or action aimed at accomplishing the release of people detained under Section 28 of the Internal Security Act 1982 or regulation 3 of the security regula-

JOURNALISTS' COURT TERM MANGA SALE

BOTH Times Media Johannesburg and the Freelance and Allied Journalists' chapels of the Southern African Society of Journalists have condemned the sale by Natal Newspapers of *Manga* to an Inkatha-based organisation, they said in a statement.

The chapels fully supported the demands by the *Manga* staff to have the sale rescinded.

Both chapels said they viewed the sale of the newspaper as politically insensitive, especially in a climate where impartial journalists were forced to take sides.

"The fact that KwaZulu government offi-

cials have already been called in to run the newspaper makes a mockery of claims that there will be no interference with editorial freedom," the statement said.

The chapels believed that the newspaper would become "nothing less than a mouthpiece of Inkatha and/or the KwaZulu government".

The sale is seen as a serious blow against press freedom which could lead not only to an exacerbation of tensions in Natal, but would contribute to racial polarisation.

The statement called on newspaper managements to carefully consider such transactions

in future, lest they compromise whatever claims they might still have on the protection of freedom of the Press.

Manga's future was "absolutely safe", the managing director of the company which purchased it last week, Dr Oscar Dhlomo said.

Dhlomo said that the first issue of the Zulu-language newspaper produced by the new owners, "sold more copies than ever before in the history of the paper".

He added "We have had thousands of applications from black journalists who want to work for *Manga*" - Sapa

IN EMERGENCY

This newspaper has been produced under emergency regulations which amount to censorship. The restrictions effectively suppress information of public interest. No details of 'unrest' or security force action can be published without permission. However, within the limits of these restrictions, City Press will continue to make every effort to provide objective coverage.

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**State to
appeal on
media
judgment**

By SHAUN HARRIS

THE Natal Supreme Court overturned several emergency regulations on Friday which severely restricted media coverage of unrest and unrest-related events.

But the State immediately lodged an appeal against the judgment, handed down by Mr Justice Galgut and Mr Justice Page in the Supreme Court, Maritzburg.

Key sections of the emergency regulations were declared invalid, including those which prohibited publication of security force action.

In a separate judgment, an order prohibiting the publication of advertisements relating to unlawful organisations, and giving the Commissioner of Police powers to prohibit advertisements relating to "subversive statements", was set aside.

The action was brought against the State by the United Democratic Front and the Release Mandela Campaign.

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Education for all based on Indaba Bill of Rights

By Bruce Cameron, Political Staff

DURBAN — The report of a committee on a non-racial, single education system for KwaZulu and Natal has been based on the Indaba Bill of Rights that every person shall have the same right to public education.

The committee, under the chairmanship of a former head of education at the University of Natal (Pietermaritzburg), Professor Jack Niven, has called its report a Charter for Education.

It concedes the proposals would not be immediately attainable but would form the basis of policy in a future educational dispensation.

The capital costs would require R82 million to provide an additional 4 530 classrooms.

Many of the principles and objectives are similar to the Government-appointed De Lange Report on Education, its most important being:

- All education be brought under one department and not, as now, administered by six
- Equal education be assured irrespective of race, language or religion, with the only differences being made in the provision of facilities being based on language or sex
- There should be a transitional programme to upgrade education to acceptable standards
- Priority would be placed on reaching a teacher-pupil ratio of 1:30

● The appointment of school committees serving geographic areas which would contribute to deci-

sions on language medium, curriculum and staff selection

● The system would be flexible to allow schools to serve particular language, religious, cultural and philosophical values

● Formal education should be child-centred, providing for cultural identities but seeking to promote universal values

● Non-formal education as a supplement to formal

Government objectives

Political Staff

DURBAN — The management structure of a single non-racial education department for Natal/KwaZulu would reflect the Indaba's commitment to devolving decision-making and administrative power to lower levels, says the report of the Niven Committee.

A major part of the proposed structure would be a provincial education council representing the entire education community.

Members of the council would be indirectly elected representatives of school committees, departmental nominees and other

education should be recognised and encouraged

● Private schools, on a subsidised basis, would be retained

● The region's education department would co-ordinate policy with the Department of National Education. This would include salaries, teachers' qualifications, examination standards and core curriculum

● The province would continue to receive financial support from central Government on at least the same formula basis as other education departments.

members representing users of education and teachers' organisations at provincial level, important religious and cultural interests and local government.

The council would advise the provincial Minister of Education and co-ordinate and monitor education planning.

It would have the right to be consulted on any proposed legislation or regulations dealing with education, the power to initiate its own investigations while playing a watchdog role on the maintenance of education standards.

The Niven Committee recommends that education control should be broken down to a re-

gional level and then a district level

The regions should not be seen as a separate level of government but as an administrative feature.

The responsibilities of the recommended regional co-ordinating committees would include physical planning, the provision and monitoring of educational services, financial control and the administration of bursaries.

The district committees were recommended for high population areas to ensure, among other things, proper representation on a geographic basis with the regional co-ordinating committees

(Report by B. Cameron, 85 Field Street, Durban)

● Additional sources of financial support would be found to improve and extend services eliminate backlogs

● The full use of existing school and teaching facilities

The committee said "Careful arrangements have to be made to ensure a smooth transition the present divided system to one of unified co-ordination. While it will not be possible to achieve this might, there should be no undue delay in commencing the process

"While there is undoubtedly scope for rationalisation, there are also such glaring shortcomings in the present system that there can be no question of continuing retrenchments or the closure of facilities which are at present under-utilised. It points out that the Government has acknowledged that there would be an enormous growth in education to reduce teacher-pupil ratios to acceptable levels

DEPARTMENT FACES TWO CHALLENGES

Concern is expressed over the many qualifications not being used. A major area of investigation is how many hundreds of qualified teachers could be moved to deprived areas.

"In short, the new single education department Natal faces two pre-eminent challenges: the redeployment of trained power and the raising of adequate finance"

(Report by B. Cameron, 85 Field Street, Durban)

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What 'equal justice' means for blacks

JOHANNESBURG — In spite of the State President's public commitment to equal justice, made in a newspaper advertisement in February last year, apartheid continues to be enforced against blacks in a wide variety of spheres, according to the South African Institute of Race Relations.

Its Quarterly Countdown, published in Johannesburg yesterday, highlights the following as some of the apartheid policies still enforced:

- Forced removals continue despite promises to the contrary: 64 000 Africans were resettled last year, compared with 40 000 the previous year.
- The Mines and Works Act, barring

blacks from key jobs on the mines, remains in force, although the Government has repeatedly promised repeal.

● Black medical students are barred from certain women's wards at the Johannesburg Hospital.

● The Vanderbijlpark public library evicted a black woman because the library is an "own affair".

● Most citizens of independent homelands continue to be denied South African citizenship rights.

● Ostensibly colour-blind aliens legislation is being used to enforce influx control against certain categories of blacks.

● Nearly 100 000 Africans were ar-

rested for trespass last year.

● The National Housing Commission is being split up into separate own affairs housing and development boards.

● The Government refused to allow the Cape Town Teachers' College to admit people of all races.

● The Indian "own affairs" administration laid down strict requirements before Africans could be admitted to Indian schools.

● The white Education Minister said State schools could not be opened to all races

● A new Child Care Act will be administered according to the "own

affairs" system.

Among the positive developments highlighted in Countdown are the introduction of salary parity for black social workers, the appointment of the first black South African representative to the International Monetary Fund, the establishment of additional free trading areas, and the desegregation of cinemas in Pretoria, Krugersdorp, Pietersburg and Rodepoort.

Countdown also notes that the Government has recently conceded from election platforms that violators of the Group Areas Act will be difficult to evict. — Sapa

(News by P Strydom, Room 626, Old Mutual Building, Harrison Street, Johannesburg)

Cosatu gets SAP undertaking on the use of force

29/4/81 Day

SUSAN RUSSELL

THE Divisional Commissioner of Police for the Witwatersrand gave an undertaking in the Rand Supreme Court yesterday that police under his command would not unlawfully assault, harass or intimidate the Congress of SA Trade Unions and its members at its Johannesburg headquarters.

The undertaking was given by the Commissioner without admitting any of the allegations made by Cosatu about police activities after they surrounded and searched Cosatu House in Johannesburg last Wednesday.

Police gave the undertaking after Cosatu brought an urgent application before Justice G Gordon against the Minister of Law and Order and the Commissioner for an order interdicting the police from assaulting union members at Cosatu House.

The union had also asked the court to order the police to return union property seized last week.

The application was postponed until May 19 after the undertaking was given.

The court was told police had given the undertaking without admitting any of the allegations against them.

Counsel said the police contended they had, at all times, acted lawfully and had continued to do so.

The court was told the Commissioner would communicate his undertaking to all policemen who did duty at Cosatu House.

The police also agreed to return items seized last week. These were seven video tapes, one dictionary, two copies of the Labour Bulletin, two containers of telex discs, a list of Press telephone and telex numbers, an envelope of cassette tapes and four VHS video tapes.

Cosatu general-secretary Jay Naidoo said in an affidavit that police activities at Cosatu House last Wednesday had extensively damaged the structure of the building as well as property belonging to the union and its affiliates.

He said it was apparent from other affidavits in support of the application that there was no need for this damage, which "amounted to sheer vandalism in many instances".

Naidoo said police had entered Cosatu House at about 5.30pm and began to remove railway workers from the hall where they had had a meeting.

After that, he said, the police moved through the remaining 11 floors of the building.

Naidoo said police had randomly and indiscriminately assaulted some members of Cosatu and its affiliates, ransacked many of the offices and removed documents and other articles.

"The loss of the documents taken by the SAP have had a paralysing effect on Cosatu and its affiliates.

"Many of the documents seized, such as cheque books, financial records, in the case of Sarhwu; and other general trade union documents and correspondence removed from Cosatu House are essential to the continuance of normal trade union activities."

Naidoo said the entire structure of labour relations in SA had been threatened by the police's actions.

"The damage caused was wanton and malicious," he said, "and leads me to believe that the members of the SAP concerned were out of control and that those in authority were either unable or unwilling to exercise the necessary control over those under their command."

Slap on the wrist for the head of police

By CARMEL RICKARD, Durban
THIS week saw the first media coverage of "unrest" in South Africa since tough restrictions were introduced in December. Thanks to a key Natal Supreme Court ruling, overseas audiences were able to watch television footage of police and students clashing on Cape Town university campus

Behind the now legal footage lay a flurry of activity in the Natal courts, reminiscent of the early days of the State of Emergency when applications challenging important restrictions were brought by the Metal and Allied Workers' Union and others

There was the same sense of excitement about the courts asserting their independence of the executive, the same confusion about whether the judgements applied outside Natal and whether a pending appeal affected the implementation of the ruling.

As the euphoria wore off there was also the same sense of realism — that another battle had been won, but that there was still little doubt as to the way the war was going

The timing, as it turned out, was especially sweet: after a fortnight in which the state repeatedly justified new regulations banning calls for detainees to be released, issued statements that the regulations would not be withdrawn or modified, and thumbed its nose at international pleading that the curbs be scrapped, the Natal courts did the unthinkable — they stripped the Commissioner of Police of the power to issue



Pictures like this — of UCT students fleeing sjambok wielding police this week — are now legal, courtesy of the Natal Supreme Court

regulations creating new Emergency offences

Judges Page and Galgut said the State President was not entitled to give the commissioner the wide powers delegated to him in December

Their ruling handed down in the Pietermaritzburg courts had the effect of invalidating all regulations made by the commissioner under the section declared unlawful by the judges

Days later, Justice Ray Leon in the Durban Supreme Court said he was

bound by the full bench decision, with which he agreed, and therefore he granted an order to the Release Mandela Campaign, the Black Sash and two detainees' support committees, declaring invalid the restrictions on campaigning for the release of detainees

In the Pietermaritzburg case, two judges also set aside key Emergency regulations which have stifled "unrest" coverage
Their ruling on the media

restrictions was not, however, based on civil rights concepts, but on a rejection of the legal definition of a "reasonable bystander". The definitions of "unrest" and "security action" (both relying on the idea of a reasonable bystander) were consequently struck down.

They said they "took judicial cognisance" of the fact that the "reporting, recording and dissemination through the media of news of, and comments on, the sort of events contemplated in the media

purpose of drawing attention to the effects of the regulations, the leaving of a blank space will have a far greater impact on the reader and his emotions than will an express statement, and that it will also be more likely to cause some reaction in such reader"

Both sides have been given leave to appeal against the judgement the UDF wants to challenge the judges' decision not to overturn more of the restrictions and the state wants to challenge those which were set aside

Picture GUY TILLIN, Afrapix

increasing the apprehension of the public as to its safety, of causing the public to doubt the existence of public order or the ability of the authorities to maintain it.

"It would fall squarely within the policy of the act to prevent such a result."

The judges accepted that the media regulations were primarily to prevent "the impact on the public of news, or of comment, on the type of events described in the regulations".

Rejecting the applicants' challenge to the ban on media coverage of court proceedings concerning conditions of detention, the judges said, "As unreasonable as the denial or the limiting of the right (to report such cases) may be, it is clear that mere comment or news on the circumstances of detention or the treatment in detention of detainees, whether favourable or condemnatory, might well set alight already smouldering feelings among certain members of the public, which in turn could give rise to further unrest and violence."

They also rejected a challenge to the restriction on papers printing blank spaces to indicate where reports were curtailed under Emergency regulations.

The judges said there was no ban on a statement saying that certain reports do not appear or certain reports were limited.

"There can be no doubt that for the

the mere act of withdrawing the effects of the judgement were suspended pending the outcome of the appeal.

The general consensus among legal experts is that the judgement is still effective.

Experts point out that there is a difference between judgements involving "execution" of some action — for example where one person is ordered to pay money to another — and judgements which are declaratory or "declare" the law.

When "execution" is involved, a pending appeal will usually suspend the effect of the judgement. However when a declaratory order is involved, that order states what the law is. This then is the law, until it is overturned by a higher court.

The issue is made more complex by the fact that most authorities on this question seem to relate to situations where money is involved and this particular issue does not seem to have a precedent.

On the question of how widely the judgement applied, lawyers said it is effective countrywide. This is because there is only one supreme court in South Africa and the Natal Provincial Division — a division of that Supreme Court — has stated what the law of South Africa is.

Until there is a contrary decision in another division or until the appellate division has held otherwise, the Natal Provincial decision states what the law of South Africa is on this point.

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New system for pleas in mitigation

ARGUS 1/5/87
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Row over Labour axing of activist

The Argus
Foreign Service

LONDON — The Labour Party leadership has suspended a black activist, Miss Sharon Atkin, as a parliamentary candidate — and prompted an angry reaction in the black community

One black leader prophesied "a pitched battle between the black community and the racist Labour Party" and said it would guarantee a Conservative victory

Labour's national executive voted 19-6 to back Mr Kinnock's call to suspend Miss Atkin, 35, as a parliamentary candidate for Nottingham East following allegations that she had branded the party "racist" at a black sections rally in Birmingham

Mr Kinnock, who has strongly opposed the formation of black sections within the party, said "We will not advance the cause of black people in this country if candidates can call our party racist and, simply get away with it."

RECORD

"This party has a better record of fighting prejudice and better policies for fighting prei-

The Argus Correspondent

JOHANNESBURG — A new system to ensure the punishment fits both the crime and the criminal is being experimented with in the Johannesburg Supreme Court.

The system involves social workers researching the backgrounds of accused people and presenting a report to pro Deo counsel. The report gives mitigating circumstances in the accused's background and could even suggest witnesses who could be called in mitigation of sentence

The new system was mentioned by Rand Supreme Court judge Mr Justice R Goldstone at a recent symposium in Pretoria

The judge said that, on a recent visit to the United States, he had found there were private organisations employed by firms of attorneys to investigate the background of the accused and present the judge with a "sentencing package"

In his own experience, Mr Justice Goldstone said, in up to 90 percent of cases mitigation pleas were "very cursory, quick"

Often the submission in mitigation of sentence was so scanty that "the judge knows no more about the accused than he did before sentencing"

Panel set up

On his return from the US he held discussions with the Attorney-General of the Transvaal, the Judge President, the Johannesburg Bar Council and the Department of Health and Social Welfare

Arising from these talks a panel consisting of five pro Deo counsel chosen by the Johannesburg Bar Council, social workers from Health and Welfare and representatives from the National Institute for Crime Prevention and the Rehabilitation of Offenders (Nicro) was set up this month and the first case to have been dealt with under the new system is expected to be completed next week in the Rand Supreme Court

"This could have tremendous repercussions," the judge said yesterday "It could be extended to the magisterial and regional courts"

"It could in some way mitigate the disadvantage of people being without their own legal representation and having to rely on a pro Deo counsel who in turn has no back up to provide him with the necessary background on the accused"

He predicted that the system might also be used to argue the merits of a case before sentencing

● Paying a debt to society, Page 5.

WESTERN CAPE

ARGUS 15/87

Paying a debt to society

If a person convicted of a crime is not a danger to society, it makes sense to allow him to pay for his misdeed by serving the community, instead of sending him to prison to be exposed to contamination and alienation at the taxpayer's expense

This is the concept of community service as an alternative to prison, which has been ordered in about 300 court cases in Cape Town since Nicro launched a pilot project in 1980

Nearly 200 men and women have completed their service in this period, and 29 are doing it at the moment

As a result of the project's success, community service orders have been introduced on a small scale in other regions and the local branch of Nicro is drawing up guidelines for other branches

Nicro doesn't claim a fairy-tale success rate with community service. In fact, about a quarter of offenders sentenced in this way are referred back to court because they don't fulfill the conditions of regular attendance being sober, punctual, co-operative and responsible

Because a community service order is always made in conjunction with a suspended or post-

THE recent sentencing in the Supreme Court of four public violence offenders to weekly community service for two years — the first public violence sentence of its kind — attracted attention in legal circles. But community service as an alternative to imprisonment was the focus of a pilot project launched by Nicro (National Institute for Crime Prevention and Rehabilitation of Offenders) in Cape Town in 1980. As a result, community service has gained acceptance, although Nicro would like to see it used more widely. SUE LUPTON spoke to Linda Christiansen, Nicro's Western Cape director, and Isabel Hancock, a senior social worker responsible for co-ordinating community service orders:

poned sentence, the court then has the option of sending the offender to jail, or giving him another chance at the service

Community service has numerous benefits — not only is the offender able to remain in his family and continue working, but he does not have to face readjusting to society

He repays society by giving unpaid service and he benefits from appreciation, which boosts his self-esteem and confidence. Low self-esteem is almost always one of the reasons why he became involved in crime

But, it is not a "soft option" — the maximum sentence recorded is 1 664 hours' service, the equivalent of one eight-hour working day a week for four years. By trial-and-error, Nicro drew

up a programme to be followed before a community service order is imposed

When a judge, magistrate, social worker or lawyer suggests that community service may be appropriate, a report is requested on the suitability of the person.

The probation officer — a member of a State welfare department — investigates,

A panel discussion, involving the Nicro community service supervisor, the probation officer and the offender is held to assess if the offender is suitable,

A suitable placement is found,

Community service is recommended to court,

The judge or magistrate accepts or rejects the recommendation

During this process, candidates are screened carefully. The minimum age is 15 and only those with stable accommodation and employment are considered suitable

Usually unsuitable are mentally disturbed offenders, drug-addicts and sexual or violent offenders

It is essential that the offender is willing and motivated to do community service

Great care is taken in finding a placement where the offender will fit in and be able to make a contribution. The offender's interests and where he lives are also taken into account

A person is never sentenced to community service a second time. If he commits another crime, it is clear that the objec-

tive of the sentence — to rehabilitate — has failed

Community service orders are most often imposed for drunken driving offences

Other crimes for which it has been used are stealing, drug offences, culpable homicide, fraud and assault

A community service order is always made with the involvement of a probation officer whose task is to encourage, counsel and supervise

Nicro's function is co-ordination matching the offender to the "placement agency" where the service is performed and making sure it is performed efficiently and honestly

Most of the "placement agencies" where offenders perform their service are welfare organisations which need voluntary workers

Institutions and clubs for the physically or mentally handicapped, hospitals, municipal cleansing departments and children's homes are among the organisations which provide opportunities

cards, that the banned organisation was planning to disrupt the elections. This view is supported by the fact that the ANC is engaged in a major thrust to gain acceptability with leading industrial countries like Japan and America.

Until a clearer picture emerges, it seems claim and counter-claim are bound to fly. The same thing happened after the Matola raid in 1981, when the Mozambicans claimed that a jam factory, not an ANC base, had been destroyed in an SADF raid. Meanwhile, anti-South African perceptions of the raid will probably carry the day.

The operation, which was officially described as "armed reconnaissance on a terrorist infiltration route from Zambia through Botswana" was, predictably, condemned by Western governments. Expectations are that the UN Security Council will again convene to condemn SA, but that calls for mandatory sanctions would probably be vetoed.

Whether the commando raid prevents more ANC attacks in SA than would otherwise have been the case is a moot point. And whether, as has been alleged, some 250 insurgents are already on their way to the country through this route, remains to be seen.

UNREST

State in court

Government suffered a defeat last week when the Natal Supreme Court set aside regulations which last year further restricted press freedom on the grounds that a "bloody Christmas" of ANC terror was imminent.

The court overturned prohibitions on reporting, recording or photographing any news or comment on security force action, deployment or equipment. It also overturned a prohibition on reporting or commenting about any restricted gathering.

Predictably, the State is to appeal against the judgment. In the interim government may well once again intervene and reformulate legislation to counter the finding. Although the decision is only binding in Natal, its effects are likely to touch on other provinces.

Another emergency measure, the restriction on campaigning for the release of detainees, is being challenged by the PFP in the Cape Town Supreme Court. The PFP argues that the State President acted beyond his powers on December 11 last year by defining a "subversive statement" as one which en-

couraged or incited people to commit an act identified by the Police Commissioner as threatening public safety or order. Alternatively, the PFP claims the commissioner acted *ultra vires* because his notice is "grossly unreasonable, arbitrary, capricious, vague and influenced by irrelevant considerations".

For the State, Major General Francois Steenkamp revealed in an affidavit that a total of 4 244 detainees were held on April 15 this year — 1 424 of them aged between 12 and 18. A total of 14 965 people had been released between June 1986 and April 15 this year. No white children are held, he said.

Meanwhile, it would seem that the upsurge in pre-election violence is gaining momentum. While March saw 234 unrest incidents, according to the Bureau for Information, Steenkamp says in his affidavit that incidents from April 1 to April 15 already add up to 160.

SATS STRIKE

Discussing action

Sats' decision to fire the strikers who declined to return to work on April 22 seems to have ended the six-week-old strike. On the other hand, it may well have set the scene for more comprehensive action by unions.

In a demonstration of firmness, Sats stuck to its guns and duly fired a total of 16 000 striking employees on the Witwatersrand and Bloemfontein last Wednesday. About 2 000 strikers returned to work on deadline.

Sats spokesman Jannie van Zyl says the service is coping with the help of existing personnel, who do the additional work in shifts, and other relief workers. It temporarily employed roughly 800 students and school children over the holidays.

Labour Day

But a shortage of workers will be only one of Sats' problems over the next few weeks. Although Van Zyl says Sats is not expecting trouble on May 1 (Labour Day), it is stepping up security as a precaution with the help of the SA Defence Force and police. Sats has already suffered a loss of about R25m in damage to rolling stock.

Congress of SA Trade Unions (Cosatu) general secretary Jay Naidoo says Cosatu is "very upset" about the dismissals and is "discussing action to ensure the reinstatement of workers". He says "solidarity action" from other workers' unions may be expected, but he declines to elaborate.

At least seven strikers have already died in

F1M 11/5/87

State to appeal against Natal court decision

By **SRU KNGADI**

THE government's 11-month-old state of emergency has been thrown into disarray following the Durban Supreme Court's ruling this week which virtually stripped the Commissioner of Police of his enormous powers relating to campaigns for the release of detainees and freedom of speech.

In a bid to uphold the regulations, counsel for the State, L.J. Visser, success-

fully applied for leave to appeal.

By late yesterday, another counsel for the State, H. Combrink, was granted leave to appeal to the Appellate Division against the last week's judgment by a full bench of the Natal Supreme Court, setting aside key emergency regulations on media coverage and security force action.

However, the UDF and Release Mandela Campaign were also given leave

to lodge a cross appeal in the Appellate Division against the court findings that other sections of the regulations promulgated on December 11 - which were the subject of their application - were invalid.

Justice Leon ordered that the definition of a "subversive statement", as in paragraph A9 in proclamation R224 of the Public Safety Act published on December 11 last year and

a notice issued by the Police Commissioner on April 10, be declared of no force and effect in law.

The respondents - the State President, the SA government, the Law and Order Minister and the Police Commissioner - were ordered to pay costs of the application.

These regulations said it was a criminal offence to make a "subversive state-

ment" which threatened the safety of the public and the maintenance of public order. The April notice expanded the definition of a "subversive statement" to include statements likely to encourage or incite participation in campaigns to secure the release of detainees.

In his founding affidavits, RMC national co-ordinator Aubrey Mokoena, supported by other applicants - the DPSC, Durban

Defence Support Committee and the Black Sash - said that since 1986 they have been engaged in a vigorous campaign of protest and opposition to the definition of various people in terms of emergency regulations.

Earlier this month Justice Leon said he was of the opinion that any attack on the freedom of speech of an individual or an organisation was a matter of urgency, especially, shortly

before a general election. Pending the outcome of the Appellate Division, the judges ruled that the prohibition on calls for the release of detainees was invalid and of no force and effect in law. The restriction on the publication of advertisements in praise of, or justifying the campaigns of any lawful organisation were invalid.

Photographs of unrest or security force action or of damaged or destroyed prop-

erty or injured or dead persons may be published.

Reports on security force action and deployment may be published. Specific definitions of "security action" and "unrest" were invalid. Regulations which made it a criminal offence to make a "subversive statement" which threatened the safety of the public or the maintenance of public order, were invalid.

Am Times 14/5/87 (252)

Muti murder case heard in 'people's court'

Staff Reporter

"PEOPLE'S COURT" chairman Mr Makhele Tono told a Supreme Court judge yesterday that two Nyanga East men charged with the "muti murder" of a nine-year-old girl had already appeared before him in the "people's court"

Proceedings in the Zolani Centre in Nyanga had been interrupted by police last year before sentence was passed, and the accused were "taken away", he said

Mr Tono, 35, told Mr Justice H A van Heerden that before the interruption, one of the accused had confessed in the "people's court" to killing the girl and "removing parts of her" Mr Tono said he had been "nauseated"

Both Mr Morgan Sikhunana, 42, and his nephew Mr Simon Sikhunana, 19, have pleaded not guilty in the Supreme Court to the murder of nine-year-old Siphokazi Alicia Goniwe in Nyanga on April 19 last year

The State alleges she left her parents' home with Mr Simon Sikhunana, who is her cousin

Later that day, the State alleges, the Sikhunanas were seen washing their bloody hands under a neighbourhood tap The uncle also washed a knife there, and his nephew was carrying a plastic bag

Five days later, the decomposing body of the girl was found in a bushy area 500m from the tap Her lips, nose and right ear were missing

Dr Johan Duflou, a district surgeon, said certain parts of her body were removed Wounds on her face and thigh "may have been caused by a sharp instrument"

He said her body may also have been gnawed by rats

Under cross-examination, Mr Tono said he had on occasion been elected to serve as chairman of the Nyanga Youth Brigade, and he also sometimes served as chairman of the "people's court"

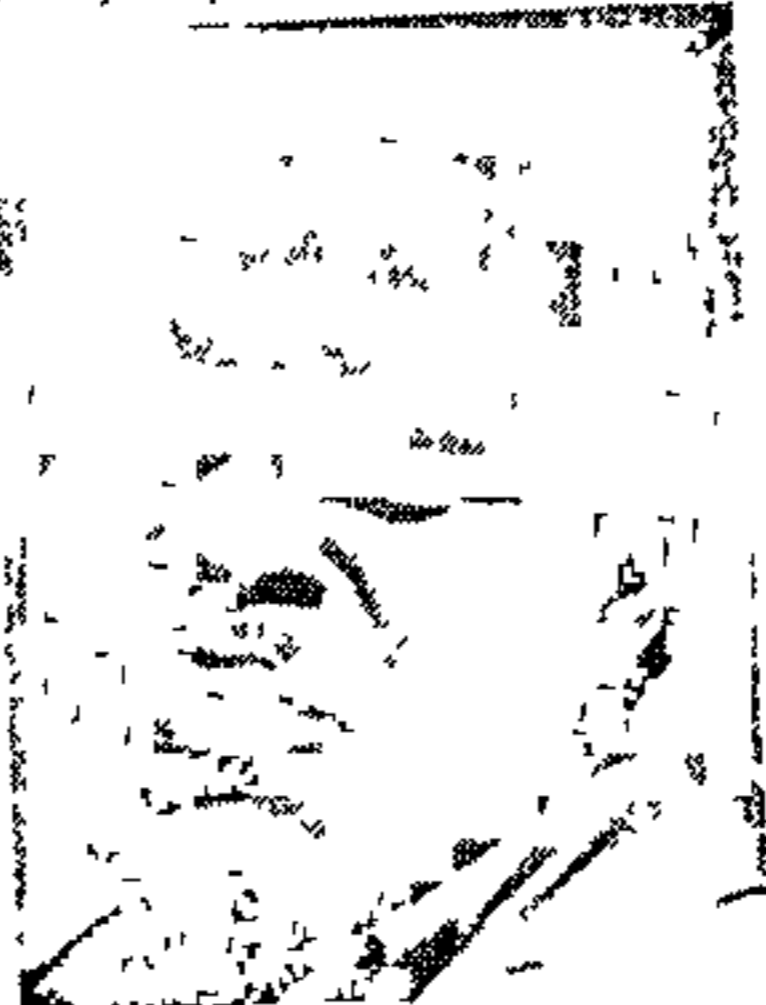
"In this case, I was chairman," he said The first he had heard of the matter was when Mr Morgan Sikhunana approached him at the Zolani Centre and "laid a charge" that the child was missing and had last been seen with Mr Simon Sikhunana

Mrs Lorna Troskie, pro Deo for Mr Morgan Sikhunana, said her client was an elder in his church, the Truth Gospel Mission in Africa, and did not believe in witchdoctors

He would claim, she said, that he had been "hit for 20 hours" at the people's court Mr Tono said in reply that he knew nothing of the accused being hit A person would not be hit before he was sentenced

Mrs Troskie put it to Mr Tono that her client knew nothing of the murder Mr Tono said "Before me, too, he denied everything, so it does not surprise me that he denies it all now"

The case continues today Mr L E Buyskes and Mr H J Luttig acted as assessors Mr G Visser appeared for the State Mrs Renate Williams appeared pro Deo for Mr Simon Sikhunana



Mr Tono



Mr M Sikhunana

Mutilated girl: People's court 'official' tells of 'trial'

MBL 14/5/87

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Supreme Court Reporter

A PEOPLE'S court "official" has told the Supreme Court of the discovery of the mutilated body of a nine-year-old girl and the subsequent "trial" of her cousin and her uncle

Mr Makhele Tono testified yesterday in the trial of Mr Simon Sikhunana, 19, and his uncle, Mr Morgan Sikhunana, 42, who have pleaded not guilty to murdering Siphokazi Alicia Goniwe in Nyanga East on April 19 last year

Previous evidence was that both accused were arrested during people's court hearings.

The State alleges Siphokazi left her parents' home with Mr Simon Sikhunana, her cousin

Later, it is alleged, both ac-

cused were seen washing their hands and a knife at a tap

Five days later, Siphokazi's partly-decomposed body was found about 500m from the tap

She had been stabbed and parts of her body were missing

A district surgeon testified that the girl's lips and right ear and parts of her nose and right cheek were missing, as well as part of her thigh

Mr Tono said he was one of the leaders of the Nyanga Youth Brigade and sometimes acted as chairman of a people's court, held at Zolani Youth Centre

On April 24, a youth brigade member reported finding a body

Mr Tono said he fetched Mr

Simon Sikhunana and showed him the body

Mr Simon Sikhunana said he and Mr Morgan Sikhunana had killed Siphokazi, said Mr Tono

Mr Morgan Sikhunana was brought to Zolani Youth Centre by relatives

A people's court "trial" of the two accused began on April 25 and was interrupted by police, who arrested Mr Morgan Sikhunana.

The next day, police again intervened and arrested Mr Simon Sikhunana, said Mr Tono.

(Proceeding)

Mr Justice van Heerden is on the Bench Mr L E Buyskes and Mr H J Luttig are assessors Mr G Visser appears for the State Miss R Williams and Miss L G Troskie appear pro Deo for the accused

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STEFFAN'S

RETURN OF THE RULE OF LAW

We, the undersigned professors of law at the University of Natal, find our position as teachers of law at a South African university increasingly untenable.

The legislative function of parliament has been usurped by the executive and the judicial function of the courts emasculated by the emergency regulations.

New criminal offences are created by the Commissioner of Police which fly in the face of basic legal principles such as the rule of law and the freedom of association and speech.

The role of the judiciary as protectors of civil liberties has been undermined by denying large numbers of political detainees access to the courts.

These acts by the executive have severely damaged the local and international reputation of not only the South African legal system but also the legal profession - judges, advocates, attorneys and academics. They have also made a mockery of the general election for the House of Assembly, inhibited the lifting of sanctions and prevented the holding of meaningful negotiations to solve South Africa's present political impasse.

Accordingly we call upon colleagues at law schools and legal practitioners throughout South Africa to join with us in a campaign to petition the government to lift the State of Emergency and to release all political prisoners.

Mail 15-2-1987
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*Interested law teachers and lawyers may write to the: Campaign for the Return of Law,
School of Law, Howard College,
University of Natal, Durban 4001.*

Signatories:

Professors L.J. Boulle; J.M. Burchell; J.R. Lund; A.S. Mathews; J.S. McLennan;
D.J. McQuoid-Mason; J.R.L. Milton; M.C.J. Olmesdahl; P.R. Spiller.

Ebrahim set free — then charged

By MONO BADELA

SENIOR African National Congress member Ebrahim Ismael Ebrahim has won his application for release from detention — only to be charged with high treason.

Ebrahim will be charged with treason and other offences relating to the Internal Security Act, the State Attorney announced yesterday after Mr Justice van Zyl heard argument on Wednesday in the Pretoria Supreme Court.

Ebrahim was abducted from Swaziland at gun-point by the South African police last December.

He has been in solitary confinement since December.

The application for his release was brought to court by Ebrahim's brother, Essop, and was piloted by civil rights lawyers, Ismail Mohammed, SC, and S Naidoo, instructed by Priscilla Jana.

The state also agreed to pay legal costs.

Another application will be lodged challenging the right of the state to charge Ebrahim in a South African court in the light of the fact that he was abducted and detained in violation of international law.

During a hearing in March Ebrahim was granted the right to speak to his lawyer and to have access to affidavits presented to the court pertaining to the application.

The application also called upon the court to restrain the South African police from assaulting or interrogating him.

The ruling, the first in South African history according to civil rights lawyers, was made by Mr Justice J Kriegler.

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Photographer wants his spools back

By CARMEL RICKARD

DURBAN freelance press photographer, Billy Paddock, launched a Supreme Court application this week to get back 13 spools of film from the police.

The film was confiscated after he photographed two student protests last week.

In court papers, Paddock, who works for Reuters, said that on Wednesday he took pictures as about 60 protesters held a placard demonstration. When police arrived and arrested 40 people he was also told to get in to the van.

Later he was ordered to hand over his film, one spool of black-and-white and one of colour, and was then told to go.

The following day he photographed a march by hundreds of students along a road around the edge of the University of Natal, Durban, campus. The students were protesting against the police action the previous day.

Police sjambokked students and arrested 18, provoking strong condemnation by university officials.

He was then arrested and 11 rolls of film confiscated, including nine spools of unexposed film taken from his camera bag.

Paddock, who was held overnight with the students and released on R250 bail, said the police were not entitled to take his film, but they had ignored a letter by his attorneys demanding that it be returned.

This week it was agreed by both parties that the unexposed film would be returned immediately, but the issue of what is to happen to the rest will be argued next week.

Paddock's application — which is being sponsored by the South African Society of Journalists — could become a test case as it is likely to decide whether a recent Natal Supreme Court judgement is effective. This judgement declared invalid several emergency regulations, including the bar on photographing or reporting on police action.

7/8/87

'Mission for justice' men are guilty

25
CP News

CP Correspondent

FOUR Muslims who robbed two security guards at the Lincoln Tavern, Athlone, and fatally shot one while trying to get arms to protect mosques, were this week jailed for 16 years each

Nazar Bhawoodien, 29, his brother, Said Ahmed Bhawoodien, 22, Moegamat Abrahams, 22, and his brother, Nazeem Abrahams, 26, robbed Frank Joseph and Roslin Macdonald of firearms

A fifth accused, Rushdien Abrahams, escaped from a prison lorry on the way to court during the trial and is still free

His trial had been separated

According to evidence they read that morning that their mosque had been desecrated and they intended stealing weapons to guard mosques

Both guards were shot, Joseph fatally

Justice MR de Kock said he had taken into account all the circumstances, including their intense religious feelings and that the robbery was not for personal gain

They were sentenced to eight years' imprisonment for robbery with aggravating circumstances, 12 years for murder and nine years for attempted murder.

Except for Said Bhawoodien, they were also sentenced to 18 months for illegal possession of a firearm and ammunition

The judge ordered that the parts of the jail terms run concurrently so the four will each serve 16 years.

Interdict to stop assaults

Sunday Times Reporter

THE family of a detainee held under Section 29 of the Internal Security Act, who was recently seen dressed in a torn nightie and with facial injuries in a Government mortuary in Durban, was granted an interim interdict in Durban's Supreme Court this week restraining the police from assaulting her.

Mr Justice Galgut ordered the Minister of Law and Order and Commissioner of Police to show cause by June 9 why they should not be interdicted from assaulting Mrs Tryphina Jokweni.

The last time her family received news of her was after a Durban lawyer and family acquaintance, Mr Kwenza Mlaba, visited the Government mortuary in Durban on April 28.

In an affidavit before the court, Mr Mlaba said Mrs Jokweni was dressed in a torn nightie, her face was swollen and one of her ankles was chained.

She appeared very distressed and hurriedly told me she had been assaulted and feared further assaults, Mr Mlaba said.

Mrs Jokweni was detained after three alleged ANC terrorists were killed by police at her Umlazi home last month.

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Light evening meals, on the patio or indoors.

'Good guys' appeal jail terms

Supreme Court Reporter "A HIGHLY distressing picture" and "a disastrous situation" were phrases used by a Supreme Court judge yesterday to describe events culminating in the holding of a "people's court" where two women were lashed 60 times with a stambok.

Mr Justice I. Rose-Innes was sitting with Mr Justice D M Williamson in an appeal brought by five people sentenced to jail terms for assault after admitting participating in the "people's court".

The five were among a group of 32 people originally charged with assault in the Wynberg Regional Court in September last year. Charges were withdrawn against all but six of the accused when the trial began. The six admitted taking part in the "people's court" held in the Nyanga Art Centre in

November 1985. The outcome was that two sisters, Mrs Nompumelelo Sogiba and Mrs Nompundulo Nguninguni, were forced to lie on a table while they were each lashed 60 times.

The "court" was convened by people described as "the good guys" by Mr W L Downer for the State, an attitude apparently shared by Mr D O de la Hunt for the appellants, who was at pains to contrast this "court" with those convened by people allied with "the revolutionary communist onslaught".

According to the record, "the good guys" started out — with the blessing of Gugulethu police station commander Major Alwyn Burger — as a vigilante group called the Nyanga Youth Brigade. Their aim was to patrol the Nyanga area to prevent robberies and act against "the criminal element".

Believing they also had permission to extend their activities into the judicial sphere,

they began to hold court and were approached in this instance by Ms Thobeka Hanoyi, who claimed she was being harassed and threatened by the families of the two women who were subsequently whipped.

Ms Hanoyi told magistrate Mr M Marais that she took this step because complainants to the police had yielded no fruit.

Both she and another witness said the two women were not whipped as a punishment for harassment but for being contemptuous of the "court" by swearing continuously.

Mr Marais sentenced Ms Hanoyi to a fine of R500 or nine months in jail with a further one-year jail term suspended.

The other five accused, who brought yesterday's appeal, were given sentences described as "shocking" and "vicious" by Mr De la Hunt.

Mzwake Ndidimba, a 29-year-old actor who acted as the chairman of the "court", was

sentenced to five years with three suspended. Xola Jack, the 21-year-old "clerk of the court", was sentenced to five years with 3 1/2 suspended.

Both these appellants were granted leave to amend their appeal to include conviction yesterday. Their appeal will be heard at a date arranged by the Attorney-General after referral to Mr Marais, who is to be "afforded an opportunity to elaborate on his reasons" for convicting them.

The other three — 28-year-old musician Simon Pasiya, 26-year-old epileptic Lawrence Sidalayiya and 23-year-old hotel worker Ndimphwe Kweza — were sentenced to five years, with half suspended.

Mr De la Hunt pointed out that all were first offenders and that they were charged with assault, not sedition.

Judgment was reserved. The five are on bail of R1 000 each. Mr De la Hunt was instructed by E Moosa and Associates

DOORWAY 250 NINETY-NINTH 664 1123

Advice offices can fill the gap in legal aid network, says advocate

By Jo-Anne Richards

Legal aid services in South Africa were woefully inadequate, Mr Arthur Chaskalson, SC, told the 12th South African Law Conference in Sandton yesterday

Government spending on legal aid last year was about R5 million. England, with twice the population, spent about R1 500 million, he said

While the legal profession did not have the resources to solve this, it could help improve people's access to the law by encouraging and supporting community advice offices such as those run by the Black Sash, said Mr Chaskalson

Advice offices had an important role to play in developing an extensive legal aid network

"One of the greatest failings of the legal aid system is that it does not give meaningful support for the defence of criminal cases. Tens of thousands of people are convicted each year and sentenced to imprisonment without the benefit of legal representation," Mr Chaskalson said

"In most of these cases the accused are black, the judicial officer and prosecutor white, and the court proceedings conducted in a language not properly understood by the defendant. It is not surprising that the criminal justice system is viewed with suspicion by the black community"

If the resources of the Legal Aid Board and the profession were directed at providing defence in criminal cases, advice offices could fill a gap in providing much of the advice needed by people

Lay people running advice offices had built up expertise in dealing with problems about citizenship and influx control, Mr Chaskalson said

"I would think that well over 90 percent of the problems are solved without reference to lawyers"

Many problems concerned illiterate or ignorant people fighting their way through red tape and bureaucracy

During 1985/86, the advice offices serviced by the Johannesburg Legal Resources Centre conducted 8 000 interviews. All but 1 000, which were referred to lawyers at the centre, were handled by advice office staff. The advice office case load had increased to almost 20 000, said Mr Chaskalson, and the percentage of cases referred to lawyers was reduced to between five and 10 percent, as staff confidence and expertise grew

While untrained people might make mistakes, most people using the offices would never have reached lawyers' offices and would probably have done no better by dealing with the matter themselves, he said

Mr I M Bredenkamp said the Legal Aid Board and the legal clinics should come to an arrangement to concentrate on certain kinds of cases

He suggested the Legal Aid Board set up a trust fund to help finance clinics and that the private sector should get involved. LIB students, who are used in clinics, could be given a limited right of appearance in court.

Legal costs: A bit out of hand?

By PETER DENNEHY

CAN the "man in the street" still afford to take a dispute to court, or are legal costs getting out of hand?

Mr Billy van der Merwe, president of the Association of Law Societies, expressed concern on Monday at the opening of the 12th South African Law Conference in Sandton over the high cost of litigation, and called for remedial action to "increase everyone's access to the law"

The Cape Times approached office-bearers at the Cape Law Society and the Cape Bar Council yesterday and spoke to attorneys in an effort to establish the present state of legal fees.

Attorneys who could not be named for professional reasons agreed that the minimum in legal costs one could expect to pay in, say, a simple dagga case involving a single court appearance was about R350.

Tariffs are laid down by the Cape Law Society in "non-litigious matters" such as ordinary consultations. The tariff is between R30 and R100 a half-hour.

Cape Bar Council guidelines could not be obtained yesterday, but an official said figures such as "R5 000 a day for the first day of appearance" of a "senior silk" in the Supreme Court gave the public the wrong impression, since the fee for preparation for the matter was included.

Mr Van der Merwe suggested that litigation costs could be brought down if every LLB graduate had the right to appear in the Supreme Court, and if the two-year-system of "serving articles" were abolished in favour of a practical training school.

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Cape Times 20/5/87
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Mrs Ndumande . . . "I don't want him to die"

The Strivings of Mums

Handwritten initials: ND

AND THE FIRST WHITE NECKLACE MURDERER

By CHARMAIN NAIDOO
TWO mothers — one weeping quietly, one dry-eyed and grim — watched from opposite ends of the courtroom as South Africa's first white necklace murderer was sentenced to death.

Later they passed each other on the steps outside the Pretoria Supreme Court, neither acknowledging the other.

One lost her son in a gruesome necklace killing. The other will lose her son because of it.

Forgive

"I believe in his innocence I'll stand by him," said Mrs Gwen (Pakkie) Naudé, 64, mother of the condemned Henry Burt, who was found guilty of murdering a young black policeman in June last year.

"I don't want Burt to die I forgive him," said Mrs Josephina Ndumande, 60, mother of Mr Johannes Ndumande, victim of the grisly necklaced

One lost her son in an evil killing

Both mothers have suffered in the past year, and one has been left destitute with the exorbitant legal costs paid out for her son's defence.

Their nightmare began in mid-June, 1986, when 26-year-old Johannes was murdered.

This week, condemning 34-year-old Burt to "hang from his neck until he is dead", Mr Acting Justice Human called the murder a "barbaric act"

that called for the ultimate penalty, a "heinous crime", "a deed of staggering wickedness."

He said Burt had chosen the necklace method to cast suspicion on black people. After he'd stabbed Mr Ndumande, he set alight a tyre round the policeman's body. The judge found no extenuating circumstances.

Conscience

Throughout the trial Burt consistently denied having anything to do with the necklace murder which occurred on a remote plot in Laezonia.

Allowed to speak before sentence was passed, Burt told the court he thought there "was a lot of framing by the police."

"I am innocent. If the court

Other will lose hers because of it

wishes me to die, I will do so as an honest man. My conscience is clear."

Mrs Ndumande, who is the mother of eight, spoke softly of her wish to see justice done.

"All I wanted was to see him punished. I forgive him for what he did to my son, and have no desire to see him die. Johannes was the breadwinner in the family — a loving child who was very good to his parents."

Speaking from her Pretoria

flat, Mrs Naudé said "Henry is a good, kind boy. He's so gentle, he wouldn't hurt anyone."

"He's always helping people. I know and the Lord knows that Henry didn't commit that dreadful murder. And that's all that counts."

"His conscience is clear. It is his belief in God that has helped him through this ordeal."

Love

Burt's fiancée, attractive paraplegic Springbok Moetikie Grobelaar, spoke of her dashed hopes of marriage to the man of her dreams.

"I love that man. We met in Windhoek in 1981 when I was working in the state hospital. He'd been admitted to the psychiatric ward because

Temper

This was the portrait of the killer that emerged in evidence before the court.

He had twice been admitted to mental institutions — once after the suicide attempt.

He lied, displayed an emotional shallowness and showed no signs of being depressed or worried about his sentence, according to a psychiatric report.

He admitted to having a violent temper — he once assaulted his former wife to the extent that she was in hospital for two weeks.

He also severely assaulted his father-in-law and assaulted an officer while doing his national service.

The psychiatric evaluation of Burt also showed that, while he was not a psychopath, there were traces of personality disorder during his early years. But these had not been present during the



Mrs Naudé . . . "God knows my son didn't do it"

Dagga

● He was arrested for illegal possession of a firearm, though the charges were later dropped

● He admitted having smoked dagga while at school and on occasion while in the army. He said he also used to abuse alcohol especially during his unhappy marriage.

But, since meeting Miss Grobbelaar — they moved to

Chair

Pretoria, where he had bought a plot and was employed at UCOR — Burt's life appeared to be more stable the court heard.

Speaking from the buudu home she shared with Burt, Moekie said he had been nothing but kind to her.

"I've taken part in paraplegic games and have won many gold medals. Henry helped me — he even built me a special wheelchair to suit my needs for the track events," she said.



MOEKIE GROBBELAAR
"I'll stand by him"

Giving evidence, Burt said he was coming home from a civil defence meeting when he saw a car which was sus-

pected of being linked to several housebreakings in the area.

He followed the car. It turned into a well-lit property, and a policeman who'd been a passenger alighted and began walking along the road.

He gave the young policeman a lift and dropped him off farther along the road.

Traces of blood belonging to the same group as the dead policeman's were found in Burt's fiancée's car.

Burt has been granted leave to appeal against sentence.

HORACE POTTER TOOK THE PICTURES

HENRY BURT TO HANG

25
24/5/87
APRA

HENRY George Burt was this week sentenced to death for the necklaced murder of a black policeman

'I go to the gallows honest'

"If the court wishes me to hang I will go to the gallows as an honest man with a clear conscience," Burt told a silent Pretoria Supreme Court just before becoming the first white man to be sentenced to death for necklacing a black

NEATLY dressed in a dark grey suit, Henry George Burt, 34, the white man who necklaced a black police sergeant, listened impassively as Acting Judge Human sentenced him to death this week.

"My son is innocent," said Burt's remarkably composed mother, Gwendoline Naude.

"There's no way he could have done this terrible thing," she told reporters. Looking on from her wheelchair (made for her by Burt) as the judge

spoke was Burt's fiancée, Springbok paraplegic athlete Moeckie Grobbelaar.

"Henry didn't do it. Tell me I'm right," she pleaded later.

Burt, however, believed he had been "framed" by the police, whom he alleged had beaten him savagely after his arrest.

Asked whether he had anything to say before the death sentence was passed, the tough-looking former Rhodesian bushfighter said he found

it "very, very strange" that one of the police officers investigating the case "had a criminal record".

"If the court demands that I die, I will go to the gallows an honest man," he told a silent court.

Also present in court were a grim-faced Lieutenant-Colonel Karel "Suiker" Britz, head of the Pretoria Murder and Robbery Squad, and several members of the squad. — Sapa.

In passing the death sentence, Acting Judge Human found no extenuating circumstances and said Burt had committed a "barbaric act" that called for the ultimate penalty. He said it was a "heinous crime" and a "deed of staggering wickedness".

Burt, 34, was convicted on a charge of necklacing Sgt Johannes Both Ndimande in Laezonia in June last year. Ndimande sustained a hard blow to the head and was wounded in the stomach before being taken to a quiet road where he was necklaced while unconscious.

Before the death sentence was passed Burt suggested the police had framed him, saying "there

was framing involved".

Referring to an alleged assault by the police he said "After the brutal way I was treated I found it strange there was no proper investigation against the policeman involved."

Human said Burt had chosen the necklaced method to cast suspicion on black people, and two black men had in fact been arrested for the crime.

The court found that Burt was not a psychopath and that though there were traces of an anti-social personality disorder during his

earlier years these were not present during the past four years.

The court was of the opinion that Burt was helped by Roger North, but rejected that Burt was influenced by North.

Human said that, after the assault had taken place, the tyre and petrol had been obtained and the accused was driven to the place where he was burnt. He added that — according to the medical evidence — Ndimande was alive at the time of burning.

The court also found that, although the accused

had consumed alcohol on the day of the murder, this had played no part in the crime.

After his conviction Burt still professed to be innocent.

According to psychologist Dr Louise Olivier, Burt was not a certifiable psychopath but did have strong traits of an anti-social personality disorder.

He had constantly displayed strong anti-social tendencies such as aggression, alcohol abuse and the use of drugs. He was twice admitted to mental institutions — once after attempts

to commit suicide. She said he displayed an emotional shallowness and no signs of being depressed or worried about his sentence.

But during the past four years there were contradictions, such as that he maintained employment, a steady relationship and no longer abused alcohol.

Burt admitted he had a violent temper and once assaulted his former wife to the extent that she had to be admitted to hospital for two weeks. He had also severely assaulted his father-in-law

and an officer while doing his national service. He conceded he had led a tranquil life since his divorce.

Giving evidence during the trial, Burt said he was coming home from a civil defence meeting when he saw a car which was suspected of being linked to several housebreakings in the area.

He followed the car which turned into a well-lit property. He saw a policeman, who had been in the car, walking along the road and gave him a lift in order to question him about the car's occupants.

Burt said the policeman told him he did not know the people and he dropped the policemen off further along the road.

He then went home briefly before going to see Roger North in connection with a meeting North had failed to attend.

William Maspe and Johannes Makgoko, who were in the car, said Burt drove the policemen directly to North's house. Traces of blood, belonging to the same blood group as the policemen's, were found in Burt's fiancée's car. Sapa



Henry Burt and his fiancée, Moeckie Grobbelaar, outside court earlier this year.

Sentence was just - Ndimandes

By SOL MORATHI
SERGEANT Johannes Buti Ndimande may not have died in a brutal way had he listened to his parents' plea not to trust all white people.

Ndimande's mother, Josephine, told *City Press* after his son's murderer, George Henry Burt of Lae-zonia, was sentenced to death in the Pretoria Supreme Court that she had

always warned him not to trust all white people.

"I tried to warn him about the danger posed by certain white people on many occasions.

"But he would not listen. He loved them so much, thinking that they were good. Unfortunately he learnt too late and in a most brutal way.

"If only he would have listened to me, he would

still be alive," said Ndimande.

She pointed out that she had told the deceased on the night he was killed to leave early for work in case he did not find transport.

But the deceased refused, saying he would be picked up by whites along the road if there was no transport.

Ndimande said she was glad that Burt had been

sentenced to death.

"I know he is not going to feel the pain my son felt, but I am happy," she said.

"My heart has been bleeding and aching since my son was killed and we have been praying that his killers be brought to book," she said.

Ndimande's father, George, said hanging was not enough for Burt.

"He needs a necklace

too. He must feel the pain my son felt," he said.

"The way Johannes was killed was uncalled for, and I hope and pray that the Appeal Court does not overrule this sentence.

"Today's decision will at least restore the peace we have been looking for since the death of Johannes," said Ndimande.

● See page 2

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By CARMEL RICKARD

A SUPREME Court application brought by Durban freelance press photographer Billy Paddock has resolved the question of the validity of key media curbs

State counsel in a Durban Supreme Court action agreed this week that the restrictions were not valid in Natal.

At issue were restrictions imposed by the state in December, but declared invalid last month by a full bench of the Natal Supreme Court

The Natal judgement is to go on appeal and there has been controversy about the effect of the pending appeal on the validity of the regulations.

Since the court overturned the curbs on April 24, general legal opinion has been that the regulations are invalid unless the Appeal Court rules otherwise. However, several state officials have claimed the opposite, saying the regulations continue to be in force, pending the outcome of the appeal.

Paddock's application brought against Law and Order Minister Adriaan Vlok was the result of police action on May 6, when they confiscated film, and May 7, when they arrested him and took more spools

On both occasions he had been taking photographs of a student protest.

In their court papers the police said one of the grounds for their action against Paddock was the Emergency media restrictions which made it an offence to take photographs of "unrest" or "police action".

These provisions are the same ones set aside by the Supreme Court a month ago.

This week, when the matter came to court for the third time, David Gordon, SC, for Paddock told the judge the legal representatives of both parties had reached agreement on the status of the media regulations.

"It became common cause ... that the effect of noting the appeal against the judgement was not to re-validate (the regulations) but that for the province of Natal at least (the judgement setting aside these regulations) are therefore invalid."

Gordon said that because this agreement was reached, the case was being withdrawn as "the heart of the application had fallen away".

The state is to pay costs.

Paddock's film is still being held by the police but they are using a different section to justify their action.

On the implications of the agreement a senior member of the legal profession said it was important to the media as it meant there was no longer any doubt about the situation in Natal.

"Police may confiscate film under the Criminal Procedure Act to use as evidence of alleged offences. But photographers cannot be prosecuted under the December curbs for taking pictures and their newspapers cannot be prosecuted for publishing them."

Paddock's lawyers are now investigating a claim for wrongful arrest on his behalf.

However, in spite of the agreement made by the state in the Supreme Court application, charges against Paddock in the Durban Magistrate's Court have not been dropped. He appeared on Tuesday with 18 students arrested by police on May 7.

The State gives way on curbs in Natal

WEEKLY MAIL, May 29 to June 4, 1987

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[Signature]

Pair sentenced

By DAN DHLAMINI

TWO Kroonstad state of emergency detainees who pleaded guilty to charges under the Internal Security Act, were this week given suspended sentences.

John Modisenyani, 35, an employee of the Department of Education and Training, was found guilty of writing or printing a subversive statement calculated to incite the public to support a boycott action.

His co-accused, Simon Mophaki, 24, was found guilty on two charges - dissemination or distribution of subversive statements and inciting the public to support a stayaway action.

Modisenyani was fined R600 or six months' imprisonment. A further six months jail term was conditionally suspended for four years.

Mphaki was fined R600 or a six months' jail term, plus a further six months suspended for for four years.

3/5/87 9/1/87

Free: The six accused of digging 'Buffel traps'

SIX Eastern Cape township residents — accused of digging trenches to trap Buffels by night and assisting security forces to fill them in by day — have been acquitted of subversion and malicious damage to government property.

A regional court in East London heard last week that residents dug trenches across streets in Mlungisi township, Stutterheim, to hinder security force patrols.

Details of the practice, apparently widespread in Eastern Cape townships at the time of the unrest last year, emerged in the trial of Nolele Blom, 35, Thembile Bevu, 25, Christopher Nyweba, 33, Mkanile Njavu, 20, Nondeloza Menkana, 23, and Marti Klaas, 23.

They were found not guilty after the court heard that two key state witnesses had consulted the prosecutor together.

The state alleged the six were guilty of digging the trenches in an effort to subvert authority, or to hinder the maintenance of law and order or the provision of services in Mlungisi.

In evidence, the court heard that trenches had been dug at night as fast as the security forces could fill them during the day. There had been eight to 10 trenches at various points in Mlungisi, each knee-deep and about half-a-metre across.

A member of the Citizen Force, Rifleman MJ Fry, who serviced in Mlungisi at the time, testified that the security forces had been unable to use their Buffels because of the trenches.

Fry said the security forces, assisted by township residents, had filled in the trenches during the day. Buffels had driven over them to compact the ground, but at night they had always been dug open again.

Constable AK Schoeman testified that the trenches had posed a danger to the police and described ambushes. "It happened to me a few times that

I was caught in a road. I would go down and find a trench where a few hours before there had not been one," he said.

"I could not go through the trench and a group of blacks came from behind to try and pin me down. I had to reverse through the group with my vehicle."

An ambulance driver, TM Hatunguh, described how his ambulance had on one occasion fallen into a ditch that had been filled in. It had rained and the ground had turned to mud: "When we drove over it, the ambulance stood on its head"

Trench digging had taken place from the start of the unrest in August 1985 until the end of March 1986,

By FRANZ KRÜGER, East London

the township manager, HHW Paper, testified. The practice had seriously hindered administrative work.

Describing the unrest, Paper told the court it "took the form of stone throwing, burning of schools and private homes, extensive damage to the beer hall which was at that time in operation, digging trenches in many of the streets and the boycott of services charges."

"There were also threats to my personal life as well as my property and my staff. As a result it was almost impossible to gain entry to the township."

It had cost the administration R2 276 to repair the trenches, Paper said.

Fry told the court the security forces had organised a patrol on the evening of March 21 last year to check whether the trenches filled in earlier that day had been dug open again.

Patrol members had been dressed in civilian clothes and had worn black stockings over their heads and arms to disguise themselves.

Fry said he had come across a group of about 30 people singing and dancing in the street, while others were digging up a trench.

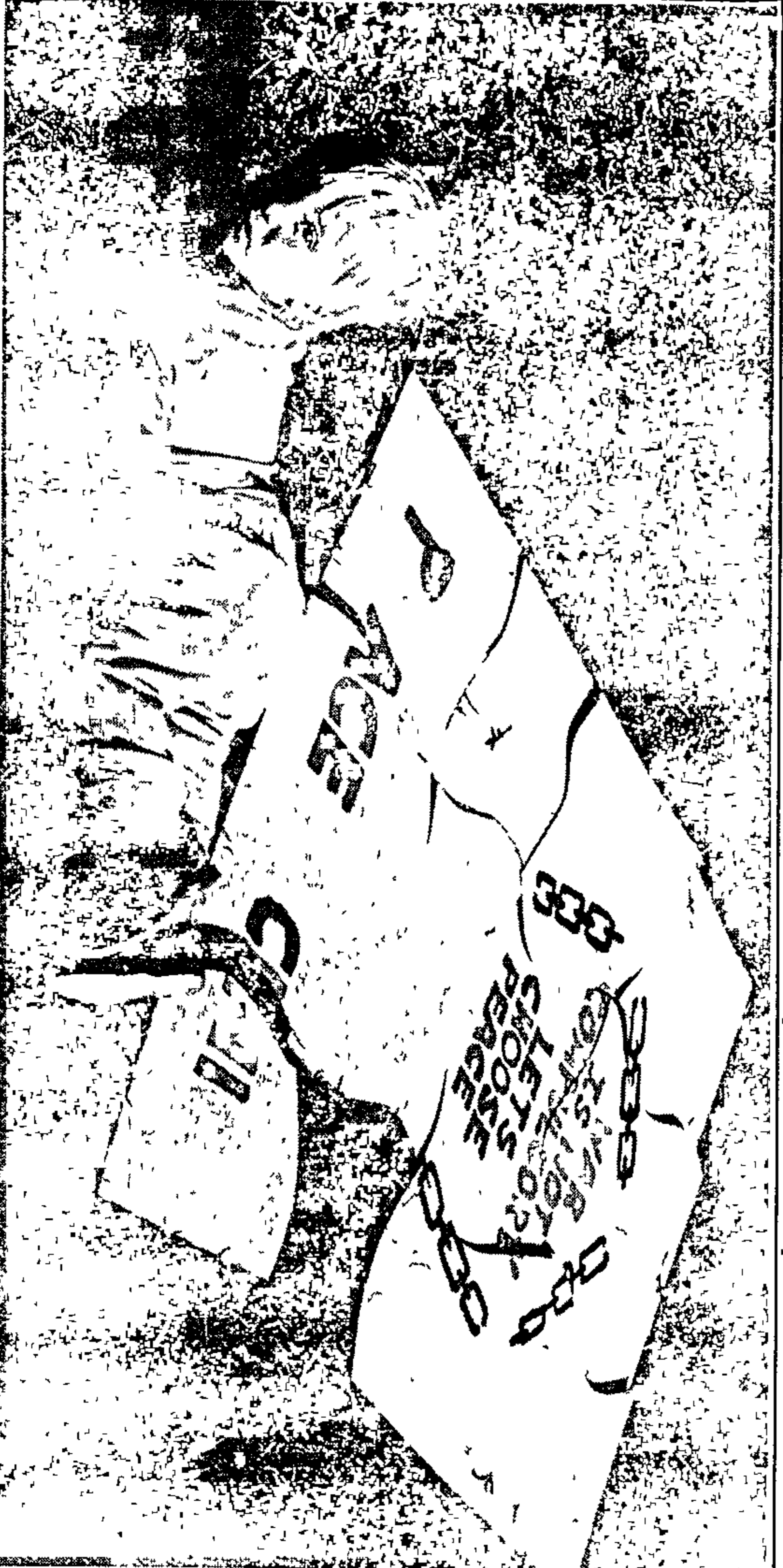
A flare had been lit and six people had been arrested. A pick and shovel

had been found there. Fry later identified one of the six as a man who had earlier that day helped the security forces fill in one of the ditches

A pamphlet headed "Umkhonto we-Sizwe — born of the people" was handed in as an exhibit.

"We are in the midst of death-defying deeds where our combat troops, supported by the people, are erecting barricades and digging defence trenches," the pamphlet said

Another document handed in was *Umsebenzi*, "the voice of the South African Communist Party", which contained a cartoon strip depicting people digging trenches into which a Casspir later fell. — Elnews



As part of their "War is not compulsory" campaign, the ECC held a Peace Picnic in Observatory. This toddler plays with a "peace jigsaw", but will he ever know it?

State legal aid funds depleted — lawyers look to private sector

ARGUS 8/6/87
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The Argus Correspondent

JOHANNESBURG. — State-run legal aid funds are so depleted that the Association of Law Societies (ALS) has appointed a committee to investigate the possibility of asking the private sector for contributions.

This was reported in the May issue of *De Rebus*, the official journal of ALS, which represents the interests of about 7 000 lawyers countrywide.

The precarious state of legal aid funds was discussed at the recent 12th law conference of the ALS.

The committee will investigate wasting money on drawn-out litigation, the appointment of permanent legal aid officers at courts, and revision of the present system of apportioning legal aid funds.

NEEDS REVISING

Mr Billy van der Merwe, the president of the ALS, said "The legal aid system needs revising because more and more people need financial help. Litigation costs have soared beyond the reach of the average citizen."

"I also suggest that legal aid administration be handled by the legal profession and not the State. Under the present system the State is the prosecutor and also appoints the representative for the defence."

"The biggest single problem facing the South African legal aid system is a shortage of funds. The State should consider looking closely at this matter, considering the perception that the ethnic race groups already have of our legal system," he said.

SA becomes summit issue

VENICE — Canadian Prime Minister Mr Brian Mulroney yesterday urged leaders at the summit here to address South Africa's racial policies, dubbing the issue the "greatest human rights concern of our time"

Mr Mulroney raised the matter in a phone call to US President Mr Ronald Reagan before the meeting of seven major industrial democracies formally began

In a meeting later with Japanese Prime Minister Mr Yasuhiro Nakasone, Mr Mulroney again raised the South Africa issue — Sapa-Reuter

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SMC
9/6/87

Law Commission reports on Bill of Rights research

(25)
5/11/87
9/16/87

Political Staff

PARLIAMENT — The South African Law Commission is pressing ahead with research on a possible Bill of Human and Group Rights for South Africa

Given an instruction by Justice Minister, Mr Kobie Coetsee, to investigate a Bill of Rights in April last year, the commission in its annual report tabled in the House of Assembly yester-

day that it was making good progress with the research

A work plan had been drawn up and research was being conducted into a number of topics including

- The protection of group rights
- Human rights viewed against the background of the principles of the sovereignty of Parliament, the rule of law, natural

law, humanism, Calvinism, socialism and communism

- The protection of human rights internationally
- The role of the judiciary in protecting human rights.
- Comparative studies of 132 charters of human rights and 10 Southern African charters
- The consequences of the introduction of a Bill of Rights in South Africa

Better deal for black women planned

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Canadian plan on SA given a summit brush-off

By Neil Lurssen, The Star Bureau

WASHINGTON — Britain and West Germany have thwarted Canada's plan to win support for renewed action against South Africa at the Big Seven economic summit in Venice

According to sources here, the Canadian Prime Minister, Mr Brian Mulroney, offered a five-point plan on South Africa when the seven leaders gathered for a private dinner in a palazzo on the historic Italian city's Grand Canal

But his proposal was rejected by British Prime Minister Mrs Margaret Thatcher

Although Mr Mulroney was able to circumvent British objections to a discussion of the issue and proceeded to outline his plan, South Africa was not mentioned in the official communique following Tuesday's session

And the summit chairman, Italy's caretaker Prime Minister Mr Amintore Fanfani, could not get permission to refer to South Africa in his verbal remarks summarising the conference progress because of objections by West German Chancellor Mr Helmut Kohl

Canada's failure to focus attention on South Africa was a big disappointment for Mr Mulroney. The problem of what to do about South Africa's race policies was one of two central issues he placed on the Venice agenda. The other was his concern that agricultural subsidies were pushing down farm prices with serious consequences for Canadian farmers

Mr Mulroney's five-point plan proposed that the summit leaders:

- Address the apartheid problem
- That they issue an important statement that would focus attention on the problem
- That they initiate a dialogue with leaders in southern Africa
- That they monitor the situation in the region
- That economic aid be offered to the Frontline states

While the brief outline of the plan hardly seems like new pressure on Pretoria at first glance, analysts here noted that it could have set in motion another set of pressures for international sanctions and that the West — notably the United States, Britain and West Germany — was not eager for another sanctions debate at this stage

France, Japan and America supported Mr Mulroney in condemning South Africa's race policies

PW refuses
to let judge
retire, so
he resigns

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The Argus Correspondent

PRETORIA — A Supreme Court judge has resigned from the Bench after President Botha refused to give him permission to retire to take up a new chair in human-rights law at the University of Stellenbosch.

Mr. Justice L. W. H. Ackermann announced yesterday that his resignation would take effect from September 1.

He said he applied to the President to be retired in terms of the Judges' Pension Act, but this was refused.

IMPORTANT ISSUE

Mr. Justice Ackermann said: "I believe that the effective protection of human rights in this country is the most important legal issue facing lawyers in the short, medium and long term."

"It is an issue which has addressed me, as a lawyer, ever more strongly over the past number of years."

"The human-rights chair at Stellenbosch affords me a unique opportunity to devote all my time and energy to this task."

Venice talks: statement on SA blocked

The Star Bureau

Western leaders made a brief critical reference to South Africa in their Venice communique, but Britain blocked a full statement on the issue.

At the end of the seven-nation economic summit, Mr Amintore Fanfani, the Italian Prime Minister, and host at the meeting, said the leaders viewed the situation in South Africa with "particular concern".

In remarks agreed with the other heads of state, Mr Fanfani added. "We agree a peaceful and lasting solution can only be found to the crisis if the apartheid regime is dismantled and replaced by a new form of democratic, non-racial government."

But this statement fell short of the detailed declaration sought by a number of governments. Britain refused to agree to a separate statement on South Africa, though Foreign Secretary Sir Geoffrey Howe denied Britain was isolated on the matter.

He said it was the wrong time to launch an initiative, so soon after the South African election when the Government was likely to be unreceptive.

Canada, the US and European Community officials had all prepared draft declarations on South Africa, focusing on the need to end apartheid and create equality.

No forced removals now

PARLIAMENT — South Africans were all human beings but they could be human beings in their own houses and in their own areas, the Deputy Minister of Constitutional Development and Planning, Mr Piet Badenhorst, said yesterday.

Speaking during debate on a Private Member's motion calling for a moratorium on the Group Areas Act and a halt to removals, he said there were no forced removals taking place in South Africa. Notices were served on people when complaints were received from the public but there was no "crackdown" on people infringing the Group Areas Act.

"We are not taking people by their necks and throwing them out of their houses, but if there are complaints the police must investigate them."

He said notices were then served on offenders to apply for permits or leave their houses within three months.

Park couple are innocent

By MARTIN NTSOLENGOE

THE EAST Rand couple arrested for sun-bathing in a whites only park earlier this year were found not guilty of any offence, the Acting Judge President of the Transvaal, GA Coetzee, has found.

Robert Mnculwane, 42, and his wife Elka, 42 - arrested in Fisher Park in Germiston after complaints to the police - were made to spend a night at the Germiston Police Station.

They appeared in court the following day and they were found guilty and fined R100 each.

Coetzee, sitting with Judge Le Grange, strongly criticised the arrest and subsequent fine of the couple and

ruled that the couple were wrongfully arrested and ordered that they be given their R100 fines back.

The judge criticised the Germiston City Council for failing to remove all "whites only" signs from the park after it had scrapped the by-law which previously forbade other race groups from using the parks.

The magistrate who found the couple guilty also came under heavy criticism from the judge who accused him of failing to question the couple.

The judge said if the magistrate had asked questions, he could have realised why the two were not guilty.

"If a person pleads guilty it is the magistrate's duty to ask why he or she

is pleading guilty.

"The accused did not understand the element of the offence and did not know there was such an offence or law.

"They may have been asked by an interpreter whether they were in the park or not and they may have answered yes.

"And the magistrate took it they were pleading guilty without asking them whether they were guilty or not.

"The magistrate was unimpressive to say the least," said Coetzee.

Coetzee went on to say that the police should have warned the couple to leave the park, instead of humiliating them by arresting them.

A delighted Robert and Elka Mnculwane after they were found not guilty of any offence.

the commercial and financial rands was applied

The Reserve Bank also ordered the forfeiture of R1.9-million accredited to Maubane's estate

All the monies are to be deposited into the State Rev-

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INVESTIGATION UNIT

Court challenge to latest detainee regulations

By CARMEL RICKARD
Durban

THE rules governing the conditions under which Emergency detainees are held are being challenged in the Natal Supreme Court.

An urgent application was brought by Durban's Legal Resources Centre this week on behalf of a local detainee, held in terms of the Emergency regulations.

Gaylord Mkhize is challenging the rules published last week when the Emergency was renewed. They were issued by the Minister of Justice, and, since they are identical to those issued the year before, they are the rules which have governed the conditions of detention experienced by all the thousands of detainees held since the Emergency was first declared.

The application is against the State President, the Minister of Justice and the officer commanding Durban's Westville prison.

The LRC argues that a number of the rules governing the conditions of detention are punitive, yet neither the Public Safety Act nor the Emergency regulations give the Minister of Justice the power to frame punitive rules.

The Emergency regulations say that if there is a conflict between any Emergency detention regulation and the Prisons Act, the Emergency regulation must apply. The LRC claims this makes the regulations invalid because, although they are "subordinate legislation", they oust the Prisons Act and go beyond the power of the Public Safety Act, which governs the Emergency.

Among the rules which Mkhize criticises is one which refuses permission for a detainee to have any reading matter except the Bible or other Holy Book or selected magazines supplied through the prison.

He also complains about the rule which provides that no bedding may be sent to a detainee and that no radio, tape recorder or musical instruments may be received by any Emergency detainee.

The case has been adjourned to July 1 and the state will file answering papers before then.

Supreme Court powers reduced, says top judge

JOHANNESBURG. — The rule of law has been eroded to such an extent that judges have been reduced to little more than "triers of cases", says a top Natal judge.

He is backed by opposition spokesmen, legal experts and lawyers who believe the rights of the individual are being slowly removed and the country's stability is at stake, the Sunday Star reported yesterday.

Mr Justice Leon, champion of human rights and civil liberties who overruled a number of far-reaching and oppressive regulations, this week announced his retirement from the Natal Bench.

He said "What has happened over the years is that the rule of law has been eroded and the powers of the Supreme Court have in that way been reduced. The traditional role of the Supreme Court of standing as a bulwark between the executive and the liberty of the subject has been reduced and we have to a large extent become triers of cases."

President of the Natal Law Society, Mr Andries Geysler, said "The rule of law allows a man certain rights. With the introduction of all these statutes under

the state of emergency, it takes away the rights of the individual

"The rule of law represents the natural law of the land and it is being disturbed by an unnaturally large number of laws being introduced to change particular situations."

South Africa did not have a Bill of Rights nor has the Supreme Court the power to declare something unconstitutional.

Legal expert Professor Tony Matthews, of the law school at the Maritzburg campus of Natal University, said "I agree substantially with Judge Leon's statement."

Forum

"I think the permanent state of emergency is being steadily constructed by the present government so the powers of the court have clearly been diminished."

"There is still a fair amount of room for the courts to act in the protection of rights."

"The judges' role is not only to protect the citizen today but to create the kind of system in which the citizen is better protected tomorrow."

"Even more than that, they can start rebuilding the rule of law state."

"Their impact goes beyond

their immediate judgments."

Said Judge Leon "Our powers of statutory review are limited. Where something is ambiguous we can interpret it in favour of liberty of innocence."

The director of the Legal Resources Centre in Durban, Mr Chris Nicholson, said he believed the only way to peace in South Africa was to return to the rule of law.

The Progressive Federal Party spokesman on justice, Mrs Helen Suzman, said "The Bench in the past couple of years has given us some redirection towards the rule of law."

"Nevertheless, every time a judgment is given which emphasizes natural justice, it jolts the South African public into some realisation of what they should be enjoying in a normal society."

"The rule of the courts is not irrelevant and the role of the judges is not disposable."

"We must make use of every avenue. The courts are a forum as well. They are the main avenue whereby the media can report what is happening."

"We may end up as a police state, but until then, we have to use every thing we've got" — Sapa

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W/ Mail

Two 'red flag' accused freed

25
By MIKE LOEWE
Port Elizabeth

A PORT Elizabeth magistrate this week acquitted two Vaal residents on charges of making and hoisting the banners of the ANC, SA Communist Party and Soviet Union during the mass funeral of Matthew Goniwe and three fellow Cradock leaders on July 20, 1985.

On Wednesday prosecutor Herman Goosen informed the court that he had been instructed by the Attorney General to withdraw charges against Johannes Maishe Bopape, 25, of Mamelodie East, and Obed Kopang Bapela, 28, of Alexandra.

The remaining accused are seven Cradock residents, charged with supporting and furthering the the aims of and ANC and SACP.

They are: Mpumelelo David Faxi, 21, Mtuthuzeli Ntombela, 29, Vulindlela Puwani, 24, Thami Madolo, 40, Lwandile Nquru, 21, Jimmy Basini, 41 and a 16-year-old who may not be named.

They all pleaded not guilty.

Bopela was remanded in custody pending his appearance in the Alexandra treason trial. Four of the accused are detained under the emergency, some for up to ten months, while the others are on bail.

There were courtroom scenes of jubilation and regret when Bopape and Bapela were acquitted.

Judgement on the other accused has been reserved.

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Challenge to 'Emergency' inside an Emergency

THE Weekly Mail challenge to the new State of Emergency starts in the Durban Supreme Court today.

In a double-handed challenge to the Emergency, the first application is being brought jointly by Weekly Mail Publications, the Release Mandela Campaign and its official, Aubrey Mokoena. A second application, to be argued in tandem, is being made by a Durban detainee, Melisiwe Queen Shamase, who has been detained since December 12 last year.

The first application challenges the validity of the Emergency on two main grounds.

- It was declared while another Emergency was in force, something not provided for under the law.

- The state president's opinion published in the new proclamation — that the Emergency was being declared "because the ordinary law of the land was inadequate" — could not have been "properly formed"

They claim the first Emergency was declared in June last year soon after the government said it did not have adequate legislation to deal with the situation in the country. The proposed new legislation ran into difficulties when neither the House of Delegates nor of Representatives would pass a new security Bill, and the Emergency was then proclaimed.

However, during the first weeks of that Emergency, the proposed legislation was passed through the intervention of the President's Council.

Since the time these amendments became law, the need for the Emergency no longer existed as the state had the legislation it had said was necessary to control law and order and safeguard public safety.

The validity of the media restrictions re-imposed in the new emergency are also tested by the Weekly Mail and the RMC.

Among the restrictions challenged in particular by the WM is the definition of a subversive statement, the definition of security force action, the power to confiscate publications and the ban on publishing blank spaces indicating material that has had to be censored through the regulations.

The application, set down to begin today, is likely to be postponed to a later date, and a date will be set for the state to file their answering affidavits.

The applicants in the media case will be represented by Advocate Ismail Mahomed SC, assisted by Shaun Naidoo and Leonard Gering, instructed by attorneys from the firms Bell, Dewar and Hall and Priscilla Jana and Associates.

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Paper may appeal 'kindling the fire' conviction

26 BY MIKE KOFWE,
Port Elizabeth

THE Eastern Province Herald may appeal against the conviction in a Port Elizabeth regional court last week of the editor, JC Viviers, and former Herald reporter Jo-Ann Bekker under section 27B of the Police Act.

Viviers was fined R100, suspended for a year, and Bekker, now a Weekly Mail journalist, was fined R200 (or a month in jail) suspended for three years.

In an interview on Tuesday, Viviers said: "We have asked our lawyers to look into the question of an appeal. In his judgement regional court president Magistrate Gert Steyn

found certain statements in a report on violence in Cradock, published on February 4 1985, were untrue.

These were *inter alia* that a police officer did not tell his men not to throw stones and that police did not fire teargas into a church while a service was on.

Steyn accepted the evidence of two police officers in charge on the day to have been honest, fair, sincere and credible. Regarding a Newspaper Press Un-

ion/police agreement, Steyn ruled that the undertaking to exempt newspapers who published allegations of police misconduct from prosecution under section 27B if the allegations were published together with police comment meant that both sides of the story had to be published.

He did not accept that reasonable attempts to obtain comment even should the attempts be met with "no comment" were covered by the agreement.

In mitigation, Advocate WH Trengove submitted that the court had found the report to be lacking only in

detail and emphasis.

Bekker's errors, which were slight, had been made at a time when she had been under great pressure to cover the widespread social upheaval in the Eastern Cape at the time.

Prosecutor Henning, van der Walt submitted that the article had been "kindling on the fire" that already raged in the township at the time.

He said the press had a duty to inform the public about the workings and duties of the police while the police also had to maintain a special trust with the community. — East Cape News Agency.

26/6-2/7/87

Two 'necklace' verdicts on same day: Six to hang, three get life

By MONO BADELA

SIX PEOPLE were this week sentenced to death for a "necklace" murder in Queenstown on the same day three people convicted of committing a similar offence in Duduza, on the East Rand, escaped the gallows

The Duduza three received life sentences

Now lawyers for the condemned Queenstown people are hoping to call on expert evidence given as mitigation in the Duduza case — evidence that is believed to have played a key part in keeping the accused from the gallows

The six who received death sentences in Port Alfred were Mzwandile Gqeba, Whanto Silinga, Lundi Wana, Thembinkosi Pressfeet, Mzwandile Mmizizi and Monde Tingwe. They were convicted at a special sitting of the Supreme Court in Port Alfred of the 1985 "necklace" murder of 18-year-old Nosipho Zamela, in Mlungisi location, Queenstown

A seventh accused, Thozamile Babela, was also convicted of the murder but sentenced to 20 years imprisonment by the presiding judge, Mr Justice Kroon

A further five accused were convicted of assault with intent to do grievous bodily harm and sentenced to 18 months imprisonment, of which 12 months were suspended for five years.

The Duduza trial centred on the "necklacing" of Maki Skosana in Duduza on July 20, 1985, an incident that was filmed in full and captured a great deal of international attention

The three who received life sentences for their involvement in the murder were Sanna Twala, 23, Linda Hlophe, 26, and Daniel Mbokwane, 22. Six others were found guilty of murder and sentenced to a total of 62 years imprisonment.

All were granted leave to appeal.

The expert evidence given at the Duduza trial — and which the Port Alfred lawyers want to use — was given by, among others, Professor Edward Diener, a world expert in crowd psychology.

A defence lawyer in the Duduza trial, Krish Naidoo, said yesterday he believes Diener's evidence contributed to the decision by Mr Justice Hartzenberg to hand out life sentences rather than send the three to the gallows.

The defence team for the 11 accused in the Duduza trial invited Diener to explain to the court the mechanisms behind the grotesque attack, in what is believed to be the first time that an authority on mob psychology was used in a South African trial.

Diener, who was brought from Illinois, told the court that "most people accused of beating and burning to

●To PAGE 3

Necklace deaths: 3 get life, 6 to hang

●From PAGE 1

death (the victim) in a vicious attack at a funeral in Duduza were churchgoers while one of the accused plans to become a nurse" They all believed their actions — kicking her, hitting her with sticks, jumping on her and stoning her — were, in retrospect, quite wrong and he found that people who knew them were surprised at what they had done

He said these people would go down in psychological literature as a classic case of "deindividuation", where the individual loses his or her self-awareness and cannot regulate his or her own behaviour

"Because of the forces existing in crowds, they often commit actions which are often against their moral beliefs," he said

Diener watched the film of the incident and said at a press conference later "I did not like what I saw, but knowing what I know about crowd behaviour, it did not surprise me that good people are capable of doing these sorts of things if the circumstances are right"

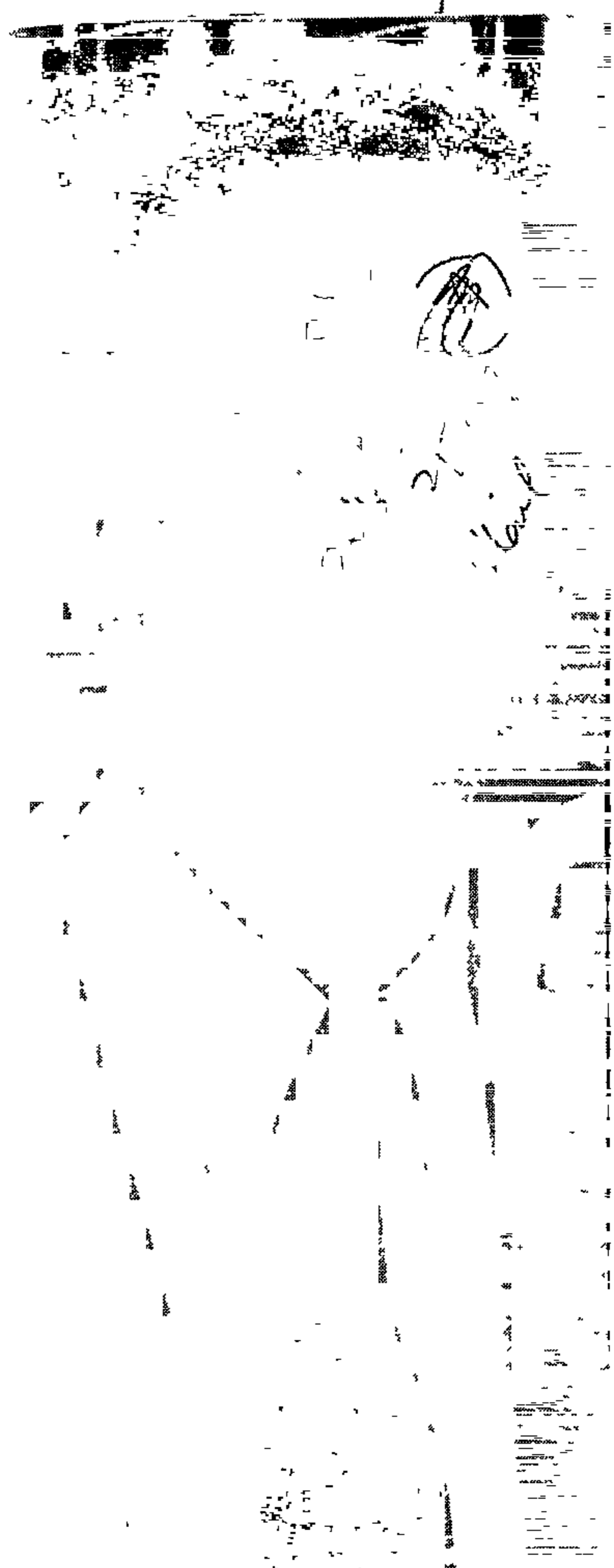
He said several of the accused he interviewed told him they had not thought about what they were doing, they had not realised their actions would kill the woman, nor were they worried about being arrested, despite the presence of cameras

"In this case, we have a very clear example of factors such as conformity, imitation and deindividuation. These factors reduced the ability of the accused to make rational judgments about their behaviour"

He added that the accused were impaired in their ability to appreciate that death could ensue and the large, chanting crowd which was present could have led to impulsive behaviour

"The psychological forces making up for aggression were very strong in this case. Such forces mitigate the level of responsibility of the defendants," the professor said.

Also an important factor was the mitigating evidence given by a field worker employed by the South African Council of Churches, the Rev Ross Olivier of the Methodist Church in Nigel, that Skosana was killed during a period of anger, suspicion and turbulence in Duduza. Pleading in mitigation, Olivier also described the period as abnormal



Expert defence witness Edward Diener
Picture: MONO BADELA

'Lesbian' slogan painter jailed

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w/ Mad 26/6 - 2/7/87
A PENINSULA Technikon student was this week sentenced to a year in jail for spray-painting slogans — including "Botha is a lesbian" — in Bredasdorp two years ago.

Peter Newman, 20, was charged under the Internal Security Act with furthering the aims of the African National Congress by spraying anti-government slogans on the Bredasdorp sports ground wall in December 1985. In the Bredasdorp magistrate's court he pleaded not guilty to furthering the aims of the ANC but guilty of malicious damage to property.

Other slogans with which he attempted, in his words, "to wake up

the dead little place" were "Away with apartheid" and "The struggle lasts forever".

He was sentenced to three years' imprisonment on the ANC charge, of which two were conditionally suspended for five years. For damaging property he was fined R100, or a month in jail, with a further four months suspended for five years.

The magistrate, AL Laubscher, said South Africa could not allow people to promote the ANC or other violent organisations.

Newman's defence attorney said an appeal against conviction and sentence would be lodged. — Sapa

foreign exchange swindle.
- Sapa

Six get death for necklace

CP Correspondent

SIX people were sentenced to death at a special sitting of the Supreme Court in Port Alfred for the "necklace" murder of an 18-year-old woman, Nosipho Zamela, in Mlungisi, Queenstown, in December 1985.

A seventh accused, Thozamile Bacela, was also convicted of the murder but sentenced to 20 years' imprisonment by presiding judge Kroon.

A further five accused were convicted of assault with intent to do grievous bodily harm and sentenced to 18 months' imprisonment, of which 12 months were suspended for five years.

Two of the accused, Xolani Ngqolowa and Phumlani Nqayi, were acquitted.

Zamela was alleged to have had an affair with a Zulu policeman, who was an Inkatha member. She was "punished" with sjamboks before being set alight with tyres.

Sentenced to death were: Mzwandile Gqeba, Whanto Silinga, Lundi Wana, Thembinkosi Pressfeet, Mzwandile Mninzi and Monde Tingwe

Convicted of assault were: Ndodana Matshoba, Andile Mbuqe, Sonwabo Kwaza, Bandile Xelo and a youth of 17.

Those convicted plan to appeal against their sentences. - Albany News Agency.

dent, Lybon Mabasa.

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Sticker detainee released

CP Correspondent

ALEXANDER Stinton high school teacher, Deh-ran Swart was released after over 11 months in detention this week on the instructions of the Cape Town Supreme Court.

Judge Rose-Innes found his detention and arrest unlawful and ordered his immediate release.

Swart was detained after handing out stickers commemorating June 26.

(252) 30/6/87. DP.

Langa shootings: state pays R1,3m

PORT ELIZABETH — In what is said to be the biggest award of its kind, R1,3-million is to be paid out by the state in the 51 civil claims arising out of the Langa shootings on March 21, 1985, in which 20 people died as a result of police action.

An initial payment of R1,12-million made unconditionally by the Minister of Law and Order on July 22 was rejected by the plaintiffs' legal representatives in respect of three claims.

Settlement was reached yesterday when the minister approved an increase in the payments in the three claims. The costs of the applications are also to

be paid by the state.

The highest pay-out figure to an individual plaintiff is R450 000. This has been awarded to Mr Lawrence Gqubule, a paraplegic, presently under medical care at the Uitenhage Provincial Hospital.

The 15-year-old "boy on the bicycle" who achieved prominence during the Kannemeyer Commission of inquiry into the shootings for the role he played on the day, Moses Bucwa, is to receive R17 000.

A spokesman for the plaintiffs' legal representatives said yesterday private prosecutions might be instituted on behalf of some of them.

— DDC

στα πλαίσια της οποίας οι επιχειρήσεις δημοπρατούνται στα κράτη
εξωτερικά προκειμένου να μην είναι δυνατόν να επηρεαστούν οι
επιχειρήσεις της ως προς τον βαθμό ανάπτυξης τους και να εξασφαλιστεί η
παραγωγή των προϊόντων που είναι απαραίτητα για τον πληθυσμό του

PUBLIC SECTOR - GOVERNMENT - JUSTICE

JULY 1987 - ~~JULY 1988~~ DECEMBER.

Magistrates are put in the dock

FIGURES given at a recent law conference in the Transvaal have shown that a staggering 80% of people serving prison sentences in SA did not have legal representation at their trials.

The problem of legal representation is a major concern to the profession as a whole in SA.

Now two recent full bench judgments setting aside the convictions of three people have confirmed and extended certain of the principles governing a person's right to legal representation in the Magistrates' Courts.

In both instances the court found there was a duty upon the magistrate to inform an unrepresented accused of this right.

Recognition

The magistrate's failure to do this, the court found, could result in a conviction and sentence being set aside.

In the one judgment, Mr Justice Goldstone, with Mr Justice Van der Merwe concurring, said the right to full legal representation was given statutory recognition by Section 218 of the Criminal Procedure Act No 31 of 1917 and the fundamental importance of this right was now beyond question.

The judge said the inherent and fundamental nature of the right to legal representation in criminal trials is now universally recog-

nised in most civilised societies.

Mr Justice Goldstone said that if there was a duty upon judicial officers to inform unrepresented accused of their legal rights, he could conceive of no reason why the right to legal representation should not be one of them.

This was especially so where the charge was a serious one which might merit a sentence which could be materially prejudicial to the accused.

"Such an accused should be informed of the seriousness of the charge and of the possible consequence of a conviction," he said.

"Depending upon the complexity of the charge, or of the legal rules relating thereto and the seriousness thereof, an accused should not only be told of this right but should be encouraged to exercise it."

Mr Justice Goldstone said the magistrate should give the accused a reasonable time to do so and, in appropriate cases, inform him of his right to apply for legal aid.

"A failure on the part of the judicial officer to do this," he said, "having regard to the circumstances of a particular case, may result in an unfair trial in which there may be a complete failure of justice."

John Gwebu was sentenced to eight years imprisonment for the theft of a motor vehicle. His advocate withdrew from the case and

SUSAN RUSSELL

the regional court magistrate gave him an hour to find alternative representation

Gwebu was unable to do so and the magistrate compelled him to proceed unrepresented.

In finding that the magistrate had misdirected himself, Mr Justice Goldstone, with Mr Justice Vermooten concurring, said it was hardly surprising that Gwebu had not managed to get the service of an attorney or advocate within an hour.

'Inexcusable'

"Let me say immediately that the conduct of the magistrate is inexcusable and deserves the strongest censure," he said.

"The understandable frustration perhaps of the magistrate, and even his annoyance at the conduct of counsel, in no way justified his rude, bullying and unfair treatment of the appellant

"The magistrate knew full well that, with regard to the conduct of the attorney and counsel, the appellant was in no way to blame

"The magistrate's behaviour was calculated to bring his court — and, indeed, the whole system of justice — into disrepute."

Mzoli Radebe and two co-ac-

cused were sentenced to four years imprisonment each for car theft.

Mr Justice Goldstone, with Mr Justice Van der Merwe concurring, said the case against Radebe and the two co-accused was a strong one

He said at no time were the accused informed of their right to legal representation and it nowhere appeared that they were aware of it.

"On the assumption — and, indeed, the probability — that the appellant was not aware of that right," Mr Justice Goldstone said, "I am of the firm opinion that the magistrate erred in not having given the appellant the opportunity of seeking legal assistance.

"Had the appellant obtained legal assistance, the outcome of the trial against the other two accused may well have been affected

"Justice accordingly demands that the conviction and sentences of the other two accused must also be set aside."

Simon Mbonani was sentenced to 10 years imprisonment for public violence, two of which were conditionally suspended.

Mr Justice Goldstone said in this case that the magistrate was to be commended for having raised the question of legal representation but was too easily satisfied with the accused's readiness to proceed without it.

"The finding that the appellant

was prepared to proceed unassisted was not therefore justified and, in my view, amounted to a misdirection by the magistrate," he said.

He said the severe sentence imposed by the magistrate could only be explained by his being influenced by the one-sided nature of the evidence led.

"Looked at objectively, the sentence can only be regarded with a sense of extreme shock

"It follows in this case, too, in my opinion, that there was a misdirection resulting in a fatal irregularity."

Appreciated

Dealing with the principle of legal representation, Mr Justice Goldstone said the desirability, if not the necessity, of legal representation — especially where persons stood to lose their liberty — had become ever more widely appreciated in SA in more recent years

Mr Justice Goldstone also criticised the habit of magistrates and some prosecutors of addressing accused persons as "accused" or "beskuldigde".

"Members of the public who appear in our courts, whether as accused or as witnesses, are entitled to be treated courteously and in a manner in keeping with the dignity of the court," he said.

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Important principle 'turfed out' — academic

Researcher slams 'murderous' crowd control methods by trigger-happy police

GUN-LAW in the townships

By Jo-Anne Collinge

South African legislation allows the use of deadly weapons in the arrest of a fleeing person who may be suspected of nothing more serious than pilfering. University of the Witwatersrand research officer Mr Nicholas Haysom points out:

"He recalls that this provision has been referred to as 'a species of state authorised lynch law' which effectively denies the suspect a trial while exacting the extreme penalty.

Mr Haysom examines two sets of circumstances, in addition to the dispersal of unlawful and unruly gatherings, where police may use deadly force

● These are
● In arresting a resistant or fleeing suspect.
● In defending life, personal safety or property

He emphasises that deadly force may be used by police and private individuals in defence of property even where there is not the slightest danger to human life.

In a crucial Appellate Division judgment, Mr Haysom recalls, Chief Justice Steyn in 1967 acquitted a shopkeeper by the name of Van Wyk who had killed an intruder by rigging up a shotgun "booby trap".

He argues that the Chief Justice "turfed out" a valuable legal principle in the Van Wyk judgment — the requirement that "the value of the interest attacked" be weighed against "the value of life of the attacker".

The Chief Justice said it was more reasonable to consider the amount of force required to stop the thief "It is he (the intruder or attacker) who steps outside the legal order and if he wishes to brave death to infringe another's right, why must the defender be branded a lawbreaker if he chooses to kill rather than to forfeit his right,"

the judge said — Mr Haysom's response to this is that it "elevates the protection of any proprietary rights whatsoever over human life"

South African law does not adequately restrain the use of deadly force by the police and they exceed even the latitude legally allowed, according to Witwatersrand University researcher and attorney Mr Nicholas Haysom

In an article in a recent edition of the *South African Journal on Human Rights* Mr Haysom says "The incidents and case law surveyed indicate that the unnecessary or reckless use of firearms by the police is not the result of 'rogue policemen' or reckless individuals. It is a widespread systematic use of lethal and violent weapons principally on South Africa's black citizens"

Mr Haysom notes particularly that the use of firearms, including shotguns, has become a disturbing feature of police crowd control and township policing, and condemns the practice of equipping policemen on township patrols with SSG shot and combat rifles.

Using evidence from official inquiries, he spells out how deadly these weapons can be "Each pellet of SSG shot can penetrate a sheet of heavy metal at seven paces. SSG shot spreads one metre in seven

"When fired at a crowd, SSG shot will injure, maim or kill all in its path. It will not discriminate between man or woman, adult or child, passerby or member of an unruly crowd"

On March 21 1985 in Uitenhage's Langa township, he recalls, 20 people were killed and more than 27 injured in "one savage volley" of SSG shot. Many died from the penetration of a single pellet into the cranium or spine

"The police did not use alternative, less violent, crowd control methods because they had been deliberately refused equipment such as teargas, rubber bullets, birdshot, or loudhailers with which to address the crowd," Mr Haysom notes, using evidence given to the Kammeyer Commission of Inquiry

Eliminate suspects'

He notes that two days before the Langa shootings a telex had gone out from the Senior Deputy Commissioner of Police, General de Wilt, to all Divisional Commissioners ordering that police should under all circumstances attempt to eliminate people suspected of throwing petrol or acid bombs at vehicles

Mr Haysom turns to evidence on the Winterveid killings, which took place in Bophuthatswana a month after the Langa shootings and claimed 11 lives, to show that using R4 rifles on a crowd spells almost certain death

At the official inquiry the State Pathologist, a Professor Bunge, confirmed that the R4 was such that it would be almost inevitable that anyone struck by a bullet fired from it would be killed. Even if the victim were shot in a limb it was likely that an artery would be severed

Mr Haysom concludes that the use of R4 rifles on adults amounts to intentional killing and their use on children is little short of summary execution

Mr Haysom points out that there are clear stipulations in the Internal Security Act on when and how gatherings may be forcibly broken up

First, he points out, police may not use force to disperse a gathering unless the meeting is prohibited in terms of the Act or the persons attending a gathering kill or seriously injure any person or destroy or do serious damage to any valuable property, or attempt to do any of these deeds or show a manifest intention of doing so

Also, a policeman of at least the rank of warrant officer must have told the gathering to disperse within a specified time

Finally, the Act stipulates that the force used to disperse a gathering should not be greater than necessary for dispersing the persons assembled and requires that non-lethal weapons be used first

Unarmed civilians

Mr Haysom notes that from as far back as Sharpeville in 1960, when 67 people were killed and 186 injured when police opened fire on an anti-pass demonstration, there have been instances of police firing into the backs of unarmed civilians

At Sharpeville, the commission of inquiry revealed, the gathering remained peaceful for hours. Then some stones were thrown at police after a fence collapsed. No order to fire was given but police started shooting with steno guns, service revolvers and rifles

Mr Haysom observes "The police justified their conduct by alleging that they thought they were being attacked. But, of the bullet wounds that could be classified, 30 were from the front and at least 155 from the back"

He notes that the commissioner rejected the obvious conclusion that the police had fired while the crowd was retreating and suggested they were standing with their backs to the police talking or waiting for the crowd to clear

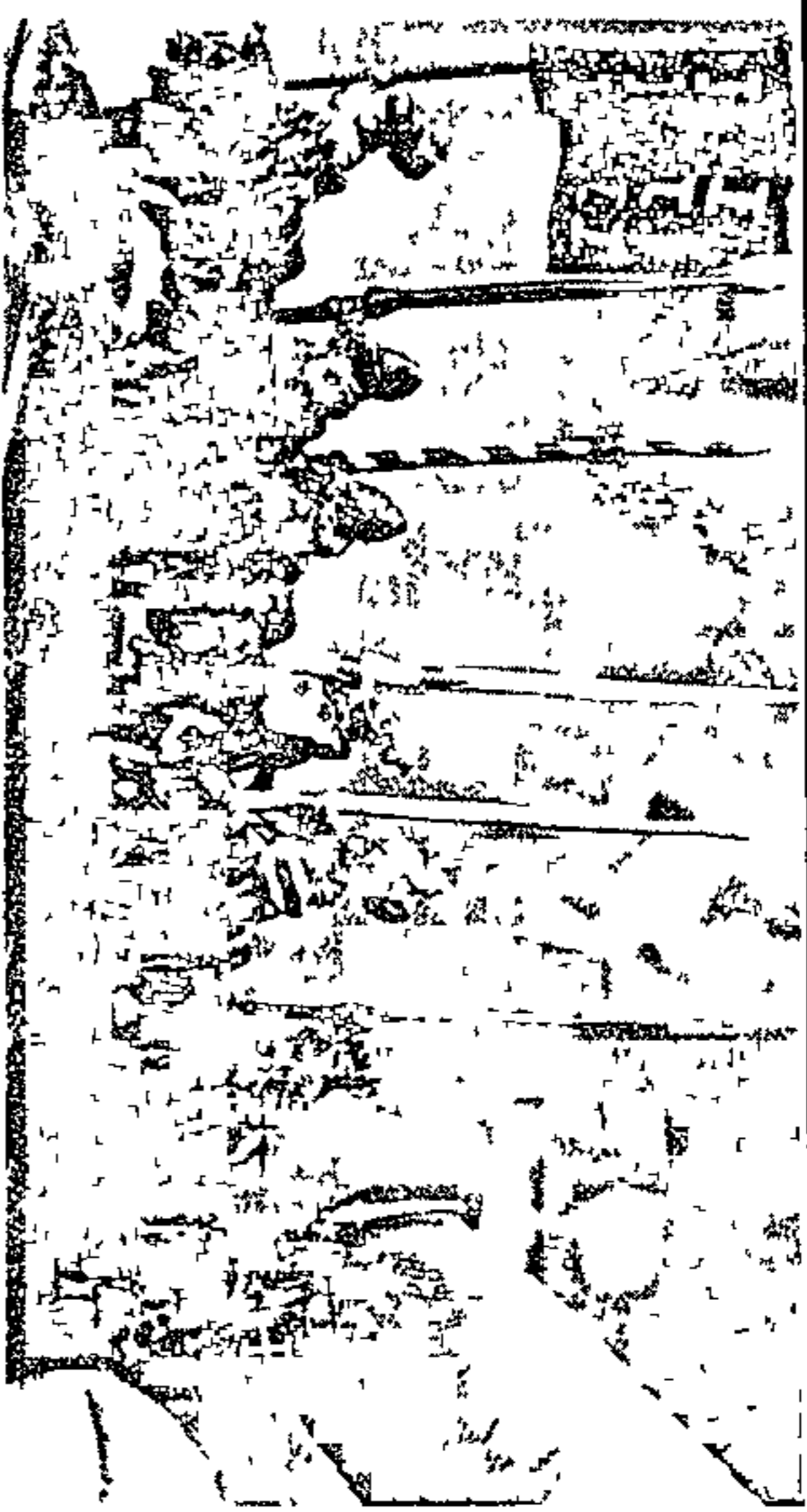
"The fact is, that even on the commissioner's findings, the police fired bullets into the backs of unarmed civilians, including women and children

"It is equally clear," Mr Haysom says, "that the police were content to rely on firearms as the primary method of crowd control"

Mr Haysom notes that a lack of police restraint has been alleged in other areas which have witnessed multiple deaths in police shootings. They range from the "Trojan Horse" shootings in the streets of the Athlone suburb of Cape Town in October 1985 to the Mamelodi women's rent march a month later

He also argues that the 11-year ban on all outdoor gatherings is so sweeping that it is untenably broken every day "The police do not disperse each and every gathering that takes place outdoors, but when patrolling the townships they may select and disperse with force such gatherings as they choose

In this light the right to use firearms to disperse gatherings is converted into a power to enforce, by firearms, an informal indoor curfew by day and night"



War games strategist Mr Patrick Williamson (below) moves his pieces into battle (above) in an attempt to find the best war games team at the University of the Witwatersrand at the weekend

Battleground at Wits

Whole armies were wiped out at the weekend as top battle strategists competed in a strenuous round of war games at the University of the Witwatersrand to find the top provincial war games team

Teams from Natal, the Eastern Transvaal, the western Transvaal and two other Transvaal teams took part in the event

The complicated game, played throughout history by the world's generals, is similar to chess and has recently captivated South African intellectuals

It involves battles between armies dating as far back as 3 000 BC and requires logic, an interest in battle strategy and a keen understanding of historical armies

"Players tend to adopt an army they can identify with. An army in the Napoleonic era or the Roman era differ considerably in their battle tactics and certain players prefer to use one type of army or another," said President of the South African War Games Union, Mr Colin Webster who helped organise the event





Against a symbolic backdrop, youth and trade union representatives this week launched a campaign to save 32 political prisoners on death row Picture: ANNA ZIEMINSKI, Afrapix

World protest for death row 'patriots'

THE 700 000-strong South African Youth Congress this week launched a worldwide campaign to save the lives of 32 South African "patriots" on death row in Pretoria Central.

Besides referring the matter to the United Nations Security Council, Sayco has also called on British premier Margaret Thatcher, United States President Ronald Reagan and West German Chancellor Helmut Kohl to intervene.

Details of the 32 would also be sent to the organisation of African Unity.

In a letter to Western leaders Sayco accused them of "sitting back while 32 compatriots await their murder by hanging"

The campaign is backed by the National Union of Mineworkers — three of whose members are among the 32 on death row — and by the United Democratic Front.

Also present at a secretly organised press conference, and who pledged their backing to the campaign, were the Release Mandela Campaign, the National Education Crisis Committee and the South African National Students Congress

The letter accuses the three Western leaders of labelling the actions of "our unarmed and innocent people" against apartheid as "terrorism", but doing nothing to stop the executions.

NUM official Hazy Sibanyoni urged the international community to back a campaign to stop the executions of the 32 "whose only crime is their desire to see a democratic society in our country".

Almost half of the 32 have been sentenced to death for taking part in

By MONO BADELA

"necklace" killings.

Sibanyoni called for a campaign to force the South African government to sign the Geneva Convention.

Sayco's president, Peter Mokaba, accused Western leaders of using last year's spate of brutal "necklace" killings to back away from support for anti-apartheid organisations. Neither Sayco, the outlawed African National Congress nor the UDF endorsed "necklacing", he said. But the West remained silent over "pro-apartheid death squads who massacre anti-government activists".

The UDF's acting publicity secretary, Murphy Morobe, told the press that the UDF would participate in the campaign "against the impending hanging of the 32 patriots who, in our view, are in death row purely for reasons beyond their control".

Morobe said the government accused the 32 people of killings and murders but "at the same time it is committing what is virtually mass murders.

"We can never accept the situation where 32 young South Africans who, under to normal circumstances, would have had the opportunity to constructively contribute to the advance of the society, are sitting in death row."

RMC's national co-ordinator, Aubrey Mokoena, said South Africa's friends in the West were guilty of selective morality. They condemned violence when it came from those resisting oppression, but when it came

from the authors of apartheid it was condoned.

Mokaba also announced the launch, in South Africa, of a petition against the execution of the 32. He called for 32 000 signatures — 1 000 for each of the 32 people on death row.

Of the more than 120 people who were hanged in South Africa last year, five of them were "political" executions.

THE THIRTY TWO ON DEATH ROW

□ Sharpeville Six murder of Vaal councillor, sentenced December 1985, appeal due September.

1. Mojalefa Reginald Sefatsa
2. Oupa Moses Diniso
3. Duma Joshua Khumalo
4. Francis Don Mokhesi
5. Reid Malebo Mokoena
6. Theresa Ramashamola

□ Jansenville. "necklace" murder, sentenced June 1986

1. Lillil Webushe
- Tzaneen: killing of two informers, sentenced July 1986.
1. Alex Matshapa Matsepene
2. Solomon Mankopane Malwasha

□ Oudtshoorn: death of councillor, sentenced September 1986.

1. Dickson Madikane
2. Desmond Majola
3. Patrick Manginda

□ Sebokeng murder of policeman, sentenced September 1986.

1. Daniel Maleka
2. Josiah Tsawane

□ Eastern Cape: sentenced for killing community councillor, Kinikini and family

1. Moses Mnyanda Jantjles
2. Mlamli Wellington Mielles

□ Colesburg: stoning of woman police informer, sentenced 1986.

1. Paul Setlaba

□ Eastern Cape. Addo Youth Congress members sentenced for murder of farmer and wife.

1. Similo Lennox Wonci
2. Christopher Mziwoxolo Makeleni
3. Ndumiso Silo Sephenuko
4. Machezuana Menze

□ Durban: bombing, sentenced April 1987

1. Robert MacBride

□ Vaal Reef: killing of team leaders, NUM members sentenced May 1987.

1. Tjelubuyo Mgedezi
2. Solomon Mangaliso Nogwati
3. Paulos Tsietsi Tshehlana

□ Queenstown: "necklace" death.

1. Mzwandile Gqeba
2. Whanto Silinga
3. Lundi Wana
4. Thembinkosi Press Feet
5. Mzwandile Mlinzi
6. Monde Tingwe

Legal Aid stops finances for labour matters

MR6US 10/7/87

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By DICK USHER
Labour Reporter

THOUSANDS of people will be denied relief promised under the Labour Relations Act because of a decision by the Legal Aid Board to stop all finance for labour-related matters.

Labour lawyers in Cape Town are aghast at the directive, issued this week from the board's Pretoria head office, and called for more funds to be made available by Parliament.

They said it was a blow at the heart of the South African labour-relations system as it effectively denied access to the Industrial Court to those who needed it most.

"The Labour Relations Act gives workers the tools to redress grievances, but they now are denied the means to exercise them," said one.

Has several cases

Mr Paul Katzeff of C & A Friedlander said he was told of the directive yesterday in connection with several unfair-dismissal cases he planned to take to court for the South African Hairdressers Employees Industrial Union.

"I was told that, in future, individuals would have to apply to the registrar of the Industrial Court for advice on the procedures and how to draft papers.

"This is totally ridiculous.

"The Industrial Court is under-staffed and all this does is effectively deny to thousands of aggrieved people the relief promised under the Labour Relations Act," he said.

Without funding, it would now be almost impossible for people in private practice to take on unfair-dismissal cases and unfair labour practices, said lawyers.

Mr Jonathan Sandler, of Bernadt, Vukic and Potash, said the move was "absolutely disastrous".

"Workers have looked to the Industrial Court for protection from unfair dismissal and unfair labour practices.

"If they cannot resolve their grievances through legal institutions, they will have to go outside," he said.

The Legal Resources Centre gave free legal assistance in deserving cases but could not cope with the many cases of unfair dismissal that occurred, said its Cape Town director, Mr Lee Bozalek.

"Some legal expertise or training is necessary to challenge unfair dismissals, but most of the people who need assistance cannot afford it. Neither do unions have the funds, especially for the number of cases that are presented.

"The centre simply cannot cope and private practice has to take the load, but it is very difficult for them without funding.

"The Legal Aid Board must think again and if they do not have the funds, Parliament must clearly come up with more money.

Interim decision

"Otherwise the unfair-dismissal clause of the Labour Relations Act could become a dead letter for the people who most need its protection."

Mr E S Scholz, director of the board, said it was an interim decision that would be reviewed by the management committee in October.

"The basic problem is money — and this is one of several restrictions the board has had to place on legal services recently," he said.

10/7/87 (252)

Groups' plea for 32 death-row prisoners

JOHANNESBURG — A campaign to save the lives of 32 people sentenced to death for murders committed "in the context of political conflict" has been launched by national anti-apartheid organizations

At a press conference here yesterday, the United Democratic Front, the National Union of South African Students' Congress and the National Education Crisis Committee pledged support for the campaign spearheaded by the South African Youth Congress (Sayco)

The "political killings", including necklace murders and the killing of community councillors, must be seen in the context of ongoing violence Sayco publicity secretary Mr Simon Ntombela said "The source of violence is the apartheid system"

Sayco would be campaigning locally and abroad The immediate goal is to collect 32 000 signatures protesting against the execution of the 32 and to send these to various Western governments and international organizations

An appeal has been made to the heads of government of Britain, West Germany and the United States to intervene on behalf of the 32

Mr Hazy Sibanyoni, representing the NUM, noted that the government had failed to bring anyone to book for the killings of civil-rights lawyers Griffiths and Victoria Mxenge — Sapa

Star 11/7/87 (252) (252)

Freed prisoner is paid out R50 000 in compensation

In May 1984 a South African court decided that black prisoner Mr Melisango Johnson should be set free. But nobody told him. Finally released in May last year, Johnson received R50 000 compensation from the Government this week. Johnson (38) was sentenced to four years' imprisonment in 1983 for culpable homicide. He then lodged an appeal. But he was not told that the appeal had been heard and that he had won. "We don't know what happened. Not even the prison was told he was released." said lawyer Mr Geoff Budlender, who works for the Legal Resource Centre, which took up Johnson's case. Johnson claimed R150 000 damages but received R50 000 in an out-of-court settlement — Sapa.

SAVE THE THIRTY ONE PATRIOTS, DO NOT LET THEM HANG



Sayco launches its campaign (from left): Aubrey Mokoena (RMC president), Hazzie Sibanyoni (NUM), Simon Ntombela (Sayco), Denkie Sekonya (NUM), Rapulane Molekane (Sayco general secretary), Peter Mokaba (Sayco president), Moeti Moeti (Sansco), Ephraim Nkde (Sayco education officer).

DON'T LET 32 HANG — SAVED

THIRTY-TWO of the 253 South Africans awaiting their fateful appointment with the hangman's noose have been condemned for offences resulting from politically motivated crimes.

Among the 32 is a Sharpeville resident, Theresé Ramashale, 25, the first black woman to be sentenced death for committing a crime for political reasons, and three National Union of Mineworkers members.

Ramashale was sentenced — together with five men — Mojalefa Reginald Sefatsa, Duma Joshua Khumalo, Feni S. Don

Mokhesi and Reid Malebo Mokoena, all of Sharpeville, for their role in the murder of a Vaal councillor Jacob Dlamini. The six have come to be known as the Sharpeville Six.

In the wake of the imposition of this sentence on the 32 the SA Youth Congress this week launched a campaign to save the 32 and is hoping that 32 000 South Africans will attach their signatures to a petition in a bid to save them.

The petition would then be presented to State President PW Botha, asking him to reprieve them.

The campaign is entitled "Save the 32 Patriots — Do Not Let Them Hang".

The campaign, announced at a Press conference held at Wits University on Wednesday, has been endorsed by the UDF, RMC, NECC, SA National Students' Congress and the NUM.

Many other trade unions, church and political organisations are expected

to endorse it soon.

Addressing the conference, Sayco co-ordinator Simon Ntombela said that letters would be sent to the United Nations and the Organisation for Africa Unity appealing for their support in this cause.

"We would ask various member states of the two bodies to educate their respective communities about this campaign.

"In turn, these international communities would send petitions to Botha and plead with him to spare the lives of the 32 condemned fellow-South Africans," said Ntombela.

Ntombela also said letters of a different tone would be directed to US President Ronald Reagan, British Prime Minister Margaret Thatcher and Chancellor Helmut Kohl, of West Germany.

He said Reagan, Thatcher and Kohl were quick in denouncing the "war" coming from the side of the oppressed and

had stated that they abhorred violence.

"This is a great opportunity for them to reiterate their stand on violence and we expect them to employ their influence to stop these hangings by the Pretoria government," said Ntombela.

RMC president Aubrey Mokoena said his organisation believed that violence was engineered by the minority SA government through the manufacture of apartheid.

"This is the time for President Botha to come out and show the world that his government is based on Christianity by sparing the 32," said Mokoena.

NECC executive member Eric Molobi said the government had told the ANC to denounce violence while "they were prepared to administer it on the 32".

Molobi said the government should be exemplary by reprieving the condemned.

UDF acting publicity secretary Murphy Morobe said "The UDF shall be fully involved in this campaign with Sayco."

"The 32 were condemned for acts which were triggered by SA's un-

democratic laws and they should be granted prisoner of war status."

Other than the Sharpeville Six, the following have been condemned to death: Lih Webushe, sentenced for his role in a "necklace" murder, Alex Matshapa Matsepane, Solomon Mankopane Maowasha for killing two alleged informers, Dickson Madikane, Desmond Majoja and Patric Manganda for the death of an Oudtshoorn councillor in 1986.

Daniel Maleke and Josiah Tsawane have been sentenced for the murder of a policeman in Sebokeng in 1986. Moses Mnyanda Janjies and Mlanti Wellington Mielies condemned for the murder of an Eastern Cape councillor, Kinikini and family Paul Setlaba condemned

for the killing an alleged informer.

Addo Youth Congress members Similo Lennix Wone, Christopher Mziwoxolo Makeleni, Ndimiso Silo Sephenuko and Machezwane Menze have been condemned for the murder of a farmer and his wife.

Robert McBride was sentenced for the Durban bombing NUM members Tjclubuyo Mgcdezi Solomon Mangaliso Nogwani and Paulos Tsetsi Tshelana were sentenced for killing a team-leader at Vaal Reef.

Mzwandile Gqebe, Wanto Silinga, Lundi Wana Thembinkosi Press Feet Mzandile Mnzini and Monde Tingwe were sentenced for a necklace murder in Queenstown.

The last in the list is 19-



Simon Ntombela

year-old former Soweto student Phillip Bekisizwe Ngidi, sentenced last week by the Rand Supreme Court for his role in the killing of a Soweto police sergeant in April last year.

Swaziland, and pay sales tax on them, or have their cars seized.

Large numbers of Swazis for a dead paying sales tax, Swazity insurance and road fund the country's roads without contributions. Sapa.

The petition would then be presented to State President PW Botha, asking him to reprieve them.

The campaign is entitled "Save the 32 Patriots — Do Not Let Them Hang".

The campaign, announced at a Press conference held at Wits University on Wednesday, has been endorsed by the UDF, RMC, NECC, SA National Students' Congress and the NUM.

Many other trade unions, church and political organisations are expected

to endorse it soon.

Addressing the conference, Sayco co-ordinator Simon Ntombela said that letters would be sent to the United Nations and the Organisation for Africa Unity appealing for their support in this cause.

"We would ask various member states of the two bodies to educate their respective communities about this campaign.

"In turn, these international communities would send petitions to Botha and plead with him to spare the lives of the 32 condemned fellow-South Africans," said Ntombela.

Ntombela also said letters of a different tone would be directed to US President Ronald Reagan, British Prime Minister Margaret Thatcher and Chancellor Helmut Kohl, of West Germany.

He said Reagan, Thatcher and Kohl were quick in denouncing the "war" coming from the side of the oppressed and

had stated that they abhorred violence.

"This is a great opportunity for them to reiterate their stand on violence and we expect them to employ their influence to stop these hangings by the Pretoria government," said Ntombela.

RMC president Aubrey Mokoena said his organisation believed that violence was engineered by the minority SA government through the manufacture of apartheid.

"This is the time for President Botha to come out and show the world that his government is based on Christianity by sparing the 32," said Mokoena.

NECC executive member Eric Molobi said the government had told the ANC to denounce violence while "they were prepared to administer it on the 32".

Molobi said the government should be exemplary by reprieving the condemned.

UDF acting publicity secretary Murphy Morobe said "The UDF shall be fully involved in this campaign with Sayco."

"The 32 were condemned for acts which were triggered by SA's un-

'PAC aims viol'

By SOL MORATHI

THE Pan Africanist Congress is an outlawed political organisation committed to violence and the overthrow of the South African government by force.

An expert on PAC ac-

tivities, who is also a SA security policeman, Col Jacobus Buchner, said this in the terrorism trial of seven alleged PAC members and two members of the Muslim Qibla organisation in the Pretoria Supreme Court this week.

Buchner was a police officer

He said Poqo was involved in attacks of several police stations in the country.

Buchner admitted that when the PAC was formed, it's officials made representations to the SA government in an effort to bring about a peaceful settle-

252 (circled) w/MAIL 17-23/87

In a remote town, 30 on trial over 'people's courts'

"PEOPLE'S COURTS" are under the legal spotlight at the Bethal Regional Court where 30 people are appearing on allegations of conspiring to overthrow the government violently with the African National Congress and its military wing, Umkhonto weSizwe.

The accused, aged between 14 and 34, first appeared on June 15 and are charged with terrorism, subversion, public violence and attempted murder. Most reside in Ackerville, Thusanang and Lynville, all townships near Witbank, Eastern Transvaal, and were members of the Witbank Youth Congress and Witbank Education Coordinating Committee.

Among them is Clement Dumisani Zulu, 30, local leader of the National Union of Mineworkers at the Landau mine, Jackson Mthembu, 29, the leader of the WECC, Peter Mnsi, 26, a Wits University student, and Sam Mkhabela, 27, a Rhodes University journalism student.

The accused are alleged to have furthered the aims of the ANC, provided it with information, recruited people for it, identified targets and carried out its instructions and campaigns.

They are accused of wanting to challenge the authority of the SA Defence Force, the Department of Education and Training, the Regional Services Councils, the local authorities, the KwaGqata Town Council and, in particular, the courts.

Between July 1985 and July 1986 meetings were held where, it is alleged, the ANC and Umkhonto weSizwe were popularised, people "indoctrinated" to commit acts of violence against the black councillors and police officials, and pupils were encouraged to stay away from school.

It is further alleged that they organised riots, attacked delivery vehicles, sought confrontation with the security forces, encouraged people to "necklace" alleged police informers and formed "alternative judicial organs, namely the 'People's Court' which was answerable to the 'disciplinary committee'."

Each ward in the area, it is alleged, was divided into street committees with a "street captain" as the leader. The street captain is said to have solved small disputes.

If he failed, these were referred to sub-committees. Serious crimes, ac-

WEEKLY MAIL REPORTER

cording to the charge sheet, were referred to the disciplinary committee.

Some of the accused are alleged to have chaired the court, heard cases and passed sentence.

Patrick Khoza, 23, from Lynville, is allegedly the leader of the disciplinary committee.

There are nine allegations of attempted murder related to attacks with *kierries*, *sjamboks* and petrol poured on people. Some of the victims were allegedly set alight.

So far, 25 state witnesses have been called. Many gave evidence *in camera* because police claimed the witnesses feared they and their families would be attacked if they testified in an open court. The magistrate, JVR van Petersen, dismissed the defence's contention that they should testify in an open court.

Six of those called to give evidence refused to do so and were each sentenced to two years' imprisonment.

Evidence was led relating to meetings held, the organisation of the consumer boycott, attacks on public transport, policemen's houses, shebeeners who allegedly defied the "Black Christmas" call, and on those who did not observe the consumer boycott.

A document, dated April 28 1986, and headed "People's Court (The people shall govern)" was produced as an exhibit. One of the witnesses who gave evidence *in camera* said the sixth accused, Sylvester Siboza, 23, from Lynville, chaired some of

the court's sessions.

Another one said he, Zulu and others manufactured petrol bombs used for attacking a local mine. He said Zulu had told him that he had travelled in several African states where he had met ANC leaders.

Gloria Lindiwe Khoza, 18, the only woman on trial, was identified as the leader of the women's section of the disciplinary committee.

A police handwriting expert linked documents, seized from a house allegedly used as a court room, to some of the accused.

The list of co-conspirators included Father Smangaliso Mkatshwa, general secretary of the South African Catholic Bishop's Conference, three senior members of the Congress of South African Trade Unions, assistant secretary general Sydney Mafumadi and second vice-president Makhulu Ledwaba and a J Naidoo, and detained *New Nations* editor Zwelakhe Sisulu.

Several organisations, among them the Soweto Parents' Crisis Committee, National Union of Mineworkers, Detainees Support Committee, United Democratic Front, Witbank Youth Congress, Witbank Education Coordinating Committee and Unemployment People's Congress were also alleged to have conspired with the accused and the ANC.

The trial resumes on August 17.

The accused are represented by Jack Unterhalter SC, assisted by Rodney Black and instructed by Phosa, Mojapelo and Partners. The prosecution is led by L van der Walt.

FOR THE RECORD

LAWYERS acting for Inkatha have objected on technical grounds to court papers lodged against the organisation. The papers concern a damages claim of over R400 000 resulting from the killing of several Metal and Allied Workers' Union members in Mpophomeni in December last year.

Inkatha objected to the fact that the papers had been signed by a Johannesburg lawyer, John Brand, not practising in Natal. Brand, in a sworn statement, said he had signed the papers instead of lawyers from the Durban Legal Resources Centre because LRC members had received death threats in previous cases where they had launched action on behalf of clients against members of Inkatha.

A VICTIM of the 1985 Langa shooting is to sue the Minister of Law and Order for R1,5-million in the Port Elizabeth Su-

Park, Pretoria

The family is that of Ciskeian diplomat Colonel Joshua Gqozo. The embassy has hired a security firm to secure the house.

A SECURITY policeman, Sergeant George Beeton, was acquitted in the Port Elizabeth Magistrate's Court this week of assaulting a detainee.

Derrick Grant, the complainant, alleged he had been assaulted in police custody. The magistrate, DP van Wyk, said Grant was an "aggressive and evasive" witness and did not accept his version of the assault.

NEGOTIATIONS between senior post office officials and representatives of Post and Telecommunications Workers' Association over a two-week-old strike in the Eastern Cape ended in a deadlock this week.

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17/7/87

Law fees fixed for under-R1 000 earners

Staff Reporter

PEOPLE who earn less than R1 000 a month can have a "fixed fee" consultation with an attorney for R20 or less — a fraction of the normal fee, the Cape Law Society points out. Society president Mr Mervyn Smith says the fixed-fee system was introduced because attorneys were concerned that high legal costs were "preventing the man in the street getting his fair share of justice".

The purpose of a fixed-fee consultation is to enable the attorney to assess the strength of a client's case.

The society stresses that people who want a fixed fee consultation should say so when making an appointment.

The SA Consumer Council has applauded this step as "making the law accessible to virtually all consumers".

Police 'terror' halted

By ELSABE WESSELS

AN ENTIRE black community was this week granted relief from what was called a "reign of unchallengeable terror" through an interim court order granted in the Cape Town Supreme Court.

The order restrains the police from assaulting and harassing members of the community in Bhonguletu — the 6 000-strong black township on the outskirts of George.

The undertaking was given during an application brought by the Bhonguletu Civic Association (Bhoca) and six members of the community.

According to the temporary settlement, the Divisional Commissioner of Police for the South Western Cape gave an undertaking to instruct all members of the SA Police acting in the township not to unlawfully arrest, detain, assault, seize possessions, enter homes, threaten, insult, harass, intimidate and interrogate any inhabitants of Bongeletu township.

In papers before the court, Bhoca chairman Bishop Elliot Maseti of the Bantu Zion Church of South Africa claimed he was particularly scared of the "kitskonstables", special constables with shortened periods of training.

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Keep judges out of Politics — Bar Council

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Staff Reporter
SUPREME Court judges should not be appointed to head commissions of inquiry dealing with pronounced political issues, the General Council of the Bar of South Africa has stated.

The appointment of judges to head commissions of inquiry was debated at the council's annual meeting in Kimberley this weekend, following a memorandum from the Cape Bar.

The council represents advocates throughout the country, as well as in the Transkei and Bophuthatswana.

The Judge President of the Cape, Mr Justice G G A Munik, was recently appointed by the State President to consider the role of First National Bank managing director Mr Chris Ball in the funding of newspaper advertisements calling for the unbanning of the African National Congress.

Impartiality

The Cape Bar referred to a leading textbook on administrative law which said that if governments involved judges in inquiries with "pronounced political aspects" too frequently, the essential assets of the judiciary — "widespread public confidence in the impartiality and independence of the judiciary" — could be dissipated.

In a statement issued after the meeting, the council said this danger was "even more pronounced" in the South African context where "political feelings run high".

"In the opinion of the General Council of the Bar this danger should always be borne in mind and judges of the Supreme Court should not be appointed to head commissions of inquiry which deal with topics having pronounced political overtones."

The council also said there was an "almost total lack" of legal assistance available to people charged with criminal offences in the lower courts, and in the superior courts there was a "low level" of legal assistance for people being tried for crimes which carried the death penalty.

Small claims

"The inadequacy of the assistance available can only be overcome by increased State aid," the council said.

While the council approved increasing the jurisdiction of the Small Claims Courts to hear cases involving up to R1 500 (instead of R1 000 as at present), it said the procedures in this court led to "rough justice" which was not acceptable to the ordinary litigant where important issues were at stake.

The council repeated advocates' willingness to act on a speculative basis in cases for deserving clients who were unable to carry the cost of litigation.

This involves the payment of legal fees only where the case is won.

Advocate Mr H P Viljoen SC, of Cape Town, was re-elected chairman of the council.

Keep judges out of politics — Bar Council

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Judges' political role criticized

CAPE Times 28/7/87 (252) (252)

Staff Reporter

THE appointment of Supreme Court judges to head commissions of inquiry into pronounced political issues has been criticized by the General Council of the Bar of South Africa, which represents the country's advocates.

The council's stand was yesterday welcomed by Mr Dave Dalling, Progressive Federal Party MP for Sandton, who said he agreed with the sentiments expressed and intended raising this principle during the justice vote in Parliament on Friday.

In May this year, Mr Dalling made controversial remarks in Parliament about Mr Justice George Munnik and his one-man commission of inquiry into the

funding of UDF advertisements

The House of Assembly appointed a select committee to investigate an alleged breach of parliamentary procedure after Mr Dalling criticized Mr Munnik's appointment to the commission because of his dealings with Barclays Bank, who had closed his account. The other factors were Mr Munnik's personal friendship with the State President, Mr P W Botha and his support for the National Party.

In April, the Munnik commission concluded that Mr Chris Ball, managing director of Barclays Bank, knew that a R100 000 overdraft granted in January was to pay for advertisements calling for the unbanning of the ANC "on behalf of the UDF"

At its annual general meeting in Kimberley last Friday and Saturday, the council said

Supreme Court judges should not be appointed to head political commissions of inquiry, after the matter was raised in a memorandum from the Cape Bar Council

A press statement yesterday quoted a passage from a leading text book on administrative law, which said governments could 'dissipate the essential assets of the judiciary — "widespread public confidence in the impartiality and independence of the judiciary" — by involving judges in inquiries with pronounced political aspects

"The danger to which attention is drawn in the passage quoted is even more pronounced in the South African context, where political feelings run high. In the opinion of the General Council of the Bar this danger should always be borne in mind," the council said

Judge leaves legacy of excellence

By Lesley Cowling

Stow 29/7/87

When the Deputy Judge-President of the Transvaal, Mr Justice G Coetzee, retires on July 30 after almost 50 years in the legal arena, he will leave a legacy of excellence.

Known at the Bar as a judge who will not tolerate slapdash or imperfect work and a man who does not suffer fools gladly, he is also respected for his brilliant legal mind.

He was born in the farming district of Bloemhof in 1920 and grew up in the Depression years, the son of a teacher and the oldest of five children. Educated in farm schools in the Eastern Transvaal until he won a bursary to Bethal High School, he matriculated with a first class pass and a distinction in mathematics.

He started work in Johannesburg in 1941, and since then has lived and worked only in the city. He does not intend to retire away from it.

"I regard myself as a Jo'burger," the judge says.

After matriculating, Mr Justice Coetzee was unable to study as a full-time student because there was not enough money available. Although he had to work fulltime, he received a BA from Pretoria University and passed his LLB from Unisa cum laude.

He was the first Afrikaans speaker to win the Buckle Prize for the student scoring the highest marks in the Attorneys Admission Examinations.

Mr Justice Coetzee was admitted as an advocate in 1946, achieved senior advocate status in 1958 and was appointed a judge in 1972.

Interested in history, he remembers not only legal, but social landmarks, and has himself played a part in shaping South African legal history.

Of the cases he was involved in, the one he sees as most significant in recent social history was an action for defamation by Dr Beyers Naude and Professor A Geyser against ultra-rightist Professor Pont.

"It is probably, from the point-of-view of social attitudes, the watershed case since the war," he says.

Mr Justice Coetzee acted for Dr Naude and Professor Geyser, theologians who were then breaking with the old ideas and the race theories of the NG church.

"These were the days when there were many symposiums held about communists and anybody who tried to criticise was labelled a communist — the influence of McCarthyism in South Africa," he says. "There was a lunatic fringe that was very powerful and very dangerous."

BIGGEST AWARD FOR DEFAMATION

He said Professor Pont had tried to prove that Professor Geyser and Dr Naude — then a leading figure of the NGK — were communists or communist-inspired. The case lasted for three months and the theologians were awarded R10 000 each, at the time the biggest award for defamation in the division.

"That case completely broke the influence of the ultra-rightist movement of the day and made it possible for people to come out into the open and give

their views," Mr Justice Coetzee says.

Professor Pont was discredited and has not been heard of again. "If I look back at many big trials, from the point of view of social influence, that was the most important thing I did at the Bar," he says.

Of his work on the Bench, he prefers not to speak. Whether his judgments have been useful or important, the future will judge, he says.

But he will leave his successor a bonus in legal administration — less work. Recently the Supreme Court has been many handling cases traditionally heard in the magistrate's court. "Agitating" by Mr Justice Coetzee has finally paid off and the limit on magistrate's court cases is likely to be raised dramatically in the next month or so.

The judge believes the South African common law system is among the finest in the world. "What we have is the British system, with our common law based on Roman Dutch law," he says. "It's a living system, it evolves all the time."

The basic principles remain static, but the substantive principles of law change to keep pace with the way the world changes. "It's not so much changing principles, but changing the way they are applied to new situations."

Mr Justice Coetzee says things have changed dramatically since he first began to practise — with the commercial and industrial sectors growing in sophistication all the time.

He has looked at systems of law in other countries — in particular Britain. He has also visited countries "behind the Iron Curtain".

Bulgaria was one place where he met legal officials. "They were charming people, who were lawyers before the communist change," he says.

He also met a legal academic in Moscow in the '60s, who had just finished working on the new criminal codes for all the Soviet Republics.

The common law of those countries was also based on Roman law, he says, but for someone schooled in his kind of jurisprudence, their legal systems were not very impressive.

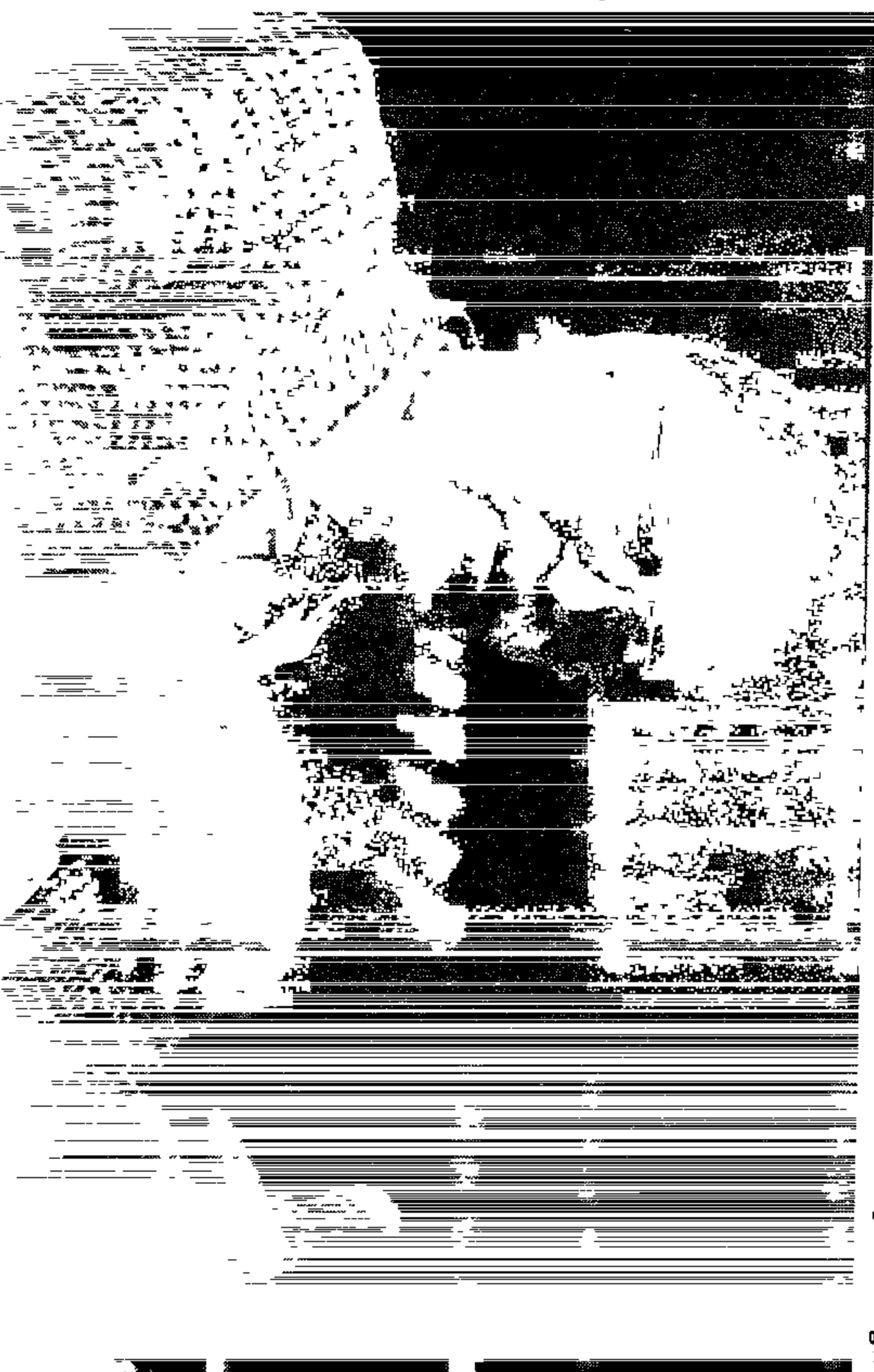
CROSS WITH JOE SLOVO

The person who helped him meet people in those countries was Mr Joe Slovo, now an executive member of the African National Congress and member of the South African Communist Party. He was then an advocate practising at the Johannesburg Bar and part of Mr Justice Coetzee's group.

"Joe Slovo and I were close friends at the Bar although we differed radically on politics and philosophy," he says. "I knew him for 10 years as a friend — 10 years spent debating fundamental things. I am very cross with him now, with what he's doing, but then we were good friends."

He says he does not know if they will ever meet again. "Who can tell what's going to happen?"

The judge also does not know what's going to happen on August 1, the first day of his retirement.



aturday, August 1, 1987

Politics

Row over Chief Justice's post

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Political Staff

THE acting appointment of South Africa's Chief Justice, Mr Justice Rabie, for a further two years was "contrary to tradition and perhaps even in contravention of the law", the MP for Sandton and Progressive Federal Party spokes-

man on Justice, Mr Dave Dalling, told Parliament yesterday

Mr Dalling said Mr Justice Rabie should have been retired automatically when he reached the age of 70 in January this year to make way for "competent senior judges of Appeal eligible to be appointed to the office of Chief Justice"

He asked whether the minister was aware of the dissension he had caused within the ranks of the judiciary through the acting appointment.

An acting appointment under these circumstances had not been made since the creation of the Appellate Division in 1910

□ The Minister of Justice, Mr Kobie Coetsee, admonished Mr Dalling for bringing the subject up eight or nine months after the acting appointment

Mr Coetsee said there had been "no murmur or objection" at the time of the appointment, as the legal fraternity had the "highest respect for Chief Justice Rabie"

□ Mr Dalling also brought up the matter of the Chris Ball affair when he said that both the South African Association of Law Societies and the General Bar Council agreed that Supreme Court judges should not be appointed as chairmen of Commissions of Inquiry dealing with topics having "pronounced political overtones"

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Legal aid 'in a mess'

CAPE TOWN 1/8/87 Political Correspondent 252

A "STAGGERING" 80% of all people serving prison sentences in South Africa had no legal representation at their trials, the PFP's justice spokesman, Mr Dave Dalling, said yesterday.

Speaking during the justice vote in Parliament, Mr Dalling said the country's legal-aid system was "in a mess, in a crisis" because of lack of finances.

"As a result the whole system of justice is being brought into disrepute."

Replying to the debate, the Minister of Justice, Mr Kobie Coetsee, said government financing of the legal-aid board had increased by 317% over the past four years, from R2,9 million to R9,5 million.

Mr Coetsee said the government also provided additional funding to the board to the tune of R2,5 million for the past financial year.

White-on-black violence must be avoided at all costs — human rights lawyer

Concern at 'light' sentence

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By Carina le Grange

Legal experts yesterday expressed their concern at the "light" sentence a white youth received when convicted in the Rand Supreme Court this week of killing a black man.

A professor of law said, however, that it was impossible for an outsider to comment and only the judge of a case could decide on the appropriate sentence. The other lawyers also stressed that only the judge knew all the available facts.

The youth (17) was sentenced to six strokes with a light cane and given a suspended prison sentence of five years. He had hit Mr Moroka Simon Mashanya with a baseball bat after an argument with his girlfriend.

Mr Mashanya died the next day. The national chairman of Lawyers for Human Rights, Mr Jules Browde, said it seemed to him this was a "grossly inadequate" sentence.

"This type of light sentence — for what would seem to be a much more serious offence — may have the effect of encouraging young delinquent whites to commit acts of assault on innocent blacks, something which this country should at all costs avoid at this stage."

But it all depends of course what the precise facts were that were available to the judge."

Pretoria University's head of criminal law, Professor Kobus van Rooyen, said it was impossible for somebody outside the court to comment.

"The judge is the person who, in accordance with guidelines long in existence, is the right person in possession of all the facts and who can decide on the appropriate sentence."

Racial bias in sentencing

Witwatersrand University's Professor J D van der Vyver said there had been a series of cases in which there seemed to be a racial bias in sentencing. A violent crime committed by a white against a black seemed statistically to carry a lighter sentence than cases involving violence by blacks against whites.

"In many cases — maybe not this case — it would seem that our courts regard the racial element in a white-against-black violent crime as an extenuating and in a black-against-white crime as an aggravating circumstance. This kind of racism in the administration of justice is most unfortunate."

"The situation in our country is such that we cannot afford violence across the colour bar. The sentence in this particular case seems particularly lenient but it could well be that other considerations were such that a relatively light sentence was warranted."

"In determining a sentence, a judge should take all circumstances into account and it is not always possible for someone unacquainted with those facts to evaluate the sentencing in a particular case."

He said he personally believed a violent crime involving a racial element one way or the other should in principle be severely punished.

The head of Applied Legal Studies at Wits, Professor John Durgard, said sentencing was "a very difficult subject".

"A judge must weigh the circumstances of the individual against the interests of the community. While it is clear there were mitigating personal circumstances present in this case, I am not sure the community interest has been adequately considered."

"A judge should bear in mind at this time in South Africa black perceptions of justice. Inevitably blacks will ask whether a black boy who had killed a white man in these circumstances would have been treated so leniently."

'Police kidnap' claim rejected

By JO-ANN BEKKER

SUPREME Court Judge H Daniels yesterday ruled that even if South African police had kidnapped senior ANC official Ebrahim Ismael Ebrahim from Swaziland, he could still be tried by a South African court.

The judge, sitting in the Piet Retief circuit court, dismissed outright Ebrahim's application contesting the court's jurisdiction to try him on the ground that his abduction by alleged South African agents was a clear violation of international law.

The judgement could have important implications for about 10 people — alleged members of the ANC's regional political military council in Swaziland — believed to be in South African prisons after similar abductions. The State is accusing Ebrahim of being the head of this council.

Judge Daniels found the police had properly denied any involvement in

Ebrahim's capture. He said the application had not made a case for the involvement of other state agents.

But, the judge added, even if Ebrahim "had been captured in violation of international law and the seizure was by the South African state or with its connivance, that would not impair the jurisdiction of the South African court" to try him.

Ebrahim's attorney, Priscilla Jana, said her client was considering appealing the judge's decision. He was also considering bringing another application.

Ebrahim, 50, who has served 15 years for sabotage on Robben Island, will now join three alleged ANC guerrillas in a major political trial due to begin in Piet Retief on Monday.

● See PAGE 9

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WMail



7-13/87

the management echelon (ie those officers who are in receipt of an annual salary of R54 954 fixed and higher) The amount payable varies for each level as it is based on an officer's grading

Full-time employees

156 Mr R M BURROWS asked the Minister of Manpower

- (1) What was the total number of persons employed in a full-time capacity in his Department as at the latest specified date for which information is available,
- (2) (a) how many such persons were employed in each of the eight most senior post levels in his Department, (b) how many of these persons were (i) male and (ii) female and (c) to which population group did each of these persons belong,
- (3) (a) what will be the applicable salaries and/or salary scales of each of the eight most senior post levels in his Department with effect from 1 July 1987 and (b) what financial and other specified benefits will be applicable to each of these post levels as at 1 July 1987?

The MINISTER OF MANPOWER

(1) 3 642 specified date 8 June 1987

(2) (a) Post level	Number of persons employed
1	1
2	1
3	1
4	9
5	1
6	2
7	16
8	1
	52

(b) (i) 81
(ii) 2

HoA

(c) Whites- 79, Coloureds 1, Indians 21, Blacks 1

(3) (a) Post level Salary scale with effect from 1 July 1987

1	R119 136
2	R70 017
3	R62 199
4	R57 268
5	R57 106
6	R54 954
7	R50 477
8	R43 389 x 1 830 -- 47 049

(b) (i) Annual Service bonus that amounts to 93% of one month's salary

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(ii) Housing Subsidy on interest and capital redemption up to a maximum of a housing loan of R50 000.00, subject to the compliance with certain conditions

(iii) Car Financing Scheme for officers occupying posts in the management echelon (ie those officers who are in receipt of an annual salary of R54 954 fixed and higher) The amount payable varies for each level as it is based on an officer's grading

Full-time employees

157 Mr R M BURROWS asked the Minister of Public Works

(1) What was the total number of persons employed in a full-time capacity in his Department as at the latest specified date for which information is available,

(2) (a) how many such persons were employed in each of the eight most senior post levels in his Department, (b) how many of these persons were (i) male and (ii) female and (c) to which population group did each of these persons belong?

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(3) (a) what will be the applicable salaries and/or salary scales of each of the eight most senior post levels in his Department with effect from 1 July 1987 and (b) what financial and other specified benefits will be applicable to each of these post levels as at 1 July 1987?

The MINISTER OF PUBLIC WORKS

(1) 12 324 specified date 31 May 1987

(2) (a) Post level	Number of persons employed
1	1
2	2
3	8
4	26
5	28
6	99
7	46
8	1

(b) (i) 208
(ii) 3

(c) Whites 211, Coloureds Nil, Indians Nil, Blacks Nil

(3) (a) Post level Salary scale with effect from 1 July 1987

1	R119 136
2	R70 017
3	R62 199
4	R54 954
5	R48 879 x 1 830 -- 50 709
6	R43 389 x 1 830 -- 47 049
7	R32 445 x 1 179 -- 34 803
8	x 1 431 -- 41 958
	R34 803 x 1 431 -- 39 096

(b) (i) Annual Service bonus that amounts to 93% of one month's salary

(ii) Housing Subsidy on interest and capital redemption up to a maximum of a housing loan of R50 000.00, subject to the compliance with certain conditions

(iii) Car Financing Scheme for officers occupying posts in

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the management echelon (ie those officers who are in receipt of an annual salary of R54 954 fixed and higher) The amount payable varies for each level as it is based on an officer's grading

Full-time employees

158 Mr R M BURROWS asked the Minister of Justice

(1) What was the total number of persons employed in a full-time capacity in the Department of Justice as at the latest specified date for which information is available,

(2) (a) how many such persons were employed in each of the eight most senior post levels in this Department, (b) how many of these persons were (i) male and (ii) female and (c) to which population group did each of these persons belong,

(3) (a) what will be the applicable salaries and/or salary scales of each of the eight most senior post levels in this Department with effect from 1 July 1987 and (b) what financial and other specified benefits will be applicable to each of these post levels as at 1 July 1987?

The MINISTER OF JUSTICE

(1) 8 123 specified date 31 May 1987

(2) (a) Post level	Number of persons employed
1	1
2	2
3	30
4	65
5	171
6	244
7	719
8	530

(b) (i) 1 639
(ii) 140

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(c) Whites 1 775
Coloureds 5,
Indians 19,
Blacks Nil

(3) (a) Post Salary scale with effect
level from 1 July 1987

- 1 R119 136
- 2 R70 017
- 3 R62 199
- 4 R54 954
- 5 R50 709 - 52 539 - 54 954
- 6 R43 389 x 1 830 - 47 049
- 7 R33 624 - 34 803 x 1 431 - 37 665
- 8 R30 087 x 1 179 - 34 803

(3) (b) (i) Annual Service bonus that amounts to 93% of one month's salary

(ii) Housing Subsidy on interest and capital redemption up to a maximum of a housing loan of R50 000,00, subject to the compliance with certain conditions

(iii) Car Financing Scheme for officers occupying posts in the *management echelon* (ie those officers who are in receipt of an annual salary of R54 954 fixed and higher) The amount payable varies for each level as it is based on an officer's grading

Full-time employees

159 Mr R M BURROWS asked the Minister of Defence

(1) What was the total number of persons employed in a full-time capacity in the South African Defence Force as at the latest specified date for which information is available,

(2) (a) how many such persons were employed in each of the eight most senior post levels in the Defence Force, (b) how many of these persons were (i) male and (ii) female and (c) to which population group did each of these persons belong,

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(3) (a) what will be the applicable salaries and/or salary scales of each of the eight most senior post levels in the Defence Force with effect from 1 July 1987 and (b) what financial and other specified benefits will be applicable to each of these post levels as at 1 July 1987?

The MINISTER OF DEFENCE

The SA Defence Force has indicated that, as a result of the sensitivity of the nature of its activities and functions, the particulars, as requested, cannot be supplied

Full-time employees

160 Mr R M BURROWS asked the Minister of Agriculture

(1) What was the total number of persons employed in a full-time capacity in his Department as at the latest specified date for which information is available,

(2) (a) how many such persons were employed in each of the eight most senior post levels in his Department, (b) how many of these persons were (i) male and (ii) female and (c) to which population group did each of these persons belong,

(3) (a) what will be the applicable salaries and/or salary scales of each of the eight most senior post levels in his Department with effect from 1 July 1987 and (b) what financial and other specified benefits will be applicable to each of these post levels as at 1 July 1987?

The MINISTER OF AGRICULTURE

(1) 3 493 specified date 8 June 1987

(2) (a) Post level

- 1 1
- 2 1
- 3 4
- 4 11
- 5 43
- 6 88
- 7 449
- 8 155

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H6A

(b) (i) 666.
(ii) 86

(c) Whites: 729
Coloureds Nil,
Indians: 16,
Blacks 7.

(3) (a) Post Salary scale with effect
level from 1 July 1987

- 1 R119 136
- 2 R70 017
- 3 R62 199
- 4 R54 954
- 5 R43 389 x 1 830 - 47 049
- 6 R33 624 x 1 179 - 34 803 x 1 413 - 37 665
- 7 R25 371 x 1 179 - 30 087
- 8 R15 912 x 789 - 22 224

(3) (b) (i) Annual Service bonus that amounts to 93% of one month's salary

(ii) Housing Subsidy on interest and capital redemption up to a maximum of a housing loan of R50 000,00, subject to the compliance with certain conditions

(iii) Car Financing Scheme for officers occupying posts in the *management echelon* (ie those officers who are in receipt of an annual salary of R54 954 fixed and higher) The amount payable varies for each level as it is based on an officer's grading

Full-time employees

161 Mr R M BURROWS asked the Minister of Economic Affairs and Technology

(1) What was the total number of persons employed in a full-time capacity in the Department of Trade and Industry as at the latest specified date for which information is available,

(2) (a) how many such persons were employed in each of the eight most senior post levels in this Department, (b) how many of these persons were

(i) male and (ii) female and (c) to which population group did each of these persons belong,

(3) (a) what will be the applicable salaries and/or salary scales of each of the eight most senior post levels in this Department with effect from 1 July 1987 and (b) what financial and other specified benefits will be applicable to each of these post levels as at 1 July 1987?

The MINISTER OF ECONOMIC AFFAIRS AND TECHNOLOGY

(1) 953 specified date 8 June 1987

(2) (a) Post level

- 1 1
- 2 3
- 3 6
- 4 18
- 5 1
- 6 49
- 7 1
- 8 115

(b) (i) 190
(ii) 4

(c) Whites 194,
Coloureds Nil,
Indians Nil,
Blacks Nil

(3) (a) Post Salary scale with effect
level from 1 July 1987

- 1 R119 136
- 2 R70 017
- 3 R62 199
- 4 R54 954
- 5 R48 879 x 1 830 - 50 709
- 6 R43 389 x 1 830 - 47 049
- 7 R34 803 x 1 431 - 39 096
- 8 R33 624 - 34 803 x 1 431 - 37 665

(b) *Handwritten:* 115

(ii) Housing Subsidy on interest and capital redemption up to a maximum of a housing loan of R50 000,00, subject

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Legal academic calls on judges to resign

STRONG criticism has been levelled at three South African judges by a senior legal academic, who asks whether they should not resign so that judicial impartiality can be maintained.

Advocate Edwin Cameron, senior research officer at the Centre for Applied Legal Studies at the University of the Witwatersrand, was speaking at the University of Natal in Pietermaritzburg this week.

Cameron said the public had to be confident that the "judicial garb of impartiality and dispassion exists".

"This requires that judges must not

expose themselves as naked supporters of the present regime nor as collaborators in questionable intrigues."

Listing three examples which could give rise to public disquiet, he first criticised Mr Justice Marthinus Steyn, former Administrator-General of Namibia, for remarks he made in a recent judgement.

In his remarks at the close of the Bloem case soon after the Emergency was proclaimed on June 12, 1986, Judge Steyn said, among other things, that the crisis was caused by resistance to governmental policies of change from people seeking faster

By CARMEL RICKARD, Durban

change. Their resistance was directed not merely at the authorities of government and administration, but "also at certain sections of the private sector, at members of the security forces and other individuals and also indiscriminately at the general public".

According to Cameron, the "emotive language employed by (the judge) included reference to 'necklacing', to 'mob violence' which, (the judge) claims, 'is usually instigated by agitators and accompanied by

widespread intimidation', to 'acts of organized terror', to school and other educational boycotts, and to the 'mounting political, psychological, socio-economic and terror onslaught upon the RSA from beyond its borders'. Finally there is reference to the 'weakening of (the country's) unit of currency' caused in (the judge's) view by the unjustified and sinister 'onslaught'.

Cameron claimed the remarks were "a politically partisan, emotive and one-sided exposition of the government's view of the causes of and necessity for the State of Emergency".

The pronouncements, says Cameron, are "a startling venture by a Supreme Court bench out of the realm of dispassion into the world of thoroughly partisan political rhetoric. The statement of political dogma preceding the judgement shows all the detachment of a defensive broadsheet put out to justify the apartheid regime and all the political sophistication of the sort of propaganda which is daily produced by the SABC."

Cameron then examines the questions surrounding Judge George Munnik's inquiry into the ANC advertisement.

He asks, with PFP MP Brian Bamford SC, whether the judge was lending an air of respectability to what was simply a political exercise.

Cameron says that even more serious are "momentous allegations" raised in parliament, which "go to the heart of (the judge's) integrity as a judicial officer".

"The public of South Africa is surely entitled to hear from Mr Justice Munnik himself whether he is a close friend of the state president, whether he is a strong supporter of the National Party, whether his banking account was closed by Barclays because he defaulted in his debts, and whether, in his view, honesty required him to recuse himself from sitting on the commission."

The technicalities of the rules of parliamentary privilege have nothing to do with the public's right to know whether a senior judicial officer has made himself party to unworthy and discreditable conduct.

Finally, Cameron questions the decision of former Chief Justice Pierre Rabie to accept a post as acting chief justice.

He examines several reasons which might be behind the government's decision to offer him the post and his decision to accept it, and comments that "it does not appear to be explainable, except on hypotheses which cast grave discredit on the judicial capacities of senior judges of appeal, or, yet worse, cast discredit on Mr Acting Justice Rabie for participating in an unjustifiable and possibly discreditable governmental manoeuvre."

"In the absence of convincing reasons, publicly advanced, for the creation (of the concept of an acting chief justice), it must be considered an innovation deeply damaging to the institution of law in this country."

Cameron says of Judge Steyn that when a judge puts aside his "judicial garb of dispassion and enters the arena of pro-government propaganda, his fitness for continued occupation of judicial office must become a legitimate subject of public debate."

Of Judge Munnik and Acting Judge Rabie, he suggests that "the same sombre questions arise."

"Can they stay on in office without inflicting irreparable injury upon the high traditions the South African judiciary is frequently said to respect?"

"These troubled times urgently demand an utterly unblemished judiciary. Does the presence of Mr Justice MT Steyn, Mr Justice Munnik and Mr Acting Justice Rabie on the Supreme Court bench contribute to or obstruct the fulfilment of that demand?"

We won't serve in the SADF, say 23 youths

DURING his basic training in the South African Defence Force five years ago, Mark Behr joined the troops' chorus: "I'm gonna go into Angola, I'm gonna kill old Sam Nujoma". But this week, the Stellenbosch University student was part of a group of 23 men who, seated in a Cape Town church under a large banner proclaiming "No Apartheid War", collectively announced their refusal to serve in the SA Defence Force.

Their public declaration came the day before the start of the SADF's second annual intake of thousands of conscripts when two of the group delivered a copy of the declaration to officers at Cape Town's Castle, headquarters of Western Province Command.

For Behr, a commissioned officer of the SADF who saw action in Namibia and Angola in 1982 while a candidate officer, the turning point came on meeting a Namibian student at a national student conference in June this year.

"When he asked her where she lived in Namibia, she started saying she and her family were from Ovamboland but then stopped mid-sentence and said: 'But surely you know where that is — you did national service. Who knows, possibly you shot at me or one of my sisters.'"

Faced with having to justify his presence in Namibia, Behr said all he could say was that he was 18 years old at the time and that in high school, where he was the prefect in charge of training cadets, he was taught all Swapo members were communists who enjoyed no local support in Namibia.

"One day you realise you have to go and fight in a neighbouring state or in a black township bordering your own suburb. You realise you have to go and shoot simply to ensure South Africa's illegitimate government can further the aims of its own warped ideology."

"You realise you are being commanded by the SADF to contribute to the political destabilisation of the frontline states. You realise you are being commanded to sell your soul by taking part in an unjust, full-scale war in Namibia. You realise that at any time you may be commanded, without any choice, to kill the black person who sits beside you in class

simply because she refuses to acknowledge the oppressive and exploitative status quo — in which she had no say whatsoever."

"These are the insights which touch the core of the person who has to live with them, insights which move one to the point where you have to say 'I refuse to be a part of that ever, ever again'," Behr said.

Members of the group — ranging in age from 20 to 35 — acted in concert but independently of any organisation. About 13 have never completed their compulsory two years' basic training, others have to face compulsory military camps.

One of the objectors, former University of Cape Town student representative council president Glenn Goosen, said each individual would choose from the limited options available to them: try for exemption on religious grounds (there is no category for those who object on moral, rather than religious grounds) and perform community service, go into exile, or face prison sentences calculated at one and a half times their service owing. For someone yet to do his basic training, this could be six years.

In their statement, the group said they believed there was a future in which all South Africans could live in peace and harmony with each other and pledged themselves to help build and be part of that future. Serving in the SADF would be a contradiction of that pledge.

The SADF defended the privileges of a minority, contravened international law by its occupation of Namibia, committed acts of aggression against neighbouring states and consumed resources desperately needed for health, housing and education.

It was deployed against township youth and members of the liberation movement. "These people are not our enemies. They are fellow South Africans and we will not take up arms against them," the statement said.

"We believe our country is best served if we refuse to fight in the SADF. The laws of our country make this a serious step to take. Yet we feel there comes a time when moral choices, no matter how difficult, cannot be avoided."

By GAYE DAVIS, Cape Town



Bernard le Roux, left, tells why he won't go to the army. Fellow protesters March Behr and Glen Goosen look on.

Picture ADIL BRADLOW, Atrapix

The Civil Rights League said it hoped the government would respond creatively to recommendations by the United Nations Commission on Human Rights, which recently called on states practising compulsory conscription not to jail conscientious objectors but to recognise their stance as a legitimate exercise of freedom of thought, conscience and religion and introduce alternative forms of service.

In a document, presented this week to the United Nations Commission for Human Rights, the End Conscription Campaign said its campaign was "based on the fundamental belief that individuals should be free to choose whether to participate in military service. ECC therefore regards it as essential that individuals be given the right to object to serve in the armed forces of any country on religious, political and moral grounds."

Since June 12 last there have been 98 ECC-related detentions under the regulations, 25 members were issued with restriction orders, publications and meetings have been banned and ECC offices, meetings and homes of members were raided by the security police.

Extracts from a speech delivered at Natal University



MR ACTING Chief Justice Rabilo



MR JUSTICE Munnik



MR JUSTICE Steyn

THE South African judiciary has a fine tradition. Despite criticism of its performance in resisting the implementation of Government policy (before and after the present Government took power) and despite grievous breaches of the tradition of unpartisan appointments which existed when the present Government took office, the South African judiciary can still look to an overall record of professionalism and relative autonomy which few would seek to pass off as discreditable.

Judges are proud of this record. The Government, especially, is proud of it and Cabinet Ministers often make a point of vaunting the independence and integrity of the South African Bench. And indeed the reputation of our judges and public confidence in their impartiality are prizes which all who care about our future should guard with a jealous passion.

But the high honour of being considered above governmental influence and manipulation, above sectional sidetaking, and above secret dispositions is something which is painstakingly earned over a long period. Once in existence, public trust in the judiciary must be carefully nurtured and its vitality sustained. If it is not, the high esteem in which the public holds our judges will soon shrivel and disappear.

Already danger signs suggest that public confidence in the impeccability of our judiciary is lessening. And in the past seven years there has been an unprecedented number of resignations from the Bench. Within the last few months, two highly regarded judges, whose presence on the Bench undoubtedly contributed to its public esteem, have resigned. In Natal, Mr Justice Leon, the chancellor of this (Natal) university, has resigned for health reasons. There can be no doubt about the state of Mr Justice Leon's health, but the

A once proud tradition is under threat

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10/8/87
Swept

circumstances of his going strongly suggest that if he had believed that judges were more than merely "triers of cases", he may have been induced to stay on.

And in the Transvaal, one of the most highly-respected judges there, Mr Justice Ackermann, has resigned to accept an academic post in the human rights field. One must again presume that had he considered his position as a judge offered him an adequate opportunity to defend human rights, Mr Justice Ackermann would not have found it necessary to resign. Both judges leave the Bench on August 31. There is not doubt that our judiciary will be greatly weakened for their going, particularly since both enjoy a high reputation as defenders of basic human values.

These resignations come at an ominous time in South Africa for those who believe law and legal regulation have a part to play not only in the present dispensation but also in the more just dispensation they hope will follow it. We must believe not only in our judges, but also in the capacity of the system within which they operate to play a meaningful constitutional role in curbing executive excesses where these occur.

Faith of this kind requires demonstrable assistance from judges themselves. The public must be confident the judicial garb of impartiality and dispassion which is so important a

part of our legal heritage really exists.

Three recent instances give rise, in my view, to disquiet that the generally high traditions of the South African judiciary in this regard have not been respected.

Taking a political line

Mr Justice M T Steyn is a well-known public figure. He is also well acquainted with controversy. His stint as Administrator-General of Namibia was marked by disputes as to his role in supporting or withholding support from various internal factions there, and the report he produced after presiding over the Commission of Inquiry into the Mass Media gave rise to considerable public debate as to his presuppositions and predispositions.

In a case heard soon after the emergency was proclaimed on June 12, 1986, Mr Justice Steyn decided to preface his judgment with a politically partisan emotive and one-sided exposition of the Government's view of the causes of and necessity for the state of emergency. According to him, the crisis was caused by resistance to governmental policies of change — resistance not by conservatives, as many ill-informed persons might have been tempted to think, but by those irresponsible enough to seek faster change. This "violent" resistance was directed not merely at the

authorities of government and administration, but "also at certain sections of the private sector at members of the security forces and other individuals, and also indiscriminately at the general public." He continued "So notorious have the facts and the nature of this resistance and its effects become by virtue of its ongoing occurrence over many months and the wide publicity accorded thereto that a court of law can now take judicial cognisance thereof. And I will do so."

Even setting aside the incipient endorsement of the official version in this introduction, of what did Mr Justice Steyn propose to take judicial notice? Of a view which was pregnant with the phrases of Government policy and blatantly supportive of the official view of the causes and nature of social dislocation in South Africa. The emotive language employed by Mr Justice Steyn included reference (inevitably) to "necklacing", to "acts of organised terror", to school and other educational boycotts, and, with depressing predictability, to the "mounting political, psychological, socio-economic and terror onslaught upon the RSA from beyond its borders." Finally there is reference to "the weakening of (the country's) unit of currency", caused, in Mr Justice Steyn's view, by the unjustified and sinister "onslaught" against the country.

There is no mention of decades of governmental intransigence and unwillingness so much as to negotiate with the chosen representatives of the people who allegedly cause all this trouble, no mention of the grim toll of security force brutalities and excesses, no mention of the increasing level of officially sponsored terrorism within the country and in its neighbouring states, no mention of disastrous blunders by the State President and other governmental figures which may have caused not merely the "weakening" but the almost total depreciation of "our unit of currency".

The "Bloem pronouncement" constitutes a startling venture by a Supreme Court Bench out of the realm of dispassion into the world of thoroughly partisan political rhetoric. The statement of political dogma preceding the judgment shows all the detachment of a defensive broadsheet put out to justify the apartheid regime and all the political sophistication of the sort of propaganda which is daily produced by the SABC.

"Bloem" is a sobering exercise in how judges should not act. It flashes to us a glimpse of the dogmas and the failures of political perception which inform the thinking of Mr Justice Steyn. It is not a pleasant sight, and a full Bench of the Natal Provincial Division has rightly refused to follow it.

To be continued

By EDWIN CAMERON: Advocate and research officer at the Centre for Applied Legal Studies at the University of the Witwatersrand.

THE use of judges to sit on commissions inquiry has long been a controversial aspect of South African political life. It is often suspected that commissioners are selected to make findings and recommendations which would suit the Government. When judges are used in this process, the discrediting effect on the judicial system is severe

Unfortunately, judges are so used. Perhaps the most flagrant instance in recent history was the Munnik Commission which sat earlier this year. The shock waves caused by Mr Justice Munnik are still resonating throughout the legal and business communities, and it is not likely that they will die down soon. In response to Mr Justice Munnik's performance the General Council of the Bar last week issued a statement in which it pointed out that "By drawing too frequently on the widespread public confidence in the impartiality and independence of the judiciary by involving judges in inquiries with pronounced political aspects, governments may dissipate those very assets that are essential to the judiciary for the satisfactory discharge of its proper adjudicative function."

This perhaps lays too much blame on the Government and too little on judges who make themselves party to political manoeuvres. Of the participation by the Judge-president of the Cape in this commission it has been said that he "lent an air of respectability to what (was) simply a political exercise."

The president of the Association of Law Societies, Billy van der Merwe, took occasion to rebuke Mr Justice Munnik publicly and in his presence for his extraordinary conduct in being filmed for television shortly before the "white" election while handing over his report to a well-satisfied State President

Serious

These matters are serious enough. Even more disturbing, however, is that profoundly serious allegations have been made against Mr Justice Munnik in Parliament by a senior opposition parliamentarian (Dave Dalling, Progressive Federal Party). These allegations (which were widely reported) included the claims that (i) Mr Justice Munnik was "a long-standing, personal friend" of the State President, who was himself one of the parties to the dispute, and whose credibility and political judgment was at issue in the commission; (ii) Mr Justice Munnik was "a strong supporter of the government party" when the dispute was essentially one which could have influenced that party's electoral performance;

(iii) Mr Justice Munnik had had an "unhappy" relationship with Barclays Bank involving a history of "debt defaulting" which had led the bank to close his account unilaterally, (iv) "an honest commissioner would have disclosed this and recused himself (from the commission) from the outset"

These are momentous allegations. They go to the heart of Mr Justice Munnik's integrity as a judicial officer. They were made deliberately and in the obvious knowledge of their seriousness by a senior person in public life. They were made more than two months ago. They have not yet been answered.

It is said that Mr Justice Munnik has

What Govt must do to retain judiciary's impartiality

By **EDWIN CAMERON**: Advocate and research officer at the Centre for Applied Legal Studies at the University of the Witwatersrand.



declined to respond to Mr Dalling's claims until a parliamentary select committee has decided whether Mr Dalling committed a breach of parliamentary privilege. So far as it is known that committee has neither sat nor given any indication of when it might sit

It is difficult to understand what possible relevance the decision of the parliamentary select committee could have to the necessity for an early, unequivocal and frank response by Mr Justice Munnik to the allegations against him. For better or worse, true or false, the allegations against him have been made. They were made by a senior spokesman of an opposition party in Parliament and were accorded widespread publicity

Entitled

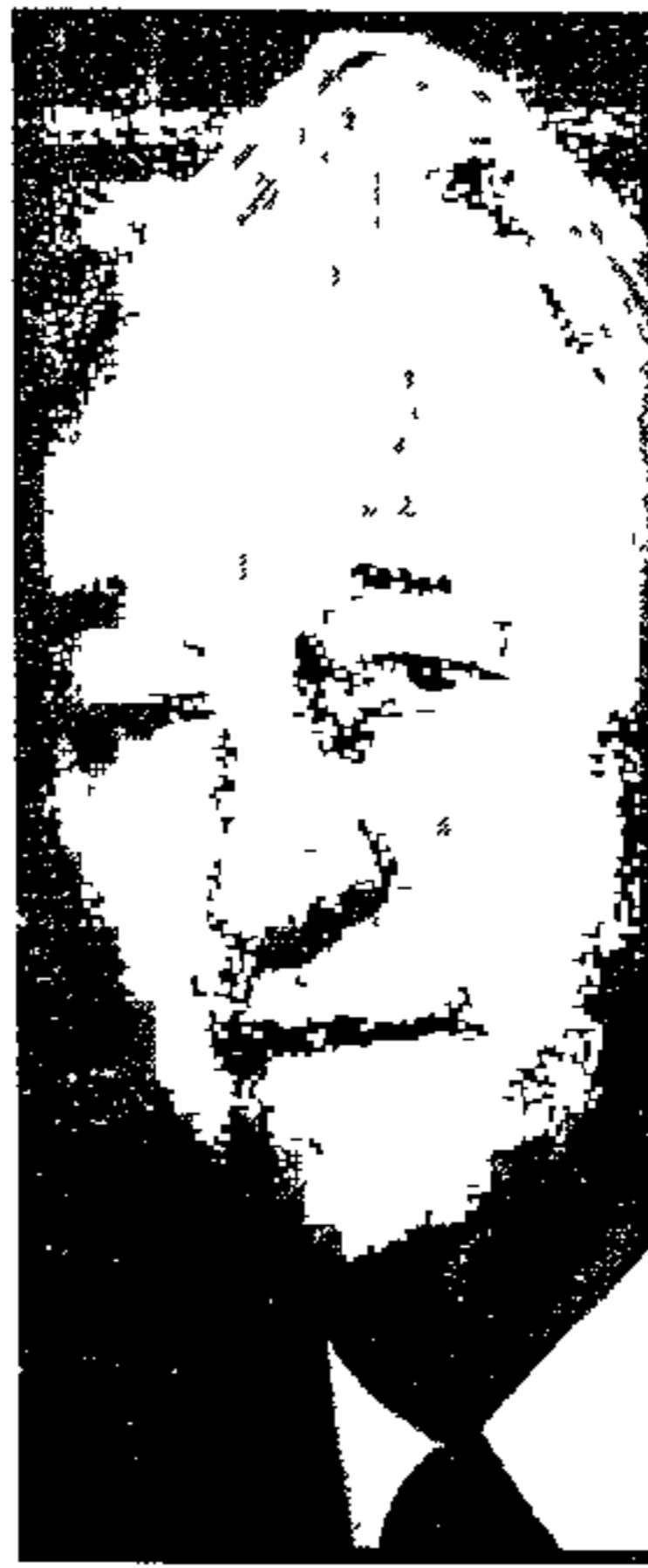
The public of South Africa is surely entitled to hear from Mr Justice Munnik himself whether he is a close friend of the State President, whether he is a strong supporter of the National Party, whether his banking account was closed by Barclays because he defaulted in his debts; and whether, in his view, honesty required him to recuse himself from

In terms of the Supreme Court Act 59 of 1959, which is the statutory basis of judicial authority in this country, there "shall be" a Supreme Court of South Africa consisting of the appellate and provincial divisions (section 2). The

appellate division, the Act provides, "shall consist of the Chief Justice of South Africa and so many judges of appeal as the State President may from time to time determine" (section 3)(1)

Since this is so, one may be tempted to think that the country must have a Chief Justice and that if it did not, something must be amiss. It is not easy to be sure whether such a conclusion would be justified or not. The truth is that at this moment the country has no Chief Justice. For the first time in its history it has only an Acting Chief Justice. The previous Chief Justice, Mr Acting Justice Rabie, reached the mandatory retirement age of 70 earlier this year. But he did not retire. He stayed on. He now fills the position hitherto constitutionally unknown, of "Acting Chief Justice" when in fact he is acting on behalf of no other person. The Supreme Court Act says the country is entitled to have and must have a Chief Justice. We do not. The closest approximation we have is Mr Acting Justice Rabie.

The Supreme Court Act seems to make provision of the appointment of acting judges only (i) "to act in the place of any judge"; or (ii) "in addition to the judges" of a division, or (iii) to fill "any vacancy". Now it seems to be plain that Mr Acting Justice Rabie is not acting "in the place of any judge" since there is no Chief Justice in whose



Mr JUSTICE Munnik.

This is the second part of a speech delivered at the Natal University.

place he can act. Perhaps the statutory words can be stretched to mean that Mr Acting Justice Rabie is filling the "vacancy" which exists in regard to the Chief Justiceship

Justice

It must be remembered that the Supreme Court Act appears to place the State President under a duty to appoint a Chief Justice. Has the State President failed in his statutory duty?

What is clear beyond any possible doubt is that this constitutionally unprecedented appointment must require the most convincing public explanation. The legal profession, the country's judges themselves and the wider public are surely entitled to be frankly told what extraordinary events or circumstances in the view of the Government necessitated the appointment of Mr Acting Justice Rabie to a temporary incumbency of the Chief Justiceship.

There seems to be only two possible explanations:

• One possible explanation is that there is no one suitable to succeed to the

Chief Justiceship. This explanation does not bear serious scrutiny. There are more than a dozen full-time judges of appeal and it can hardly be thought that the Cabinet and Mr Acting Justice Rabie considered none of them would make a suitable Chief Justice.

• A second possible explanation is that the Government thought Mr Acting Justice Rabie possessed certain personal capacities which made it essential that he and no one else should occupy the post for the next two years

Emergency

If so, what capacities can the Government possibly have had in mind? No lawyer would want to contemplate the suggestion that the Government, in the present emergency, trusted Mr Acting Justice Rabie and no one else in the post. That would mean that a drastic process, which now governs what we can say, what we can hear and read, how our freedom is regulated and even where we may go, has also been introduced into appointments to the judiciary

This line of thinking could require that a new acronym be introduced into law reports: ECJ, for Emergency Chief Justice. The thought does not, cannot, bear contemplation. But the absence of explanation for the extraordinary nature of Mr Acting Justice Rabie's appointment necessarily creates speculation of just this sort

What other exceptional personal attributes could possibly have been considered? Even if one takes the view that Mr Acting Justice Rabie enjoyed a distinguished incumbency of the Chief Justiceship. It is unlikely that many could be found to contend that Mr Acting Justice Rabie is so much more distinguished than all his many distinguished predecessors that he, and none of them, should have been prevailed upon to accept this unpredictable position

The truth is that this extraordinary appointment has never been explained

Some few
11/8/87
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THE MINISTER OF EDUCATION AND CULTURE

- (1) (a) 550
- (b) 404 as at March 1987
- (2) No (a), (b) and (c) Fall away

Closure of Durban schools

*4 Mr M J ELLIS asked the Minister of Education and Culture

- (1) Whether any consideration is being given to closing (a) Mansfield High School, (b) William Hartley Primary School and (c) a junior primary school in the Glenmore area in Durban, if so, (i) why and (ii) what is the name of the junior primary school in question,
- (2) whether any decision has been taken regarding the closure of these schools, if not, when is it anticipated that a decision will be taken, if so, (a) on what date and (b) what was the decision,
- (3) whether any representations have been received from any educational institutions regarding the grounds and facilities of Mansfield High School, if so, (a) from whom, (b) when and (c) what decision has been taken in this regard?

THE MINISTER OF EDUCATION AND CULTURE

- (1) (a) Yes
- (b) Yes
- (c) Yes
- (1) Decreasing pupil enrolment
 - (ii) Carrington Heights Junior Primary School
- (2) No, a final decision has not been taken
 - (a) and (b) Fall away
- (3) Yes
 - (a) (i) Technikon Natal
 - (ii) M L Sultan Technikon

HoA

- (2) whether he will take steps to have this means test re-evaluated in the light of the rising costs of living and of divorce, if not, why not, if so, what steps?

THE MINISTER OF JUSTICE.

- (1) Yes

(a) The means test concerned, like any other similar provision of law, is constantly reviewed in the normal course of events. During 1980 it was formally re-evaluated by the Commission of Inquiry into Proceedings in the Supreme Court of South Africa

(b) The above-mentioned Commission recommended that the amount be adjusted due to monetary depreciation. The Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), which placed the responsibility to make rules for the Supreme Court and the lower courts on the Rules Board for Courts of Law, has since then been put into operation

- (2) Yes The Rules Board for Courts of Law considered the Commission's recommendation at its recent meeting and the Board's decision has been submitted to me together with numerous other suggested amendments of the relevant rules I am presently considering these suggestions

Top management: cash loans

282 Mr C J DERBY-LEWIS asked the Minister of Transport Affairs

- (1) Whether the South African Transport Services granted any cash loans to any members of its top management in 1986, if so, (a) to whom and (b) what as the (i) amount, (ii) rate of interest and (iii) terms of repayment in each case,
- (2) whether these loans were granted subject to any conditions relating to the purpose for which they could be used, if not, why not, if so, what were these conditions,
- (3) whether this loan facility is available to all staff members of the Transport Services, if not, (a) why not and (b) to what categories of staff is this facility available?

THE MINISTER OF TRANSPORT AFFAIRS

- (1) No
- (2) and (3) Fall away

Staff: second-hand motor-cars

283 Mr C J DERBY-LEWIS asked the Minister of Transport Affairs

- (1) Whether the South African Transport Services provide a facility to certain categories of staff whereby new or second-hand motor-cars can be purchased at special low prices, if so, (a) (i) to which categories of staff is this facility (aa) available and (bb) not available and (ii) why in each case, (b) how many staff members are making use of this facility at present, (c) what discount as compared to normal retail prices is provided, (d) to what extent are customs and excise duties paid on these vehicles by the staff members concerned, (e) in whose name are these vehicles registered, (f) (i) how many vehicles is a staff member permitted to purchase in terms of this facility and (ii) why, (g) what are the terms of the loan facilities provided in respect of such purchases, (h) what was the total annual cost to the Transport Services of this facility in the latest specified financial years for which information is available, (i) how many motorcars have been purchased in terms of this facility by each specified category of staff members purchase motor-cars in terms of this facility,
- (2) (a) how are such motor-cars disposed of after the period of repayment has been completed, (b) (i) to whom do the profits from such transactions accrue and (ii) why do they so accrue,

HoA

Approved 11/8/87

221 Mr A GERBER asked the Minister of Justice *Harwood 11/8/87*

- (a) How many persons charged during the period 1980 to 1986 with alleged contraventions of the provisions of the Group Areas Act, No 36 of 1966, have been convicted and (b) in respect of what date is this information furnished?

THE MINISTER OF JUSTICE

(a) and (b) The information for the period 1980 to 1983 is not readily available in the Department. For the period 1984 to 1986 four (4) persons have been convicted. For the honourable member's information I may add that alternative steps are also taken against unlawful occupants. For example, approximately 500 occupants evacuated their places of residence in Johannesburg during 1981-1984. The last-mentioned evacuation was, *inter alia*, brought about by negotiations and the issuing of summonses and written notices to the unlawful occupants

In forma pauperis divorce

157 Mrs H SUZMAN asked the Minister of Justice:

- (1) Whether the means test for *in forma pauperis* divorce proceedings has been re-evaluated since January 1965, if so, (a) on what dates and (b) what factors were taken into consideration in these re-evaluations, if not, why not?

NSV

Approved 11/8/87

Harwood

11/8/87

ANC 3
get long
jail
terms

LIZO Bright Ngqungwana (27), Western Cape commander of Umkhonto we Sizwe, the military wing of the banned African National Congress, was yesterday jailed for life by a Cape Supreme Court judge.

Thembinkosi Theophilus Mzukwa (26), who activated a limpet mine outside an inquiries office at the Langa Police Station and threw a hand-grenade at the charge office and a patrolling Casspir was jailed for 25 years by Mr Justice H C Nel at the end of a marathon trial.

Joseph Ngoma (28), who detonated two limpet mines at the Mowbray Railway Station, was also sentenced to 25 years' imprisonment.

— Sapa.

14. to August 20, 1987

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W/Weil 14-20/8/87

~~Handwritten initials~~

A court nod to employee overtime rights

THE right of workers to refuse to do overtime has been confirmed by a Natal Supreme Court judgement considered highly significant by labour lawyers.

By **CARMEL RICKARD,**
Durban

Judge John Broome was asked by Plascon Paints to grant an interdict against the Chemical Workers Industrial Union and 356 workers, restraining them from either holding any unlawful strike concerning an issue currently in dispute or from starting any overtime ban until the procedures under the Labour Relations Act had been exhausted.

The judge granted the bar on any unlawful strike but refused to prohibit workers from initiating an overtime ban. He said it would constitute "a very serious inroad into the rights (of the workers) were (he) to restrain them from inciting, instigating, calling for, supporting or organising an overtime ban."

"As far as the individual worker is concerned, the working of overtime is something which he should be free to do or to refrain from doing. The notion of a worker being compelled to work overtime as and when required is so one-sided and unfavourable to the worker that the prejudice speaks for itself. This is so even if

the obligation to work overtime is qualified with the words 'subject to any legitimate excuse'.

"As far as the union and the shop stewards are concerned, it seems to me that, provided there is no intimation, it is perfectly valid and unobjectionable if, in order to strengthen their hands, they call for an overtime ban. It represents a weapon available to them and to deprive them of it would be highly prejudicial to them."

"That (the company) is being prejudiced by an overtime ban seems clear. But that prejudice can probably be avoided by employing more workers and adjusting the work times."

"In my view the balance of convenience favours the individual and not the employer, especially as the employer's case, on the merits, seems to be rather thin."

Commenting on the judgement, a labour lawyer said as far as he knew it was the first time the Supreme Court had said that an overtime ban did not constitute an unlawful strike and so the ruling "clarified the issue."

"It is most significant because the judgement goes so far as to say it is contrary to public policy that workers should be compelled to work overtime and that of its nature overtime is voluntary."

AKAS 14/8/87
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WRITE TO: The Editor, The Argus,
PO Box 56, CAPE TOWN, 8000

Letters 'System designed to enrich lawyers'

I READ with interest the Law Society's reply, published on July 30, to my letter of July 27 on high legal costs. Although I shall be happy to discuss the matter with the Law Society and share the outcome with the readers of The Argus, I wish in the meanwhile to comment on their letter.

I am well aware that appeals from the Magistrate's Court go firstly to the relevant division of the Supreme Court. This is merely an additional few thousand rands in expenses if either party then takes the matter to the Appellate Division in Bloemfontein, where transport and hotels for the litigant and his lawyers add to the costs of le-

gal fees, and the parties are both obliged to employ and pay Bloemfontein attorneys as well as all other lawyers previously employed. This would appear to be designed to keep as many lawyers as possible in the top-income bracket at the expense of litigants.

The Law Society admits that taking a Magistrate's Court matter (maximum claim allowed R5 000) on appeal is not a common occurrence because of the high costs involved. On half a dozen occasions in which I have been involved in Magistrate's Court actions in the past 15 years, on only two occasions did the damages awarded to me cover the legal fees I had

to pay, despite my being awarded "costs". This is because the lawyers charged me more than the amounts recognised by the courts, which I maintain is self-evident injustice.

The Law Society refers to appeals from the Magistrate's Court going to the Supreme Court "which does, of course, sit in Cape Town". This, apparently, is not applicable, as I made clear in my first letter that the defendant was not in Cape Town. To obtain justice, I am informed, I have to fly myself and my lawyers to the town where the defendant resides.

If (against the risks of financial losses already made clear) one side or the other

does appeal to the Supreme Court, I understand the case will yet again not be heard in Cape Town, but in a different division of the Supreme Court up country.

It is apparent, inter alia from the Law Reports, that a case heard originally in a Magistrate's Court or local division of the Supreme Court, may have its finding reversed on appeal to a "full bench" of the Supreme Court — which "full bench" may later be overruled by the Appellate Division of the Supreme Court, which refuses to send judges to other centres and inflicts great expense on litigants while frequently discrediting the findings of magistrates and other judges by reversing their decisions.

There are, therefore, two things wrong with our legal system. Firstly, it is cumbersome, often highly technical, and the litigant is at the mercy of next-pert legal advisers or wrong judgements — witness the large number of judgments overturned on appeal by other judges.

Secondly, the whole procedure is, in my view, outrageously expensive, with the litigant forced by the authorities to employ sometimes several different legal firms to handle the same case — one firm in every town involved in the case, and each receiving full fees as laid down "by the authorities" — to quote the Law Society Advocates' fees, as opposed to attorneys' fees, are not even "laid down." I understand, and advocates can simply refuse to take a case unless

their financial demands are met.

The Law Society does not identify "the authorities" who it says determine court tariffs. Apparently "the authorities" have no control over advocates' fees, which frequently constitute up to half or more of total costs to the litigant. Yet when a successful litigant is awarded costs, these may be about half the sums actually incurred — and the litigant, who has worked frequently as hard as any member of his legal team on the case, is awarded nothing.

Nor is allowance made for the litigant's loss of income, or even the loss of his job, perhaps, as a result of enforced attendances at his lawyers' offices and in court.

Cape Town

VERITAS

SHOCK VERDICT

THE verdict handed down by the Seshego Magistrate's Court on the death of United Democratic Front president Peter Nchabeleng, is the second inquest finding in two months which implicates the Lebowa police in the death of a detainee.

In June this year Magistrate Mr M B Mabuza found that 12 policemen based at the Mahwelereng Police Station were responsible for the death of journalist Makompo Lucky Kutumela, a member of both the Azanian People's Organisation (Azapo) and the Media Worker's Association of South Africa (Mwasa)

For the second time in two months a court has found that a detainee has died at the hands of Lebowa police.

Mr Kutumela died of loss of blood and internal brain haemorrhage. Evidence led at the inquest was that seven people, all Azapo members, were detained by police at the Mahwelereng police station on the night of April 4. Some of them, including Mr Kutumela, were severely assaulted during the night. Mr Kutumela died the following morning.

The inquest also heard that a command "to hunt and kill comrades" had been issued to the police

on the day the arrest and the assault took place.

Mr Nchabeleng died six days after Mr Kutumela at a police station about 100 km away. Evidence led was that he had been taken to a garage at the Sekhukhune police station where he was interrogated.

Screams

Witnesses who were at the police station at the time said they heard screams and sounds of beatings emanating from the garage during the time Mr Nchabeleng was

interrogated. A magistrate who took down a "confession" and saw Mr Nchabeleng two hours before he died, testified that the deceased "looked sick and did not concentrate. He kept falling asleep", he said.

There are at least five other inquests of people who allegedly died at the hands of Lebowa police members still pending. One, resulting from the fatal shooting of Mr Moss Magae on March 7 last year, is due to resume today at the Mokopane Magistrates Court.

Still pending are inquests into the deaths of

- Isaac Mafokwane, who died of bullet wounds after clashing with police at the University of the North on June 16, 1985,
- Ngwako Ramelepe who died at Kgapane, near Duiwelskloof, on October 18, 1985 following alleged police beatings;
- Mavis Malatji who died of bullet wounds at Namagale, Phalaborwa, when police allegedly disrupted a Sharpeville commemoration service on March 23 last year, and
- Lawrence Kodi Tseka who died of bullet wounds in May last year at Gamasemola in Sekhukhuneland.

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COURT ~~STOPS~~ STRIKE

A STRIKE planned from today by nearly 400 employees of the City Council of Atteridgeville was declared illegal by the Pretoria Supreme Court at the weekend.

On Saturday Mr Justice de Klerk granted an interdict against the workers and restrained them from organising, propagating or encouraging a strike. The judge also restrained them from distributing ballot papers propagating a sit-down strike.

The council brought an urgent application against the employees — all members of the Transvaal Association of Employees of Black Local Authority — following threats that about 60 percent of the workers had agreed to stage a sit-down strike from today.

The application was not opposed.

Mr Justice de Klerk called upon the union to

show cause by next Tuesday why a final order should not be granted against the workers.

The planned strike followed various grievances expressed by the workers. They include failure by the council to sign a recognition agreement with their union. In papers before the court the council submitted that it had at all times been willing to negotiate with the union.

The council also submitted that the planned strike would lead to the disruption of essential services which could result in unrest in Atteridgeville which is at present "reasonably stable".

their statutory responsibility to maintain law and order

- (3) (a) and (b) No but as a result of reports in the media, the Police took note of the expected presence of leftist and rightist radicals and consequently took the necessary preventative measures

(i) to (ii) Fall away

(4) Yes

(a) An officer of the South African Police directed a warning with a megaphone to the persons in English and Afrikaans in terms of section 72 (c) of the Internal Security Act

(b) The persons dispersed peacefully

(5) Yes, a request was directed to the persons

(a) Mr Eugene Terre-Blanche and Dr Alex Borriane

(b) and (c) The request which was directed at the two persons, was intended to promote the statutory responsibility of the South African Police namely to maintain law and order

Mr D J N MALCOMESS Mr Speaker, arising out of the answer of the hon the Minister, can he perhaps tell us at what stage this warning to disperse was given, and how long after the warning had been given the AWPB members vacated the airport premises, where they were gathered in fairly considerable numbers?

The MINISTER Mr Speaker, I would suggest that the hon member formulates in a question the further particulars he requires and have it placed on the Question Paper. I will then go into the matter of the specific times etcetera which he requires, and give him my reply

Remission/parole

*16 Mrs H SUZMAN asked the Minister of Justice

Whether persons convicted of offences in terms of the Internal Security Act, No 74 of 1982, are entitled to (a) remission and (b) parole, if not, why not, if so, how many persons (i) had applied for and (ii) had been refused (aa) remission and (bb) parole as at the latest specified date for which information is available?

The MINISTER OF JUSTICE

(a) and (b), (i) (aa) and (bb) as well as (ii) (aa) and (bb) The Prisons Act, 1959 (Act No 8 of 1959) and the Regulations promulgated thereunder do not establish a right for any prisoner to be released prior to the expiration of his or her sentence

The statistics as required cannot be kept due to the fact that one prisoner's possible conditional release, on parole or probation can be considered and/or reconsidered and recommended by the Institutional Committee or the Release Board on more than one occasion

For the hon member's information, however it can again be mentioned that 153 security prisoners were released since May 1982 prior to the expiration of their sentences. The hon member is also referred to the hon the State President's speech in which he dealt comprehensively with related matters

New Questions

Alexandra: serviceman shot

*1 Mr P G SOAL asked the Minister of Law and Order,

Whether, with reference to his reply to Question No 430 on 23 February 1987, the investigation into the shooting of a national serviceman in Alexandra Township on 1 January 1987 has been completed, if not, (a) what progress has been made in this investigation and (b) when is it anticipated that it will be completed, if so (i) what were the findings and (ii) what action has been taken as a result?

The MINISTER OF LAW AND ORDER

No

(a) The suspect(s) in the case have not yet been identified or traced

(b) All possible endeavours have been made to trace the suspect(s) but no indication can be given of when the investigation will be finalized

(i) and (ii) Fall away

Guguletu death of ANC terrorists

*2 Mr S S VAN DER MERWE asked the Minister of Law and Order

(1) Whether, with reference to his reply to Question No 43 on 20 February 1987, the investigation into the deaths of suspected ANC terrorists in Guguletu on 3 March 1986 has been completed, if not (a) what matters remain to be completed and (b) when is it anticipated that the investigation will be completed, if so,

(2) whether a copy of the post-mortem report on C Piet has been made available to his family since the date of the reply referred to above, if not, why not, if so on what date,

(3) whether any further requests for copies of the post-mortem reports have been received, if so, (a) from whom, (b) when and (c) what was the response thereto,

(4) whether the investigation into the escape of any person or persons during the confrontation with the Police on 3 March 1986 has been completed, if so, what were the findings,

(5) whether any persons have been arrested as a result of this investigation, if so, what are their names?

The MINISTER OF LAW AND ORDER

(1) Yes

(a) and (b) Fall away

(2) No I wish to point out to the hon member that if the family of a deceased wished to obtain a copy of such a report, they can apply for one to the clerk of the court where the inquest was held. The South African Police has no jurisdiction to furnish documents of this nature to interested parties or their representatives

(3) No
(a) to (c) Fall away

(4) No, the investigation is continuing

(5) No

Communication programming total cost

*3 Mr P G SOAL asked the Deputy Minister of Information

(1) (a) What was the total cost of the communication programme including the song "Together we'll build a brighter future" and (b) what specified items are included in this total,

(2) whether this programme is continuing, if not, (a) when and (b) why was it stopped, if so, what aspects of the programme are still in progress?

The DEPUTY MINISTER OF INFORMATION

(1) (a) R8 718 797 for the financial year 1986/87 which includes R4 373 652 expenditure on the "Together we will build a brighter future" project and, an expenditure of R4 345 145 on the Rent and Services' project

R3 007 319 for the financial year 1987/88 for outdoor advertisements for both campaigns

(b) TV commercials
Radio commercials
Press advertisements
Outdoor advertisements
Posters

(2) Yes The outdoor advertising campaign will continue until the end of the 1987/88 financial year

(a) and (b) Fall away

Note It will be noted that the figure as in 1 (a) above (R8 718 797) differs from the figure as supplied by the hon the State President in reply to oral Question 1 of August 11, 1987, for R7 412 000

Expenditure on outdoor advertisement of R1 306 852 for the 1986/87 financial year was inadvertently not included in calculating the total costs of the communication project

ANC pair sent to jail

Star
19/8/87

Two high ranking African National Congress (ANC) officers were this week given effective jail terms of 11 and 12 years by the Johannesburg Magistrate's Court.

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Solomon Molozi Makape (34) and Theodore Vuzimusi Bigboy Zwane (36) had pleaded guilty and were convicted on two counts of terrorism and one under the Internal Security Act. They were given jail terms of 21 and 22 years respectively, with parts of the terms to run concurrently.

CA 7/15/87
SA justice
under ⁽²⁵²⁾
critical
scrutiny

Staff Reporter

THE South African system of justice has come under extreme critical inquiry — and deservedly so, Professor Dennis Davis of the University of Cape Town's Department of Law told a Civil Rights League lunch-time meeting yesterday.

Professor Davis said the emergency was not a temporary phenomenon, but part of the state's policy of trying to generate reform "in the way that they see it". To do this, it "warehoused" its extra-parliamentary opponents so it could pursue this reform without effective opposition.

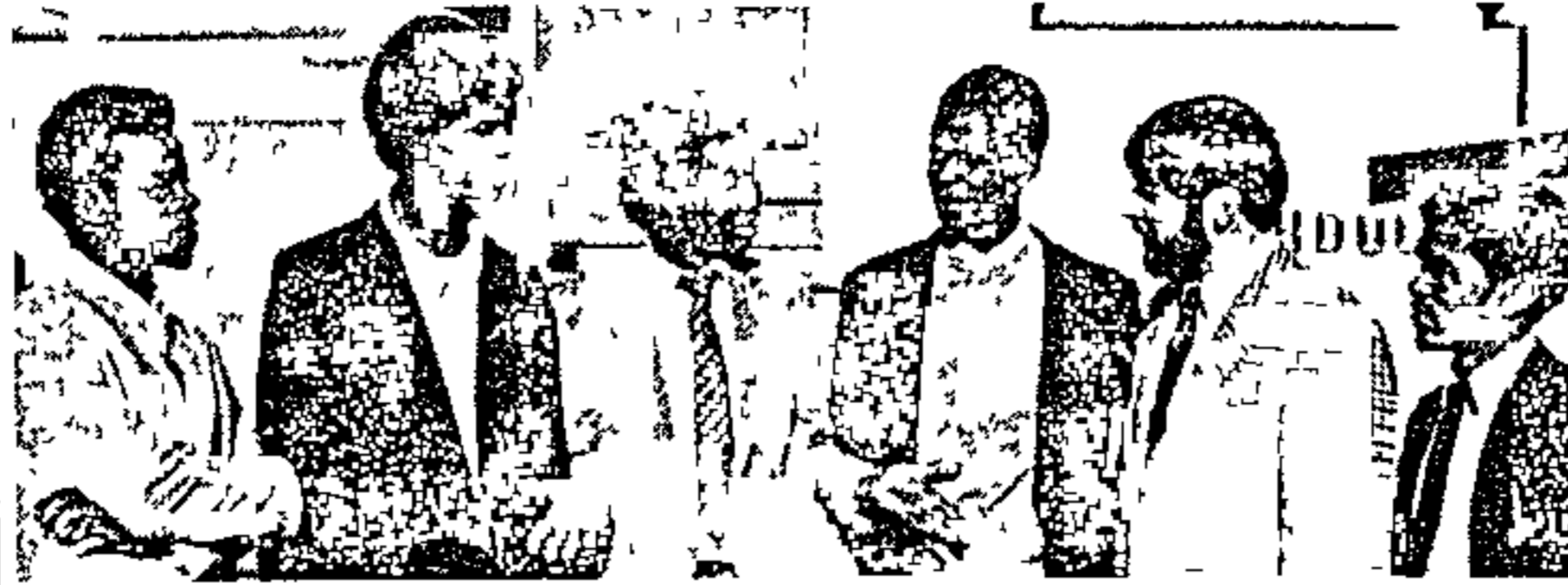
The courts, he said, could afford relief to detainees, but — although the country's constitution allowed for a judicial system to function — they had "come under extremely critical scrutiny".

He referred to recent developments concerning the judiciary, including a report by the Human Sciences Research Council — "hardly the UDF" — and a call by a legal academic and senior advocate, Mr Edwin Cameron, that three "top" judges "review their positions on the Bench".

They are former Administrator-General of Namibia Mr Justice Marthinus Steyn, the Judge President of the Cape, Mr Justice George Munnik, and former Chief Justice Pierre Rabie who has accepted an acting chief justice post.

While regulations barred discussion — or made it difficult — on detainees' conditions, he said many South Africans suspected they were tortured and that it was time whites "came to care about this".

The government had brought a "proud legal system into disrepute", he said.



KARATE CHAMPS . . The four national karate champions outside the Supreme Court yesterday with their instructors. The instructors are Mr Patrick Plum (third from left) and Peter Brendon (second from right) The four champions are (from left) Vusumuzi Michael Gubango, Vincent Hamca, Tembi Gabriel Gama and Eric Monco

By ANDRE KOOPMAN
 FOUR national karate champions, described by a Supreme Court judge as "decent and upstanding young men", were yesterday convicted of murdering a gang leader with karate sticks and machetes after he had "repeatedly terrorized them".

Vusumuzi Gubango, 22, Tembile Monco, 21, and Tembi Gama, 22, all of Nyanga, and Vincent Hamca, 19, of Constantia, pleaded guilty to murder.

They were sentenced to three years jail, suspended for three years.

Three of the men are expected to receive their Springbok colours this weekend, according to the head of Goju-Kai Karate in South Africa, Mr Peter Brandon, who was in court.

Evidence was that the four, who are all members of the same karate club, killed the leader of the Ntsala gang, Mr Johannes Mabuyana, on April 2, by "stabbing and/or chopping and/or cutting him" with knives, karate sticks (nunchakus), and other sharp instruments.

In papers before the court it was said that Mr Mabuyana had stabbed and killed one karateka and stabbed another member of the club in the shoulder blade, after he and 10 of his gangsters had disrupted a karate club fund-raising event at the Zolani Centre, Nyanga East, in March this year.

Campaign of terror

The four and their instructor, Mr Patrick Plum, then disarmed Mr Mabuyana and handed him over to the police.

Hamca said "I was surprised to see that he was walking free with his group a few days later."

In the ensuing weeks "Mabuyana and his gangsters conducted a campaign of terror against the members of the karate club", according to evidence.

Hamca said gang members "deliberately tried to drive over me as I was returning from gym" the day after the funeral of a club member who had been stabbed to death by Mr Mabuyana.

The court was told that when the gang had tried to knock down Hamca this was the "last straw".

The four decided to approach Mr Mabuyana and took nunchakus with them because they were not prepared to face the gangsters unarmed.

They found about 10

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Karate men murdered gang leader

gang members along the way and tried to speak to them but the four were surrounded by the machete-wielding gangsters. They fought the gangsters and managed to overpower some, who then ran away.

Mr Mabuyana continued fighting with a big knife and hurt Gubango and Hamca. The four then grabbed knives abandoned by the fleeing gangsters and stabbed and beat Mr Mabuyana. He later died in hospital and the four

gave themselves up to the police.

Mr Justice A J Lategan said he was satisfied with the version of the four men and found that they had been "repeatedly terrorized". They had acted under circumstances which clouded their judgment and extenuating circumstances therefore existed.

Mr Justice Lategan presided with two assessors Mr H Van Huysteen and Mr H J Luttig. Mr P J Marais appeared for the State. Miss R Scalabrino, Mr P Berthold, Miss L Conradie and Mr J Miller appeared pro Deo for the four.

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W/Mail 21-3-7/8/87

There ought to be a law to stop all this, remarks judge

REMARKS by a Natal Supreme Court judge have sparked fears that attempts could be made to have parliament restrict access to the courts.

Earlier this month an application, launched in May by seven Emergency detainees against the minister of prisons and other state officials, came up in the Durban Supreme Court.

The case was scheduled to be adjourned until a later date.

Just before he adjourned the matter, Judge Auret van Heerden remarked that the case was on the opposed roll and that during the previous fortnight there had been a number of such cases adjourned, that have been settled.

He then asked who was paying the costs of the case. Told each party was paying their own costs, he asked how the state could "let itself in for such things".

"Applications are being made and the state has no hope of ever recovering costs from the applicants.

By CARMEL RICKARD, Durban

"I have read the papers — now here are a lot of things (*'n klomp goed*) — if these people were to come under cross examination I do not know whether they would stand up as witnesses

"It is apparently a cooked up thing this (*'n opgekookte ding die*), just from a reading of the papers"

He went on to say he believed something should be done "by legislation to bring an end to this kind of thing (*dat daar iets deur wetgewing gedoen word om die soort dinge aan bande te lê*)"

Judge van Heerden was later asked by the *Weekly Mail* whether he intended to make representations to parliament and whether his remarks been misinterpreted?

He was not prepared to say anything.

Responding to the remarks made in court by the judge, the national chairman of Lawyers for Human Rights, Jules Browde, said his organisation "viewed with grave disquiet the suggestion by the learned judge that people should be precluded from approaching the courts by an Act of parliament.

"It is an established practice in our courts that judges do not decide disputes of fact by reading affidavits and that they require to see and hear the witnesses giving their evidence.

"Any legislation that would deprive a citizen of his right to come to court must be viewed as a serious inroad into human rights"

University of Natal security law expert, Professor Tony Mathews, expressed concern as to whether the "already vulnerable detainee should be made even more vulnerable by legislation directed against court applications".

D-1: ... 1 1 - C - ...

trolled animal diseases, two Senior State Veterinarians have recently been seconded to the KwaZulu Government to help combatting those diseases.

* so far this year 91 500 vaccinations against rabies have been undertaken in Natal

(3) No

Mr R W HARDINGHAM Mr Speaker, arising out of the hon the Deputy Minister's reply, has he received reports to the effect that the vaccine that is being used for rabies is not 100% effective? If so, has any action been taken in this regard?

The DEPUTY MINISTER No, Mr Speaker, I have not received any such reports

Kwamevane Township

Mr R W HARDINGHAM asked the Minister of Constitutional Development and Planning

(1) Whether with reference to his reply to Question No 9 on 28 July 1987 his Department intends allocating funds for the upgrading of Kwamevane Township, near Howick, if not why not, if so, (a) when, (b) what total amount and (c) for what specified projects,

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

The DEPUTY MINISTER OF CONSTITUTIONAL PLANNING

(1) Yes

(a) As soon as funds for new projects can be made available from the National Housing Fund in collaboration with the Natal Provincial Administration and the Black Local Authority within the limits of the development priorities of the Natal Provincial Administration

(b) Approximately R1,5 million

(c) Upgrading of roads, sewerage reticulation, water reticulation and electricity reticulation as

well as upgrading of existing dwellings

(2) No

Persons awaiting execution

Mr P C CRONJE asked the Minister of Justice

How many persons were awaiting execution as at the latest specified date for which information is available?

The MINISTER OF LAW AND ORDER (for the Minister of Justice)

On 25 August 1987, 262 persons were in detention after having been sentenced to death. Nine were awaiting execution while the cases of the rest were still in various stages of the post sentence process. The largest group being involved in appeals

television transmitters

Mr P C CRONJE asked the Minister in the State President's Office entrusted with Administration and Broadcasting Services

(1) Whether he will furnish information on the erection of transmitters for television broadcasts, if not, why not, if so

(2) whether a booster transmitter is to be erected in the Greytown area in Natal to improve television reception, if so, (a) when and (b) what aspects of television reception is it anticipated will be enhanced by this booster, if not, why not,

(3) whether any representations have been received from persons in the Greytown area regarding television reception, if so, (a) how many and (b) what was the (i) nature of these representations and (ii) response thereto?

The MINISTER IN THE STATE PRESIDENT'S OFFICE ENTRUSTED WITH ADMINISTRATION AND BROADCASTING SERVICES

(1) Yes

(2) (a) Such a booster transmitter could

possibly be erected when capital and operational funds could be provided for this purpose

(b) TV reception at the town itself would be improved

(3) Yes

(a) From two organisations namely the local Municipality and E Bolland and Son (Pty) Ltd General Dealers and from one individual, a Mr R H Walker

(b) (i) The nature of the representations was for the provision of a TV1 signal for the town by the SABC or otherwise for the installation of a private station

(ii) At the request of the Municipality, the SABC approved the installation of a private station for TV2/4

An investigation into problems of TV1 reception was conducted *in loco*. The Municipality was informed that a TV1 booster transmitter would be needed to improve reception. A fixed date for this could not be given, but that the indications were that it would not be within the next 2 years

Mr Walker was given an explanation of the position with regard to problems of reception, and he was provided with details concerning an aerial installation that could possibly resolve the problem

Child detainees: rehabilitation

Mr H SUZMAN asked the Minister of Constitutional Development and Planning

(1) Whether a detention centre for the rehabilitation of child detainees is to be built in or near Stutterheim in the Eastern Cape, if so, (a) what is the total estimated cost of construction, (b) what facilities will be provided,

(c) what categories of child detainees will be sent there, (d) how many detainees will it be able to accommodate, (e) who will be in charge of the centre, (f) what is the nature of the rehabilitation programme planned for detainees at the centre, (g) what security arrangements will be made for the centre, (h) when is construction due to (i) commence and (ii) be completed and (i) who is to carry out the construction work,

(2) whether any other such detention centres are planned, if so, (a) where and (b) when are they to be built, in each case,

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

The DEPUTY MINISTER OF CONSTITUTIONAL PLANNING

(1) No (a) up to (h) Fall away

(2) The hon member is referred to the press statement by Minister F W de Klerk in his capacity as Chairman of the Cabinet Committee on Social Matters issued on 15 August 1987 and in respect of which the Minister of Constitutional Development and Planning was consulted

(a) and (b) Fall away

(3) No

Eastern Province: newspapers

Mr D J DALLING asked the Minister of Economic Affairs and Technology

(1) Whether proposed arrangements to merge the interests of certain newspapers circulating in the Eastern Province and those of an English-language newspaper circulating in East London, particulars of which have been furnished to the Minister's Department for the purpose of his reply, have been submitted to the Competition Board for approval, if so, (a) when, (b) what was the (i) nature of the arrangements submitted and (ii) decision of the said board and (c) what are the names of the newspapers concerned,

252 ARGW 27/8/87

Year in jail but no evidence — court frees Boland men

Supreme Court Reporter

A JUDGE said it was disturbing that two people charged with murder had spent almost a year in jail awaiting trial without there being an iota of evidence on which a court could convict them

Mr Justice Lategan yesterday discharged Mr Bernard Pietersen and Mr Phillip Olivier, both of Wolseley. The case against a third man, Mr Jan Arrison, continues

Mr Arrison, 19, has pleaded not guilty to the murder of Mr Pieter Braaf, who was stabbed in Wolseley on September 5 last year

The judge said the Attorney-General and his representatives had an enormous responsibility when deciding whether to charge a person and that they should exercise a great deal of caution in doing so

"TRAUMATIC EFFECT"

"Charging involves a radical intervention in a man's freedom. To be dragged in front of a court must have a traumatic effect on a free man

"It disturbs me greatly that these two men have had to suffer this trauma. I'm not saying they are angels, but at the end of the day they have not committed any crime

"I know the Attorney-General and his representatives as responsible people — that is why it disturbs me and why I

use the strong language I do," the judge said

Earlier Mr Justice Lategan remarked that the State's only eyewitness had said that although Mr Pietersen and Mr Olivier had been present when Mr Arrison allegedly stabbed Mr Braaf, they had done nothing themselves

"SCORPION GANG"

"The three men had been seen together earlier that evening, looking for Scorpion gang members," he said. "What they wanted to do with them is not clear because Mr Olivier himself was a Scorpion

"The high watermark of the State's case against Mr Pietersen and Mr Olivier is the fact that the eyewitness saw Mr Arrison hand Mr Pietersen a small axe after the stabbing incident," the judge said

"It is not a crime per se to carry an axe or run around with your friend who stabs someone in front of you"

(Proceeding)

Ms L Troskie appears pro Deo for Mr Arrison. Mr D Bosman and Mr G Taylor appeared pro Deo for Mr Pietersen and Mr Olivier

Death-sentence issue arises again

By Jo-Anne Collinge

With at least 30 people on death row for politically motivated murders — and two of them likely to be executed next week — the question of capital punishment stares South Africans in the face once more.

The regular arguments for abolition or retention of the death sentence raised in democracies around the world have long been complicated in South Africa by the presence of African National Congress men in the death cells of Pretoria.

In these circumstances the debate on whether or not ANC fighters should be accorded the status of prisoners of war — a move which would spare them execution — becomes a strong feature of the capital punishment issue.

Further complications arise in the wake of the deluge of political violence which burst over South Africa from September 1984, drawing hundreds of untrained civilians into the ambit of violent opposition to apartheid.

NOT TRAINED FIGHTERS

The majority of men and the lone woman now on death row for politically related crimes are not trained guerrillas. They are civilians, often swept up in the tide of mass protest and conflict, who have been convicted for killing community councillors, policemen and alleged informers.

They include six Sharpeville residents who have been convicted for the killing of a councillor during the massive rent marches in the Vaal on September 3 1984, two Uitenhage men sentenced for the murder of a councillor and his family in the chaos that followed the Langa shootings of March 1985 in which police killed 20 civilians, and three mineworkers who were found guilty of killing team leaders at Vaal Reefs mine near Klerksdorp.

Where do they fit into the spectrum ranging from the acknowledged soldier to the common criminal?

Firstly, not even proven ANC members have succeeded in establishing their claim as combatants and soldiers when brought before the South African courts.

Their claim to PoW status rests on the 1977 Protocols of the Geneva Convention Protocol 1 extends the normal protection applicable to PoWs to "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination".

These provisions were clearly framed with the South African situation in mind, but Pretoria has not signed Protocol 1 and is not bound by it.

Despite this, Pretoria will not be able to ignore "the irreversible trend in international law" to treat members of national liberation

movements as prisoners-of-war, argues Professor John Dugard, director of the Wits Centre for Applied Legal Studies.

He states that the number of countries subscribing to Protocol 1 is steadily increasing. All this points, he believes, to the principles of Protocol 1 in time becoming established in international common law and, as such, binding on South African courts.

At present, however, there is no such hold on local courts which try ANC members. Where evidence has been led in mitigation of sentence in ANC cases, arguing that the humanitarian principles of Protocol 1 should at least be considered, the response has varied.

In the Transvaal, Mr Justice Curlewis was unimpressed by the argument and went on to impose the death sentence on the ANC trio of Thelle Simon Mogoerane, Jerry Semano Mosoloh and Thabo Marcus Motlaung. They were convicted of attacking three police stations, claiming four lives.

The ANC, Mr Justice Curlewis maintained, was a "terrorist organisation". He said "The ANC is an organisation prepared to shed the blood of innocent people and does so."

In contrast, Mr Justice Diddcott of the Natal Bench, ruling in a Terrorism Act trial at about the same time as the Mogoerane case, sympathised with the "frustration and despair" caused by the restricted lives of the accused. He viewed them as coming "under the influence of agents and recruiters for the Umkhonto we Sizwe wing of the ANC. So they joined up as soldiers."

So what chance do unorganised civilians have of reprieve once they have been convicted of political murder?

A number of the 30 on death row still have recourse to the Appeal Court.

NOT EXECUTED FOR POLITICS

Professor Dugard points out that their hopes do not lie in the direction of the Geneva Conventions — few could lay claim to being part of the established liberation movement.

He maintains instead that "traditionally" in South Africa people are not executed for politically motivated offences.

After the hanging of Jopie Fourie, an army officer convicted of treason for taking part in an armed rebellion, "the convention developed that people convicted of politically inspired crimes are not executed," said Professor Dugard.

Robey Leibbrandt, also sentenced to death for treason (but not responsible for a killing), provided a stark contrast to the Fourie case, he pointed out. Convicted in 1943, his sentence was converted to life imprisonment and a mere five years later he was released, when the National Party came to power.

Professor Dugard concedes that clemency wears thin when the political crime results in loss of life.

A rare spectator view into the weighing of a detainee's fate

By PAT SIDLEY

A JOHANNESBURG lawyer has had a rare insight into a secret tribunal where a judge and two assistants decide the fate of Internal Security Act detainees six months after their incarceration.

And after the hearing, attorney Kathleen Satchwell criticised the review board process, particularly the fact that a supreme court judge should allow himself to be a party to it.

Although no lawyers have previously been able to represent their clients at the review board, Satchwell was allowed to attend one such hearing to argue why her client, detained University of the Witwatersrand science student Tsitse Jacob Maleho, should have been represented at the hearing.

After wandering around on the seventh floor of a building in Pretoria, she was shown to a room to wait alongside several policemen. She was called into the hearing after a security

policeman had spoken to the board. She recognised the presiding officer, Supreme Court Judge Human, but was not introduced to either of the two people who presided with him, nor to any of several other people in the room.

"I was allowed to address the hearing on why I believed it necessary for the detainee to be represented at the hearing," Satchwell said.

The hearing was amicable, said Satchwell, but Human told her the board had already been addressed on the merits of the case by a policeman, and her request to represent her client was turned down.

"The principle of hearing the other

ing, if it had all been explained to him. In fact she did not know if he knew anything of his situation at all. She did not know if he was able to adequately represent himself anyway and pointed out that youths or retarded people certainly could not represent themselves at such a hearing and were apparently not entitled to any representation either.

For all she and her client knew, the case made out by the policeman to continue to detain him may have been totally untrue and therefore easily challengeable.

The review court process was set up in 1982. Under the regulations, the detainee need not be present at the

side of the story exists in every administrative decision and every judicial hearing unless it is expressly excluded. It has not been expressly excluded in this part of the law," Satchwell said.

She had also addressed the board on the fundamental principles she believed entitled her client to representation.

"The Board of Review is not able to reach a decision with only one side of the story. The decision can never be more than 50 percent right," she said.

Satchwell said she did not know if her client knew of the board's meet-

hearing. And in the absence of access to detainees or public scrutiny of the process, nobody would know whether the detainee was told — as is his or her right — the reasons for the detention, that a detainee can make representations, and that these will be put before the review board.

"Nobody knows when this 'court' meets and the person on the receiving end knows nothing about it and is apparently not entitled to be represented," Satchwell said.

In a telex to the Commissioner of Security Police in which Satchwell asked to represent her client at the Board's hearing, she said "It is fundamental to (the) right of legal representation that he be in a position to properly instruct his legal representatives and to receive legal advice from them in return."

Once again this month, in a further request to be present at the review board's hearing, she sent a telex to the director of security legislation in which she said "Our client, Mr Maleho, is not in a position to properly represent his own interests. He does not have the opportunity to analyse and evaluate any allegations which may be made against him, he does not have the expertise with which to challenge any such allegations, he is not in a position to collect such evidence as may be necessary to rebut any allegations against him or to advance his own arguments."

Shortly after making this request, Satchwell was granted the opportunity to appear before the board to argue why she needed to represent her client there. Her argument was rejected.

This week, criticising the involvement of a judge in the review board procedure, she said that she thought a judicial officer "should not be party to a procedure which is fundamentally contrary to every principle of court proceedings and judicial hearings."

"The proceedings are contrary to the training of a judge as a lawyer and to his duty as a judge. The decision (made at the board) are based on hearsay evidence of one person," she said.

Satchwell is now applying to the Supreme Court to have Maleho released on the grounds that his detention is not lawful.

Maleho has been held under Section 29 of the Internal Security Act, which allows for indefinite detention without access to a lawyer, since January.

The review board determines whether Section 29 detainees can continue to be held after six months.

In March she was informed by the commissioner of the South African Police that her client was being held after a police investigation "revealed that he had given accommodation to the ANC terrorist" and that he had not reported this information.

She wrote back challenging the idea that any crime had been committed and pointing out that the letter had not disclosed "any offence which has been committed or intended to be committed".

There are at present about 81 detainees who have been held for longer than six months in terms of Section 29 of the Internal Security Act. They will all have had their cases reviewed by this process.

Just 28 to September 3, 1987

252 W/Meal 28/8-3/9/87

Two to hang Tuesday - but parents not told

By MONO BADELA

TWO of the 33 political activists on death row at Pretoria Central Prison are to be hanged on Tuesday — but their parents only found out about their appointment with the hangman by chance.

The families heard about the hangings when they visited their sons last weekend.

Wellington Melles and Moses Jantjes were found guilty of killing a KwaNobuhle town councillor, Benjamin Kinkini, by "necklacing" him in March 1985. They have been on death row since December last year.

Meanwhile the name of a 33rd activist on death row is now known. He is Michael Lukas, of Queenstown.

The Detainees' Parents Support Committee yesterday condemned the government for planning to "secretly" hang Melles and Jantjes.

In a statement DPSC chairman Max Coleman said the DPSC "fully supports the call to the authorities to relieve the 32 people on death row."

"We can only regard the 32 under sentence of execution as the victims of a situation in this country not of their making."

"That they should be sentenced to death by those who are responsible for the situation is the supreme irony. Even prisoners of war do not meet

with such a fate."

The Northern Tranvaal Youth Congress, a South African Youth Congress affiliate, urged the government to spare the lives of the two men. The organisation also called on the international community to write letters of protest to the government.

"We are again calling upon the regime to stop killing our fellow comrades. We reiterate our position that our peace-loving people have not committed any crime against humanity. Their only crime was to oppose the barbaric and inhuman system of apartheid, and the blame should be put at the door of the system," the statement said.

Sayco has called on workers to observe a few moments of silence on Tuesday for Melles and Jantjes. A prayer meeting will be held at Khotso House at midday on Tuesday.

A Department of Justice representative has confirmed the hangings.

Among the 32 is a young Sharpeville woman, Thelesa Ramashamola. She was sentenced in 1985.

Three National Union of Mine-workers' members, Tlehubuyo Mgedzi, Solomon Mangaliso Nogwati and Paulos Tsietisi Tshelana, are also among those waiting to be hanged. They were sentenced in May this year for killing team leaders at Vaal Reef's mine.

28/8-58

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Mkhatshwa assault: six charged

By CARMEL RICKARD, Durban

LAW and Order minister Adnaan Vlok has revealed that six people were charged with *crimen injuria* in connection with claims of serious assault by senior Catholic priest, Father Smangaliso Mkhatshwa

The information was given by Vlok this week in response to a question by PFP MP for Pinelands, Jaspal Walsh.

Vlok — who did not mention Mkhatshwa's name in his reply — said in his written reply that the investigation into the allegations revealed that during interrogation the *dignitas* of Mkhatshwa was injured.

On June 24 this year the case was referred to the attorney general who

decided the six accused should stand trial for *crimen injuria* and August 26 was set as the date for their trial

However, the AG also decided that if one of the six were to pay an admission of guilt fine of R200, the other five would be absolved.

The fine was paid on August 11 and as a result there was no trial.

Lawyers acting for Mkhatshwa said they were astonished to hear Vlok's announcement as they had known

nothing about the AG's decision.

"We sent letters to the AG's office asking for progress reports on the investigation into Mkhatshwa's allegations, and they said we would be kept informed."

They were also shocked at the minor offences with which the six were to be charged "rather than assault on a number of counts", and at the handling of the matter which ensured that the names of the six were not revealed.

"Obviously they never intended to proceed to a trial of the six. If they

had intended to do so, they would have had to subpoena witnesses, and particularly Mkhatshwa as chief witness. But this was never done"

Natal University law professor, Tony Mathews agreed that it was very strange that Mkhatshwa was not subpoenaed

He said that in view of the very serious allegations of torture by Mkhatshwa it was "very difficult to understand why the charges did not include assault and were confined to *crimen injuria*".

Mkhatshwa has launched a damages claim of R50 000 against the state for assaults which he alleges he received during his detention

28/8-3/9/87

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ADDITIONAL INFORMATION FROM OTHER SOURCES

Banned on the Island: Our Island series

POLITICAL prisoners on Robben Island are being prevented from reading the Weekly Mail's series about life in the prison.

Relatives who have visited the prisoners say that warders have censored the relevant parts from the newspaper, leaving only the teasers on the front page.

Asked to confirm this yesterday, a Prisons Service liaison officer said: "The head of every prison is responsible for the maintenance of the security and good order of the prison under his command. The Prisons Act and the regulations promulgated thereunder provide for a variety of measures that the head of the prison may utilize."

Therefore all in the case with all written typed printed material that is brought into prison, newspapers are also subject to censorship for reasons of security or the maintenance of order.

Date set for two killers to hang

By SELLO SERIPE

TWO ... from KwaNo buhle, in the Easterr Cape - Wellington Mielies and Moses Jantjies, sentenced to death in the Port Elizabeth Supreme Court, will be hanged on Tuesday.

Mielies and Jantjies were condemned for their role in the murder of a local councillor, Benjamin Tamsanqa Kinkini, and five members of his family.

A spokesman for the Sheriff's Office confirmed the execution date and added that the families of the two men had been informed about the men's fate.

The two men were each sentenced to death six times by the Port Elizabeth Supreme Court in November 1986.

Leave to appeal against the sentence was rejected in May by the Appeal Court in Bloemfontein.

According to Jane Mielies, 65, her son told her of the hanging date when she paid him a visit at the Pretoria Central Prison on Tuesday.

"My son said he was informed on Monday that he would hang on Tuesday," she said.

232
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More appeals for 32 in death row

By PETER DENNEHY

MORE appeals for the lives of 32 death-row prisoners awaiting execution for "politically-motivated" killings have been sent to the government

The Austrian Vice-Chancellor and Minister of Foreign Affairs, Dr Alois Mock, has sent a message to the Minister of Foreign Affairs, Mr Pik Botha, appealing to the South African government not to carry out the death sentences passed on the 32 "accused of politically-motivated crimes"

The Austrian Ambassador in Pretoria, Mr A Christiani, said in a telex message that Austrians and their government would interpret a decision to save the lives of these persons "not as weakness but as a commendable humanitarian act which would contribute towards halting further escalation of violence"

The Southern African Catholic Bishops' Conference (SACBC) also appealed for the sentences to be commuted

The SACBC said in a statement the 32 had been found guilty of various acts of violence, including two "necklace" killings and a bombing that resulted in three deaths

Deaths attributed to the 32 included those of three community councillors, three alleged informers and two policemen

"Great numbers of people consider that what these persons stand condemned for are 'acts of war' performed in the liberation struggle, in which the South African state is responsible for even greater and more widespread violence," the SACBC said

"In the eyes of their supporters

those condemned are patriots and heroes. Execution will endow them with the crown of martyrdom"

The SACBC added that "however we may recoil in horror from deliberate killing, indiscriminate bombing and the brutality of necklacing"

The South African Youth Congress (Sayco), the United Democratic Front, the Congress of South African Trade Unions, the Release Mandela Campaign and various other organizations have all endorsed the campaign to save the 32

The 32 are Mojalefa Sefatsa, Oupa Ditsino, Duma Khumalo, Francis Mokhesi, Reid Mokoena, Theresa Ramashamola, Lilli Webushe, Alex Matsepene, Solomon Maowasha, Dickson Madikane, Desmond Majola, Patrick Mangida, Daniel Maleke, Josiah Tsawane, Moses Jantjies, Mlami Mielies, Paul Setlaba, Similo Woner, Christopher Makeleru, Ndumiso Sephenuko, Machezuana Menze, Robert McBride, Tjelubuyo Mgedeze, Solomon Nogwati, Paulos Tshelana, Mzwandile Gqeba, Whanto Silinga, Lundi Wana, Thembinkosi Feet, Mzwandile Mnzini, Monde Tingwe, and Philip Ngidi

Two to hang tomorrow

Own Correspondent

JOHANNESBURG. — The Transvaal Youth Congress (Trasco) has called on the government to spare the lives of two people, Wellington Mielies and Moses Mnyanda Jantjies, who are to hang tomorrow

Mielies and Jantjies were sentenced to death for the killing of several members of the Kinikini family during the Eastern Cape unrest in 1984.

In its statement Trasco called on the black community to support the "Save the 32" campaign which was launched by the South African Youth Congress (Sayco) last month to save the lives of people sentenced to death as a result of unrest-related incidents

The organization also highlighted the case of the six Sharpeville people — one of them a woman — condemned to die for the murder of a Vaal Triangle councillor in 1984 and awaiting execution. Last month 3 600 people in Norway signed a petition to grant them amnesty

MONDAY, 31 AUGUST 1987

Indicates translated version

For written reply

General Affairs

Legal Aid Board

210 Mr D J DALLING asked the Minister of Justice

- (a) What were the unpaid (i) financial and (ii) contingent financial obligations of the Legal Aid Board as at 31 May 1987 and
- (b) what cash funds did this board have at its disposal as at that date?

The MINISTER OF JUSTICE

(a) (i) and (ii) A rough estimate done by the staff of the Legal Aid Board indicates that the Board may receive accounts for about R13.5 million in respect of live cases (some of them up to thirteen years old) over the next thirteen years. During the present financial year up to and until 31 July 1987 R2 047 724 has already been paid in legal costs. This amount includes the payment of accounts rendered in approximately 3 677 cases which have been finalised and the payment of provisional accounts rendered in approximately 1 967 live cases. A rough estimate also indicates that during the remaining part of the present financial year approximately 7 526 cases will be finalised and that approximately 2 800 provisional accounts will be rendered for which it is expected, a further R6 million will have to be paid.

(b) R9 987 126 from which R8 668 910 was set aside for legal costs.

I may add that due to the nature of the Legal Aid Board's activities it occurs that cases, especially civil cases, are only disposed of years after legal representatives are instructed and that moneys become payable only then. It is usually also not possible to predict in which financial year a case will be disposed of and the moneys become payable. It is therefore difficult to budget accurately. However, in the case of a shortfall in any given year the Gov-

HoA

ernment has in the past always been prepared to arrange for additional funds

I also refer the Honourable Member to the discussion of the Department's vote during which I also dealt with the matter (Hansard Col 2 796)

Strikes: damage

328 Mr P J PAULUS asked the Minister of Transport Affairs

Whether any railway coaches were damaged during the strikes by employees of the South African Transport Services this year, if so, (a) what are the nature and extent of the damage, (b) (i) how many coaches were damaged beyond repair and (ii) what is the total cost of these coaches and (c) what is the total amount of the damage suffered by the Transport Services in this connection?

The MINISTER OF TRANSPORT AFFAIRS

- Yes
- (a) 136 railway coaches were damaged by fire
- (b) (i) Thirty (ii) R7.6 million
- (c) The cost can only be determined once the damage has been repaired

Own Affairs

Technikons, non-White persons

75 Mr R M BURROW'S asked the Minister of Education and Culture

- (1) Whether he has had talks with the rectors of the eight technikons falling under his control in connection with the admission of non-White persons to the technikons concerned, if not, why not, if so what resulted from these talks,
- (2) whether it is possible for a technikon council to admit students of all population groups to the technikon concerned, if not, why not,
- (3) whether a quota system is still being applied at all technikons, if so (a) to

How 31/8/87

Executions in spite of clemency pleas for 'political criminals'

Two hanged for

ARGUS 11/9/87

necklace murder

ARGUS 252

The Argus Correspondent
JOHANNESBURG. —
Two young Uitenhage men, Mnyanda Moses Jantjies and Mlami Welington Mielies, went to the gallows today — in spite of pleas that people convicted of politically inspired crimes should be spared the death penalty.
A last-minute appeal to President Botha was made yesterday by Archbishop Desmond Tutu

He told Mr Botha that commuting the death penalty would defuse a volatile situation in the community and pointed out he had helped secure a reprieve for South African mercenaries sentenced in the Seychelles.

But Archbishop Tutu was told last night that the President was unable to accede to his request.

At dawn today Mrs Winnie Mandela, wife of jailed African National Congress leader Nelson Mandela, and a small group kept watch outside Pretoria Central Prison at the scheduled time of the execution.

Death Row

The group included Mrs Pauline Moloise, whose son Benjamin was executed at the end of 1985 after spending many months on Death Row after being convicted of killing a Pretoria security policeman.

A spokesman for the office of the sheriff of the Pretoria Supreme Court confirmed that Jantjies and Mielies were executed with five other men — Mielies, 27, and Jantjies, 22, were convicted of killing Kwanobuhle town councillor Mr Ben Kinikim and five others on March 23, 1985.

The killings came two days after 20 people were shot dead in Langa and at a time of turmoil in the Eastern Cape.

Trade union and church leaders have pleaded in recent weeks for clemency for Jantjies, Mielies, and all others condemned to die for crimes provoked by what they called the "violence of apartheid".

● Two sentenced to death for necklacing — Page 2.

Violence after necklace hangings

252
Cape Times
2/19/87

Own Correspondent

VIOLENCE flared in Johannesburg and the Western Cape yesterday during demonstrations over the hanging of two activists in Pretoria earlier in the day.

Moses Mnyanda Jantjies and Mlamli Wellington Mielies were hanged for necklacing Uitenhage councillor Mr Ben Kinikini and killing five other members of his family in 1985.

The two were the first to be executed of 33 people who are on death row for crimes committed during the 1985 unrest.

In Johannesburg, streets were cordoned off around Khotso House, where a memorial meeting was being held. There was violence after people left the meeting, and at least 10 people were treated for injuries at the Hillbrow Hospital. Most of the injuries were caused by broken glass, according to a hospital source.

And in the Western Cape, incidents occurred at the University of the Western Cape and at the nearby Modderdam Senior Secondary School at Bonteheuwel.

Thousands of pupils from most Cape Flats schools streamed to the UWC campus for a mass indoor memorial rally and scores of youths later staged a placard march around the campuses of UWC and the adjoining Peninsula Technikon, according to students.

Violence followed, according to eyewitnesses. Details of the day's events cannot be published in terms of the emergency regulations.

Journalists held

A spokesman for police headquarters in Pretoria declined to comment, saying unrest incidents would be detailed in today's official unrest report.

Most of those treated in Johannesburg were members of the Post and Telecommunication Workers Association who attended a lunchtime meeting to protest against the executions. The meeting was organized by the South African Youth Congress. Mrs Winnie Mandela spoke at the meeting.

In Pretoria police said two journalists were held briefly for questioning following the meeting at Khotso House. A police spokesman said police action was conducted in terms of Section 51 of the emergency regulations — allowing police to enter premises without a warrant.

The journalists were "taken in for questioning, their films confiscated and they were allowed to go", the police spokesman said.

He said there were no other arrests. Earlier, police said they were taking "proactive" steps at Khotso House in connection with a meeting involving "various organizations" in the building.

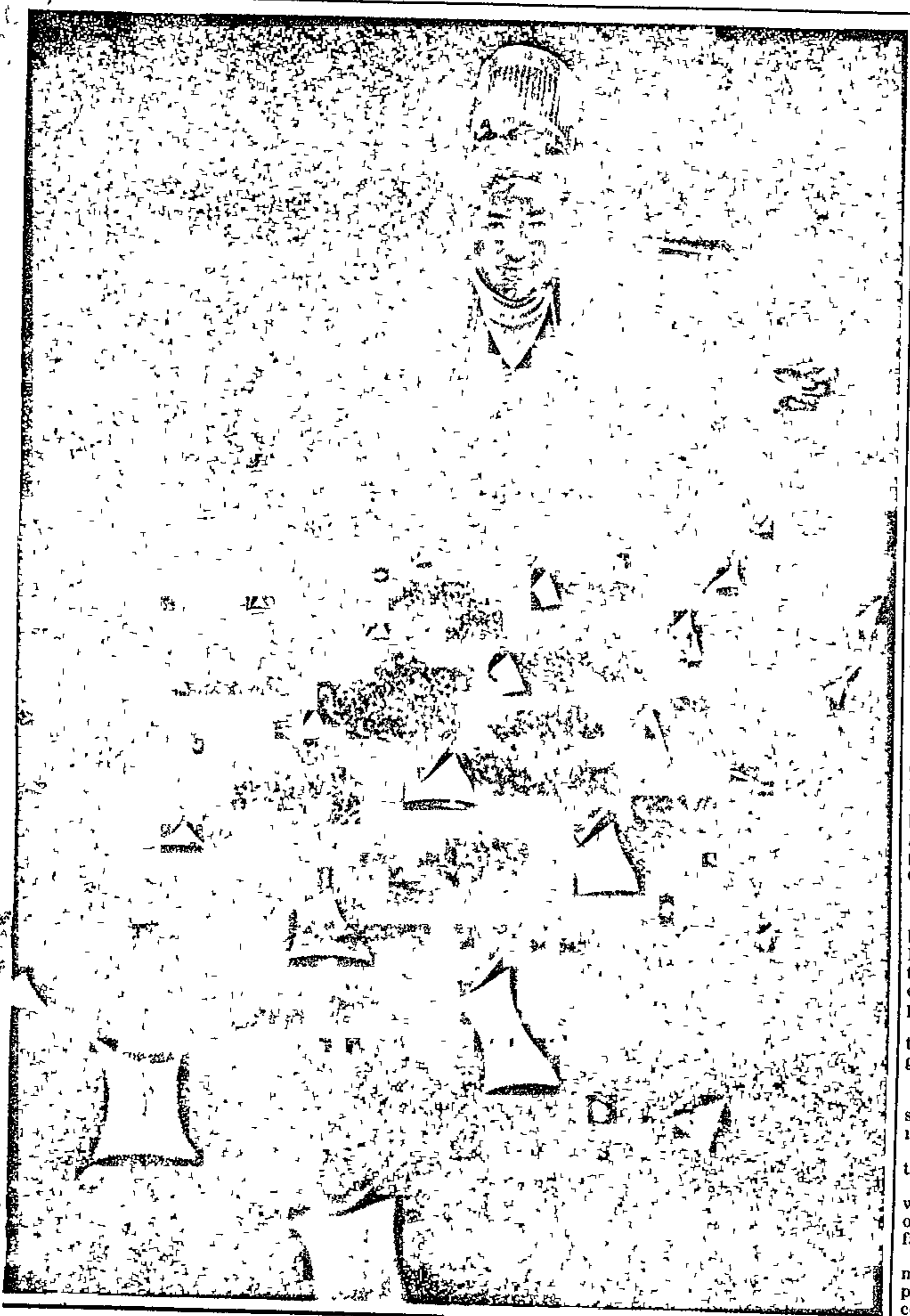
Reporters were told to stay out of the area in terms of the emergency regulations.

It was learnt yesterday that a last ditch attempt was made by the Most Rev Desmond Tutu, Archbishop of Cape Town, for clemency on behalf of the families of Jantjies and Mielies.

Archbishop Tutu told President P W Botha about midday on Monday that "an act of clemency on your part will defuse a very volatile situation in the community".

Violence after necklace hangings

252
Cape Times
2/9/87



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A spokesman for police headquarters in Pretoria declined to comment, saying unrest incidents would be detailed in today's official unrest report.

Most of those treated in Johannesburg were members of the Post and Telecommunication Workers Association who attended a lunchtime meeting to protest against the executions. The meeting was organized by the South African Youth Congress. Mrs Winnie Mandela spoke at the meeting.

In Pretoria police said two journalists were held briefly for questioning following the meeting at Khotso House. A police spokesman said police action was conducted in terms of Section 51 of the emergency regulations — allowing police to enter premises without a warrant.

The journalists were 'taken in for questioning, their films confiscated and they were allowed to go', the police spokesman said.

He said there were no other arrests. Earlier, police said they were taking 'proactive' steps at Khotso House in connection with a meeting involving "various organizations" in the building. Reporters were told to stay out of the area in terms of the emergency regulations.

It was learnt yesterday that a last ditch attempt was made by the Most Rev Desmond Tutu, Archbishop of Cape Town, for clemency on behalf of the families of Jantjies and Mielies.

Archbishop Tutu told President P W Botha about midday on Monday that 'an act of clemency on your part will defuse a very volatile situation in the community'.

PUDDING FEVER Mrs Vicky Kempthorne

1

(248) 4-9/10/81 252 w/paul

The more flexible judiciary: A retiring judge looks back

IT was no accident of fate that former Natal Judge Ray Leon joined the legal profession

As a 14-year-old schoolboy with a flair for debating, and excited by the "idea of advocacy", he was already quite determined he would become a lawyer

Leon, whose former colleagues have described him a strong upholder of civil rights, retired this week because of ill health, prompting a senior advocate to remark that the people of Natal, irrespective of their political persuasions, had lost a champion of their liberty

Looking back over his more than 20 years as a judge, he highlights two developments which have gratified him

"In the last few years, judges have become more innovative, perhaps more flexible and imaginative, less hide-bound and more activist"

He says he can't put his finger on the causes of the shift but adds, "Until a few years ago judges had generally been very conservative in their interpretation of statutes, for example. And although if parliament says something is black you can't say it is white, there is a greater room for flexibility than I myself for example thought, even 10 or 15 years ago"

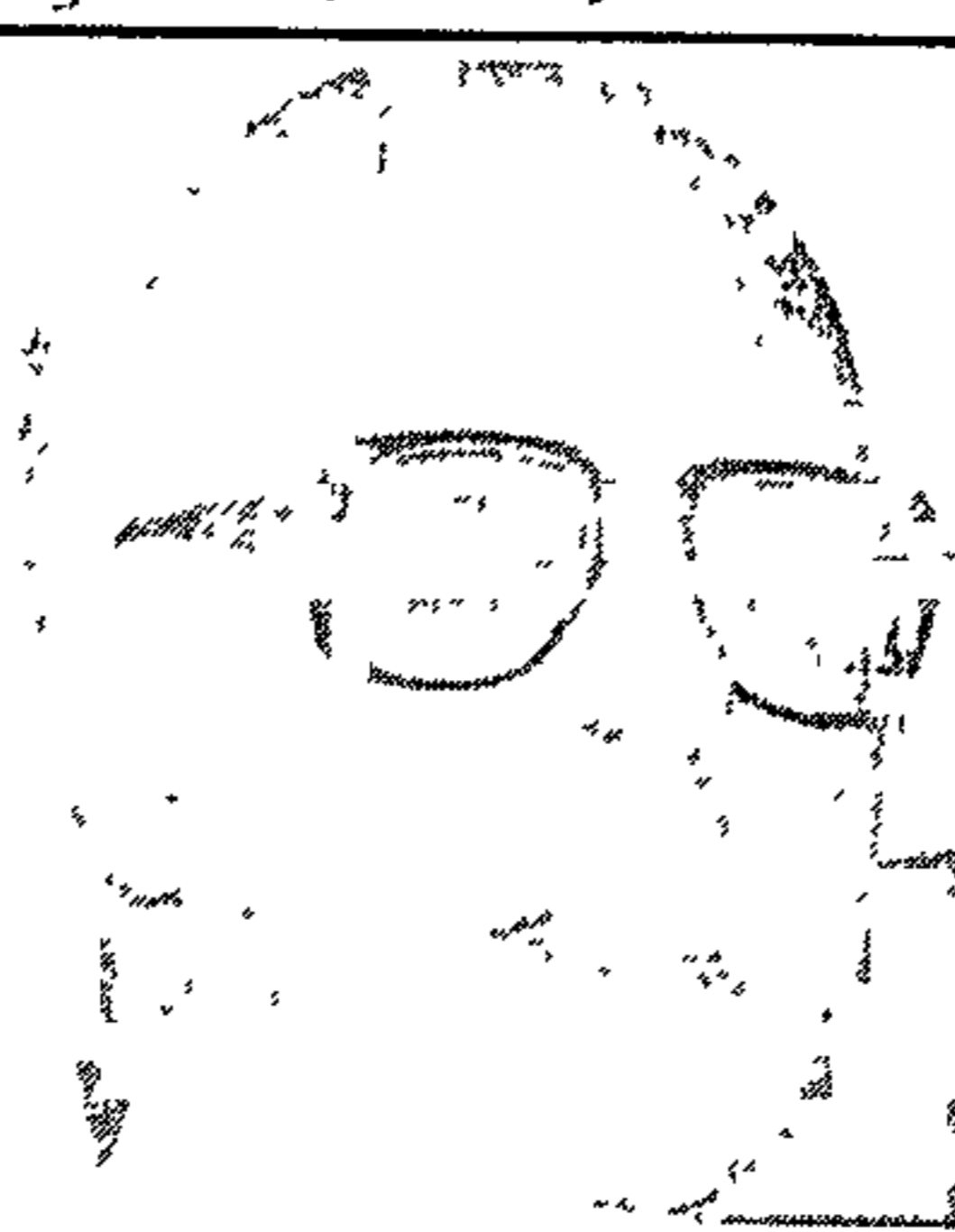
"The other interesting legal development is that attorneys have become very much more sophisticated and expert, particularly in the field of commercial law and matters of business, than they were when I started practice"

"This is quite important because I think there are some attorneys who would grace the supreme court bench as judges"

Leon said that as the load of supreme court work increased, so did the need to widen the "pool" of potential judges.

"Traditionally judges have come from the ranks of senior advocates, but if you remove from these ranks those members who will not accept judicial appointment for whatever reason, and those whom the government may not wish to appoint, then what is left is insufficient to staff the supreme court bench with able

The Natal bench this week lost one of its civil rights-champions when judge Ray Leon retired. He spoke to CARMEL RICKARD about the new 'flexibility' in the judiciary



Former judge Ray Leon

judges

"I am not at all in favour of civil servants coming on to the bench. I think it is a thoroughly bad idea, but I am in favour of suitable members of the attorneys' branch of the profession being appointed judges"

Spelling out some of his feelings on civil rights issues, Leon says as a lawyer he cannot approve the idea of detaining someone without due process. The system of detention without trial means an inevitable danger that an innocent person could be incarcerated

Of the death sentence, he says it has always caused him a great deal of distress to impose it and it would take him some days to recover afterwards. It was one facet of a judge's duty he was relieved to have left behind. "One is in a very real sense causing someone to be killed"

He says he is opposed to the death penalty as he believes it has a brutalising effect on society, that there is no satisfactory evidence it is effective as a deterrent and that there is always the possibility, however small, of judicial error, which in the case of the

death sentence would be irreversible

On the question of judicial appointments, Leon believes the great majority of judges are appointed on merit, contrary to the criticism expressed in some quarters, and adds this was a trend greatly strengthened during the time of John Vorster as minister of justice

"He made a considerable effort to improve the quality of judges, by, whenever he could, appointing on merit. His successors have, largely, done the same."

"I think he was very concerned about the image of the judiciary. He was an efficient, strong and able minister of justice and a good administrator who did his very best to make appointments on merit"

But while the quality of judges may have improved, Leon believes their status has declined. This is indicated by the frequency with which "judicial protocol" is not observed — and by the salaries paid to judges

"At the time of union, judges earned at least the same as cabinet ministers. Now they earn substantially less than a minister and even less than a director general, a development which is really regrettable"

"This has never happened before and I regard it as appalling, particularly since we live in a society where in the eyes of many people, status is judged by financial considerations. Inevitably then the status (of judges) must to some extent suffer"

"It's not just the financial question but the office of judge is without a doubt much more important than that of director general"

Leon has been closely associated with Natal University since his days as a student in Pietermaritzburg where he was SRC president in 1947. He will stay on as university chancellor and has plans to write a book, probably reminiscences of his time on the bench

Although he is not yet sure of what else he will do in his retirement, he is certain that, after all his years as a lawyer, he will enjoy his new-found time to read and indulge his great love of history and English literature

FOR THE RECORD

Security Act on...

Mail's court challenge starts

4-10-91

THE Weekly Mail challenge to the validity of the State of Emergency and the media regulations begins in the Pietermaritzburg Supreme Court today before a full bench of judges.

It is being brought jointly with the Release Mandela Campaign and RMC official Aubrey Mokoena.

A second application, to be argued in tandem, is being made by a Durban detainee, Mewiswe Queen Shamase.

The applications, first launched in June, challenge the Emergency on two main grounds.

First it will be argued the Emergency was declared while another was in force, something not provided for in law.

The second ground of the application is that the Emergency was not necessary, as legislation passed during the first Emergency, meant the "ordinary law of the land" was no longer inadequate.

Certain media restrictions, reimposed under the new Emergency after some of them had been overturned by the Natal courts, will also be tested.

W/Mail 252

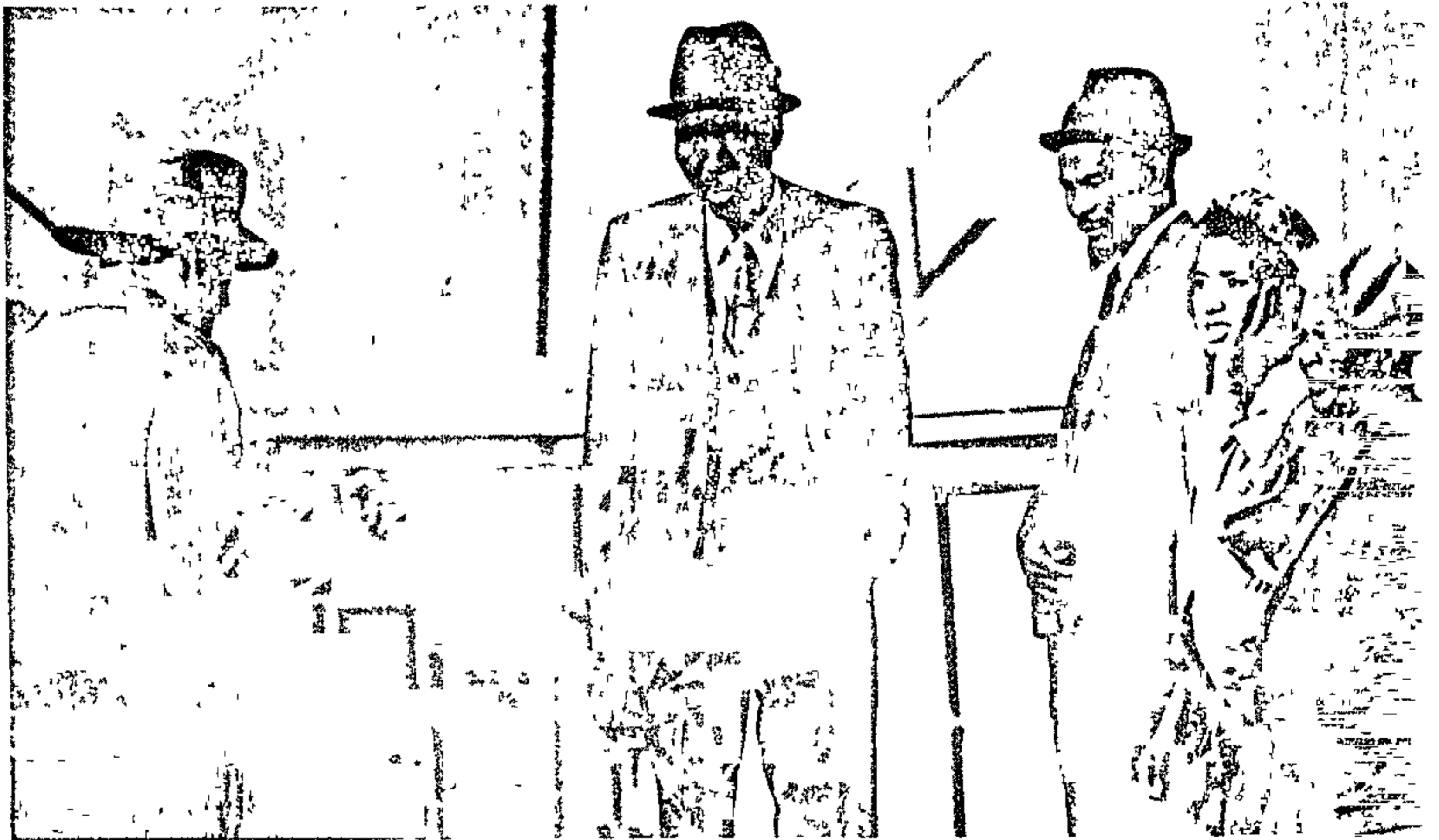
252

TWO MEN GO TO THE GALLOWES

A macabre processi

The executioners executed. The necklace, followed by the gallows. 'Street justice' against state justice. Another two men were hanged this week for a political killing. Their deaths in turn sparked more violence.

By PATRICK LAURENCE



Bearer of the bad tidings A prisons official informs family members that their sons have just been hanged

THE places occupied in death row by Moses Jantjies and Wellington Mielies were filled before their lives ended on the gallows

Only hours before Jantjies, 23, and Mielies, 26, were hanged on Tuesday for their role in the "necklace" murder of KwaNobuhle town councillor Thamsanqa Kimikini, two more men were sentenced to death for another "necklace" killing

Oupa Mbonane, 21 and Sibusiso Masuku, 22, were convicted for stoning a policeman in So-shanguve in February 1986 and then placing a tyre around his neck and setting it alight

Thus, in a macabre procession of the damned, as people go to the gallows in South Africa, so their places in death row are filled by new candidates for the hangman's noose

So far this year, 104 people have been hanged. All were men. 64 were black, 34 coloured and six white.

Executions in South Africa are never totally divorced from political issues. The overwhelming proportion of victims are working class blacks, tried and sentenced by courts staffed predominantly by whites.

But the steady pre-dawn march of people down the corridors of Pretoria Central Prison to the scaffold has been given an unmistakably political dimension by the "Save the 32" campaign.

The original 32 — 31 men and one woman — have been labelled "activists" and "political prisoners" by the South African Youth Congress. Supported by its allies in the United Democratic Front, Sayco is calling for "an end to the hanging of political prisoners and activists."

The 32 include an African National Congress bomber, Colin McBride, the "Sharpeville Six," the "Queenstown Six" and three members of the 200 000-strong National Union of Mineworkers.

Most of their victims were men deemed to be collaborators, township councillors, policeman, informers and team leaders or, in old-fashioned language, "boss boys."

Where the state sees the 32 as common criminals convicted of murder, Sayco refers to them as "patriots" and refuses to acknowledge that their victims were murdered.

Sayco posters distributed at a memorial service at Khotso House in Johannesburg for Jantjies and Mielies declared that the 32 "patriots" had, for the most part, "eliminated" their victims.

Where the victims were not "eliminated," they were "killed." The Sayco posters used the word "killed" between inverted commas, inferring a reluctance to accept that the 32 were guilty of murder in the ordinary sense of the word.

Ironically, at about the same time the Minister of Law and Order, Adriaan Vlok, was telling parliament that 489 ANC and 19 PAC guerrillas had been "eliminated (uitgeskakel)."

Whether the 32 were activists motivated by political considerations is a matter of debate. The answer may well vary from one case — and perhaps even from one individual — to another.

But, judging from notes taken by their lawyers to substantiate an appeal for clemency, neither Jantjies nor Mielies were political activists in an orthodox sense.

Neither proclaimed their loyalty to any political organisation. Neither could be described as politically sophisticated or even knowledgeable.

Jantjies, an epileptic, was illiterate, having left school in grade two.

He was a casual labourer before joining the swelling ranks of unemployed blacks in KwaNobuhle. Even before he was convicted of murder he had — perhaps under the exigencies of township life — become a petty criminal, having been jailed for housebreaking and theft.

His political knowledge was scanty. He did not



know when the UDF was formed. His understanding of its policy was very general. He had not heard of Steve Biko until he arrived at Pretoria Central Prison. He had never heard of Robert Sobukwe.

Mielies was relatively well educated. He passed Std 8. He did not drift into an existence of petty crime, working instead for companies manufacturing motor car parts. He was the only breadwinner in an extended family consisting of his young son, his mother, his aunt and uncle and their children.

He was never a member of any political organisation and his political knowledge was rudimentary. He did not know why the UDF was formed or when the ANC was banned. Of Steve Biko, he said "I heard that he died. I do not know his role or significance."

Both men, however, knew poverty and hardship.

Jantjies's father deserted his mother when he was four months old. He lived with his aunt, not seeing his mother until he was 15 years old. His aunt beat him with a stick, sometimes on the head. He fathered a child while he was still a teenager. The child died at the age of 18 months.

Mielies fared better. But he did not lead an easy life. "We always had food before we went to bed but the food was not elaborate," he told his lawyers. "It was usually bread and porridge. There was not enough clothing."

While they may not have been anti-apartheid activists, Jantjies and Mielies could well have been victims of apartheid.

It is easy to imagine them being swept up in the wave of anger and hatred which erupted in KwaNobuhle after 20 black people marching to a

funeral were shot dead by police at the neighbouring township of Langa on March 21 1985.

As resentment surged, Kimikini, the last remaining councillor in KwaNobuhle, refused to heed calls to resign. On March 23, three days after the Langa shooting he and five members of his family were murdered by a frenzied mob.

With the 32 in death row are five white men. Three of the men, Johan Wessels, Schalk Burger and George Scheepers, were sentenced to death for raping and murdering black women.

Wessels hit his young victim over the head with a bottle and stabbed her with a fishing knife. He did not want her to recognise him as one of the men who had raped her.

Later, while he was in death row, he was convicted of a second murder. His victim, an unidentified black man, was found in a shallow grave not far from where he had raped and killed Elizabeth Mokoena.

Burger and Scheepers, acting in concert, raped and murdered Ginny Gontseane. After gratifying themselves sexually, they forced her into the boot of a car and set the car alight.

The two remaining white men are Anton Stoop and Henry Burt. Stoop murdered a black man, David Mthutang, assaulting him, throwing him out of a car and then setting him on fire. Burt beat a policeman, Johannes Ndimande, unconscious before placing a petrol-soaked tyre around his neck and setting it alight in an attempt to make it seem that Ndimande had been murdered by radicals.

If the fate of the 32 has become a political issue, so, too, has that of the five white men. It will serve as a test in the townships with which to measure the quality of South African justice.



Villains in the eyes of the law, martyrs to memorial service to the hanged men. Right-eral secretary Frank Chikane warns that the lence, first apartheid should be abolished.

Endless cycle: That fed upon the

BARELY six hours after Wellington Mielies and Moses Jantjies were hanged in Pretoria, a confrontation on the streets of central Johannesburg left up to 20 people injured after a midday commemoration service for the two.

Three people, including two journalists, were briefly detained.

A police spokesman said police also fired tear-gas in an attempt to disperse a stone-throwing mob at the corner of Hoek and De Villiers streets near the main Johannesburg railway station.

Police said they were taking "pro-active" steps at Khotso House, where the memorial service was planned by the SA Youth Congress and cordoned off the area.

Meanwhile people attending a meeting nearby of the Posts and Telecommunications Workers Association poured into the street. Among the injured were Potwara members who apparently ran into a shop window in an attempt to avoid tear-gas.

Mielies and Jantjies were hanged despite international pressure and pleas.

In his last-minute plea to the state president, the archbishop of Cape Town, Desmond Tutu, said

people should be elected to a meeting of a choice of the cause. At the small, hanged for a reason. come to declarate Africa. from the

Session of the damned



Picture PAUL WEINBERG, Afrapix



... martyrs to others Faces in the crowd at a ... men RIGHT SA Council of Churches general warns that the hangings 'will not end violence abolished'. Pictures WALTER DHLADHLA, AFP

Circle: The violence on the violence

Melies and ... a con- ... Johannesburg ... day com- ... were ... fired tear- ... -throwing ... streets ... station ... 've' steps ... of service ... and cor- ... nearby ... -GLACIS AS- ... the in- ... -my ran avoid tear- ... -inter- ... the ... Tutu, said

By MONO BADELA

people convicted of politically-inspired crimes should be spared the death penalty. A similar message was delivered by the newly-elected South African Council of Churches general secretary, the Rev Frank Chikane at a prayer meeting for the two men on the eve of their execution. Chikane said the two had been forced into a position where it was necessary to make a choice. They chose violence — and "the institutionalised violence of the apartheid regime" was the cause of it. At dawn on Tuesday Winnie Mandela led a small group of activists including Pauline Maloise, mother of Benjamin Maloise, who was hanged in 1985, to keep watch outside the Pretoria prison around the scheduled time of execution. Mandela told a packed service that "you have to come to terms with the truth that the enemy has declared war with the oppressed masses of South Africa. There is nothing that is going to free us from the yoke of oppression but our blood."

THE ROUTE FROM LANGA TO THE PRETORIA GALLOWS

The weeks of rage that led to that first necklace death

The men hanged this week were the country's first convicted 'necklace' killers. MONO BADELA recalls the spiral of violence which finally exploded into the gruesome death of town councillor Ben Kinikini in March 1985, before the first State of Emergency.

THE death of KwaNobuhle town councillor Benjamin Tamsanqi Kinikini was a sight I will never forget. It was not easy to witness.

I went to KwaNobuhle on Saturday morning, March 23 — two days after the Langa "massacre" — after receiving a phone call from one of the young "comrades". I was told only that "things are bad — come quickly".

I was there by 10.30, in time to see chanting groups moving from street to street.

By the time the crowd reached Kinikini's house, it had swelled to about 7 000 angry people.

There were two policemen on guard outside the house, but they fled once they saw the size of the crowd. Stones and other missiles were thrown at them, and a truck outside the house was set alight.

The crowd split into two groups. One group attacked Kinikini's mansion, while the other attacked a supermarket centre owned by Kinikini's friend, Jimmy Claassen.

When the crowd set the house on fire, it was hard to see whether there was anyone inside. By the time the people had finished, the house was a complete shambles.

Opposite, at Claassen's supermarket, several trucks and oil drums were destroyed. The shop was looted and set alight.

The crowd then surged towards Kinikini's funeral parlour a block away, where Kinikini and his two sons were hiding.

The parlour was attacked and within minutes, Kinikini, his two sons, and an employee, who was related to the councillor, were dragged outside.

The angry crowd started hacking at their bodies with pangas, beating them with sticks, and then dragging them to the township's main road, Mitanzima Street. Tyres were placed over what was left of their bodies, and they were roasted.

People danced around the bodies of these people as they burned. To them, they were burning the symbols of oppression.

Several of Kinikini's cars and hearses were destroyed, and the crowd surged on again — this time to the liquor outlet owned by the East Cape Administration Board, which was also set alight, along with a milk depot metres away from Kinikini's funeral parlour.

It was now close to midday. The crowd moved towards the homes of policemen in the township. They hunted the streets for several hours, searching for other symbols of oppression.

By 4pm, more than a dozen policemen's homes had been destroyed. The policemen themselves had moved their furniture and possessions while Kinikini was burning. The charred remains of Kinikini have never been found.

For the next two days, police were unable to enter the township. It was a no-go area — all police could do was hover over the area in a helicopter, powerless to act.

It was a day to remember. The first necklace killings in South Africa. It was the culmination of a spiral of violence that had been building for months in the two Uitenhage townships, of KwaNobuhle and Langa.

Weeks before he died, Kinikini knew there were people who wanted to kill him. He had been warned in public on several occasions that the community was out to get him. For township residents, the town councillor had become a symbol of oppression.

Kinikini's problems with the community of Uitenhage began more than seven months before his death.

On August 9, 1984, he was among a group of town councillors who called an evening meeting in KwaNobuhle hall to announce they were going to increase rentals



LEFT Benjamin Kinikini in his damaged home after a petrol bomb attack. RIGHT Aftermath. Kinikini's son's mutilated body hangs from a rafter. Pictures Courtesy City Press



in the two townships.

The councillors were shouted down by a large crowd and chased out of the hall. They ran to the council chambers, protected by municipal police.

From that meeting onwards, all the councillors' homes were placed under guard. The sides had been drawn.

At the next council meeting, Kinikini is alleged to have proposed that all councillors be provided with guns in order to protect themselves. His motion was adopted. By mid-September, councillors were armed. Some of them moved out of the township to avoid the "amabutho", or "young lions".

In November the Congress of South African Students and the Uitenhage Youth Congress asked Mayor Bonana Tim to open the hall for a meeting. The groups had arranged with parents to discuss school boycotts. Tim told the organisers Kinikini was holding the key for the hall.

When confronted by the organisers demanding the key, Kinikini allegedly threatened them with a gun. From there on, it was open confrontation between Kinikini and community members.

Rumour fed upon rumour. Kinikini was alleged to have formed a band of vigilantes, of working openly with the police, of pointing out "comrades". The rumours were never proved — but they fed the mounting violence.

Community leader Fikile Kobese, a national organiser for the Motor Assembly Components Workers Association of South Africa, accused Kinikini of leading vigilantes in a series of attacks on his home. On December 3, his mother's home was rocked by a highly sophisticated bomb that killed his younger brother, Leslie Kobese.

On the eve of the funeral, police broke up a night vigil for the young man and detained scores of mourners including Fikile Kobese. The funeral was postponed. When it was finally held, police occupied Kobese's house but Henry Fazzie and other UDF leaders prevailed upon them to go.

At the funeral mourners started singing about Kinikini as a "symbol of oppression and all that goes with it". Protection to his house was increased.

There followed three months of mounting violence.

On January 16, 1985, police in Uitenhage opened fire on a crowd on its way home from a funeral. The next day the houses of three policemen were burnt down

in KwaNobuhle.

On January 28, police allegedly fired birdshot into a crowd. Two more houses were set alight.

On February 1, a vigil held for 16-year-old Mlitchi Mkhooza was broken up by the police. Several arrests were made. The education struggles in Uitenhage intensified at both Department of Education and Training and coloured schools and spread to Port Elizabeth.

On February 14 in Langa, police opened fire on a crowd of about 200, after a house was burnt down. The next day in KwaNobuhle a bus was stoned and set alight.

February was a crucial month. All KwaNobuhle councillors resigned — with the exception of Kinikini. His house was stoned on February 23. Allegations spread that some of the missing activists were being held by Kinikini in his funeral parlour, or had been taken to a nearby farm where they were being tortured.

Clashes between the police and demonstrators increased both in Port Elizabeth and Uitenhage, leading to weekly mass political funerals.

On March 6, three mini buses were set alight. The next day, three youths were arrested in Rosedale after a bus was stoned, and the day after that a library was set alight in KwaNobuhle.

Days later, a man was killed after hurling a petrol bomb at the police.

On the weekend of March 16/17, The Port Elizabeth Black Community Organisation called for a "black weekend" of mourning and stayaways and a consumer boycott. Two died over that weekend. Civil rights activist Molly Blackburn collected scores of affidavits from KwaNobuhle residents, youths and students alleging torture and harassment by the police.

On March 19, the Uitenhage Youth Congress held a meeting to call for a stayaway and to commemorate the victims of violence in the townships. A Uitenhage magistrate banned a funeral, planned for the next day in Langa.

On March 21, police opened fire on a crowd on its way to the Langa funeral. Police reported 21 people killed.

In Uitenhage, 13 policemen's homes were burnt.

On March 23, Kinikini, his two sons and a relative who worked for him were killed by an angry mob. Police attempts to retrieve the bodies from the funeral parlour were hindered by people armed with sticks and knives.

Valence Watson wins his appeal

CP Correspondent

6/9/87

VALENCE WATSON, who was sentenced to an effective 30 months imprisonment for fraud and arson, won an appeal against the conviction in the Grahamstown Supreme Court this week.

CP 252

Following a fire in their family home two years ago, three of the Watson brothers, Ronnie, Valence and Dan were charged with arson, fraud and attempted murder.

Dan and Ronnie were acquitted on all charges, while Valence was found guilty on the first two and sentenced to an effective 30 months in jail.

Speaking after the judge's ruling, Valence Watson said he had little doubt that the psychological warfare and attempts on the lives of the members of the Watson family would continue.

Cheeky and Ronnie have made a claim against the Minister of Law and Order.

A summons for detention, wrongful arrest, malicious prosecution and repayment of legal fees was issued against the Minister.

The total claimed by both brothers amounts to R500 000.

The legal representative of the family, Leon Schubart, said that legal processes and a 30-month waiting list for trial in the Supreme Court were likely to ensure that the case against the Minister, if it is not settled, is not likely to come to court for about three years.

Picture of Valence Watson in Holland for the...
announced that he was...
...in Holland for the...

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By SHAUN HARRIS

A PROMINENT judge who recently overturned a number of emergency regulations retired this week after more than 20 years on the Natal Bench

Mr Justice Ramon Leon, 62, left more than his chambers on Monday — he also left an impression on South Africa's legal profession which will be felt for a long time to come

Praised by colleagues as a champion and defender of civil rights, Justice Leon was at the centre of test cases against the emergency regulations earlier this year as a judge of the Natal Division of the Supreme Court

Interviewed this week, he said he had no specific plans for his early retirement — brought about by ill health — but it seems likely he will still have strong links with the legal fraternity

"I have been approached to become an Honorary Fellow of the Institute of Arbitrators," he said

"And I am trying to write a book, although it is too early to tell what will come of it

"I don't know if it will be published"

The book will probably deal with Justice Leon's early life at the Bar

One thing the former judge will almost certainly be spending more time on is reading — an English honours degree graduate, he has a great interest in literature

"I will be re-reading Charles Dickens and Graham Greene, my favourite author," he said

Chancellor

He will be spending three weeks overseas next month, visiting family members

"I want to tell you about my sons, even if you don't ask about them

"Tony is a city councillor in Johannesburg, and Peter is a partner in a law firm there "He's a better lawyer than his father," Justice Leon said

A lot of time will be taken up by the University of Natal,

Mr Justice Leon relaxes with his wife, Jacqueline, after retiring this week
Picture: JIMMY HUTTON

of which he is chancellor

Mr Justice Leon went to Durban High School and studied law at the University of Natal, Maritzburg, where he graduated with a BA LLB

At the age of 33 he became a QC — and one of the youngest lawyers in the world to take silk

In 1967 he was appointed a judge of the Natal Division of the Supreme Court

Justice Leon has placed his views against capital punishment on record, and admits

the times he was obliged to pass the death sentence were some of the most stressful in his career

He is also opposed, as a lawyer, to detention without trial, having said he could not approve the idea of detaining someone without due process

But Justice Leon would not be drawn by any questions he thought might lead to controversial answers

Asked, however, about earlier statements on the erosion of the rule of law in South Africa, he said it was something everybody knew was happening

"The thing is whether the circumstances and times in which we live justify this departure — and the matter is not a legal one, but political," he said

Lawyer tells of police station 'exercises'

11-17/87
 update

WHAT Durban attorney Linda Zama allegedly saw in the KwaMashu police station one night last week led her to wake a Supreme Court judge and seek an urgent interdict halting "assault".

In her late-night application, Zama said she had been called by residents in Section D of the township who claimed their children had been arrested by SA Police at the Nhlakanipho High School, KwaMashu, last Wednesday.

Zama said she and two of the relatives of the missing children were walking through the police station

WEEKLY MAIL REPORTER,
 Durban

when they heard voices

"The relatives and I went there and saw a group of male students moving up and down in a semi-squatting position and being made to keep their arms out in front of them.

"It was a cold evening, but sweat was trickling down their faces and one could tell that the students had been exercising a long time," Zama said.

In her interdict, Zama identified the armed police in the room as SAP re-

servists, rather than Kwazulu Police even though the station had been taken over by the Kwazulu authorities three months ago.

The interdict was brought against the South African Minister of Law and Order as well as the Kwazulu Commissioner of Police and the local station commander.

According to Zama, the Kwazulu station commander has said he did not know what the SAP was doing in his own station.

The three respondents to the interdict have until October 16 to respond. — Concord News

1. Department of Manpower, The Unemployment Insurance Act, May 1983, Pretoria. This pamphlet gives a summary of the Unemployment Insurance Act. It is an information document for the contributors.
2. Department of Manpower, Unemployment Insurance Act, May 1983, Pretoria. Same as above and a list of contributions by employers at 0,3%.
3. Department of Manpower, U.I.F.: Summary of Main Provisions Affecting employers, Pretoria (Pretoria Printers), Jan. 1987.
4. FOSATU, U.I.F. - A Battle for Benefits, Feb. 1985. In this publication FOSATU explains the fight the over U.I.F. between the state, capital and the workers generally. It further goes on to trace the history of U.I.F. battle in S.A. and also the problems faced, especially by the working class. The responses of the state and the capital are also outlined.
5. Gon Sylvia & revised by Raney Jocelyn (for Institute for Industrial Relations), A Guide to Unemployment Insurance Act (and amendments), Braamfontein, 1983. This pamphlet explains the Unemployment Insurance Act and what Unemployment Insurance Fund is. It also explains the procedures to go about for one to become a member of this fund.



The old remember the young: one of the many people at yesterday's service for the Sharpeville Six PIC ANNA ZIEMINSKI

Extra time for condemned six

By MONO BADELA

HUNDREDS of Sharpeville residents yesterday attended a special service for the Sharpeville Six, not knowing that the condemned men had been given a brief reprieve. *RS2*

The Appeal Court in Bloemfontein yesterday postponed the hearing of the six's appeal against their death sentence. The counsel for the appellants, JC Unterhalter SC, was seriously ill. The appeals will now be heard in the first week in November, on a date still to be fixed.

The six are Mojalefa Reginald Se-fatsa, 30, Oupa Moses Diniso, 30, Reid Malebo Mokoena, 22, Theresa Ramashamola, 24, Duma Joshua Khumalo, 26, Francis Don Mokhesi, 28. *W. Mail*

They were sentenced to death after the killing of a Lekoa town councillor, Kuzwayo Jacob Dlamini, at Sharpeville on September 3 1984. His house and car were set alight and he was disarmed, stoned and burned.

The six were convicted of murder without extenuating circumstances. Two others, Motseki Christian Mokubungu and Motsidi Gideon Mokone, were convicted of public violence and sentenced to five years imprisonment.

The eight were convicted on December 13 1985. The appeal concerns a question of law: whether there was a casual connection between the acts of the accused and the death of Dlamini, and whether the trial judge erred when he disallowed cross-examination of a witness, Manete, in regard to a privileged statement he had made. *RS2*

The six are among the 32 on death row in the Pretoria Central Prison.

Last week, two Eastern Cape men, Wellington Mielles and Moses Jantjes, were hanged for the murder of a KwaNobuhle councillor, Benjamin Tamsanqa Kimkimi. *11-17/9/87*

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FOR 24 hours in June this year, the state president's arsenal of special powers were multiplied by two.

On June 11, two different States of Emergency were in effect at the same time it was the last day of the older State of Emergency and the first day of the current one

The question facing the average citizen on that day was this which of the two different sets of regulations was he or she to obey?

A fundamental requirement of the law is certainty Can there be certainty when neither one regulation nor another predominates?

This was the dilemma put to a Natal court this week by counsel challenging the validity of the State of Emergency

The applicants behind the case were the Release Mandela committee and its chairman Aubrey Mokoena, the *Weekly Mail* and Mewisiwe Shamase, the wife of a detainee

The state appeared to be taking the challenge seriously Six advocates, three of them senior counsel, were instructed to oppose the applications

Facing them was advocate Ismael Mahomed, SC, the man who successfully challenged the media regulations earlier this year

For once the leading civil rights lawyer, accustomed to dominating courtrooms, found the going troublesome Judge Alan Howard, who presided along with colleague John Broome, interjected frequently to dispute his interpretations

"I cannot follow your argument," Mr Mahomed, he said at one point

"Perhaps his lordship will give me the opportunity to argue it," replied Mahomed

The applicants have challenged the validity of the regulations on three grounds, any of which, if upheld by the court, would invalidate the Emergency

●The applicants have submitted

The day in June when PW had twice his powers

A court hears a challenge to the validity of the Emergency. Among the applicants: The *Weekly Mail*. IRWIN MANOIM and CARMEL RICKARD report

that certain procedures have to be followed when a State of Emergency ends These were not followed when the Emergency of 1986-1987 was superseded in June this year

Counsel for the state president has argued that the Emergency declared in June last year was withdrawn "by implication" when the second Emergency was proclaimed three months ago, and so the two Emergencies did not overlap

He added "The fact that the state president could have done it in another way (by withdrawing the earlier proclamation) does not mean that he should have done so"

●In mid-1986 the state president warned parliament that unless certain amendments to the Internal Security Act were passed, he would have to declare a State of Emergency

The amendments met fierce opposition and he declared the Emergency on June 12 But later, he managed to ram them through the President's Council

For this reason, argue the applicants, a new Emergency was unne-

cessary and invalid because, by the president's own yardsticks, the ordinary law of the land was now sufficient to cope

Counsel for the state said the opinion of the state president could not be queried "It is his decision and his decision alone Once he has reached this decision it is the end of the matter and the court cannot substitute its opinion for that of the state president"

●The Public Safety Act requires the state president to apply his mind to and form an opinion of the situation in the country Mahomed argued that he had not demonstrated that he had properly applied his mind, he had merely repeated the "catechism" that the Emergency was necessary

The state argued that it was sufficient that the state president was convinced the powers were necessary

The *Weekly Mail's* interest in the case centred upon the media regulations, which, it was argued, are in many cases identical to regulations struck down by a Natal court in May this year Although the state has appealed against the May judgement, until the appeal is heard any other Natal court is bound by it and must throw out any similar set of new regulations on the same grounds

At one stage lawyers for the state responded with a swipe at the *Weekly Mail*

Counsel for the minister of law and order said the applicants "should be censured" for having brought the application against the curbs "It was totally unnecessary," he said The earlier judgement throwing out some of the regulations is being taken on appeal by both sides Mahomed retorted that it was the minister who had opposed this attack and that the applicants were bound to proceed with it

The regulations in the "new" Emergency are in several cases substantially the same, and lawyers for the RMC and *Weekly Mail* argued last week that judges in the current case were obliged to declare the restrictions invalid once again, because they were bound by the full bench in the previous case — unless they were convinced the other judges had been completely wrong

On the question of the media restrictions, the RMC and *Weekly Mail* challenge sought to overthrow the curbs already set aside during the first Emergency by the Natal courts In addition the application challenged other regulations, including the "ANC ban" Counsel for the applicants argued the new prohibition was "too vague to bear a reasonably ascertainable meaning"

"Alternatively its effect on public debate on matters crucial to political realities in South Africa is so far-reaching as to be beyond the contemplation of parliament."

A second application was also argued during the hearing, concerning the steps which had to be observed on the re-detention of detainees held under the old Emergency at the time the new Emergency was proclaimed

The case was originally scheduled to be heard in November, but late last week it was suddenly rescheduled for Friday Judgement was reserved, and it is not known when it is likely to be given

Two policemen, accused of murder, were acquitted in the Supreme Court this week because the Judge's Assessors overruled the Judge. Staff Reporter JEREMY DOWSON spoke to legal experts to gauge their opinions of the judgment

Overruling the Judge: It's a 'matter of law'

NR645 17/9/87

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NOT unprecedented — but pretty unusual.

This was the general response of legal experts to the situation in the Cape Town Supreme Court this week in which a judge's decision was effectively overruled by that of his two legal "helpers" or assessors.

The judge, Mr Justice Howie, said that on the evidence before the court he would have convicted a policeman of murder and attempted murder — and another of attempted murder — on charges stemming from the death of a young woman and the injury of three others in Bellville South in 1985.

However, his two assessors disagreed, he said. They believed the State had not proved its case "beyond all reasonable doubt".

Mr Justice Howie said he believed the order of the policemen's superior, Captain Ockert van Schalkwyk, to shoot ringleaders or those taking part in unrest was so unlawful that a "reasonable man" would not have felt duty-bound to carry it out.

The assessors, retired magistrate Mr AJ van Niekerk and retired advocate

Mr JP van Niekerk, believed on the other hand that property had been in danger and that "drastic action" had been called for

They believed the captain's order would not have been questioned by a junior

The two accused, Warrant Officer Paulus Kruger and Constable Ernest Villet, are now free men.

The Argus asked a number of lawyers to explain the role of assessors in the South African legal system for the benefit of a possibly puzzled public

They said assessors were selected by the judges themselves, usually from a list of people with a legal background who had made themselves available

Lists were kept in each division of the Supreme Court.

Assessors tended to be people "of senior years", as one lawyer put it, with more spare time on their hands than legal practitioners in full-time employment

Qualifications

Like magistrates, they did not have to have any formal legal qualifications. Where a judge deemed it necessary, an assessor from another professional field — such as medicine — could be invited to participate in a trial

One or two assessors could be invited to take part.

An assessor's task, a senior advocate said, was similar to that of members of the jury in British and American courts

"They assist the judge with findings of fact. In this they have an equal say to the judge. In matters of law, how-



ever, the judge makes his own decisions"

He could recall only one other case in which two assessors had reached a finding which differed from that of the judge.

Commented another advocate "This doesn't occur often at all."

"In fact, the last time I can remember it happening was in a trial I was involved in myself in the 1950s"

Legal academics spoken to after the verdict was given were still doing their own assessment of the implications

One said it appeared that the assessors' decision could arguably have gone beyond the bounds of "matters of fact".

He said the judgment could raise legal questions about whether actions taken under orders — whether lawful or not — were implicitly lawful actions

However, he would have to study the court records before commenting fully.

The director of the University of Cape Town's Institute of Criminology, Professor Dirk van Zyl Smit, did not

wish to be drawn on the specifics of the judgment other than to say it was "extremely interesting".

Asked what the distinction was between matters of fact and matters of law, he said: "The question of whether a question is a matter of fact or of law is a matter of law."

Professor Dennis Davis of the UCT law department said the reason legal disagreements between judges and assessors were so unusual was that assessors were chosen for their knowledge of the law and were therefore likely to be "heavily influenced" by the judge — "perhaps more so than the jury systems of the United States and Britain".

"In the US and Britain, juries often go the other way."

Black Assessors?

The judgment brought home the need for the South African legal system to be amended to allow black assessors

"If we had black assessors, they might be able to perform the kind of function members of the jury do in other countries"

It was particularly important that in, for example, cases of a political nature, blacks were able to participate in assessment the way whites did at present.

On the judgment itself, Professor Davis said it appeared the assessors had been influenced by their perception of the role of the police in "unrest" situations

"They appear to have taken a sympathetic view towards the executive role of the police"

Legal beagles

The Department of Justice has been unhappy with some articles and editorial comment in the *SA Journal of Criminal Law and Criminology*. In certain legal circles it was even feared that the department might cancel its subscription to the journal, which is distributed to all magistrates' courts.

This would be a deathblow to the journal. Without these roughly 1 200 copies, publisher Juta would have to cease production.

To clarify matters, a meeting was held between two of the co-editors, professors Janne van Rooyen (Unisa) and Roland Graser (Durban-Westville), and Justice Director General Faan van der Merwe, who is also a patron of the editorial board, plus senior officials from his department and Richard Cooke of Juta. Professor David McQuoid-Mason from the University of Natal (UN), another co-editor, was abroad.

Sources who attended the meeting tell the *FM* that there was no direct threat from the department to the editors to soften comment and editorials. This is also reflected in the minutes of the meeting, the *FM* is told.

However, it became clear that the department was unhappy with some of the journal's contents. The department's representatives pointed to what they described as certain

invitation of the publishers. "We attended the meeting under the impression that the discussions were being held in the interests of the publication and to establish inter alia the various needs such a publication should provide, and that was the spirit in which we perceived the discussions to have taken place."

The journal in its present form will cease to exist at the end of the year. A new journal, *SA Journal of Criminal Justice*, will be published in its place.

Only Van Rooyen will continue as a co-editor. Graser and McQuoid-Mason have asked to be relieved of their duties.

In legal circles it is felt that the emphasis of the contents will change. The new journal will probably deal more with cases and judgments, whereas up to now the editors were Dave Swanepoel of the Department of Justice says the meeting was held at the

relationship with the department says the journal enjoys a good working relationship, "but it was nothing political." He was unhappy about certain aspects of the journal, "but it was nothing political." He says it is true that the department department were taken into account "the biggest subscribers, the interests of the changes should be made. And being one of had a discussion and it was felt that certain of being threatened by the department. "We But Juta's Cooke says there is no question editorial policy of the journal minds as unofficial interference in the open threat, the discussions are seen by some legal Though there was no direct or implied inaccuracy information and unfounded criticism of it.

Though there was no direct or implied threat, the discussions are seen by some legal minds as unofficial interference in the open editorial policy of the journal. But Juta's Cooke says there is no question of being threatened by the department. "We had a discussion and it was felt that certain changes should be made. And being one of the biggest subscribers, the interests of the department were taken into account."

Cooke says it is true that the department was unhappy about certain aspects of the journal, "but it was nothing political." He says the journal enjoys a good working relationship with the department. Dave Swanepoel of the Department of Justice says the meeting was held at the

invitation of the publishers. "We attended the meeting under the impression that the discussions were being held in the interests of the publication and to establish inter alia the various needs such a publication should provide, and that was the spirit in which we perceived the discussions to have taken place."

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■ cited not to keep a copy in its library. investigate the thesis. As a result Unisa department instructed a panel of experts to thesis dealt with prison conditions, the de- (Current Affairs August 28) whose lecturer at the University of Bophutha- torate at the end of last year on a senior derrated. When Unisa conferred a legal doc- The department's influence cannot be un- present conditions were not prepared to continue work in the resign long ago. But colleagues say that they their resignations and that they wanted to cated that there is nothing sinister about Graser and McQuoid-Mason have indi- tion of justice. ally in an effort to improve the administra- ment was doing and often commented criti- keen to take a hard look at what the depart-

Policemen acquitted

20/9/87

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TWO policemen accused of murdering a woman and attempting to murder three others in Bellville South during the 1985 unrest were acquitted by the Supreme Court this week because they were carrying out the order of a superior officer.

However, in a minority finding, Judge Howie said he believed the order by former Bellville riot unit head Captain Ockert Van Schalkwyk - to shoot ringleaders or those taking part in unrest - was so unlawful that a reasonable man would not have felt duty-bound to carry it out.

Immediately after the verdict, the commissioner of police, General Hennie de Witt, announced that charges of defeating the ends of justice and perjury were being investigated against Van Schalkwyk and Brigadier Martinus Mans, former district commandant for Bellville, both of whom testified in the trial.

Howie said he differed from his assessors, AJ Van Niekerk and JP Van Niekerk's findings, and would have convicted Constable Ernest Villet of attempted murder.

The court found that Van Schalkwyk ordered the policemen to shoot ringleaders or those taking part in unrest at the corner of Armanda Crescent and Industry Road on August 29, 1985.

Both Van Schalkwyk and Mans had known fully well that shooting would take place - at least to injure seriously, the judge found.

It was not the majority opinion that the order was lawful or even justified.

However, the majority opinion of the court was that the state had not proved beyond reasonable doubt that the policemen had acted unlawfully or with guilt in executing the order.

The court found that Van Schalkwyk's evidence

was untrue and that he had lied to protect himself.

Mans had made a bad impression as a witness and his evidence in court differed from a report on the incident which he had signed.

The judge said he believed that Van Schalkwyk's order was unlawful and that it was the responsibility of the policeman to weigh the implications of such orders.

In contrast, the assessors believed that property was in danger and that drastic action was called for.

They believed that Van Schalkwyk's order would not have been questioned by a junior.

De Witt said he had taken cognisance of the evidence of Mans and Van Schalkwyk.

"In view of the evidence of these two officers, the commissioner of police has ordered that possible criminal offences be investigated. - Sapa

Haunted by death row

FOUR young men in a town called Bhongolethu in the Little Karoo, have been sentenced to death. But many residents are with them in spirit in Pretoria's death row. Residents believe the "Bhongolethu Four" are there because of the community's struggle to improve conditions in the township and that they were caught up in the emotions that swept the country in 1985

Reports and pictures by SAHM VENTER

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BHONGOLETHU, "Our F... only lives up to its name in respect of its unity and cohesion among the residents. The small township of 500 people was named by the residents who moved there the Group Areas Act as they promised "beautiful houses" permanent place to live. For the rest, Bhongolethu is a picture of poor housing, inadequate drainage systems, dirty water running along the roads and bumpy, eroded roads which become muddy when it rains. There is a constant stench of the "bucket system" of toilets the slop thrown into the streets. There are almost no facilities. Children play in



Mama Nomademfu Madikane, mother of Dickson Madikane, with her daughter, Thembeke, left, and her grandson Thobela



From Left Tobile Manginda, brother, Zanele Manginda, father, and Nomahlubi Manginda, stepmother of Patrick Manginda

TO THE State, four Bhongolethu youths on Death Row are murderers — but to their family and community they are victims of a violent system which brings about further violence.

Attorneys have argued that the four youths sentenced to death had been caught up in a spiral of violence.

Patrick Manginda, Desmond Majola and Dickson Madikane were sentenced to death in September last year for the necklace killing of community councillor "Big Boy" Marenene. They have been granted leave to appeal.

Michael Lucas was sentenced to death last month for the murder of a bus inspector, William Blaauw. His attorneys have filed a petition for leave to appeal. SOUTH visited the homes of all four in Bhongolethu this week.

Patrick Manginda

THE family of Patrick Manginda is baffled at their son being charged and sentenced for murdering "Big Boy" Marenene.

"As far as I know, Patrick was not against him," his father, Mr Zanele Manginda, said.

Recalling the day of the necklacing, Mr Manginda said he was standing outside his house. "The whole of Bhongolethu had the spirit that day. As soon as somebody is called an informer about 300 people are around."

"Looking at the group of people then, I didn't think three would hang."

One of eight children Patrick attended Fezekile Secondary School where he passed standard six.

When he left school Patrick did contract work mainly for construction companies.

"I feel very bad because Patrick would always bring happiness and jokes into the home," his stepmother, Nomahlubi Manginda, said.

Manginda has seen his son once since he was sentenced.

"He hopes that God will show the world the truth," Manginda said.

There but for the Grace of God . . .



Mrs Nettie Majola, mother of Desmond Majola, with his children, Angelina and Xola

Desmond Majola

NETTIE Majola believes her son, Desmond, is on death row because of the system which creates the impoverished conditions under which she brought up nine children.

The old woman last saw him about two months ago. She is poor and cannot afford to travel often to Pretoria.

She is also taking care of her unmarried son's two children, Angelina, 6, and Xola, 4.

A tearful Mrs Majola told that Desmond had asked her to stay close to God, and not to be ashamed.

In his precious letters from prison which she keeps locked away, Desmond asked that people back home should not forget to pray for him and the others.

"They are praying in prison too," she said.

Dickson Madikane

THE youngest boy of 16 children, Dickson Madikane comes from a very poor family.

His mother, Mama Nomademfu Madikane, one of her daughters and a grandchild, live in a tiny two roomed corrugated iron house in Bhongolethu. Mama Madikane a widow,

believes that God still has to pass judgment on "whoever caused this whole business".

Like most Bhongolethu residents, Dickson was frustrated about the conditions under which they lived, his mother said.

She and her son had a "powerful connection" and she would not hesitate to work for the rights of people in the township.

Wiping away tears from her lined cheeks, Mama Madikane said when she had the chance to visit Dickson on death row, she couldn't face it. She sent her sister instead.

Dickson, a member of the Bantu Zion Church, attended primary school. He left school after standard five when he developed mental disorders. Like many youths in Bhongolethu he worked for construction companies.

"He is a boy of peace. I never saw him fighting with other boys," Mama Madikane said.

Michael Lucas

WITHIN days of the sentencing to death of Michael Lucas, walls in Bhongolethu were daubed with slogans in support of him.

It is as if many in this closely-knit community it seems share in the family's grief. Relating his predicament, many seem to say there but for the Grace of God, go I.

Though heartbroken his mother, Mrs Nowest Lucas believes he represents a sign of the times.

He was frustrated at conditions in the township. The atmosphere there at the time is believed to have had a direct influence on the incident.

He is a sweet, quiet person who didn't like doing bad things to other people, his mother said.

Michael, who finished standard eight, was going to go away to complete his education when he was arrested and charged for the murder.

Michael is a member of the Roman Catholic Church.

He was a keen soccer player and played for the White Spurs in Oudtshoorn.

Reporter's guide detained

A BHONGOLETHU community worker, Mr Mbulelo Grootboom, was detained by security police while accompanying a SOUTH reporter in the township last Friday.

Police have confirmed to attorneys that Grootboom, 27, who was detained for 13 months from June last year to July this year, is being held in terms of the Emergency regulations.

His attorneys said they were bringing an urgent application for his release.

Grootboom, who lives with his mother and three brothers, works for Saamstaan community newspaper.

Apart from his mother's small salary, he is the sole supporter of the family.

Grootboom the first president of the Bhongolethu Youth Organisation (Bheyo), is highly respected in the community.

According to community leader Mr Reggie Oliphant, Grootboom is a very disciplined, honest and sober person who is loved and trusted by everybody.

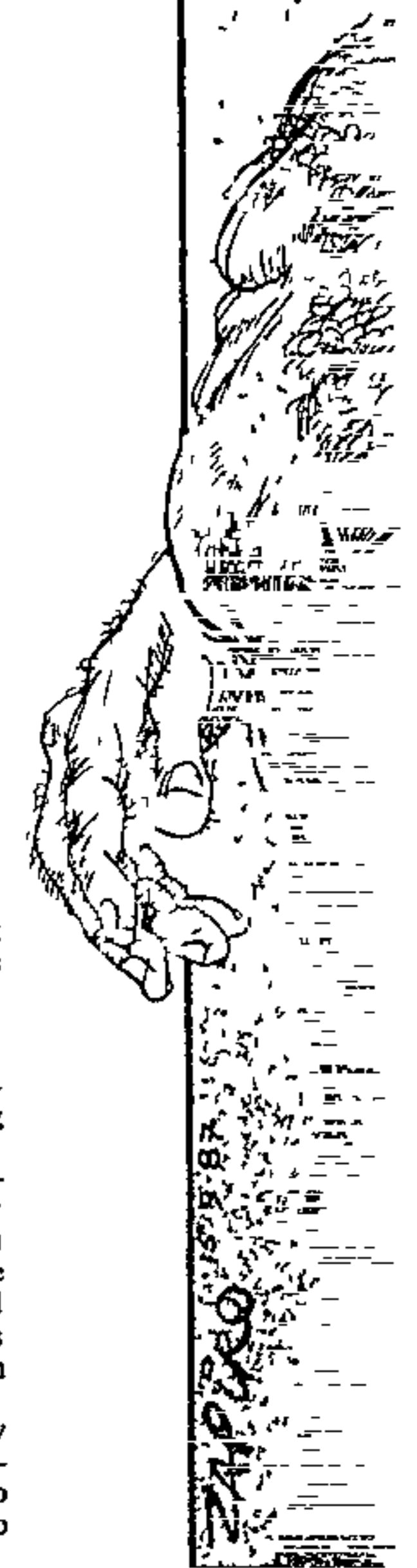
"His lengthy detention has inspired him to dedicate his time to assisting people," he said.

He took part in the organisation of a prayer service for the families in Lawaakamp who face removal and was involved in a focus on the families of the four people on death row.

Grootboom was a law student at Fort Hare University, but had to abandon his studies due to financial difficulties.

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A TOWN CALLED 'PRIDE'

BHONGOLETHU, "Our Pride" only lives up to its name in its unity and organization among the residents. The small township of 5 000 was named by the first Group Areas Act as they were "beautiful houses" and a place to live. For the rest, Bhongolethu is a town of poor housing, in drainage systems with water running along furrows the roads and bumpy, gravel which become muddy and when it rains there is a constant stench from "bucket system" of toilets and slop thrown into the furrows. There are almost no recreation. Children play in the

streets often in the furrows where they can pick up diseases like gastro enteritis. Africans in the Little Karoo town were moved from Oudtshoorn to Klippies island, a "mixed" coloured and African community, under the Group Areas Act. Then finally about 400 African families were moved to 306 sites which are rented for R10 a month each. Only 13 water points were provided. Overcrowding led to the rapid establishment of a squatter area, Amatotyombe, literally meaning shacks. No housing was provided for nearly two decades until community pressure led to the building last year of an extension. New Bhongolethu

But families are hard pressed to pay the R35 a month rent in the new houses. Some people are still living in the squatter area and in Bhongolethu people are still living two or three families in a house. "There is still a great need for housing," a member of the Bhongolethu Civic Association (Bhoca) said. The zinc and cement primary school built in 1967 was only replaced last year due to pressure from the community. The struggle for a new primary school was taken up by the now banned Congress of South African Students (Cosas) and later by other community organisations. Pupils boycotted the opening of the school last year by the Minis-

ter of National Education, Mr Gerrit Viljoen. The community wants the school to be named after the former principal of the Oudtshoorn Primary School Sicelo Mhlauhi, who was mysteriously murdered two years ago. Alternatively the community wants the school to be named after Nokuzola Fatyi, the 16 year-old girl who is serving a three-year jail sentence for public violence. For many years there was only a primary school and children had to leave the area if they wanted to complete their education at great expense to their parents. Fezekile High School only recently went as far as matric. Bhongolethu is wracked by

hunger and unemployment. Some residents have to travel to George to work paying more than half their weekly wages in transport. A survey done two years ago showed that 73 percent of Bhongolethu residents earned less than R150 a month. Residents complained of construction companies who bring in workers from the bantustans and then leave them in the area with nothing when the contract expires. An attempt is being made to address the hunger situation in Bhongolethu and Bridgton. Only roads surrounding the township are tarred. No sooner had one road been tarred recently than it had "Walter Sisulu Ave" painted on it in big white letters. Residents believe that the mu-

nicipality is planning a separate cemetery far from the township. Bhongolethu people have always buried their dead with the Bridgton community. But they believe the planned separation is to prevent political funerals in view of the town. Residents attribute the unity to strong community organisation. The Bhongolethu Civic Association (Bhoca) formed in September 1985 consists of representatives from students, parents, youth, women's, and ministers' organisations. It works closely with community organisations in Bridgton, Saarnstaa and the Oudtshoorn Resource and Advice Centre (Orac) which were formed to bridge the gap between Bhongolethu and Bridgton.

Sayco fire first shots in campaign



THE first salvoes of the campaign in Western Cape to save 36 people on death row were fired this week in Athlone. The meeting, initially scheduled for the UWC, was banned in the magisterial district of Bellville. At the alternative venue at Kismet Cinema, a magisterial district of Wynberg, about 900 people saw prominent community leaders sign first letters of protests. The campaign is spearheaded by the South African Youth Congress (Sayco). The sentences on the 36 people followed the 1985 upheavals in the country. So far, two people have been hanged. SOUTH spoke to members of the Sayco Campaign Committee about the campaign. The aim is to appeal to the government not to hang the people for humanitarian, political and moral reasons. "We also want the government to give the people prisoners-of-war status," a member of the committee said. In all regions sub-committees comprising youths, religious bodies, workers and women would be formed. These committees would link up all grassroots organisations. So far, the South African Catholic Bishops Conference and the South African Council of Churches have supported the campaign. Sayco would seek support of peace-loving in international countries to seek reprieve for the con-

demned people. "We shall also collect at least 1 000 signatures for each person on the death row. We will ask for platform at the United Nation Organisation, Non-Aligned Movement and Organisation for African Unity." Thousands of pamphlets highlighting the issue had been distributed in the country. He expressed concern that the number of people

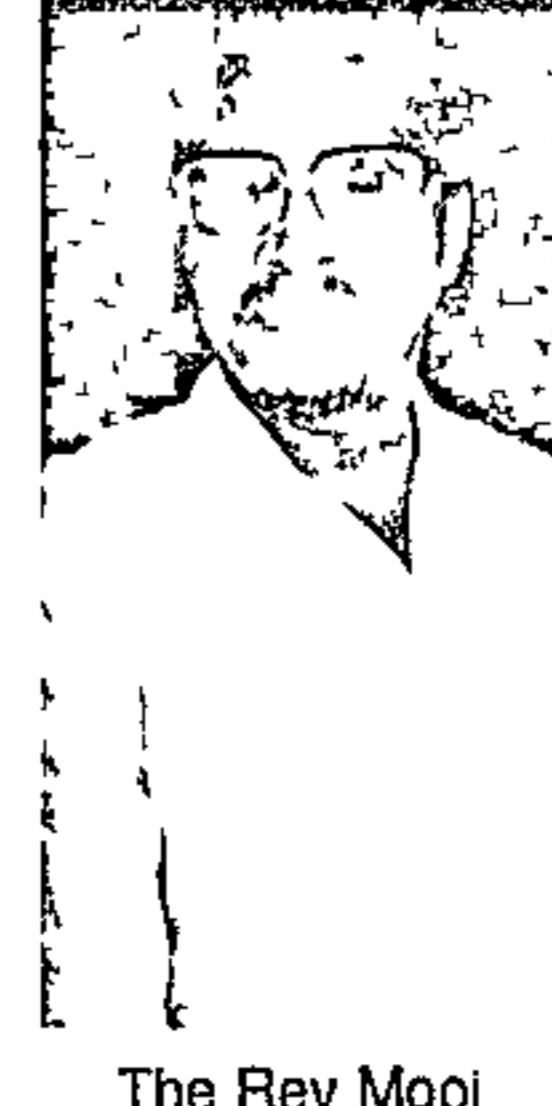
on the death row might increase. "There are many trials of the same nature throughout the country at the moment. For example, there were 31 people when the campaign started but now there are five more. On the other hand, many of our comrades have been killed by vigilantes but no one has been brought to court," he said.

Pressure mounts in UK

From MOIRA LEVY
LONDON — On the eve of the appeal for clemency of the Sharpeville Six, in a small ante room of the Westminster Cathedral in London, dozens of Britons stood to attention for a minute of silent tribute to the political prisoners who have been executed for crimes many say are politically motivated. They had just heard of three more hangings. The meeting was told that, unannounced and without any publicity, Solomon Maqwasha and Alex Matsepene were hanged last December and Eilele Webushe on a date unknown. "Our task is more urgent than before," said organisers of the Anti-Apartheid Movement (AAM) and Southern Africa — The Imprisoned Society (Satis). "We must speed up our operations to save the lives of the victims of the war time situation in South Africa." That call was echoed by campaigners from the towns and villages of Oxford, Sheffield, Derbyshire, Suffolk and organisations like Lawyers Against Apartheid and the Refugees' Study Programme. Hundreds of demonstrators gathered outside the South African Embassy in London as part of the AAM and Satis campaign for an end to executions. The campaign began about two months ago in response to the South African Youth Congress (Sayco) call for prisoner-of-war status for the 36 people convicted of politically-related crimes. Sayco issued a statement in London last week welcoming the AAM and Satis initiative.

Kids say 'we've failed'

THE root cause behind the four Bhongolethu youths being sentenced to death is entrenched in the township, according to the Rev Nzimeni Moses Mooi. If they had all the facilities in life, they would not have gone that far, said Mooi, leader of the Gospel Mission Church in South Africa and the Bhongolethu Mission Church and one of the first residents of the township. "They are kids who have grown up in front of me." He blamed their predicament on the lack of facilities at school and low wages earned by their



parents. Some children had to go to school without food," he said. For many years there was no secondary school in Bhongolethu and if parents wanted to give their children higher education, they had to send them to the bantustans. It is not actually that these people wanted to do these things, they wanted to attract the attention of the government," Mooi said. The youth is trying to bring the government to their senses. We have been talking and talking for so many years, and they say we have failed."

The Rev Mooi



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WEEKLY MAIL, September 18 to 24, 1987

UDF's Morobe tells of 'balaclava' arrests

BY MONO BADELA

TOP United Democratic Front officials, Murphy Morobe and Mohammed Valli, have filed papers in the Supreme Court contesting their detention

The two have been held for 59 days under Emergency regulations

Morobe, who was acting publicly secretary at the time of his detention, contends in a affidavit before the court that he was arrested in Port Elizabeth in the early hours of July 22 by three men wearing balaclavas

In the affidavit, Morobe states he and Valli were asleep in the house of advocate Dayahin Cherry when the balaclava-clad men woke them and

arrested them, without informing them of the grounds for their arrest

The men, he says, were apparently under the command of a Captain Beeton But "we were never interrogated by Captain Beeton or any of the men responsible for our arrest", the affidavit states

He states they were interrogated two days after their arrest by a Captain Smuts "He suggested to us that the purpose of our visit to Port Elizabeth had been to reorganise the rent boycott in the local black townships" On July 29 the two were transferred

from Port Elizabeth to Johannesburg where they have since been held at Johannesburg Prison (Diepkloof).

The application by Morobe and Valli asks that orders made for their further detention in terms of Emergency regulations be set aside, alternatively, that the orders be declared to be void and that they be released

The respondent is Law and Order Minister Adnaan Vlok According to the lawyer for the two men, Krish Naidoo, the minister has indicated the application will be opposed Naidoo expected the minister to file affidavits by today

Naidoo has repeatedly asked the minister to disclose the reasons for their arrest and detention, but without success.

In his affidavit, Morobe contends the arrest and detention of the two men could be ascribed to the fact that they were senior executive members of the UDF which the government and particularly the police were seeking to disrupt and destroy

Valli was detained under Emergency regulations in February and held until April His lawyers were on the point of bringing an urgent application when he was released, three months before his re-detention

NECC on new schools Bill: 'A device to keep control'

By THAMI MKHWANAZI

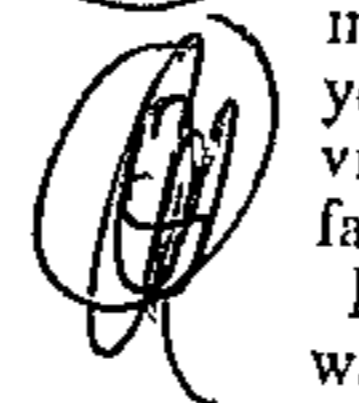
THE proposed new education Bill was a subtle device to maintain Emergency conditions at schools and campuses after the State of Emergency has been lifted, the National Education Crisis Committee (NECC) charged at its national consultative conference at the weekend

The NECC had been asked by parliament to comment on its proposed Education Laws (Education and Training) Amendment Bill by Sep-

Appeal fails: Pupil to go to jail

24-30/9/87

South



752

By AYESHA ISMAIL

A BONTEHEUWEL high school pupil was told this week to report to Pollsmoor Prison within 14 days to start a one-year sentence for public violence after his appeal failed

Norman Scheepers, 20, was sentenced following a stone-throwing incident in Bonteheuwel last year

He served five days of his sentence earlier this year but was released on bail pending the appeal

Norman's mother, Mrs Martha Scheepers, said she her son would not "harm a fly"

"My children are worried and nervous about their brother going to jail But I always tell them there is a Supreme Being who will guard over Norman

"I will always remember the day Norman was arrested He told me he was not feeling well and wanted to stay at home I told him to take some pills and forced him to go to school," she said

"Later I was informed that Norman had been detained Maybe if he didn't go to school that day, he would not have had to go to jail now But God knows best "

Mrs Scheepers said she was worried how her son would be treated in prison and whether he would be placed with common criminals

"Norman was a happy and lively child who liked to sing and dance Now he's quiet and withdrawn," she said

Norman, very quiet during the interview, appeared stunned by the news He said he had nothing to add as he did not want to go against the court's decision

He said he had already written part of the September exam

"But now that I've heard about my appeal, I've lost my will to study to complete the exams," he said

NR605 24/9/87 252

Small claims court for Bellville, Goodwood

Tygerberg Bureau

THE magisterial districts of Bellville, Goodwood and Kuils River will have their own small claims court from next week

It will sit in the restored former synagogue in Goodwood (renamed the Goodwood Cultural Centre) and two night sessions will be held once a month

About 25 to 30 commissioners, drawn from the legal profession and the University of the Western Cape, will be sworn in soon

Residents may start filing claims from October 2 with the clerk of the small claims court, Mrs. Susanna du Plessis, at the Bellville Magistrate's Court in Hoboken Building, Kruskal Avenue, Bellville 77 3921

● Who may institute a claim?

Anyone except companies, corporations, associations, people under 21 and married women subject to the marital power of their husbands

● Against whom?

With the exception of the State, against anyone, including companies, corporations, municipalities or other entities within the court's jurisdiction

● For how much?

Not more than R1 000

● What cannot be claimed?

Claims for more than R1 000, claims against the State, those based on cession or the transfer of rights, claims for damages in respect of defamation, malicious prosecution, wrongful imprisonment, wrongful arrest, seduction and breach of promise to marry, claims for the dissolution of marriage, concerning the validity of a will and concerning a person's mental capacity

● Legal costs and representation?

Representation by an attorney or advocate is not allowed in court although advice from an attorney at your own cost may be obtained in advance

The clerk of the small claims court will assist free of charge

● How to file a claim.

Before you go to the clerk of the court, contact the opposing party in person, by telephone or in writing, asking for your claim to be satisfied

If not complied with, send a WRITTEN demand Deliver it in person or by registered post and keep the proof of delivery

After 14 days, report in person to the clerk of the court with your proof that the demand has been delivered

● What documents are needed?

Written proof that the demand has been delivered

Any contract, document or other proof on which you base your claim

The full name and address, home and business address if available and telephone number of the opposing party

● Clerk's duties:

The clerk will help you draw up a simple summons, inform you of a date and time for the hearing, issue the summons and hand it to you

● What to do with the summons?

You can deliver the summons to the opposing party in person, (obtain proof of delivery) or you can hand the summons, with the delivery fees, to the messenger of the court for delivery

A copy of written proof that the summons was delivered must be obtained before the hearing

● The hearing:

Appear in person Bring all your documents and your witnesses and the proof that the opposing party has been served with the summons

Report to the clerk of the court at least half an hour before the court session

The hearing will be informal and simple

The commissioner will ask you to state your case as clearly as possible, to answer questions and to submit your exhibits

No cross-examination is allowed, but if the commissioner allows it you may put a few questions to the opposing party

● Judgment against you.

Judgment is usually final

and you must abide by the decision of the court

Settle at once any order for costs the court may make against you

● Judgment for you.

The opposing party will immediately pay you the amount of the judgment You must give a receipt immediately.

If the opposing party cannot pay, the court will inquire into his financial position and his ability to settle and make an order for payment

of passenger coaches on passenger trains are not changed during journeys

Mr D J DALLING Mr Chairman arising from the reply of the hon the Deputy Minister, I should like to ask him what "normal circumstances" and "abnormal circumstances" are?

The DEPUTY MINISTER Mr Chairman, an "abnormal circumstance" would be, for example, when a technical defect occurs in a coach, and that coach has to be uncoupled. Obviously there would then have to be a change in the sequence of the coaches [Interjections]

Debt. committed to prison

*7 Mr D J DALLING asked the Minister of Justice

Whether he intends introducing any legislation arising out of the report of the South African Law Commission regarding the commitment of persons to prison for debt, if so, (a) what is the main import of the legislation and (b) when is it anticipated that this legislation will be placed before Parliament?

†The MINISTER OF JUSTICE

I dealt with the matter at length during the discussion of the Justice Vote in the House of Representatives on 30 July 1987 (Hansard col 1645). For the hon member's information I reiterate that I indicated on that occasion that it is a matter in which Members of Parliament have an interest and that the report of the South African Law Commission must therefore be referred to the Standing Committee on Justice with the instruction to report on the findings and recommendations of the Law Commission. The Standing Committee may, should it find it necessary, propose legislation.

I have already given notice that I shall move tomorrow that the report of the Law Commission be referred to the Standing Committee on Justice.

Crime-prevention-civic-patrol

*8 Mr K M ANDREW asked the Minister of Law and Order

(1) Whether he or the South African Police have received any representations from the Cape Town City Council in respect of the possible formation of a crime-prevention civic patrol, if so, (a) what representations, (b) when and (c) what (i) was his response and (ii) were his reasons for giving this response,

(2) whether he received any requests for financial assistance to form such a patrol, if so, (a) what amount was requested and (b) what (i) was his response and (ii) were his reasons for giving this response?

The MINISTER OF LAW AND ORDER (Reply laid upon the Table with leave of House)

(1) Yes, representations were received by the Divisional Commissioner of the Western Province Division

(a) The representations dealt with the establishment of civic patrols to enforce municipal by-laws

(b) 20 February 1987

(c) (i) and (ii) The Divisional Commissioner held discussions with the Executive Committee of the City Council and also attended their meetings

For reasons of efficiency it is however, the viewpoint of the South African Police that it is a priority to rationalise law enforcement bodies in the South African context, instead of having fragmented smaller law enforcement components that possess separate executive powers throughout the RSA.

After a meeting of the United Municipal Executive on 4 February 1987, during which the South African Police explained the benefits of a national police force with a uniform system, the United Municipal Executive decided at its annual meeting on 12 March 1987, not to negotiate the institution of Municipal Police for White, Asian and Coloured Local

Authorities. This subject was not raised again

(2) No, (a) and (b) (i) and (ii) Fall away

Howick: abduction/murder

*9 Mr P C CRONJÉ asked the Minister of Law and Order

(1) Whether any (a) arrests have been made and (b) charges have been laid in connection with the alleged abduction and murder/near Howick on or about 6 December 1986 of three persons, whose names have been furnished to the South African Police for the purpose of the Minister's reply, if so, (i) who were arrested and charged, and (ii) when, in each case,

(2) whether any further steps have been taken in respect of those so arrested and charged, if not, (a) why not and (b) when is it anticipated that such steps will be taken, if so, what was the outcome?

†The MINISTER OF JUSTICE (for the Minister of Law and Order)

(1) (a) and (b) No

(i) and (ii) Fall away

(2) Falls away

Strikes: employees prosecuted

*10 Mr J J S PRINSLOO asked the Minister of Justice

(1) Whether any of the employees of the South African Transport Services who took part in strikes this year, have been prosecuted under criminal law, if so, (a) how many, (b) when, (c) on what charges and (d) with what result, if not, why not,

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

†The MINISTER OF JUSTICE

(1) Since the required information covers a wide spectrum, it is not clear which information the hon member requires. In order to be of assistance to the hon member, we obtained information in regard to offences related to strikes. Following on this I supply information which is at hand. Should any further information become available I shall inform the hon member in writing.

(i) On 27 August 1987 1 person was found guilty in the Regional Court, Germiston of contravening section 1 of the Intimidation Act, 1982, and sentenced to 4 years imprisonment of which 2 years imprisonment were suspended.

(ii) on 9 September 1987 1 person was found guilty in the Regional Court, Johannesburg of contravening section 1 of the Intimidation Act, 1982, and sentenced to 5 years imprisonment of which 2 years imprisonment were suspended.

(iii) the cases against 11 persons who are charged with contravening section 1 of the Intimidation Act, 1982, have not yet been finalized, and

(iv) a Police investigation against 45 persons which, *inter alia*, includes 4 charges of murder and 1 charge of attempted murder is still pending.

In the light of this comprehensive information and that which I shall possibly furnish still, but which I do not promise to, a statement is in my opinion not necessary.

Strikes: temporary employees

*11 Mr J J S PRINSLOO asked the Minister of Transport Affairs

(1) Whether during the strikes by employees of the South African Transport Services this year any White persons were temporarily employed to do the work of strikers, if not, why not, if so, how many,

(2) whether the services of any of these White persons were terminated as a result of the re-employment of Black

Teachers: jobs lost

*5 Mr K M ANDREW asked the Minister of Education and Culture.

- (1) Whether it is anticipated that any teachers in schools in the Parow School Board area will lose their jobs at the end of 1987 as a result of (a) a reduction in the number of pupils and (b) the implementation of revised pupil/teacher ratios, if so, how many in each case,
- (2) whether changes in pupil/teacher ratios are to be implemented in stages, if so, (a) when and (b) why, if not, (i) in what manner will they be implemented and (ii) (aa) when and (bb) why will they be implemented in this manner?

†The MINISTER OF LOCAL GOVERNMENT, HOUSING AND WORKS (for the Minister of Education and Culture)

- (1) (a) Yes, 53
- (b) No

- (2) The matter of pupil/teacher ratios is being studied and no final decisions in this regard have yet been taken, (a) to (bb) Fall away

For written reply
General Affairs

Annual reports

369 Mr K M ANDREW asked the Minister of Justice

The MINISTER OF JUSTICE

- (1) (a) How many reports were produced in 1986 by the Department of Justice and/or statutory bodies falling under this Department and (ii) in respect of what bodies were these reports produced, (b) what was the cost of producing each such report, (c) how many copies of each report were printed and (d) who undertook the printing of each report,
- (2) whether the printing of these reports was put out to tender, if not, why not, if so, (a) what was the (i) lowest and (ii) highest tender submitted, and (b) what was the amount of the successful tender, in each case,
- (3) whether any copies of these reports were sold, if so, (a) how many, (b) to whom, and (c) at what price, in respect of each report,
- (4) in respect of each of the latest specified five years for which information is available, (a) what was the total cost to this Department of these annual reports, (b) how many of these were printed, (c) how many of these reports contained (i) full colour and (ii) black and white pictures, (d) on what quality paper were annual reports printed and (e) (i) how many of these reports contained a photograph or drawing of the (aa) political head and (bb) top official of this Department and/or the statutory bodies in question and (ii) how many of these pictures were in (aa) colour and (bb) black and white in each case?

(1) (a) (1) Three

(ii) The Department of Justice (Directorates Justice and Prison Services)

The South African Law Commission

The Legal Aid Board

(b) R13 680 (GST excluded)

R1 980 (GST excluded)

R1 566 (GST excluded)

(c) 1 800

550

600

(d) The Government Printer

The Government Printer

V and R Printers, Pretoria

HOA

(2) The printing of the reports of the Department of Justice and the South African Law Commission was not put out to tender. The Government Printer decides whether or not to invite tenders. The report of the Legal Aid Board was also not put out to tender. The Legal Aid Board is an autonomous body and therefore responsible for the printing of its own reports

- (a), (i), (ii) and (b) Fall away
- (3) Yes, by the Government Printer

Department of Justice

South African Law Commission

Legal Aid Board

- (a) 62
- (b) General public
- (c) R7,60 per copy (GST excluded)

53

General public

R3,60 per copy (GST excluded)

Falls away

Falls away

- (4) Department of Justice

South African Law Commission

Legal Aid Board (paid for by the Board)

- (a) 1981/82 R 6 696
- 1982/83 R10 620
- 1983/84 R11 151
- 1984/85 R10 080
- 1985/86 R13 680

- (b) 1 800 each year

550 each year

600 each year

- (c) (i) None
- (ii) All reports contained black and white pictures

None

None

- (d) G P White Vowe with Manila cover
- (e) (i) (aa) One *
- (bb) None
- (ii) (aa) None
- (bb) One

G P White Vowe with Dukuzu Linen cover

70 grams bond

- (a) One
- (ii) (aa) None
- (bb) One

None

None

None

None

* A photo taken during a parade, on which *inter alia* the Minister of Justice appears

Annual reports

370 Mr K M ANDREW asked the Minister of Justice

(2) whether the printing of these reports was put out to tender, if not, why not, if so, (a) what was the (i) lowest and (ii) highest tender submitted, and (b) what was the amount of the successful tender, in each case,

- (1) (a) (i) How many annual reports were produced in 1986 by the Prisons Service and/or statutory bodies falling under this Service and (ii) in respect of what bodies were these reports produced, (b) what was the cost of producing each such report, (c) how many copies of each report were printed and (d) who undertook the printing of each report,

- (3) whether any copies of these reports were sold, if so, (a) how many, (b) to whom, and (c) at what price, in respect of each report,
- (4) in respect of each of the latest specified five years for which information is available, (a) what was the total cost to this Department of these annual reports, (b) how many of these were printed, (c) how many of these reports contained (i) full colour and (ii) black and white pictures, (d) on what quality paper were annual reports printed and (e) (i) how many of these reports contained a photograph or drawing of the (aa) political head and (bb) top official of this Department and/or the statutory bodies in question and (ii) how many of these pictures were in (aa) colour and (bb) black and white in each case?

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HOA

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Husband

THURSDAY, 24 SEPTEMBER 1987

mation is available, (a) what was the total cost to this Service of these annual reports, (b) how many copies were printed, (c) how many of these reports contained (i) full colour and (ii) black and white pictures, (d) on what quality paper were the annual reports printed and (e) (i) how many of these reports contained a photograph or drawing of the (aa) political head and (bb) top official of this Service and/or the statutory bodies in question and (ii) how many of these pictures were in (aa) colour and (bb) black and white in each case?

The MINISTER OF JUSTICE

(1), (a) and (i) None The SA Prisons Service is a service in the Department of Justice. It is therefore standing practice to report fully on its activities in a separate section of the annual report of the Department of Justice as was the case with the departmental annual report for the period 1 July 1985 to 30 June 1986 which was tabled in Parliament on 18 June 1987
(ii), (b), (c) and (d) as well as (2), (3) and (4) For further details the hon member is referred to the reply on Question No 369

Annual reports

378 Mr K M ANDREW asked the Minister of Environment Affairs

(1) (a) (i) How many annual reports were produced in 1986 by his Department

(1) (a) (i) Six

(ii)

- A Department of Environment Affairs
- B Council for the Environment
- C National Parks Board of Trustees
- D Forestry Council
- E National Hiking Way Board
- F Fisheries Development Corporation

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ment and/or statutory bodies falling under his Department and (ii) in respect of what bodies were these reports produced, (b) what was the cost of producing each such report, (c) how many copies of each report were printed and (d) who undertook the printing of each report

(2) whether the printing of these reports was put out to tender, if not, why not, if so, (a) what was the (i) lowest and (ii) highest tender submitted, and (b) what was the amount of the successful tender, in each case,

(3) whether any copies of these reports were sold, if so, (a) how many, (b) to whom, and (c) at what price, in respect of each report,

(4) in respect of each of the latest specified five years for which information is available, (a) what was the total cost to his Department of these annual reports, (b) how many copies were printed, (c) how many of these reports contained (i) full colour and (ii) black and white pictures, (d) on what quality paper were the annual reports printed and (e) (i) how many of these reports contained a photograph or drawing of the (aa) political head and (bb) top official of his Department and/or the statutory bodies in question and (ii) how many of these pictures were in (aa) colour and (bb) black and white in each case?

The MINISTER OF ENVIRONMENT AFFAIRS

	(b)	(c)	(d)
R31 479,30	1 301	Government Printer	
R 3 044,34	1 000	Government Printer	
R 6 380,00	1 000	Heer Printers	
R 1 344,14	600	Aurora Printers	
R 3 660,60	6 750	Aurora Printers	
R 3 200,00	550	Budd & Thompson (Pty) Ltd, Cape Town	

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Husband

(2) A Department of Environment Affairs

No, Government Printer undertook printing himself

B Council for the Environment

No, Government Printer undertook printing himself

C National Parks Board of Trustees

Yes, put out to tender

D Forestry Council

Government Printer assigned to contractor

E National Hiking Way Board

Government Printer assigned to contractor

F Fisheries Development Corporation

Yes, put out to tender

(a) (i) (ii) (b)

A Fall away Fall away Fall away

B Fall away Fall away Fall away

C R6 200,00 R11 469,00 R6 380,00

D Fall away Fall away Fall away

E Fall away Fall away Fall away

F R3 200,00 R3 500,00 R3 200,00

(3) (a) (b) (c)

A Yes Government Printer does not keep record of number sold

Local R21,60 and Overseas R25,90

B No Copies are distributed free of charge

Fall away

C No No copies sold

Fall away

D No No copies sold

Fall away

E Yes Government Printer does not keep record of number sold

Local R0,50 and Overseas R0,60

F No No copies sold

Fall away

(4) (a) (b)

1981/82	R46 350,58	2 500
1982/83	R46 241,63	3 384
1983/84	R54 158,21	3 750
1984/85	R20 125,16	5 130
1985/86	R48 092,06	4 677

A Department of Environment Affairs

(c) (i) (ii) Four (1981/82, 1983/84, 1984/85, 1985/86)

B Council for the Environment

None

C National Parks Board of Trustees

Five

D Forestry Council

One (1985/86)

E National Hiking Way Board

None

F Fisheries Development Corporation

Five

HOA

HOA

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Jail at night and work by day parole system

The Argus Correspondent

JOHANNESBURG. — A day parole system in which prisoners are released during the day and return to the prison at night has been announced by the Minister of Justice, Mr Kobie Coetsee.

Speaking at the launch of a resettlement fund for released prisoners last night, Mr Coetsee said the system was designed to provide certain categories of prisoners who had reached their approved conditional release date with temporary housing at the prison until they could support themselves.

These categories include ex-prisoners who are employed but do not have a home or money to find housing, those unemployed who have to find employment, those who during parole lose their jobs or homes and therefore no longer comply with the parole requirements and those who are placed in in-

stitutions and need to be slowly integrated into society.

This new development in South Africa had been tested on a small scale and found to be acceptable, so the Prisons Service would continue the system of day parole on a larger scale, said Mr Coetsee.

A resettlement fund for released prisoners has been launched under the protection of the National Institute for Crime Prevention and Rehabilitation of Offenders (Nicro).

Major Jannie Smit, chairman of the fund, said it was to help needy ex-prisoners with food, housing, clothing, transport and money.

He said one of the biggest problems was that people were sceptical or reluctant to give money to help ex-prisoners.

The fund would ask the Prisons Service to refer ex-prisoners to it for help.

Challenge to Ngoyi acquittal



By EDYTH BULBRING

PORT ELIZABETH - Six months after the United Democratic Front's East Cape president Edgar Ngoyi was acquitted of murder, the state has challenged his acquittal and that of co-accused Lulamile Mkalipi. The State has appealed against the acquittal to the Appellate Division.

In March this year, Ngoyi, 62, Mkalipi, 22, and seven others were tried for the murder at Kwazakhele of Azapo member Pakamisa Nogwaza on June 8 1985.

The killing took place during clashes between UDF and Azapo supporters which started in April 1985. Twenty UDF members under Mkalipi were guarding Ngoyi's house after two petrol bomb attacks.

Nogwaza, 24, and his mother arrived at Ngoyi's house. Ngoyi left to make a phone call, leaving his visitor in the house. While he was away, Nogwaza was killed.

The state alleged Ngoyi deliberately failed to foresee the dangers when he went away, leaving Nogwaza at the Ngoyi home.

Controls comrades

A 17-year-old youth was sentenced to 14 years in jail for the murder of Nogwaza and two others. Funamekile Siyoni, 21, and Xolile Pete were sentenced to four years each, two of which were suspended for five years for beating the deceased with a stick. The six others were acquitted.

The court found that while Ngoyi was in control of the "comrades", his failure to take steps to prevent the crime did not make him guilty.

Ngoyi spent 17 years on Robben Island for his membership of the ANC. He was released in 1981.

He was arrested after Nogwaza's murder on June 10 1985. Although released on bail of R50 000 in December 1985, he was detained under the emergency regulations in June last year and has not yet been released. Judgment has been reserved.

Ma Sisulu's sentence is set aside

By SOL MORATHI

THE conviction and sentence of United Democratic Front president Albertina Sisulu was this week set aside in the Pretoria Supreme Court.

Sisulu, also president of the Federation of Transvaal Women, was sentenced to five years' imprisonment - two of which were suspended - by Magistrate TJ le Grange in Krugersdorp in February for furthering the aims of the African National Congress.

Sisulu's defence counsel, George Bizos SC, told the court that Le Grange's findings in convicting Sisulu were unwarranted, unpermissible and unsupportable.

He added that the sentence was unduly severe and disturbingly inappropriate.

He then asked the court to overlook the magistrate's findings, saying that he had over-emphasised the effect of Sisulu's acts and under-emphasised her personal circumstances.

Judge Eloff and Deputy Judge President of the Transvaal Schabbert found that the speech Sisulu had delivered at the



Albertina Sisulu

funeral of former ANC member Rose Mbele on January 16, 1982, did not support or praise the outlawed ANC.

And, furthermore, acts of conspiracy Sisulu had allegedly shown were also not proved.

Sisulu and her co-accused, Thami Mali, were sentenced to five years' imprisonment: Both of them were released on R3 000 bail pending the outcome of their appeal.

Mali since left the country and the court ruled that he must be regarded as a fugitive from justice whose appeal could not be considered.

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Major changes to legal system will help cut cost

The Argus Correspondent

JOHANNESBURG — Three major changes to the South African legal system which could reduce costs and make legal representation more accessible to the man in the street are being considered by the legal profession.

These are a new "speculative fee" system for attorneys, the possibility of fusing the Bar and side-Bar and an increase in the monetary limit for litigation in the magistrates' courts.

The "speculative fee" system is being investigated by a joint committee of the Association of Law Societies (ALS) and the General Council of the Bar and could be introduced early next year, according to a spokesman.

Mr Edward Southey says that if the system is introduced, attorneys will be able to decide to represent clients on the strength of their cases for damages.

Trial basis

If the client loses the case, the attorney does not receive a fee. If the case is won, the attorney is paid according to a special tariff. Use of this system would be open to those who did not qualify for legal aid, but earned less than R2 000 a month.

He says the committee is working on the finer details of the new fee system, which should be introduced in 1988.

"We should implement it on a trial basis, with the cases restricted to certain matters, effectively personal injury cases."

Another possible change, the fusing of the Bar and side-Bar, is a more controversial issue.

The Minister of Justice, Mr Kobie Coetsee, announced in Parliament earlier this year that the government had asked the Rules Board of the Law Courts to look at the role of advocates and attorneys and the possibility of attorneys appearing in the Supreme Court as a way of reducing legal costs.

The ALS supports fusion and sees it as a major step towards reducing legal fees, but the Bar, which represents advo-

ates, is strongly opposed to it. ALS president Mr Billy van der Merwe says South Africa cannot afford the split-bar system because it increases the number of lawyers that are required to argue a case in the Supreme Court.

The vice-chairman of the Johannesburg Bar, Mr Ralph Zulman SC, says the idea that the fusion of the bar is the panacea which will reduce litigation costs is a fallacy.

"There is this theory that there is a duplication of work. But advocates and attorneys do different work," he said.

He said if there was fusion, there would still be lawyers who specialised in litigation and the client would have to pay for that.

R20 000 limit

He said the man in the street was not affected by "a handful of silks" working in the Supreme Court, since more than 90 percent of litigation was done in magistrate's courts, where attorneys could appear.

However, few attorneys did magistrate's court work. Junior counsel were usually called in for these cases, he said.

Mr Coetsee has also indicated that a rise in the monetary limit for litigation in the magistrate's courts is under consideration. The envisaged rise is from R5 000 to R20 000.

The minister is studying representations made by various branches of the profession and a decision is expected by early November this year, says a spokesman for his office.

SAB action dismissed

By **MARTIN NTSOELNGOE**

A RAND Supreme Court judge dismissed, with costs, a urgent application by South African Breweries against the Food and Allied Workers' Union because it was not specific.

Delivering judgment this week, Judge R Goldstone said allegations by SAB that the union was instigating and inciting employees were not specific and hung on a very thin thread.

SAB had brought the application against Fawu and its members alleging that there had been a collective decision to start a "go slow" and refusal to work overtime.

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~~253~~

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11/10/87 C/11/20

CAP 7.215 13/10/87 (252)
Legal aid as national service?

JOHANNESBURG — The Cape of Good Hope Law Society is considering pressing for an "office of the public defender", staffed by young attorneys and articulated clerks, as part of their national service, to help the needy gain access to the law.

Addressing the society's annual meeting in Transkei yesterday, the president, Mr Mervyn Smith, said: "The office we plan to set up to help indigent people should be totally divorced from the state and will provide legal representation for those who cannot afford it."

"The legal aid system has failed us. About 80% of all accused in criminal courts are unrepresented."

Mr Smith said South Africa's legal aid budget was "hopelessly inadequate" to meet the needs of the majority of the country's population.

Comparing the South African legal aid budget with that of the UK, he said the figure budgeted by the government for the year ended March 31, 1987 was R9,57m, as opposed to the UK's R1 400m.

"To stay within its budget, the Legal Aid Board has had to exclude from its programme all divorce cases and now assistance in the crucial area of disputes in the industrial courts."

"The Hoexter Commission drew attention to the shortcomings in the legal aid system to no avail. Matters have worsened since then," Mr Smith said.

"If legal aid is not increased drastically, we may find the very system of justice itself being undermined simply because there is no money available to help the needy gain their rightful access to the legal system." — Sapa

Police to probe school 'lotteries'

AKGUS 14/10/87 252

By STEPHEN WROTTESEY and DENNIS CRUYWAGEN
Staff Reporters

POLICE nationwide are investigating possible contraventions of the Gambling Act by schools — and possibly churches — which collect funds by running competitions for expensive prizes.

Schools collect hundreds of thousands of rands each year this way.

A police spokesman said the investigation revolved around whether the competitions involved skill or chance

Police headquarters in Pretoria had instructed narcotics bureaus around the country to investigate the competitions

Churches might also be affected

While the police were sympathetic to the needs of schools and churches, there was a law which had to be upheld and there was no choice other than to investigate and charge, the spokesman added

Warned

He warned that newspapers and magazines which published the entry forms could be charged with helping in the commission of crimes

Before holding competitions the organisers should take legal advice.

Major Muller Haggard, head of the Narcotics Bureau in Cape Town, said police in the Western Cape were investigating five cases, mainly against schools

He could not say when the investigations would be completed as "we are getting new cases the whole time"

The charges being investigated were under Section 2 (1) of the Gambling Act, which prohibited participation in lotteries or sports pools

In terms of the section no person may establish a lottery, manage a lottery, allow any place under his control to be used for conducting a lottery, or buy or sell tickets for a lottery

Advertisements

Section 3 of the Act prohibited advertisements or notices of lotteries in newspapers or periodicals.

Teachers have reacted with shock

Mr Franklin Sonn, president of the Cape Teachers' Professional Association, said schools and all community organisations were experiencing great difficulty in raising funds in troubled economic times

Money raised was used to finance extra-curricular activities and to buy materials for schools

"Normally parents are directly taxed to provide this income. It is admirable that schools prefer to raise these funds themselves and competitions are part of the venture," said Mr Sonn

"It is therefore resented that schools are to be interfered with and threatened."

Mr Sonn said he would prefer that the police fight crime in the townships than probe possible contraventions of the Gambling Act by schools.

The South African Teachers' Association did not want schools to contravene the law, said chairman Mr Richard Hawkins

"But we would hope that the authorities would be reasonably sympathetic towards schools who are attempting to lift some of the financial burden in education from the State," he added

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Fund-raising subject to Gambling Act

By CHRIS STEYN

CHARGES of contravening the Gambling Act are being investigated against schools and churches countrywide, according to the head of the Cape Town Narcotics Branch, Major Muller Haggard

Following intensive police investigations, several dossiers had already been forwarded to the Attorney-General for his decision

Major Haggard yesterday also warned that newspapers and magazines which carried adverts on behalf of the schools and churches could be prosecuted for aiding and abetting a crime

In an interview with the Cape Times, Major Haggard said police were investigating all competitions to determine whether they complied with Act 51(2) of 1965 which prohibited lotteries or sports pools. Newspapers and magazines which publicized or advertised entry forms had to comply with Section 4 of the same act.

Major Haggard said that although police were sympathetic to the good causes for which schools and church

organizations ran competitions to raise funds, they still had to comply with the laws of the country

Competitions contravened the law when there was no skill and knowledge required to answer the questions

"The answers are either supplied or made so obvious that it is ridiculous," Major Haggard said

"It is a guessing game, no expertise is involved," he said

Major Haggard warned members of the public who sold tickets for these competitions in the city's streets that they too could be prosecuted

Even welfare organizations with a registered number could be seen as contravening the law if they offered a prize in a "guessing-game-type" competition.

Major Haggard warned churches and other organizations which organized competitions with big prizes to consult their legal advisers before they started advertising or selling tickets.

He called on these organizations to consult their own legal advisers instead of asking the police for advice on whether their competitions complied with the provisions of the law

DR. HON. ... (3) was addressed | 20 knots | WIND (D F Malian) 8 pm. Southerly | Tel Aviv | 19 28 | clear | Tokyo | 15 23 | clear

Call to restore legal aid labour cases

17665 5/10/87

252



By **DICK USHER**, Labour Reporter

URGENT representations by the Association of Law Societies for legal aid in labour cases to be restored have been requested by a group of Cape Town lawyers.

The lawyers, from private firms and the Legal Resources Centre, warn that the withdrawal of assistance for labour matters by the Legal Aid Board earlier this year could have serious consequences for industrial peace, restrict access to the courts, diminish the Industrial Court's credibility and result in fewer employers being "brought to book" for unfair labour practices.

This week the president of the Law Society of the Cape of Good Hope, Mr Mervyn Smith, said South Africa's legal aid budget was "hopelessly inadequate" to meet the needs of the majority of the population.

Addressing the society's annual meeting, Mr Smith drew attention to the exclusion of labour cases.

Undermining justice

"If legal aid is not increased drastically we may find the very system of justice itself being undermined simply because there is no money available

to help the needy to gain their rightful access to the legal system," he said.

The lawyers said the withdrawal had severely restricted access to the Industrial Court because "faced with the complex task before them, a large sector of aggrieved employees with deserving cases will not be able to utilise the court without legal representation".

"Inevitably, aggrieved employees would increasingly resort to strike action or industrial unrest to resolve their grievances with management.

"In view of the fact that the standards and codes of conduct laid down by the court are relatively new, added to which there has been considerable resistance on the part of many employers to changing attitudes to labour relations, it is absolutely essential that contraventions and breaches of Industrial Court guidelines and codes are properly enforced."

They urged that society should not allow a situation where, in a climate of large-scale unemployment, a person who might be the sole breadwinner would have no access to machinery created to protect rights to reinstatement or any other rights as an employee.

Schools slam probe into competitions

By DENNIS CRUYWAGEN
Education Reporter

THE police clampdown on school competitions — where attractive prizes are offered in school fund-raising campaigns — because of possible contraventions of the Gambling Act will hit hard at schools already suffering from severe education finance cuts

Many high schools are strapped for hard cash and run "lotteries" or raffles to raise funds quickly to finance projects, repairs or improvements to school buildings

An Argus survey of schools in the Peninsula has shown that some schools see competitions of this nature as a "financial lifeline" which they can cling to in depressed times.

Schools in the underprivileged communities would suffer financial blows if their competitions were found to be illegal, Mr Randall van den Heever, principal of Spes Bona Boys' High School in Athlone said

Insensitive

Any witch-hunt on schools running competitions would be insensitive and unfair, he thought

The survey was conducted after police announced yesterday that they were investigating possible contraventions of the Gambling Act by schools and possibly churches organising competitions which collected funds by running competitions for expensive prizes.

Schools collect hundreds of thousands of rands each year this way

A police spokesman said the investigation revolved around whether the competitions involved skill or chance

Police headquarters in Pretoria had instructed narcotics bureaus around the country to investigate the competitions

While the police were sympathetic to the needs of schools and churches, there was a law which had to be upheld and there was no choice other than to investigate and charge, the spokesman added

A Heathfield principal said schools which organised lotteries or raffles found that they could accrue money easily with these competitions

He said "It is imperative and essential that schools raise funds from year to year otherwise they will not survive"

He did not believe that the police should probe school competitions, he said

A Cape Town headmaster said it was true that schools all over the country regularly organised competitions which were really raffles

"They cover themselves with simple questions. Obviously a kind of evasion of the law takes place. But one wonders if betting on horse races requires any skill," he said

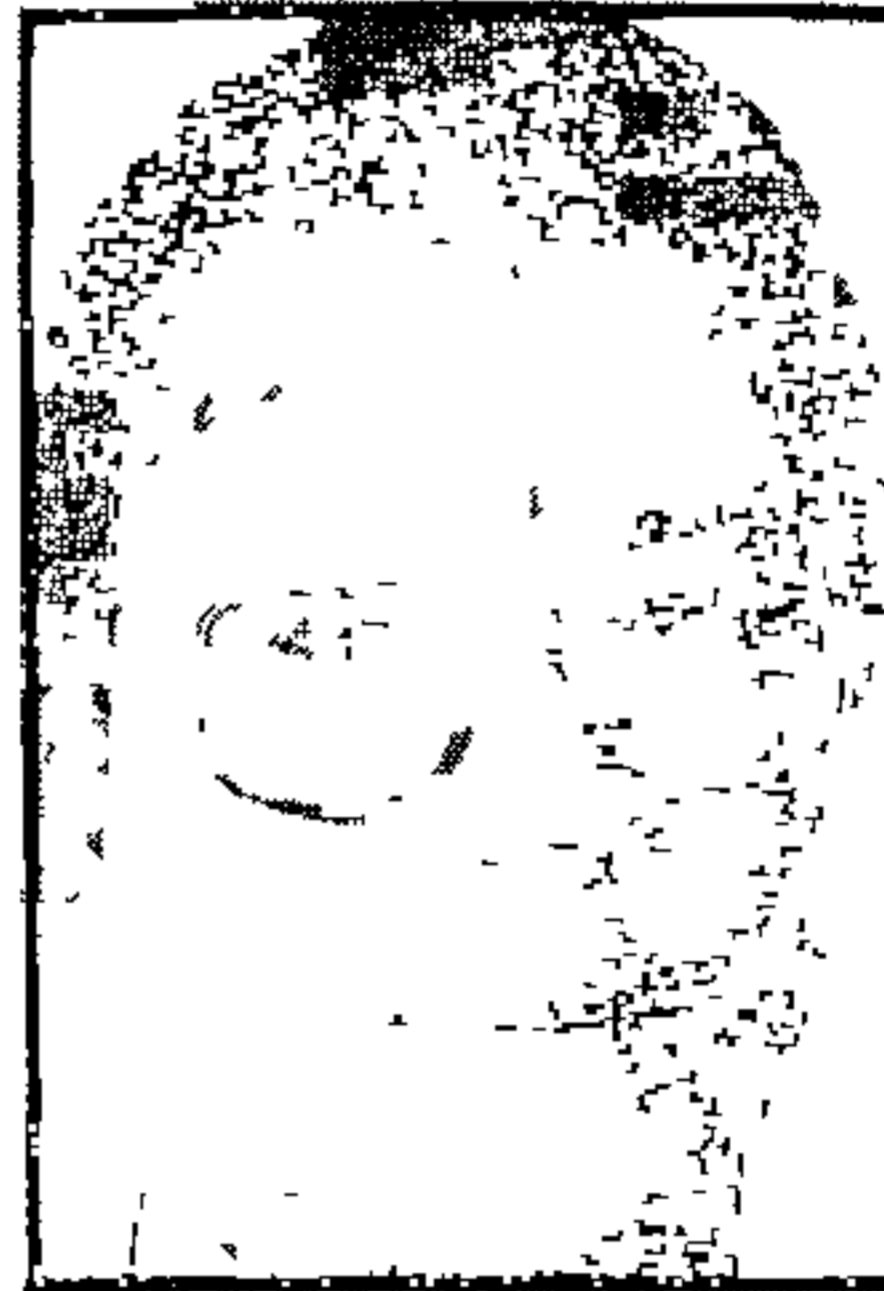
He said raffles run by schools for fund-raising was innocent and should be treated in that spirit

"If schools are prevented from raising money it will impose a financial burden on them," he said

He said white schools had lost their subsidies for ground maintenance

Their books subsidies had also been reduced and schools now had to pay for the general maintenance of school buildings

"We must raise money from parents through volun-



Mr van den Heever

tary contributions or raffles"

He did not believe that the police should investigate fund-raising ventures

"I would have thought that they would have better things to do," he said

A Mitchell's Plain principal could not understand why the Government allowed punters to bet on race horses, but was frowning on school competitions

His school was busy organising a competition which would win a lucky ticket-holder a few hundred rands "which will be welcome just before Christmas"

He knew of other schools which wrote letters to business institutions asking them for donations

"I will not reduce my school to begging big business for money. Competitions help us to keep our dignity and pride," he said

Competitions were an invaluable source of revenue for many schools, according to the principal of a Rondebosch school

"Most schools try to make sure that there is some element of skill involved, like

writing a slogan or answering questions in these competitions," he said

He said people who entered competitions viewed their expense as a donation or contribution to a school

Mr van den Heever said "Schools need support. I don't see anything wrong with competitions or raffles where prizes can be won. If police want to crack down on this there must be a greater support for the community from the State"

He did not want to encourage gambling, but adults who wanted to spend money on competitions should not be deterred from doing so, he said

A Wynberg principal said his school served a community which could not afford expensive competitions

"The tickets are usually expensive. We take the financial situation of our community into account when we hold fund-raising efforts," he said.

Troubled economy

Mr Franklin Sonn, president of the Cape Teachers' Professional Association, said schools and all community organisations were experiencing great difficulty in raising funds in troubled economic times

Money raised was used to finance extra-curricular activities and to buy materials for schools

"Normally parents are directly taxed to provide this income. It is admirable that schools prefer to raise these funds themselves. Competitions are part of the venture," said Mr Sonn

"It is therefore resented that schools are to be interfered with and threatened," Mr Sonn said

In the Supreme Court last month two policemen accused of shooting people during a period of unrest pleaded they had acted under "superior orders" and were acquitted when two assessors overruled the judge GERALD GORDON QC looks at the legal history of the "superior orders" defence



Adolf Eichmann despite the defence in his 1961 Jerusalem trial that he was acting on orders, he was found guilty of committing one of the gravest crimes against humanity.

CMS TIMES 16/10/87

World courts do not absolve those who are ordered to kill

IT IS a dark day in the Great War. A hospital ship, the British Llandovery Castle, is torpedoed. This is a crime against the international laws of war.

Two lieutenants, part of the crew of a German U-boat which has sunk the vessel, give orders to fire on the lifeboats bearing sick, wounded and other survivors. The submarine's commander has ordered these two to act thus because he wants to leave no trace — for he fears the consequences.

Are these two junior officers entitled to the defence that they were merely carrying out orders?

The German Supreme Court in Leipzig in 1921 answered in the negative. It held that the commander's orders to leave no trace did not free the accused from guilt.

But for some decades there was considerable confusion in international legal circles as to the correct law on the subject. The British Manual of Military Law of 1914 had stated that "members of the armed forces who commit such violations of the recognized rules of warfare as are ordered by their governments or their commander are not war criminals and cannot be punished by the enemy".

However in 1944 the British and American Manuals of Military Law amended the rule and said that soldiers "cannot escape liability if, in obedience to a command, they commit acts which both violate the unchallenged rules of warfare and outrage the general sentiment of humanity". They are "bound to obey lawful orders only".

This was also the line taken in the historic trial of the major war criminals of Germany held at Nuremberg from November 1945 to October 1946.

In the Charter of the International Military Tribunal which the "Four Powers" (British, Americans, Russians and French) produced, it was expressly provided that the tribu-

nal was forbidden to entertain pleas based on the defence of superior orders — except as a mitigating factor. The plea of superior orders failed and 12 of the accused went to the gallows.

Adolf Eichmann, one of the principal Nazis implicated in effecting "The Final Solution of the Jewish People", that is, by elimination, was charged in 1961 in Jerusalem with the killing of millions of Jews. His main defence was that at all times he was acting on orders from above and his counsel, Dr Servatius, cited the British Manual of 1914.

His own evidence, however, destroyed whatever possible reliance might have been placed on this defence for he told the court "Your Honour I must declare that I see in this murder, this extermination of the Jews, one of the gravest crimes in the history of humanity. I am bowed down with shame."

And in the recent Cape case of *S v Villet and Kruger* (September 15, 1987) Mr Justice Howie cited Snyman's *Strafreg* "Our law, like most civilized systems, will not be prepared to excuse a soldier who on the command of an officer commits rape or, like the war criminal Eichmann, mass

murder, solely on the ground that he was obeying the order of a superior."

Until last month the only reported case on "superior orders" was *Rex v Smith* in the Cape courts in 1900 during the Boer War. The accused, a private, was ordered by his

captain to shoot a farm-hand dead if he did not hand over a bridle and saddle to the patrol which had occupied the farm. Upon the farm-hand's refusal, the accused did shoot and kill him. The court laid down that a soldier is obliged to obey only an order which is not "manifestly illegal". On this basis it acquitted the accused.

In the *Villet and Kruger* case the evidence was that during certain unrest in the Bellville area the two accused policemen had, under orders from Captain O van Schalkwyk (a former riot squad commander), hidden themselves in a garden at the corner of two streets. The police district commandant, Colonel Martinus Mans and Van Schalkwyk were in the vicinity.

A crowd of about 50 had gathered and there was an order to arrest those who set up obstructions and had set fire to them. Kruger said that he had been ordered "to eliminate" those who again acted (against the police) (*hy het opdrag gekry om die wat weer sou kom "optree", te "elimineer"*) and that the word "eliminate" was used by Van Schalkwyk.

Kruger interpreted this to mean that he was to do all in his power to arrest those who committed acts of unrest, and if necessary for this purpose, to shoot. They were to shoot those who made trouble (*die wat kak maak*). Teargas was soon used, the crowd moved past the corner and some ran. Kruger said he decided what action was needed and instinctively shot at the crowd — in order to obey the command Van Schalkwyk had given him. The two accused fired seven shots with shotguns. The court found that from their own evidence it was clear they did not shoot in order to make arrests.

In consequence of the shooting a young woman, Miss Sarah

van Wyk, was killed and three persons were wounded. The court was satisfied that the woman died through shooting by Kruger. When shot, she was less than six metres from him.

Mr Justice Howie sat with two assessors in a court so constituted, questions of law are for the judge alone, but questions of fact are for all three and any two can overrule the third. In the event this is what happened. The assessors overruled the judge and acquitted both accused.

"The pith of the question of the two accused' guilt," they said, "lay in the nature and contents of the relevant command which, originating from Mans and spoken by Van Schalkwyk, was given to them, as well as the manner and spirit in which it was carried out."

The orders had to be seen against the background of the events of the day and the unrest which had prevailed. There was no room for discretion on their part of the two men and the congratulation of the accused by Mans immediately after the event left the assessors in no doubt that the accused did everything that evening just as they had been told to do.

The learned judge, however, who had analysed the authorities and, while citing conflicting views on the *Rex v Smith* decision, adopted it in broad terms, said he would have found Kruger guilty on the charge of murdering Miss Van Wyk and of attempting to murder the three wounded people. On the latter charge he would have likewise found Villet guilty, but not on the charge of murder.

He said the two men had been ordered to wound people with lethal weapons. This was not a

lawful order. Killing of our fellowmen is always *prima facie* unlawful and the use of a firearm is a drastic operation.

While he agreed that the shooting could not be considered in isolation, this was a shooting not at people who were busy committing a crime but at a group of persons, some of whom had shown criminal intentions but in circumstances in which it was impossible to determine who they were. In his lordship's view the orders were manifestly illegal.

It is perhaps to be pondered whether in the light of the considerable amount of juristic writing on the "superior orders" defence and the plethora of decisions in the forums of the world, the determination of a case like this does not turn fundamentally on a question of law and not of fact.

In this context one should notice that the issue as to whether it is a question of law or fact is itself a question of law to be decided only by the judge. There is substance in this respectfully posed query, assessors in such cases could be debarred from contributing to the finding on the guilt or otherwise of the accused.

A concluding thought. If in any system the lawfulness of an order given in the armed or police forces cannot be questioned either at the lowest or highest or any other level, we would reach a state of government summed up by that brilliant satirist of autocratic Rome in the first century of this era, Juvenal: "*Hoc volo, sic jubeo, s' t pro ratione voluntas*" (I will have this done, so I order it done, let my will replace reasoned judgment).

Target

HOW many words of four letters or more can you make from the letters shown here? In making a word each letter may be used once only. Each word must contain the white letter and there must be at least one ten-letter word in the list. No plurals, no foreign words, and no proper names.

TODAY'S TARGET 16 words, good, 19 words, very good, 23 words, excellent. Solution tomorrow.

YESTERDAY'S SOLUTION
Adit aised allied dais dale date deal dealt deasil deist dell delta desalt detail dial diet dilate dill distal distil DISTIL LATE edit idea ideal idealist idle isled lade ladle laid lased lasted lead laised lied liled lifted listed said sailed sallied salted sated side sidle silted sited slated slid slide staid staled stalled stated stead

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Cape Times 16/10/87 (252)

Govt plans curbs on 'illegal' use of funds

Political Correspondent

AMANZIMTOTI — Politically motivated organizations are using "great ingenuity" to circumvent laws aimed at preventing the illegal use of foreign funding in South Africa, according to the Minister of Justice, Mr Kobie Coetsee

However, the government had identified 16 organizations that received about R23 million during 1986 and the first half of 1987

It wanted to close the loopholes with new measures

The warning — read on his behalf at the National Party's congress here by the Natal leader of the party, Mr Stoffel Botha — responded to a resolution calling for legislation to combat "the undesirability of foreign funding of certain extra-parliamentary organizations in the South African political field"

Worthy goals

Delegates urged that swift action be taken to prevent groups like Idasa, the UDF and the Kwa-Natal Indaba support group from receiving foreign funding

Mr Coetsee said the question of foreign funding and existing measures was being examined

A measure might be introduced to "sift" money intended for worthy goals from that used for political or undermining purposes

Other speakers at the congress yesterday included

● Mr Stoffel Botha, Minister of Home Affairs, who said a poison pen could be as dangerous as a terrorist weapon. This was in reply to a resolution calling for steps to curb subversive and inciting newspaper reports

He said the government did not underestimate the role of subversive reporting in creating a revolutionary climate

Action against the press was unpopular but while journalists always claimed the public had to "right to know", they were prepared to go to

jail rather than divulge their sources

A renowned academic had once said journalists did not believe in the right to know, but in their own right to decide what the public should know

"This is consistent with their concept of editorial freedom — the freedom to decide what they will or will not publish," said Mr Botha

"To put it differently, journalists tend to lay claim to the sole right to super-censorship"

The government believed in the sensible flow of information but it challenged the "all or nothing approach"

"The government will not deviate from its standpoint that the press should develop machinery to conduct its own discipline in terms of its own code of conduct," he said.

● Mr Botha, who is also Minister of Communications, said an increase of post and communications tariffs next year was not being considered

Endorsed

● Mr Chris Heunis, the Minister of Constitutional Development and Planning, said it was the responsibility of the leaders of all the communities to encourage their people to peaceful cooperation and negotiation

He responded in particular to a delegate who asked whether, in the light of recent incidents in parks on the Reef, black leaders were also calling on their constituents to promote good group relations

Mr Heunis said there had also been the actions of the Afrikaner Weerstandsbeweging at Blood River on Kruger Day, which needed consideration

● The congress unanimously endorsed the Group Areas Act guidelines laid down by the State President, Mr P W Botha, in Parliament on October 5

In a lengthy debate, most delegates expressed concern at the implications of open areas

● Du Plessis warns on sanctions —

BEHIND BARS!

The changing face of SA prisons

WEEKEND ARGUS SPECIAL REPORT

by ROBERT HOUWING
Weekend Argus Reporter

FOR mass human misery over a long period, nothing in South Africa has ever matched the Breakwater Prison in Table Bay docks, author Lawrence G Green wrote in his best-selling *Tavern of the Seas* book

"It became one of the most feared prisons in the world, a place that ranked in the criminal mind with Dartmoor and Devil's Island"

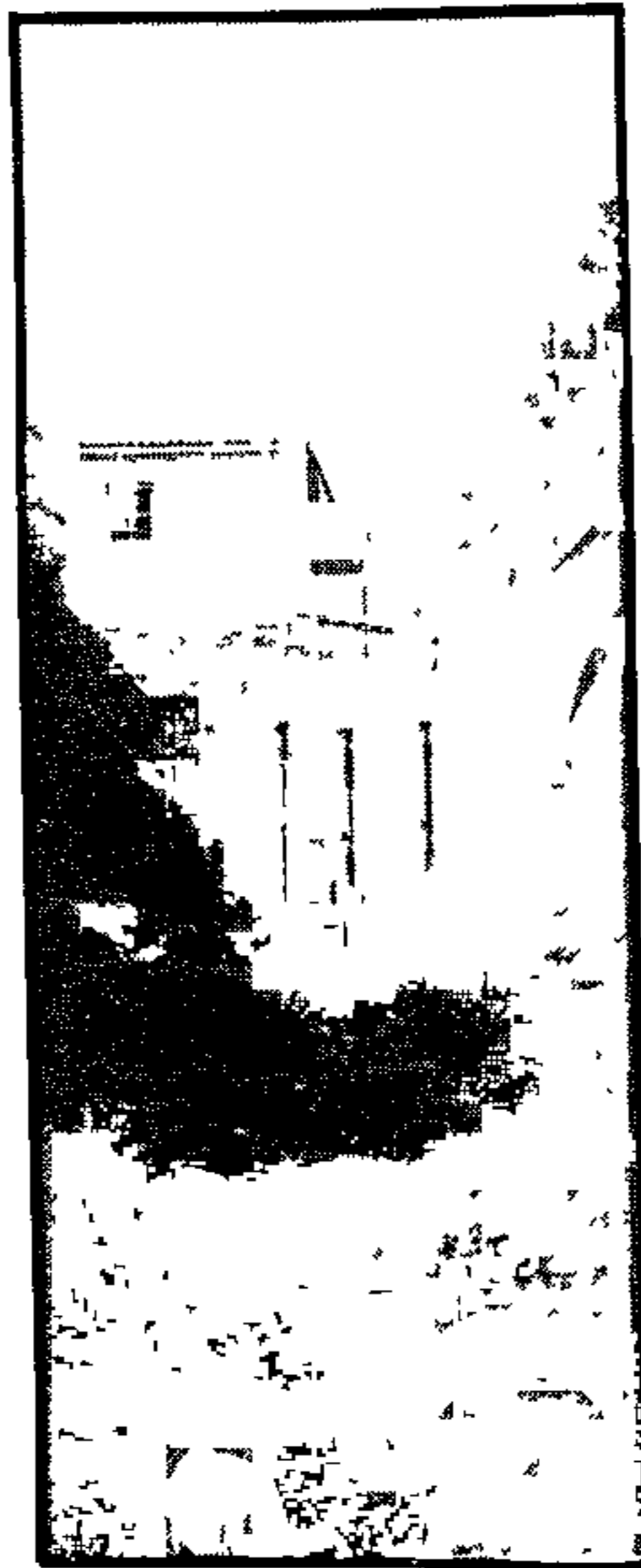
Breakwater Prison was particularly notorious for the punishments inflicted within its damp and dreary depths

The cat-o-nine-tails — nine knotted thongs of whipcord, pickled in brine to stiffen it — scarred a man for life, while the dreaded treadmill severely lacerated prisoners' shins if they slackened off

"A man would spend the whole day, from nine to five, climbing these endless stairs, with only five minutes rest every 30 minutes. And, in summer, a sadistic warder might inflict torture by allowing the wheel to run too fast," Green wrote

"The prison, founded under British colonial rule in 1860, now serves as a hostel for dock-workers, but the rusty remains of the treadmill machinery still serve as a grim monument to a penal system that bordered on barbarism.

Roeland Street Jail, established in 1859, also had an unhappy track record. But it is no longer in use, either — a R15-million arches building is being erected on the site.



The blocked off entrance to the tunnel leading to the Breakwater prison and along which convicts were moved to and from their labours.

Picture CAPTAIN CJ HARRIS

THE SA Prisons Service, which celebrated its 75th anniversary last year, has come a long way down the reform path since the harsh penal days of the previous century, although it has image problems of its own.

In 1983, the Hoexter Commission found prisons to be overcrowded by about 46 per cent

A study by the Human Sciences Research Council into 11 selected institutions last year estimated that up to 90 per cent of South Africa's coloured prisoners could belong to gangs.

LIFE INSIDE

Failures often highlighted — success hardly ever...

THE SA Prisons Service acknowledges that a prison is by definition the most undesirable place in the world to be in. It is a place where, according to English EC, "the only thing that matters is the fact that you are there."

In a statement, English said that the improvement of the SA Prisons Service is a major priority for the Department of Justice.

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The SA Prisons Service is a major priority for the Department of Justice.

and lauds the latest initiative of a day-parole system for prisoners as a "modern and progressive" move

The day-parole system, announced recently by Minister of Justice Mr Kobie Coetsee, authorises certain prisoners to leave prisons during the day to work or seek work before their official release.

Mr Coetsee said the plan was aimed at providing some assistance to prisoners before they were self-sufficient

Day-parole would help to reduce the shock of sudden release for prisoners who had been in jail for lengthy periods, gradually reintroducing them to involvement in the community.

"If offenders can be punished without being deprived of their livings and family life, an important advance has been made," Mrs Suzman says

"It is encouraging to see South Africa coming into line with many Western countries in this regard.

"The image of the Prisons Service has improved in several respects, including positive changes to recreation facilities, bedding, and the fact that they are trying to mend racial inequalities in terms of food provision

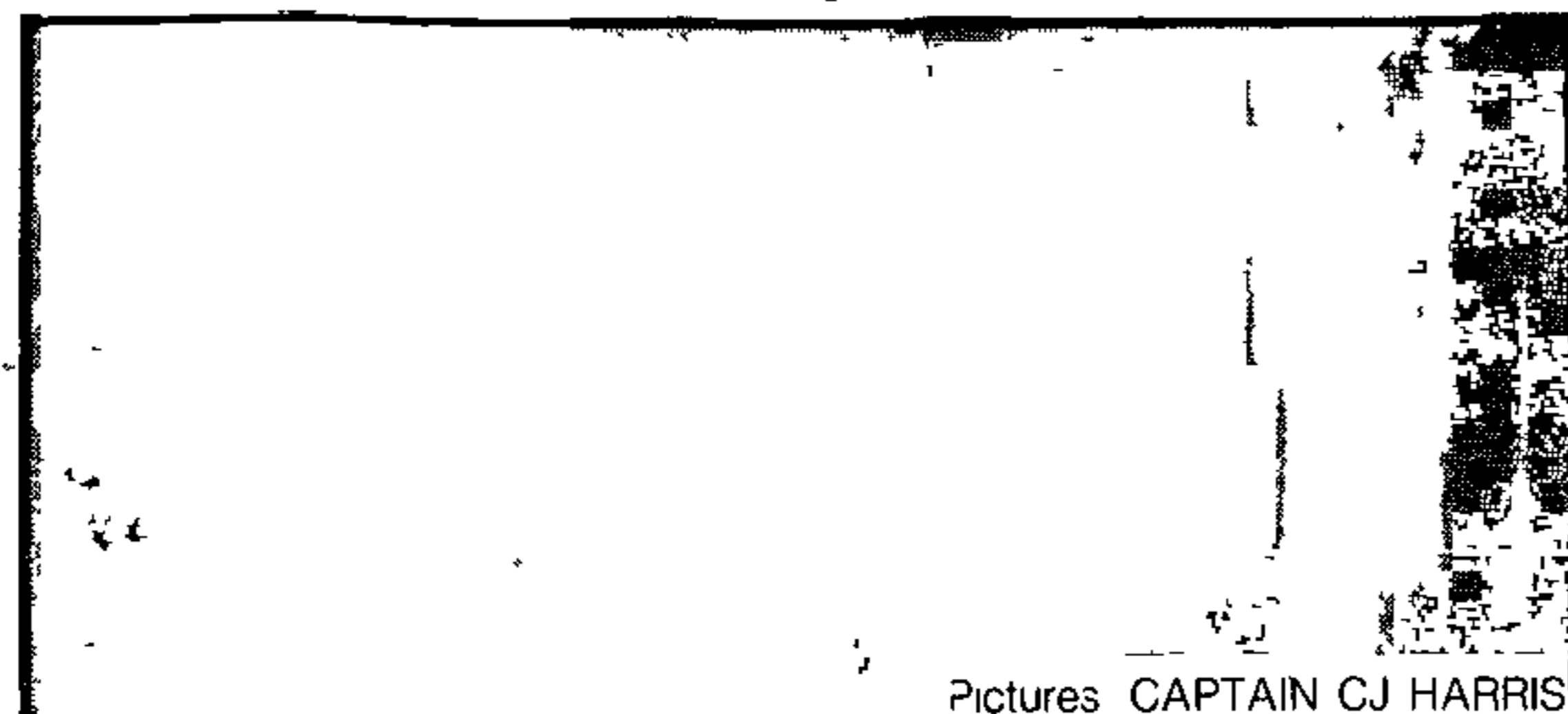
"A lot is still wrong, of course Press restrictions on the reporting of prison conditions are most unhealthy, and the fact that prisons are holding hundreds and hundreds of people detained without trial — a considerable number under the age of 18 — certainly gives the outside world the impression of a very harsh system

"But I must say that the current Minister of Justice is, relatively speaking, one of the most forward-looking and progressive-minded ones I have experienced in my years in Parliament"

SHE says she appreciates his understanding of the importance of organisations like Nicro (the National Institute for Crime Prevention and the

And the number of detentions without trial, allegations of maltreatment and unnatural deaths behind bars badly tarnishes the image of the justice system as a whole, says veteran Progressive Federal Party MP and spokeswoman on Law and Order, Mrs Helen Suzman.

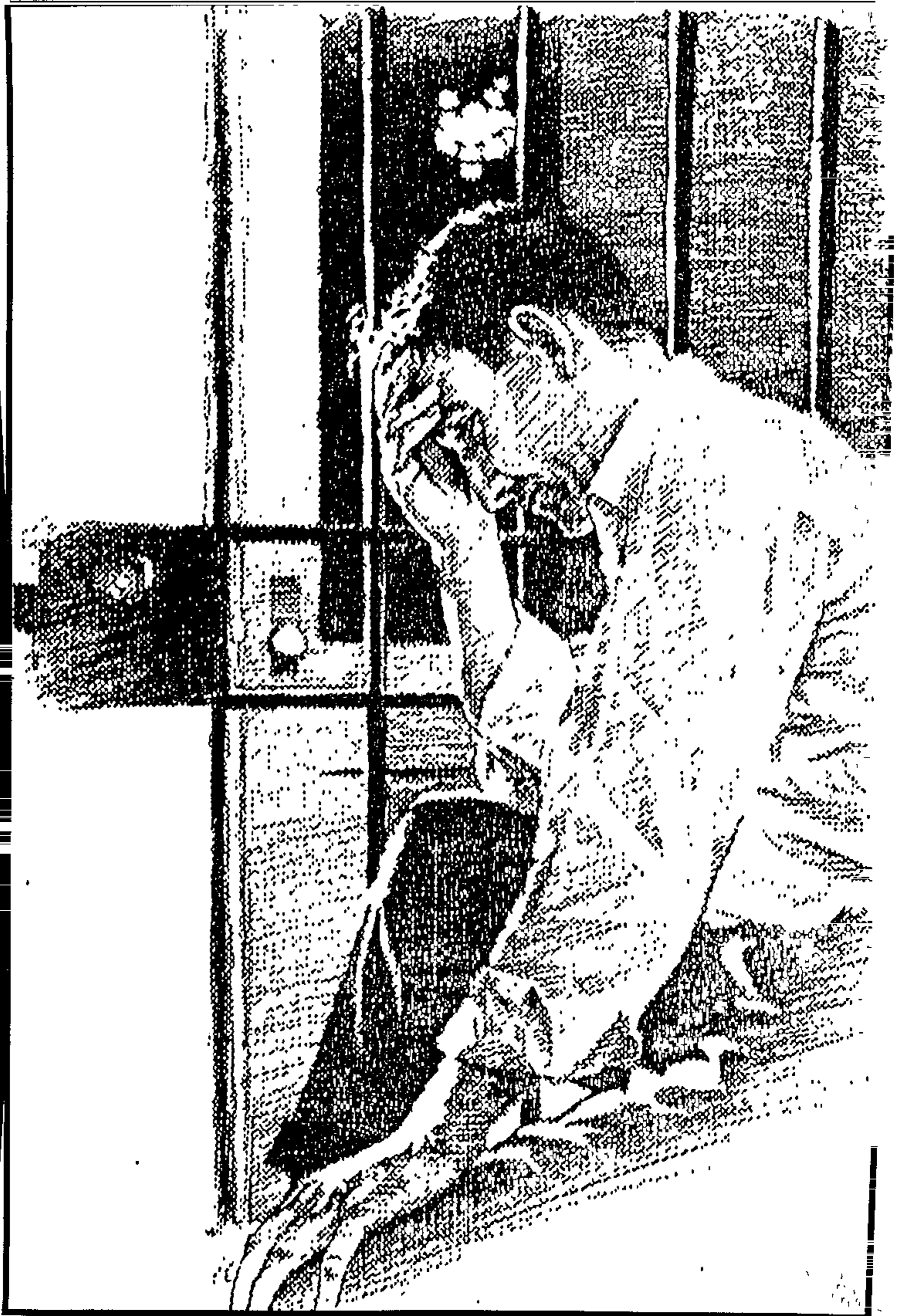
BUT she shares the view of criminologists and welfare workers that things appear to be looking up in certain respects,



Pictures CAPTAIN CJ HARRIS



The machinery controlling the infamous treadmill.



Rehabilitation of Offenders).

Nicro, a private welfare body, has made significant advances since the launch of a pilot project in Cape Town in 1980 for community service as an alternative to imprisonment in certain cases — mostly “economic” crimes rather than crimes of violence.

Nicro's Western Cape director, Linda Christiansen, says about 400 people had received community service orders in Cape Town courts since 1980. “The concept is picking up to the extent that we are averaging about 10 cases a month now — particularly driving while drunk offenders

“Magistrates were a little reluctant at first, but attitudes are changing for the better and we are trying to push this concept further afield

“The beauty of the scheme is that convicted people are staying with their families, instead of getting alienated and contaminated in a prison environment.

“Community service is not just helping to relieve overcrowding in prisons — it has led to job creation, because a number of these people carry on after the completion of their service at a particular welfare organisation, either on a paid or voluntary basis”

CHRISTIANSEN says prisoners behave like second-class citizens “But their self-esteem is restored if their identity is allowed to stay intact.

“I believe in punishment, but feel that it can be detrimental to remove a person from familiar surroundings”

University of Cape Town criminologist Mrs

Mana Slabbert says she welcomes progress being made, both in the field of community service and in the new parole development

“The day-parole system will mean quite a lot I am certainly not in favour of the total isolation of prisoners.

“I am still most worried, however, at certain aspects of the prison environment. How can you claim to rehabilitate prisoners in institutions where gang activity is rife, with accompanying murder, rape and tattooing?”

“And the general ratio of one trained psychologist or social worker for every 500 prisoners is a startling figure.

“But the Prisons Service deserves praise where it is due, latest steps will help to improve their negative image.”

BUSINESS

W/C ARKUS 17/10/82

252

LABOUR
AFFAIRS
DICK
USHER

Legal Aid Board move strikes at basis of Industrial Court system

ONE of the main underpinnings of the South African labour relations system is, in the end, the Industrial Court

Here disputes between two parties can be argued in an atmosphere far removed from the hurly-burly of shopfloor conflict and decisions reached where an impartial third party can take into consideration the special concepts of justice and equity enshrined in labour legislation

When the new dispensation founded on the Wierhahn Commission came into being it was recognised that the existing rights of workers required reform as did the institutions available to work-

ers to enforce these rights

The commission concluded that "the time had come for those rights derived from labour law to be adjudicated more properly — in a labour court"

"The aim was to encourage judicial rather than strike action

"It is a fact that countries with labour courts have experienced fewer strikes and have developed their labour law to a greater extent," the commission found

The decision by the Legal Aid Board earlier this year to halt aid for labour cases has struck at the whole basis of this legal system in which the court spends most of its time dealing with unfair dismissals and unfair labour practices

In a memorandum to the Association of Law Societies, calling for restoration of legal aid in labour cases, a group of concerned Cape Town labour lawyers said that the success of the Industrial Court was evidenced by the extent to which it had been used by both management and trade unions to resolve industrial conflict

From 30 cases in 1981, the court's case load had grown to 2 042 in 1986 In Cape Town a proportionate growth had been shown, with 97 applications launched in June alone

While it was possible for individuals to represent themselves in hearings, the lawyers argued that the complexity of labour law put an individual without representation at a tremendous disadvantage

"It is a fact of life that employers are general-

ly able to afford legal advice and/or representation and make good use of this facility in labour related matters

"On the other hand, the vast majority of dismissed employees are from the lower income group and have neither the savings nor the income to engage the services of an attorney

"Moreover, their position is usually exacerbated by the fact of their dismissal," said the memorandum

It also pointed out that many legal aid applicants were either illiterate or barely literate and had only rudimentary education

"Such a person's position becomes more precarious when, in the unlikely event of him attempting to bring his own case to court, he now has to face the company's attorney and counsel

"It is therefore our view that the Legal Aid Board's decision has severely restricted access to the Industrial Court because, faced with the complex task before them, a large sector of aggrieved employees with deserving cases will not be able to utilise the court without legal representation," the lawyers said

They warned that the "confidence which the court presently enjoys . . . would be greatly diminished

"Inevitably, aggrieved employees would increasingly resort to strike action or industrial unrest to resolve their grievances with management"

Inkatha men jailed for murder

By SIBU MNGADI

THREE Durban Inkatha Youth Brigade members were this week each sentenced to an effective 12 years' imprisonment by Maritzburg Supreme Court Judge Page for murdering a Cosatu member in Mthunzini and attempting to kill his girlfriend in December last year.

Cleophas Mbatsha, 20, Sikhumbuzo Buthelezi, 21, and Themba-kosi Ngyane, 23, all of Lindelani squatter camp - were found guilty with extenuating circumstance by Page and two assessors of having

shot Nathi Basi through the head. The dead man's girlfriend, Hlen-gwe Mkhize, was also shot in the head and was seriously injured during the incident at Sundumbili, Mthunzini, on December 16 last year.

According to evidence before the court the accused and supporters of Uwusa had gone there to conduct a publicity campaign on behalf of Inkatha, which controls Uwusa. Basi was accused of being a supporter of rival Cosatu but he denied this.

The three accused were each jailed for 10 years on the murder charge with extenuating circumstances and seven years' imprisonment for attempted murder. Five years of the sentence was ordered to run concurrently.

Page said he took into cognisance the ever increasing killing of people by "bands of thugs" purporting to act under the aegis of political movements. He said the courts had the duty of combating conduct of this nature which was reducing the townships to "lawless chaos".

It appeared that a great number of people involved were young and were acting under the protection of "youth movements".

He felt, however, that the youth of the perpetrators should not be accorded undue weight as a mitigating factor in this case. Nevertheless, he was imposing a lesser sentence on them than he would have on adult people.

The judge said the crimes committed by the men were a "ruthless murder and an equally ruthless attempted murder".

R800000 EIGHT HUNDRED THOUSAND CLAIM

A 27-YEAR-OLD unemployed Winterveldt man who was left paralysed and impotent after he was allegedly shot at by a white man three years ago yesterday claimed more than R800 000 in the Pretoria Supreme Court.

Mr Simon Mdakane said in papers before Mr Justice Hartzenberg, he was crippled after he was hit by a bullet in the spine on April 12, 1984. He said the incident took place as he was walking along a footpath near property number 509

By ALINAH DUBE

Deetliefs Street, Wonderboom, Pretoria North

He said that he would never recover and his life expectancy "has been diminished by between five and 10 years" Other problems he faced following the shooting included:

- Multiple bed sores on the left hip,
- The wasting of both lower limbs and paralysis from the waist down, and
- Having to empty his bowels with a glove when he did not take a laxative

Mr Mdakane said he sustained endured pain, suffering, permanent disability, shock, loss of amenities of life expectancy and impotency. He is claiming R810 437 from Mr John Frederick Gouws.

In a replying affidavit, Mr Gouws denied the allegations. He admitted having shot at a person who trespassed on his property but said he did not know whom he had struck. The shooting was in self-defence, he said.

Shot

Mr Dikgang Mosenke, who appeared for Mr Mdakane, said evidence before court will show that one shot was fired at his client that day.

Captain LA Rubinsheimer, of the Pretoria North Crime Investigating Unit, told Mr Hartzenberg that Mr Gouws laid a charge of housebreaking against Mr Mdakane after the shooting incident. He said the charge was withdrawn because the accused was in a serious condition.

(Proceeding)

Sweetan
22/10/87
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Sequel to
shooting
incident

APR 23/10/87

CITY/NATIONAL

Judge hits at ignorance of jails and conditions

The Argus Correspondent

JOHANNESBURG —

There was a prevailing ignorance among judicial officers about the realities of prisons and the efficacy of imprisonment, said Mr Justice JC Kriegler in an address on sentencing in times of political unrest.

Speaking at the University of Bophuthatswana (Umbo), Mr Justice Kriegler asked how many officers of the court had any knowledge of penology and how many of them knew what the inside of a prison looked like.

"Even those who have done jail visits, like myself, have but a superficial knowledge.

"To see the neat rows of folded bedding and the deferential phalanx of orange-garbed men teaches one little about the reality of prison life," he said

He suggested that judicial officers got to know a great deal more about what a jail sentence really meant

"In times of political unrest, when it behoves each and every one of us to do his utmost to restore the image of the criminal process, we cannot allow this kind of ignorance to continue"

The judge said it was the duty of members of the judiciary to know what happened in prisons and their duty to know how effective, in fact, were the sentences "that we blithely impose on people often of tender years"

"If it is so that a doctoral thesis has been embargoed, we should take note of that and we should inform ourselves all the better concerning the realities of our system of prisons and how it really works"

It was unfortunately true, he added, that there was public apathy about penology.

This was understandable,

just as it was understandable that there was public apathy about mental hospitals and the treatment of mental patients.

"None of us in normal society likes to be reminded of those unpleasant corners on the fringes of our awareness"

It was also so that any organisation run by any bureaucracy resented any scrutiny of its affairs

This was normal, natural and could even be right, said Mr Justice Kriegler

However, it was certainly not the function of the judiciary to adopt a non-pursuous attitude in those circumstances

Cripple tells of pain

A WINTERVELDI paraplegic claiming more than R800 000 from a white man who allegedly shot him in the spine, told a Pretoria Supreme Court judge yesterday that he lay in a street writhing in pain before he was dragged to a house shortly afterwards.

Mr Simon Mdakane (27), said this before Mr Justice Hartzenberg in a case in which he is claiming R810 437 from Mr John Frederick Gouws, who allegedly shot at him on April 12, 1984.

He is suing for endured pain, suffering, permanent disability, shock,

and impotency. He is paralysed from the waist down. He gave evidence from a wheelchair.

Cross-examined by Mr J L Blignaut, counsel for Mr Gouws, Mr Mdakane told the court that it was about 6am when he was shot in the back. "I was walking in a street when I felt my legs weakening. I

fell down and could not stand.

"I was writhing in pain. The next thing I saw was a white man who stood next to me. He carried something which I thought was a gun," the witness said.

He added that the man ordered him to stand up but he could not do so as

his legs felt numb. After telling the white man that he was in pain, Mr Mdakane said the man started dragging him towards a house about 20m away.

Mr Mdakane said at the house he was dragged over stairs and made to lie on a stoep. He felt dizzy and was very old.

Mr Mdakane said he later asked for a blanket from the man who had brought him to the house.

(Proceeding)

Detainee is brought into testify - then back to cells

AN Emergency detainee, Bongani Nxumalo, appeared in the Durban Supreme Court this week to give evidence in an application against the Minister of Law and Order.

It is believed this is the first time an Emergency detainee has been brought from prison to testify in such a case.

However, the case was cut short and dismissed after Nxumalo told the court he no longer feared the police would assault him, and the judge made an unusual costs order, to emphasise that no ruling had been made about the validity of Nxumalo's allegations.

Nxumalo, a teacher who lives in Chesterville, was arrested by police on April 23. He was later detained under Emergency provisions, without

By CARMEL RICKARD,
Durban

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having left police custody.

His application, brought on April 30, and opposed by the state, asked that the police be interdicted from assaulting or unlawfully interrogating him. He made allegations about police treatment both during the time he was under "arrest" and later, during the time he was held under Emergency provisions. 23-29/10/87

In terms of Emergency regulations, allegations about treatment during Emergency detention may be published only after final judgement, and as the dismissal of the case was a final ruling, these claims may now be published. W/Mail

Nxumalo claimed the police assaulted him at the time of his arrest after putting a canvas bag over his head so that he could not identify his assailants. Some time later during interrogation, police put first a plastic bag and later, when this did not appear to "work", a rubber tube over his head while again assaulting him and he lost consciousness.

He said they also threatened that since he refused to give information about the whereabouts of a firearm, he would be locked up in a cell with members of the A Team (a vigilante group in Chesterville) and they would make him talk.

During cross-examination, counsel for the minister asked Nxumalo whether he was not a "political activist" who would be prepared to go to the lengths of embarrassing the government by making "serious allegations which were not valid".

The case seemed likely to last for some time, with a number of police and other witnesses. However, during cross-examination Nxumalo said that since April 30 — the day on which the interim order was granted — he no longer feared for his safety at the hands of police.

Nxumalo's counsel subsequently agreed this meant he could not proceed with the application because an interdict can only be granted where there is a continuing fear of assault.

The judge said that in dismissing the case he made no finding about whether the alleged assaults had taken place.

(252) SM 23/10/87

Afrikaners told: lead on human rights

Pretoria Correspondent

It is the responsibility and duty of the Afrikaners as the leading group in South Africa to take human rights seriously, even though for a long time they have believed that human rights was an area for the liberal left.

This was the message at a discussion of human rights issues at the Centre for Human Rights Studies at the University of Pretoria last night, attended by more than 200 people, including overseas visitors.

Mr Justice Johan Kriegler said Afrikaners should campaign for human rights. It was also the duty of the law and lawyers to intercede and speak where the need was greatest — not only when the clash of arms was heard — but when anybody needed it.

"Afrikaans lawyers and universities have not been known as leaders in the world of human rights and have believed human rights belonged to the liberal lefties for a long time," said Professor Johann van der Westhuizen, of the University of Pretoria.

A growing awareness and interest in the

field, especially among Afrikaners, could possibly be attributed to the many cracks in the unity of the Afrikaner, he said.

Professor van der Westhuizen said black people felt all human rights were violated in the apartheid system and the two could not be reconciled. The destruction of apartheid was therefore the first priority and a Bill of Rights would come after liberation.

The National Director of Lawyers for Human Rights, Mr Brian Currin, said lawyers as a group, were doing very little for human rights and those that did were regarded as a "security risk by the authorities and as being shades of pink and red by their colleagues."

Lawyers had to work through the political ideology and develop a common human rights ethic and this was therefore one of the main objectives of Lawyers for Human Rights.

He said political battles were being waged in our courts and one seldom got to the crux of the violation of human rights — with tragic consequences to those suffering

He said they would be working to protect human rights which did not enjoy protection through the courts of law.

Mr George Bizos, SC, said political trials were a strain on any legal system but if "lawyers were to choose between political trials and arbitrary punishment the answer was obvious" as the bitterness and desire for revenge caused by arbitrary punishment was not difficult to imagine.

He compared the rights and treatment of criminal and political prisoners in this country. He referred to detention without trial and the fact that political prisoners were interrogated while, prior to a criminal trial, the prisoner was granted the right to remain silent and usually appeared in court within 48 hours of being arrested.

He said "The ease with which a miscarriage of justice could occur in political trials can't be underestimated." He added that there was a danger that an innocent person would be convicted and jailed or sentenced to death.



The two unrest unit officers standing trial for murder in Graaff-Reinet, Warrant-Officer Leon de Villiers and Constable David Patrick Goosen.

Claim: officer said he shot man in neck

GRAAFF-REINET — It was suggested yesterday in the Supreme Court here that the shot that killed Mr Wheanut Mlungisi Stuurman next to the Great Fish River last July was unintentionally fired by a policeman and was not a deliberate execution

Sergeant Heinrich Blumenthal was testifying at the trial of two Unrest Unit members, Warrant Officer Leon de Villiers, 36, and Constable David Patrick Goosen, 26, on charges of murdering Mr Stuurman and Mr Andile Plaatjies, and assaulting Mr Zixolisile Goniwe and Mr Michael Qhina

The offences were alleged to have occurred when the unit section, under the command of W/O De Villiers, was sent to Cradock to keep order at a funeral on July 26 last year

Both men pleaded not guilty to all the charges but they did not reveal their defence

It was put to Sgt Blumenthal by the defence counsel, Mr C Jansen SC, that when Const Goosen returned from the river he was pale and said that when he got to the river he slipped and a shot went off and hit Mr Stuurman in the neck

Sgt Blumenthal denied this, and said Const Goosen appeared normal and reported he had put the pistol against Mr Stuurman's neck and fired

He said Const Goosen had said one of the constables had helped him throw the body into the river, but that it had fallen on a sandbank

Sgt Blumenthal said he did not remember who had said Mr Stuurman should be "taken out" — Mr Stuurman had been assaulted during interrogation, but was not so badly hurt that he was likely to die

He admitted that it was possible that the purpose of taking Mr Stuurman to the river was to allow him to wash blood off his face before releasing him

He had not understood "take out" as execution, but it could mean that. He thought they wanted to interrogate Mr Stuurman in a secluded place

Even after W/O De Villiers said "Dis maar bad as 'n mens so jonk moet dood gaan", he did not take it seriously, as to kill the man would be murder

When after Const Goosen and two others left with Mr Stuurman W/O De Villiers said "I wonder when Goosen is going to shoot that black" He thought he was just "talking big"

He agreed that if he wanted to "take out" a man, he would have used one of the shotguns, because the shot could not be matched by ballistics

He would not have taken witnesses and he would have removed traces of his presence at the scene. He would not have announced his intention, or reported the shooting to relative strangers

He would also have taken care to conceal the body, and not just left it lying in the river

He agreed that when Const Goosen left with Mr Stuurman and the two constables, he was sober and seemed to know what he was doing.

The trial will continue on Monday. Mr Justice Zietsman was on the bench, with Mr B P Loots and Mr Jean van der Riet as assessors. The Attorney General, Dr J A van S D'Oliveira, assisted by Mr W Kingsley appeared for the State. Mr Jansen was assisted by Mr N du Toit, and instructed by Huisamen and Roelofse

Man refuses to plead to terror

25/10/87 CP Correspondent

C. Ives

AN alleged ANC member has applied to the Cape Town Supreme Court for protection under the 1977 Geneva Protocol.

Mxolisi Edward Petane, 29, of New Crossroads, has refused to plead to three charges of terrorism and two of attempted murder.

Pleas of not guilty were entered for him by the court.

Arguing against the application, deputy Attorney-General of the Cape D Rothwell, said a clear and unambiguous South African statute took precedence over international law of which the protocol is part.

He said that international law was part of South African law except when it conflicted with South Africa legislation or common law.

Judge Conrade is on the bench, with assessors LP Francis and W Vivier.

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Simon 29/10/87

Man loses R800 000 claim case

THE Pretoria Supreme Court yesterday dismissed a claim against a white man who allegedly crippled a Winterveldt man by shooting him in the spine three years ago.

Mr Simon Mdakane (30), was claiming R810 437 from Mr John Frederick Gouws (27), who allegedly shot him in the spine on April 12, 1984.

Dismissing the claim yesterday, Mr Justice Hartzenberg said Mr Mdakane was not shot while walking in the street as he had testified before court. He said Mr Mdakane and an unidentified man broke into a house and were shot at.

The judge said Mr Gouws was justified in

By ALINAH DUBE

firing a shot which left Mr Mdakane paralysed and impotent. He pointed out that Mr Gouws had to protect himself against the danger he might have faced when he realised there were strangers in his house.

Shot

He said there has been many incidents in which people were killed after they had surprised burglars.

Judge Hartzenberg found it "improbable" that Mr Gouws could have fired at Mr Mdakane while he was walking in the vicinity of

his home that morning. He stated that it was also unconvincing that Mr Mdakane was shot in the street because at no stage did he inform the police where he was at the time of the shooting.

"It is also illogical to think that Mr Mdakane arrived at Wonderboom, Pretoria North, at 5,30am looking for work. That must have been too early for anyone to make contact with an employer," the judge said.

Mr Mdakane, who is permanently disabled, was suing for pain, suffering, permanent disability, shock, loss of amenities of life expectancy and impotency. His lawyers said they were considering appealing against yesterday's ruling.

17/10/87
Glendale

head in court bid to save his job

Supreme Court Reporter

A SCHOOL head today asked the Supreme Court to declare his demotion and transfer illegal.

Mr Peter Carelse, acting principal of Glendale Senior Secondary School in Mitchell's Plain, claimed in papers before the court that the cancellation of his probationary period and demotion to primary school deputy principal were unlawful in terms of the Coloured Persons Education Act.

Mr Carelse, who has been acting principal of the school for five years, is being transferred by the Department of Education and Culture, House of Representatives, to a primary school on January 1 next year.

He applied urgently for the court to declare null and void the department's decision to end his probationary period on December 31.

He is also seeking an order entitling him to all his rights as principal until his appointment is lawfully terminated.

SUMMONED

The matter was postponed by agreement.

Mr Carelse said in an affidavit that he successfully made a formal application for the position of principal of Glendale in May 1984 and assumed that he would serve the usual 15-month probationary period which expired in March 1986.

However on July 27 this year he was summoned to a meeting of department officials at which he was criticised for "lacking leadership qualities, having inadequate communication skills and lack of control over pupils and staff".

He said: "It was also said that allowing the absence of pupils and staff on May 6 and July 28 constituted an act of defiance".

He said on this basis he had been accused of misconduct.

tion's (NPA) view before responding officially.

Judging from Van Wyk's comments and those of other Indaba officials and sympathisers, there is growing support for the notion that the NPA and KwaZulu Legislative Authority may reopen the debates that led to the Indaba. This time around, with government's blessing.

Intriguingly, the vehicle for such discussions — the Joint Executive Authority (see page 60) — will hold its inaugural meeting next week.

So whereas prospects for a referendum and the introduction of the Indaba proposals as they stand appear bleak, all may not be lost. ■

JUSTICE 30/10/81 (252) FM

More accessible

Justice Minister Kobie Coetsee's increases in the monetary jurisdiction of the lower courts should make legal redress more widely accessible. They are described by Mike Cooper, chairman of the Society of Advocates of SA, as "long overdue."

From January, the civil jurisdiction of magistrates' courts will be increased from R5 000-R10 000 for illiquid claims, and from R10 000-R30 000 for liquid claims.

In the criminal jurisdiction, maximum

fines the magistrates' courts can impose will be increased from R2 000-R4 000, while that for regional courts will be raised from R20 000-R40 000. The jurisdiction of small claims courts will also be increased, from R1 000-R1 500.

The FM has advocated similar measures (*Leaders*, August 21). They will make access to the courts easier for those unable to afford Supreme Court litigation, which is welcome. It was also suggested that jurisdictional limits be index-linked to prevent the renewed erosion of magistrates' courts' jurisdiction. The new measures at least go some way towards meeting that problem.

But they raise another problem: whether magistrates are sufficiently qualified to make such large awards. The 1983 Hoexter Commission described the work of magistrates in civil proceedings as "unsatisfactory." This is because most magistrates have no previous experience of civil proceedings, having worked mainly as prosecutors — hence the finding that their work in the criminal field was satisfactory.

The commission suggested certain remedies, including requiring an LIB as a minimum qualification (as opposed to a B Proc or B Juris); offering better pay to attract suitable people, and the establishment of a National Centre for Practical Legal Studies to provide better training.

Cooper acknowledges the grounds for this complaint, but believes that cases of the size

catered for by the new jurisdiction are best dealt with at magistrates' court level. "And when mistakes are made, there is an adequate appeal system to deal with them."

The other issue is the independence of magistrates. At present they are civil servants and, as such, subject to the constraints of working for a political master (given that State and government in this country are inseparable).

Judges, by contrast, are appointed from practising advocates by the minister of justice. This should ensure a minimum standard of competence.

Being outside the Civil Service, judges also enjoy (theoretical) independence from political pressure. Obviously the judiciary must be seen to be above politics if it is to enjoy respect. ■

CP Correspondent

THE Appellate Division in Bloemfontein is to hear an appeal by two Eastern Cape journalists against their continued detention under the state of emergency.

Mxolisi Jackson "MJ" Fuzile and Phila Ngqumba, who jointly run the Veritas News Agency in King William's Town, have been in detention since the state of emergency was declared on June 12, 1986.

The Grahamstown Supreme Court last year dismissed an application to have their detentions declared unlawful, but an appeal was noted.

The appeal in Bloemfontein has now been set for November 24, lawyers for the men said this week.

The application was originally also brought on behalf of four other King William's Town detainees. However, three of them - Brain Osteridge, Colin Jooste and Gareth Damons - have since been released and only Prince Mame is still being held with Fuzile and Ngqumba.

A security policeman,

Newsmen's detention appeal date set by court

Sergeant Conrad Anthony Williams, said in an affidavit used to oppose the application, he had received information that Veritas, the agency the two men run, planned to publish "in a newsletter, news about radical persons and organisations in which the community would be incited to civil disobedience".

The aim of the newsletter was to "make the public of South Africa ungovernable".

Williams also said Ngqumba was responsible for placing news reports on consumer boycotts in other areas.

The branch commander of the security police in King William's Town, Major Andre

Nel, also said the two journalists had planned a newsletter to propagate radical viewpoints in the region, adding there had been no alternative way to prevent publication but by detaining the pair.

In an answering affidavit, Fuzile denied there had been any intention of using his planned "Inyaniso media skills and research project to propagate consumer boycott, civil unrest or any ideas or ideologies".

Fuzile also argued the police could have taken other, less drastic steps to prevent publication and need not have detained him and Ngqumba. - Elnews.

Emergency does not 'render rights bill ineffective'

THE state of emergency did not necessarily render a bill of rights ineffective, attorney Monty Knoll said.

He told the Transvaal Law Society's annual meeting at the weekend "While there are bills of rights which provide for derogations from ordinary human rights conventions during states of war or national emergency, some do retain due process and outlaw detention without trial during an emergency.

"Examples of this are to be found in the emergency legislation of England. Some even vest in the courts a residual

MICK COLLINS

power to find whether or not a declaration of emergency was necessary.

"Some may think that such a residual power goes too far or draws the courts too much into the political process. Nevertheless, we see that a bill of rights need not be without effect during a state of national emergency."

Knoll said he hoped a bill of rights subject to the testing right of the courts would emerge in SA to give all the anchor and security they needed.

Such a bill of rights could help change the prevailing state of serious polarisation, ease the climate for meaningful negotiation and enhance the chances of bringing an end to the emergency.

"As lawyers we must work to that end and bring about a lasting era of government under the rule of law. This is the best guarantee for ensuring justice for all the peoples and every individual of our multi-faceted South African society."

Dealing with the role of the courts in times of national turmoil, Knoll quoted a

judgment by Mr Justice Toon van den Heever "Where Parliament has conferred vast powers of legislation upon the executive, the courts should not, in my opinion, be astute to divest themselves of the judicial powers and duties, namely to serve as buttresses between the executive and the subjects."

Knoll said he believed that if a true balance were to be preserved to ensure justice, lawyers should best be guided by fundamental rules and freedoms which had become associated with the concept of the rule of law.

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29/1/87
Mick Collins

THERE was no evidence that the throwing of a stone, or any other act by two of the Sharpeville Six sentenced to death for the killing of Lekoa councillor, Mr Kuzwayo Jacob Dlamini on September 3, 1984, had caused his death, the Appeal Court in Bloemfontein was told yesterday. *Sanetun 3/11/87*



Mr Mojaleta Reginald Sefatsa, Mr Reid Malebo Mokoena, Mr Oupa Moses Diniso, Miss Theresa Ramashamola, Mr Duma Joshua Khumalo and Mr Francis Don Mokgesi are appealing against their convictions for murder without extenuating circumstances and against the resultant mandatory death penalty.

Mr Motseki Christiaan Mokubung and Mr Mosisi Gideon Mokone are appealing against their convictions for public violence for which they were sentenced to five years' jail.

The eight were convicted by Mr Acting Justice W J Human in the Pretoria Supreme Court on December 13, 1985.

Mr Dlamini died after he was disarmed, stoned and burned. His house and car had been set alight.

Mr Jack Unterhalter, SC, submitted yesterday that there was no evidence that the throwing of a stone, or any other act by Mr Sefatsa and Mr Mokoena, caused Dlamini's death.

He submitted that there was doubt that Mr Sefatsa had thrown a stone that hit Mr Dlamini.

Burnt

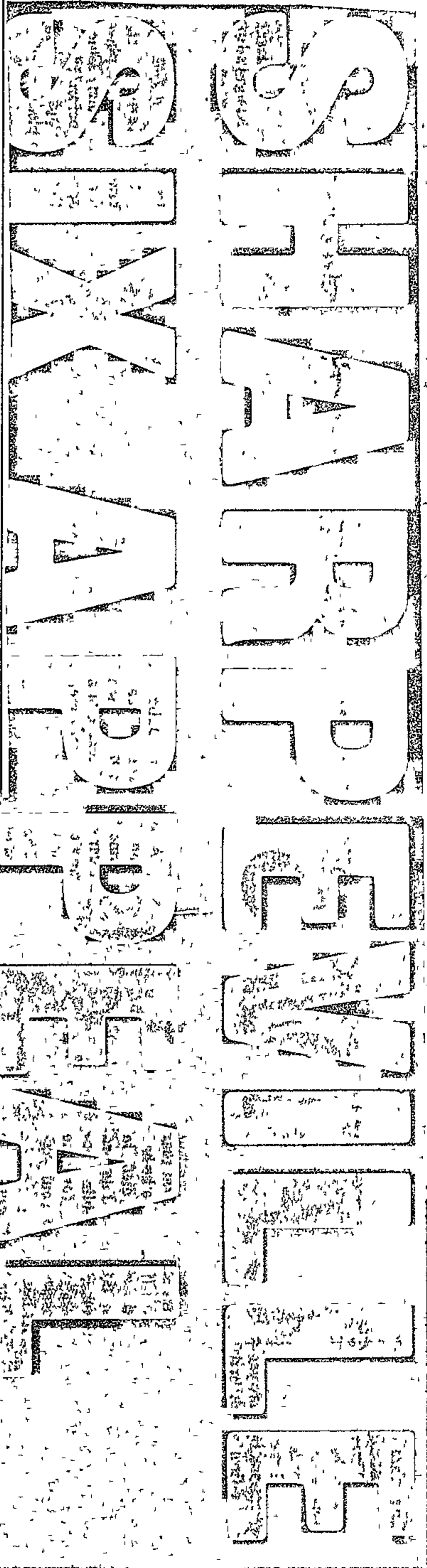
Medical evidence was that the causes of death were brain injuries and burning. It was submitted that Mr Dlamini was alive when he was burnt and the brain injuries had not caused his death.

Earlier, the court had granted the eight leave to argue on the full record in their appeals. The

State had taken the point that the trial court had only granted leave to appeal on three questions of law, and not on all the grounds on which leave to appeal had been sought.

After hearing argument from counsel, the court adjourned and decided that Mr Unterhalter would be permitted to argue on the complete record. The reason for the decision will be given in the judgment on the merits of the appeal.

The appeals are being heard by Mr Justice Botha, Mr Justice Hefer, Mr Justice Smalberger and Acting Judges of Appeal Mr Justice Boshoff and Mr Justice Steyn. (Proceeding)



THE 6 MUST WAIT

THE Appeal Court in Bloemfontein has reserved judgment on the appeals of eight Sharpeville residents who were convicted of murdering a Lekoa town councillor at Sharpeville in 1984.

Mr Kuzwayo Jacob Dlamini was disarmed, stoned and burned on September 4, 1984 after his house and car had been set alight.

Mr Mojalefa Reginald Sefatsa, Mr Reid Malebo Mokoena, Mr Oupa Moses Diniso, Miss Theresa Ramashamola,

Mr Duma Joshua Khumalo and Mr Francis Don Mokgesi appealed against their convictions for the murder — without extenuation — of Mr Dlamini and against the consequent death sentences imposed on them.

Mr J Unterhalter, SC, for the appellants, submitted that there was no evidence that any acts committed by them had caused the death of Mr Dlamini.

He also argued that there was no evidence

that they had had a common purpose to kill Mr Dlamini.

The remaining two appellants — Mr Motseki Christiaan Mokubung and Mr Motsidi Gideon Mokone — appealed against their convictions for public violence, for which they were imprisoned for five years.

All eight were convicted by Mr Acting Justice WJ Human in the Transvaal Supreme Court on December 13, 1985.

4/11/87

The law must be seen to be just

A COMMON human rights ethic amongst all members of the legal profession in SA — irrespective of political ideology — would force government to make an effort to legislate just laws

This is the belief of Brian Currin, newly appointed head of the National Directorate of Lawyers for Human Rights.

Currin, who took up his post on October 1, defines lawyers as anyone qualified in the profession, be they magistrates, prosecutors, judges, academics, attorneys or advocates.

He believes it is the task of his organisation to promote the concept of human rights, to advertise it and get lawyers to agree on what is civilised and just.

"I think there is an enormous responsibility on lawyers to think very carefully about the role they should be playing," Currin said.

"Although in this country judges and magistrates are forced to apply the law as it stands, they can still comment

"If judges commented daily on the justice or otherwise of the laws they were applying this would give government something to think about," he said.

"At the moment one has very

The protection of human rights has become recognised world-wide as essential to the democratic process. Yet lawyers and others seeking to entrench the human rights ethic in SA are often regarded as politically suspect — frequently by their own colleagues. In an interview with SUSAN RUSSELL, newly-appointed national director of Lawyers for Human Rights Brian Currin outlines the role his organisation hopes to play in fostering human rights in SA

little chance of really making significant inroads and promoting human rights until we, as lawyers, start talking about the same thing.

"A magistrate must know what I mean when I come to court and say I am representing a client because his rights have been violated.

"He must be big enough to accept we may be different politically but we are fighting about a principle, a right which is the norm in any civilised society.

"We as lawyers must try to work through the ideology and establish a common human rights ethic. We must agree that the State can go so far and no further."

As an attorney, Currin has spent the past 10 years representing people affected by the apartheid laws in this country. He joined a Pretoria firm of at-

torneys in 1977 immediately after being admitted to the side bar. By the time he resigned last year his practice consisted entirely of labour and civil rights cases.

He said he decided to resign and set up a civil rights institute on his own "right in the heart of nationalism" after realising that while he was representing detainees and people affected by the emergency regulations, the underlying social, economic and political consequences of the system were not being addressed.

Currin said at about the same time he was approached by Lawyers for Human Rights, who had decided to establish a national directorate.

He decided to work with them, and shortly after a four-month tour

of nine countries speaking to human rights organisations he took up the post.

Currin said as an organisation the national directorate would have to create a much bigger network to provide legal services to people whose rights had been violated.

He said the reasoning behind the national directorate was to have someone on a full-time basis to coordinate the efforts of practising lawyers in the human rights field

"It was found that one might have 100 to 200 lawyers in the country involved in this field, and the right hand didn't know what the left was doing."

Currin said the definition of "human rights" was actually a misnomer. "We are not talking about le-

gal rights, which are enforceable in court and protected by law, but rather rights which people ought to have but which have not been extended or have been taken away.

"What we are really talking about, I think, are people's reasonable expectations, what an individual is entitled to as part of mankind to enable him to live a happy, fulfilled life with dignity."

Currin praised the vast network of so-called non-government organisations (NGOs) with which he came into contact during his overseas tour. These NGOs have, through persistent lobbying, established an international human rights ethic.

"There are set norms and standards," Currin said, "which countries at least pay lip service to"

He said these NGOs were staffed by qualified lawyers who constantly researched, investigated and published their findings on every facet of human rights.

Currin was impressed by the successes these NGOs have had, and sees the national directorate in SA following the same path

"The law must be seen to be just. All people in this country must look up to those who apply the law as fair, just and equitable," he said.

First legal 'political' death in Kei

Correspondent

THE Ciskei Supreme Court has sentenced one man to death and jailed four others for lengthy periods for a necklace murder.

This is believed to be the first politically-linked death sentence to be passed in Ciskei.

Thembisile Baneti, 35, of Alice, was sentenced to death after being found guilty of the necklace killing of alleged Port Elizabeth vigilante Kwezi Nyenyana in July last year.

Xolani Songayi, 18, was sentenced to 20 years, Koliswa Seti to 15 years, Nyikl Nakane, 18, to 15 years, and Mawethu Mabona, 18, to 12 years.

The remaining 13 were acquitted. All five accused were granted leave to appeal.

Two of Baneti's 17 co-accused gave evidence against him.

One State witness said Baneti suggested that the vigilante must not only be chased away but burnt.

The second State witness said she

was intimidated by Baneti into joining the group.

At the close of the State's case, the defence applied for a discharge of the accused due to lack of evidence.

The application was refused.

In his defence, Baneti said that according to his custom it would have been degrading for him to associate with children half his age.

He said that he was an uneducated person. Concord News

CP Press 15/11/87 (990)

Grahamstown's 'greenflies' told...

GO HOME!

252
100A

CP Correspondent

MOST of Grahamstown's municipal policemen have been dismissed and sent home after participating in an illegal strike last week.

One of the local "greenflies", as the township policemen are known, said that about 70 of the policemen had decided to stop work on Tuesday in an attempt to secure a pay increase.

He had not joined the stoppage.

He said "I earn only R219 a month and some earn less than that."

He said municipal policemen in other areas earned more.

The policeman, who asked not to be named, said the commanding officer had told them that they were not allowed to stop

work.

"He said that we must fill in forms listing our complaints. All those who stopped working were dismissed," he said.

"My grievances are the same as the other policemen, but because I was born and bred in Grahamstown and I have nowhere else to go, I did not stop working."

Most of those dismissed came from Zululand and were sent back by bus. Less than 25 municipal policemen remain in Grahamstown.

This information was confirmed by two other "greenflies" who also did not participate in the stoppage.

One of them said more than 70 - all from Zululand - had been fired.

The station commander of the municipal police, W/O I Merrington, said under the emergency regulations the municipal police were under the control of the SAP and he could not comment.

The district commandant, Major H Herschmann, said only the police liaison officer for the Eastern Cape, Capt Peet Grobler, could comment.

Grobler said the municipal police were under the control of the city council and he could only comment about unrest incidents.

The mayor, C Draat, said that Merrington or the town clerk, K Cilliers, were in a position to make a comment.

Cilliers refused to comment - Ana

Chiefs

management has requested end.

All the prizes galore for the three. The contest is sponsored by Billing, Sales House, Puma and

ment for the evening will be by Yvonne Chaka Chaka and the Young Five.



Yvonne Chaka Chaka

FOR FEELING

CP Correspondent

A DETAINEE who loses an application for his release in the Supreme Court could face paying State costs to the tune of tens of thousands of rands.

And if he is unable to pay, his possessions "may well be auctioned to contribute towards the payments of such costs".

So says the Port Elizabeth office of the Legal Resources Centre, which estimates that there are now 126 emergency detainees and five Section 29 detainees in the Eastern Cape recorded on their books.

Many of these, the LRC says, have been in detention since June 12, 1986. Many have never been interrogated, none have been charged and many have denied the reasons given by the Minister of Law and Order for their detentions.

The LRC said that it was difficult for detainees to regain their freedom because the law pertaining to emergency detainees did not permit them to be freed purely because their "reasons" for detention could be proved to be invalid.

The courts have held that the law prohibits detainees from even appearing in a court to defend themselves. This point is presently being argued in the Appellate Division in Bloemfontein.

It was made by the LRC on behalf of two detainees on the grounds that Regulation 3 (10) of the emergency regulations does not preclude detainees from appearing in court to give evidence.

The appeal arises from applications for interdicts restraining the South African Police from assaulting, ill-treating or unlawfully interrogating two detainees, Wellington Apleni and Tingo Lamani, who were being held

25/2
CP News

15/11/87



FLASHBACK: The pain and the tears ... a victim is hurried to an ambulance and a scene at a funeral service.



Alex bus disaster case to kick off

By DERRICK LUTHAYI
ONE of the most unusual criminal cases in the legal history of South Africa in which an accused faces a charge of manslaughter, is due to start on January 29 at the Graskop Magistrates' Court in the Eastern Transvaal.

At least 100 witnesses, mainly Alexandra High School pupils and teachers, are to testify against George Mokone, the driver of the

Kowyns Pass, where 14 students died and 77 were seriously injured. Mokone, 33 of Mamelodi, who is out on a second trial of R300 after the first was estreated when he failed to appear in court, has appeared six times before Magistrate H Labuschagne.

Mokone has as yet not been asked to plead. The investigating officer, Sgt JJ Boshoff, has worked around the clocked thousands of kilometers tracing witnesses. It is believed that the case had been delayed to enable pupils to concentrate on their end-of-year exams. The pupils were killed and injured on the evening of May 22, while on their way to one of the Department of Education and Training youth centres at Klaserie.

Ninja Pleasure Resort, was partly owned by runaway Mamelodi Sunday boss Zola Mabohe. At a time of the tragedy, Education and Development Aid Minister Dr Gerrit Viljoen sent messages of sympathy to the families of the dead and injured pupils. The Sandton Town Council was also touched by the incident and immediately established a relief fund under the chairmanship of

FOR

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C/M

CP Correspondent

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The appeal arises from applications for interdicts restraining the South African Police from assaulting, ill-treating or unlawfully interrogating two detainees, Wellington Apleni and Tango Lamani, who were being held at St Albans Prison.

Dispute of fact arose when the affidavits of the police officers contradicted those of the detainees, and the judge dismissed the case with costs.

If the appeal is successful, the rights of detainees will be affected for the better.

According to the LRC, at present to obtain a release from detention, the onus is on the detainee's lawyer to prove that the State was acting in bad faith, or that the Minister did not "apply his mind to the extension of a detention" - irrespective of whether his reasons for doing so were valid or not.

Therefore, the court has to deal with the subjective opinion of the Minister and his employees, rather than with the guilt or innocence of the detainees.

If an application for the release of a detainee is overturned, the detainee faces enormous financial costs and, on his release, he cannot be sure of a job.

"Most of our clients seldom have employment to return to once they are released, due to fears by employers of their employees' involvements - presumed to be proven by their detention," said the LRC.

The LRC also states that 444 missing persons have been referred to the office since June 12 last year, of which less than a third have been accounted for. Pen

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Sisulu loses case

A COURT yesterday rejected an appeal by *New Nation* editor Zwelakhe Sisulu that he be released after 11 months in detention without charge. The *New Nation* newspaper is a weekly published by the South African Catholic Bishops Conference and aimed at black readers. The newspaper is strongly critical of the Government's apartheid policies. The Rand Supreme Court ordered Mr. Sisulu to pay costs.

According to police documents, Mr Sisulu is in detention "mainly based on his involvement with *New Nation*." Mr Sisulu was "actively involved in writing and publishing articles in *New Nation* which led to the creation of conditions for unrest," police said in court papers. Mr Sisulu, the son of jailed African National Congress leader Walter Sisulu, was not allowed to attend the hearing. — Sapa-AP.

Sowetan - 18/11/87

critical of apartheid. I hazard the opinion that the Government does not

case until December 3 to enable the defence to call witnesses. court when called. Mr J. H. Bekker, the

CAC- Tiers
24/11/07

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Court fight over school committee

By SHAUNA WESTCOTT
Supreme Court Reporter

A MEETING called for today by the Department of Education and Culture to elect a new school committee for Calvinia's Fanie van der Merwe Senior Secondary School has been cancelled by order of the Supreme Court.

The order follows an urgent application brought by the current school committee, which sought an order declaring the department's decision to dissolve it unlawful.

In an affidavit the Rev Adriaan Louw, resident NG Sendingkerk minister and chairman of the school committee, said that on July 31 the school's head student, Mr Barend January, distributed a note calling on fellow pupils to attend school on the following Monday without their books.

Mr January was arrested by security police but released when Mr Louw undertook to address pupils, whom he subsequently advised to "follow the correct channels if they had grievances".

Students then sent a letter to the school committee in which they expressed dissatisfaction at the dismiss-

al of one teacher and the appointment of another.

At the same time, pupils did not attend formal classes, irritating security police who warned Mr Louw that they would "invade the school".

The school committee then unanimously decided, in the interests of the school and pupil safety, to close the school for the rest of the week.

"The situation was subsequently effectively defused and all parties concerned calmed down," Mr Louw said.

However, the school principal, Mr W Williams, twice refused to carry out the instructions of the committee, and finally complained to the chief inspector that Mr Louw was "undermining his authority and should be replaced".

A letter from the department, purporting to dissolve the committee, followed.

The application was indefinitely postponed yesterday, with the Minister of Education and Culture and officials in the department ordered to let the committee's attorneys know by December 7 if they intend to oppose the application.

They were ordered further not to reconvene an election meeting without "adequate" notice to the committee's attorneys.

25/11/87

Judgment reserved on six detained

BLOEMFONTEIN — Judgment has been reserved by the appeal court in Bloemfontein on the appeals of six people from the King William's-Town area regarding their detention under the emergency regulations.

The appellants are Mr Phila Ngqumba, a freelance journalist detained on June 17, 1986, Mr Prince Mhahme detained on June 25, 1986, Mr Adam Damons for his son Gareth, Mr Mxolisi Jackson Fuzile, a freelance journalist, and Mr Brian Osteridge, and the Rev Colin Abraham Godfrey Jooste

On September 4, 1986, a full bench of the Eastern Cape Supreme Court dismissed applications by the appellants for declaratory orders on the validity of the regulations and for their release

The respondents were the State President and government of South Africa and the Minister of Law and Order. Also cited were the officers commanding Kei Road police station, King William's-Town prison and police station, and Berlin police station

The appeals were heard by the acting Chief Justice Mr Justice Rabie, Mr Justice Joubert, Mr Justice Viljoen, Mr Justice Hefer and Mr Justice Vivier

Submission

Mr D P de Villiers QC and Mr I G Farlam SC appeared for the appellants and Mr J L van der Merwe SC and Mr L E Leach for the respondents

For the appellants it was submitted that the general principle where a person was arrested without a warrant was that the person who arrested, caused the arrest or relied on its lawfulness, should prove that the arrest was justified in law

It was submitted that in the case of each detainee the respondents had not established that the arresting member held the requisite opinion in terms of regulation 3(1)

It was submitted that the lower court erred when it held that an unlawful arrest becomes lawful if, even though the detainee is not informed of the cause of the arrest as soon as practicable after his arrest, he is informed of the cause later

It was also submitted that, for the purposes of a valid detention, it is required that the arresting and/or detaining member should apply his/their mind(s) to the duration of the detention considered necessary for the prescribed purposes

It was said that it could not be right that all detentions under regulation 3(1) were automatically for 14 days unless the minister ordered an earlier release

Sapa
(25/2)

Hangings end the story of two rape-murders

The Argus Correspondent

PRETORIA. — The final chapters in two of the country's most gruesome murders were written today with the execution of Klerksdorp "boot" murderer Joseph George Scheepers and 19-year-old "Coke bottle" murderer Johannes Wessels

Also executed at the Pretoria Central Prison were Jim Khethong Mokwena and Simon Ramohatshe Moatche. The four hangings have brought to 136 the number of criminals who have been executed this year.

Scheepers was hanged after his plea late yesterday for a stay of execution was rejected.

Long sentences

Scheepers was one of four married men involved in the rape and murder of a young woman who was locked in the boot of a car which was set alight.

The other three are serving long jail sentences.

Also hanged in Pretoria Prison was 19-year-old Coke-bottle murderer Johannes Wessels. He and three others were found guilty of raping Elizabeth Moakoena, 18. Wessels and another man were convicted of murdering her.

The other three are serving jail sentences.

The four married men — Wessels, his 19-year-old neighbour Christo Viljoen, and two friends, Frederick Swanepoel, 25, and Michael Mynhardt, 24 — forced the girl into a bakkie at a bus stop after demanding her pass. They took her to dam and took turns raping her.

"Mad Max"

Wessels knocked her out with a bottle and the four left.

Wessels, Viljoen and Swanepoel returned later and Wessels stabbed the half-naked girl to death with a diving knife.

The court heard that Wessels and Viljoen had seen the "Mad Max" the night before the murder and were greatly impressed by its violence.

An application by Wessels for a stay of execution was rejected.

RAPISTS HANG FOR KILLING BLACK WOMEN

(25)

29/4/87



Baby-faced killer Johan Wessels

By **DESMOND BLOW**

TWO notorious white rapists and murderers of black women were hanged on Thursday morning at Pretoria Central Prison

They were hanged with two black murderers

Baby-faced killer, Johan Wessels of Bethlehem, then 18, was sentenced to death last October for the brutal rape and murder of schoolgirl Elizabeth Mokoena

Hanged with him was George Scheepers, then 21, who was given the double-death sentence in Klerksdorp for raping and then burning to death Ginny Goitstone, 20, in the boot of a car in September 1985

The life of a second killer sentenced with Scheepers, Schalk Burger, 20, - also given a double death sentence - was spared a week ago by the State President

Wessels was refused leave to appeal. The other two lost their appeals against their death sentences, and all three made a final effort to save their lives through a plea for mercy to State President P W Botha.

However, a week ago they were informed that only Burger was successful.

His sentence was commuted to life and he was removed from death row. The other two were told they would be hanged yesterday.

Both cases were the centre of much attraction.

In sentencing Wessels, the Judge President of the Free State, Frank Smuts said that although Wessels was only 18 years, he was a married man and of above average intelligence.

Wessels had told the court he was drunk, but the judge said that it was only Wessels' evidence of how drunk he was. And even this showed he was aware of what he was doing.

Scheepers and Burger had also alleged that they were drunk when they raped and murdered Goit-



George Scheepers ... double death sentence.

sione, a nurse

But, the judge in that case, Judge Schabardt said this was not a mitigating factor.

The judge said it was common for young people in South Africa today to use their youth and alcohol abuse as excuses for acts of violence.

He said that although both were young, they were married with children and therefore were used to having responsibilities.

After sentence was passed, Burger told the court he had something to say. "I want to say how sorry I am for what happened."

He asked the family of the murdered woman and her boyfriend, Morake Wessie, who he had helped rob and assault, for forgiveness.

He denied that he had a part in the death of Goitstone and said that Scheepers alone was responsible.

Scheepers told the court he had nothing to say.

Wessels also asked for forgiveness after he was sentenced.

He said "I ask the Lord to forgive me for the terrible thing I did."

In the Scheepers case, Burger and two others - Johannes Adriaan Matthysen, 20, and Daniel Arnoldus du Randt, 20 - had found Goitstone and Wessie parked in Wessie's BMW on the side of the road.

They had pretended to be policemen and commandeered the car. They assaulted and robbed Wessie and raped Goitstone.

Scheepers poured oil on a screaming Wessie and he was told to get into the boot of the car. He, however, managed to escape. Goitstone was then locked in the boot and Scheepers siphoned petrol from the tank of the car, threw it in the car and set it alight.

Evidence was that Goitstone screamed for help as she was burned alive.

In the Bethlehem case Wessels also had three companions. They also pretended to be policemen.

The others were Christopher Viljoen, 19, Frederick Swanepoel and Michael Mynhardt both 24.

They drove up to a bus stop in the early hours of one morning and confronted schoolgirl, Elizabeth

Mokoena, who was waiting for a bus with two male cousins.

The bogus policemen demanded their passes and then said they were taking Elizabeth to the police station. They drove her to a desolate spot where they ordered her to undress and raped her on the back of a bakkie.

After she was raped, Wessels hit her with a bottle and she fell off the bakkie.

They drove away to take Mynhardt to work, and Wessels had then driven back with the other two to where the girl had been left lying in the veld.

She was dazedly sitting up trying to put on her blouse when Wessels jumped out of the car, seized a hunting knife from the cubby hole and cut her throat.

Viljoen had then driven the bakkie over her.

In both cases the prosecutors had asked for the death sentence for all four.

In the Bethlehem case Viljoen was also found guilty of murder, but with extenuating circumstances.

He was sentenced to nine years' imprisonment for murder and eight for rape, with two years to run concurrently. This left him with an effective 15 years' jail term.

Mynhardt and Swanepoel were both sentenced to eight years for rape.

In the Klerksdorp case Durandt and Matthysen were each sentenced to 18 years for rape and robbery.

The two black murderers hanged with Wessels and Scheepers on Thursday were Simon Moatche convicted in the Rand Supreme Court on August 28, 1984, and Jim Mokwena, convicted in the same court on February 27 this year.

27/11-3/12/89
No bail because police 'won't live'

By CARMEL RICKARD,
Durban

Youth Brigade members on September 25.

TWO South African Police members and their co-accused should be refused bail as they would not live to stand trial if they were released, a Pietermantsburg prosecutor said this week.

(252)
The state's main argument was that the situation in the townships was abnormal and the accused would be murdered by the families, friends and relatives of the 13 deceased if they were freed. *W/haul*

He was arguing against a bail application made on behalf of people accused of the murder of 13 Inkatha

Judgement was reserved and is expected to be delivered today.

MAGISTRATE who gave a lawyer three hours to discuss a case with clients he had not yet met, was rapped over the knuckles by the Supreme Court.

Worcester regional court magistrate AJ van Wyk's behaviour was found on review to have resulted in four young residents of the town's Zwelethemba township being denied their right to legal representation.

Van Wyk found them guilty of public violence (stone-throwing) on December 10 1985 Mpho Letaba, Ernest Ntantsana and Ntobeko Nkawali — aged 21, 20 and 17 at the time — were sentenced to five years' jail with two years suspended. Xolani Ndabeni, then 16, was to receive six cuts.

All four have been on R1 000 bail each for the past two years, pending the outcome of this week's application. Now their convictions and sentences have been set aside.

Mr Justice AJ Lategan, with Mr Justice HC Nel concurring, found Van Wyk had "misdirected himself and committed an irregularity" when he refused to allow a postponement of the original trial.

Cape Town attorney Alan Chiat explained in an affidavit why he had asked for a postponement. In the week since he was first asked to act for the accused, attorneys couldn't get into Zwelethemba to consult with them or their witnesses. Police had sealed off the township to everyone but residents.

He also needed more details of the serious charges his clients faced, charge sheets in public violence trials usually being of a "vague nature", as well as time for an *in loco* inspection and to prepare his cross-examination of state witnesses.

Van Wyk refused — among his reasons being that state witnesses had travelled from Pretoria for the trial and that a third party, the Dependents' Conference, had instructed Chiat, rather than the accused.

He stood the matter down for three hours, during which time Chiat was expected to

- Consult nine accused (five were acquitted) and 10 possible witnesses.

- Study the charge sheet, which gave no details of the times or place of the alleged offences or of damage or injuries suffered.

- Get further details of the charges, study them and consult his clients.

- Visit the area in question, assimilate all the facts "and thereafter do justice" to his clients' case.

The lack of time and having to work through a Xhosa interpreter meant he got only superficial details from the accused — one of whom was unavailable as he was "still being detained". He couldn't consult with a single witness.

He again asked for a postponement. Van Wyk dismissed it. When the trial resumed the next day, Chiat told the magistrate he would remain in court to protect his clients' interests but would not cross-examine witnesses or lead evidence because he was insufficiently prepared.

He decided that if his clients were convicted and sentenced, he would make use of appeal and review pro-

By GAYE DAVIS,
Cape Town

ceedings. His decision was vindicated this week.

"Magistrate Van Wyk has not responded to attorney Chiat's affidavit which amounts to an uncontested statement and it is quite clear that Magistrate Van Wyk misdirected himself and committed an irregularity in not granting a postponement," Justice Lategan said.

"An accused's right to legal representation is one of the basic rights an accused in a criminal trial has.

"The net result of the magistrate's refusal to grant such a postponement was a denial of this basic right by denying the postponement (the magistrate) denied the accused an opportunity to be properly represented by an attorney."

This irregularity was of such a nature that the four's subsequent conviction and sentence, "must be held to be null and void and to no effect".

It was up to the Attorney General whether they should be charged again — "and if so, preferably before another magistrate".

Van Wyk presided over a well-publicised case in May last year when 120 residents of the Boland township of Zolani, near Ashton, appeared.

Many of the women were clad only in underwear or nighties and some of the men in their underpants. They had been arrested in a midnight raid two days earlier and many bore marks of beatings. Their condition shocked Black Sash court monitors and other observers, but Van Wyk failed to make any comment. Bail was eventually granted on appeal to the Attorney-General and charges against 90 were withdrawn. The remaining 30 were acquitted in January this year for want of evidence against them.

Attorneys dealing with public violence cases arising out of the political turmoil of the past two years said this week the decision set a "welcome" precedent.

"We have experienced situations where cases, particularly those in rural areas where the accused are more often than not unrepresented, have been dealt with very quickly.

"With this decision, the supreme court has stipulated very clearly that everything possible must be done to accommodate the accused," a lawyer said.

A rebuke for three-hours delay magistrate

MS 2

WEEKLY MAIL, December 4 to December 10, 1987

LEGAL PROTECTION

252

A new insurance policy that will make lawyers affordable to all who can afford premiums of R18 a month was launched this week.

Legal Insurance SA (Lisa) legal protection insurance policies could have dramatic repercussions, especially if they find favour with employers.

Leading advocate Arthur Chaskalson recently said that SA's legal system has not been able to provide any meaningful support for the defence of criminal cases.

Tens of thousands of people are convicted every year and imprisoned without the benefit of legal representation.

Three policies, underwritten by ACA Insurers (formerly Atlantic & Continental Assurance), are available:

Lisa Personal Legal Protection. With

a monthly premium of R18, providing indemnity of R25 000 per claim;

Lisa Matrimonial Legal Protection. With a monthly premium of R48, providing indemnity of R10 000 per claim; and

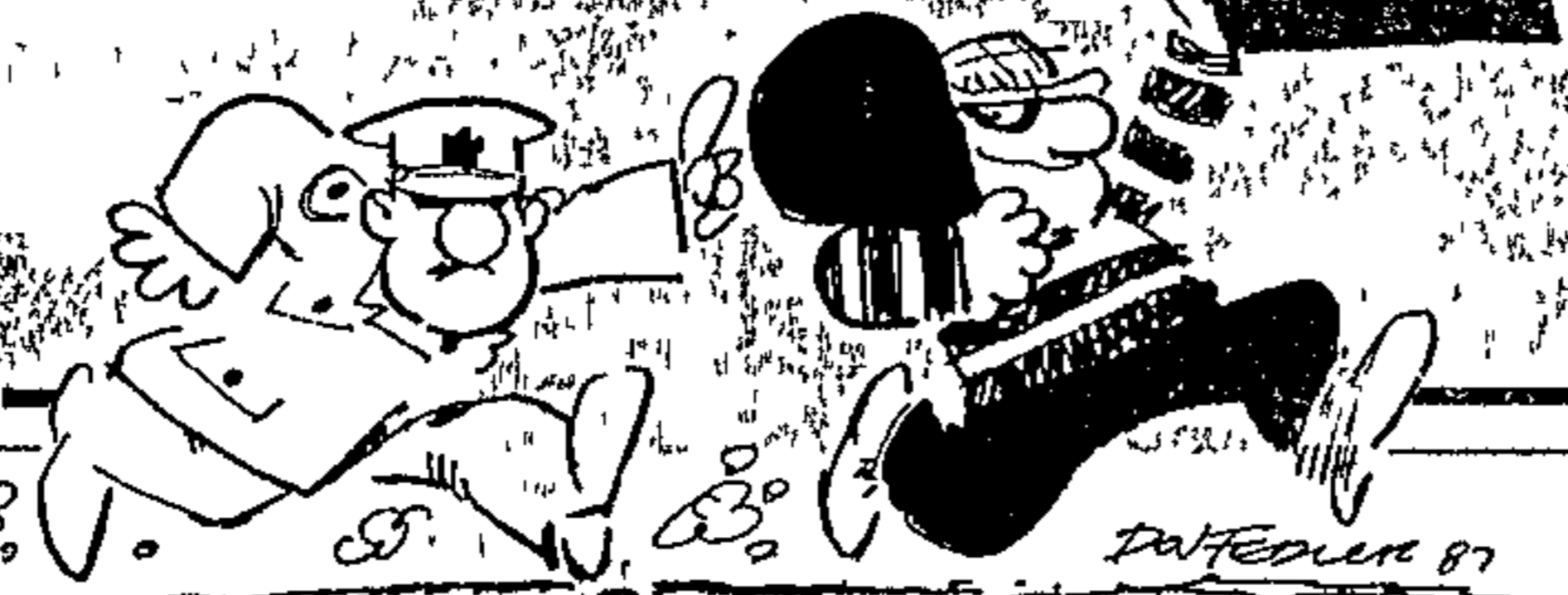
Lisa Commercial Legal Protection, for which premiums and indemnity limits will be determined individually.

The comprehensive policies, a first in SA, follow well-established legal protection industries in many Western nations.

Willem Swanepoel, MD of ACA, feels the Lisa policies will provide a valuable protection of the legal rights of the man in the street.

A possible conflict of interest arises if legal expenses insurance is underwritten by an insurer who also underwrites other lines of insurance.

To avoid this, ACA has established a separate Lisa Legal Protection Insurance Division.



AM
4/12/87

Gordon Folovin said in I
CME Times 7/12/82 (20/12)

Anglo 'delighted' with response to share scheme

JOHANNESBURG. — Anglo American Corporation said today it was "particularly delighted" that the gold mining companies with which it has management contracts, as well as a number of associated companies, had indicated their intention to participate in the Anglo American Group Employee Shareholders Scheme, subject to the approval of their respective shareholders.

"This means that a further 180 000 employees will have the opportunity of participating in the scheme," Anglo American said in a statement.

The companies are Free State Consolidated Gold Mines Ltd, Vaal Reefs Exploration and Mining Co Ltd, Elandsrand Gold Mining Co Ltd, Western Deep Levels Ltd, East Rand Gold and Uranium Co Ltd, The SA Land and Exploration Co Ltd, Shaft Sinkers (Pty) Ltd, Stone and Allied Industries (OFS) Ltd, and Inter-Mine Services OFS (Pty) Ltd

"It is intended that eligible employees will be offered an annual allocation of Anglo American Corporation shares over a period of five years.

"The number of shares to be issued to employees who elect to participate in the scheme will be based on the annual results of their employing companies," the statement said. — Sapa

13/12/87
**SAP men
on murder
charges**

(252)
TWO suspended South African policemen are expected to appear in court soon on charges of murder and attempted murder.

"The police, in their investigation into the murder of two coloured men and the attempted murder of a black man on the West Rand in October this year, are investigating the possible involvement of two members of the SAP," the SAP public relations division said yesterday.

"These two members were suspended pending the outcome of the investigation," it added - Sapa

Sharpeville Six:

No Xmas hanging

By MARLENE BURGER

THE Sharpeville Six, convicted of murder, will not be hanged on Christmas Day.

The Department of Justice statement follows claims in the United Nations that the six people convicted of murdering Lekoa deputy mayor Kuzwayo Jacob Dlamini were to be executed on December 25.

The Sharpeville Six have meanwhile become the centre of an international bid to seek clemency, including appeals by the European Parliament, the Austrian and Israeli governments and the United Nations.

The six are Theresa Ramashamola, Reid Malebo Mokoena, Oupa Moes Diniso, Duman Joshua Khumalo, Mojalefa Reginald Sefatsa and Francis Don Mokhesi.

They were found guilty of murdering Mr Dlamini as he fled from his house, which had been set alight by a mob on September 3 1984.

Cape Times 21/12/87 (252)

Minister of Justice attacks advocate

Own Correspondent

JOHANNESBURG — The Minister of Justice, Mr Kobie Coetsee, has strongly attacked advocate Mr Edwin Cameron for his criticism of the conduct of three senior judges

In a lecture published in the SA Journal on Human Rights and in a recent speech, Mr Cameron questioned whether the presence of Mr Justice Steyn, Mr Justice Munnik and Acting Chief Justice Rabie on the Supreme Court bench contributed to the demand for an utterly unblemished judiciary

He criticized Mr Justice Steyn for espousing government political dogma

He raised the question of allegations affecting the integrity of Mr Justice Munnik after the Munnik Commission and the fact these had not been answered

He criticised government's failure to appoint a new Chief Justice after now Acting Justice Rabie reached the mandatory retirement age of 70, and asked why he was appointed Acting Chief Justice and what

role he played in deciding the appointment

Mr Coetsee responded in a statement in which he said he found "the spurious reflections on the integrity of a greatly-respected lawyer and Chief Justice and his esteemed colleagues in the Appellate Division most disturbing to say the least"

"I find them even more distasteful and improper coming from such a lesser-known officer of the court"

Referring to an article of five years ago in which Mr Cameron had criticized the record of a retired chief justice, Coetsee accused him of appearing to derive a "misguided pleasure in denigrating great chief justices"

He said "the young Mr Cameron" appeared to believe his was the only correct opinion on what constituted human liberty within the framework of the legal system

"The fact the court judgments are the product of considered legal opinion by an internationally recognized Appellate

Division comprising men of great legal structure and decades of learning and experience seem to matter little to this lesser-known officer of the court"

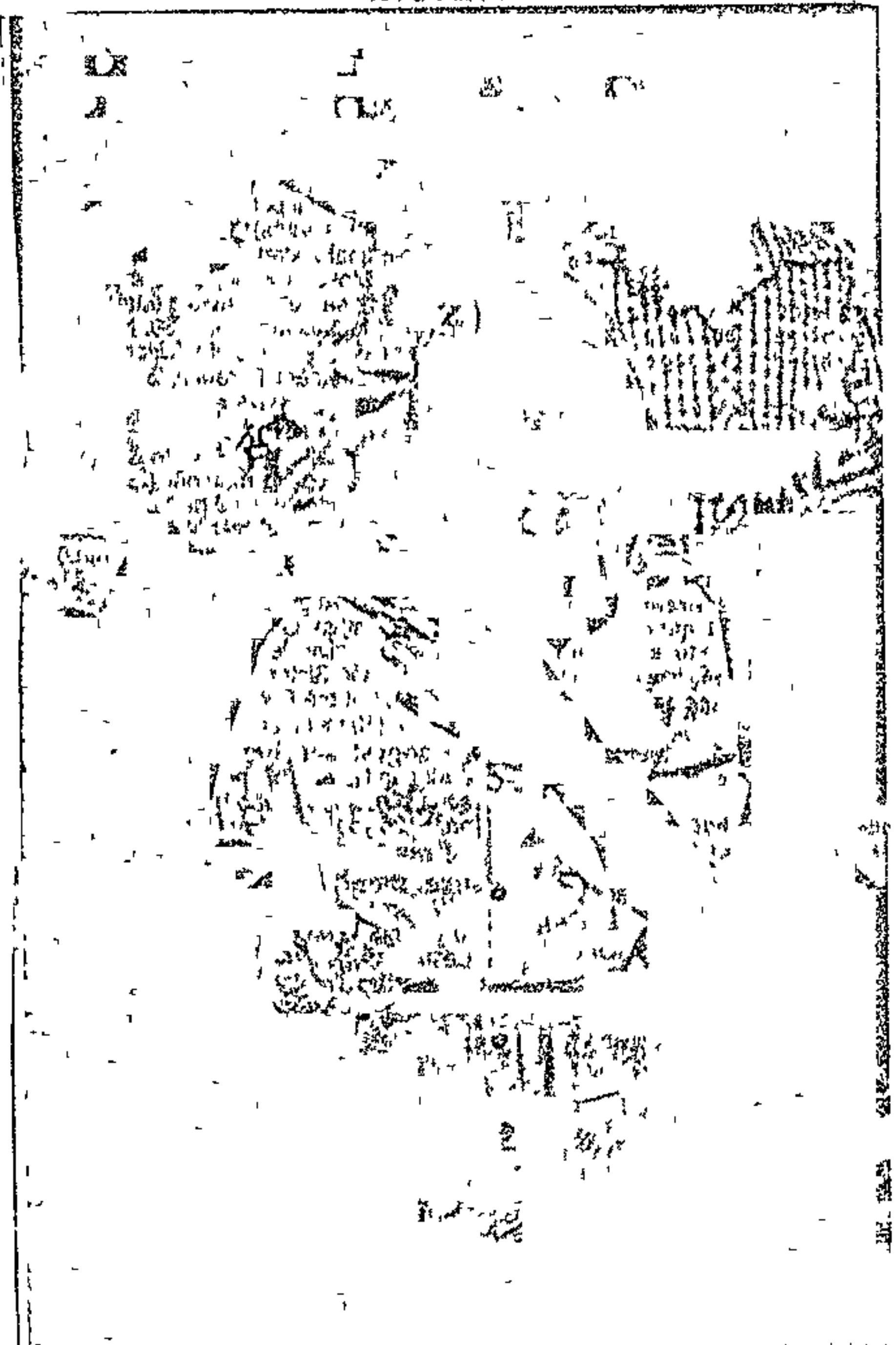
Mr Cameron replied to Mr Coetsee's attack saying he had failed to address a single one of the important issues to which he (Mr Cameron) had directed attention

"It is remarkable and sad the minister should try to evade the grave issues involved by making a personal attack on me"

He said the issues were causing profound concern to lawyers of all shades of opinion at every level

"I must now ask the minister and all those who care about the future of the SA legal system to give the public the answer it deserves on the issues at stake"

Progressive Federal Party justice spokesman MP Dave Dalling, who has raised the criticisms relating to Mr Justice Munnik and Acting Chief Justice Rabie in Parliament, has not been available for comment this week.



Detainees' families and friends sing carols by candlelight at an 'Unlock the doors of apartheid' service at Cape Town's St George's Cathedral. Picture ERIC MILLER, Afrapix

Evicted squatters go to court

By GAYE DAVIS,
Cape Town

SINCE police ordered several hundred squatters to dismantle their homes on Noordhoek farmland and move to Khayelitsha, Joseph Ntshwaqela has been rising at 3.30am to get to work by 7am.

He now has to travel more than 40km to report for duty with the Noordhoek building contractor who has employed him for the past 24 years. His transport costs amount to R7,40 a day — swallowing almost half his weekly wage of R75.

Ntshwaqela and other squatters this week brought an urgent supreme court application for an order directing the regional services council, the administrator of the Cape, the minister of law and order and Noordhoek landowners to restore to them the sites and homes they occupied up to three weeks ago.

Justice Leonora van den Heever ordered a postponement until January 20 next year so opposing and replying affidavits can be filed.

In his affidavit, Ntshwaqela tells of the five-roomed wood-and-iron home he had on Dassenberg Farm, Noordhoek. He has rebuilt in Cape Town's Khayelitsha, township but he lost some of his materials during the removal when a bulldozer flattened what remained of his home and the site he now has is much smaller.

Ntshwaqela says he does not see how he can continue "paying half my small daily wage on transport and travelling and working in a state of exhaustion."

"We are deeply saddened and an-

gered to be uprooted by force from the community in which we have lived, especially now just before Christmas," he said.

A 65-year-old woodcutter, Richard Mayo, said in his affidavit that a white official told him he would "end up in Pollsmoor (prison)" if he didn't break down his house. Mayo has tuberculosis and cannot work. The woodcutter is forced to depend on others for food as Khayelitsha has no trees.

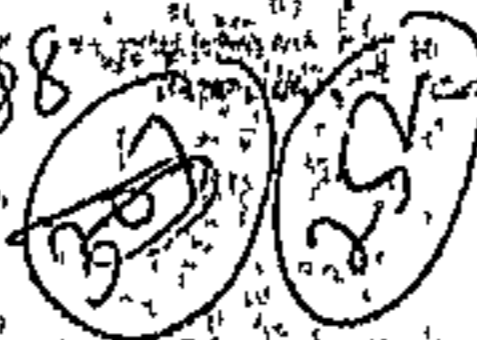
Western Province Council of Churches fieldworker Buyiswa Jack describes in her affidavit how, prevented from entering by police roadblocks, she followed a woodcutter's trail into the area the day the resettlement took place.

It was clear to her police were forcing people to hurry, kicking their possessions and using harsh language.

She describes policemen mocking a woman for having a fudge in the bush.

Some of the trucks drove off with people sitting on top of the timber and iron, "which seemed to me very dangerous". At Khayelitsha, she found residents moving into two rows of green tents on an open strip of sandy terrain. "I watched in dismay as one of the tip-up trucks dropped its contents, breaking many things in the process," she said.

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PROTECTION is being sought for an entire community from *kiskonstabels* allegedly perpetrating a "reign of unbearable terror" in the Eastern Cape township of Eluxolweni at Hofmeyr.

Affidavits before the Eastern Cape Supreme Court allege gross abuses including assaults, shootings, intimidation and harassment by drunken *kiskonstabels* ("instant" policemen) and a reluctance on the part of the South African Police to curb them.

In his affidavit, 75-year-old Methodist Church elder Abner Sami warns of a "highly explosive" situation he fears will erupt into "bloody violence".

Resentment was running so deep that "if things explode now, it's going to make the disruptions we previously had in our community look like a Sunday school picnic."

On November 6 a judge issued an interim order restraining 13 Eluxolweni *kiskonstabels* from arresting, detaining, assaulting, threatening or intimidating eight residents who brought an urgent supreme court application in their personal capacity.

Papers have since been amended and the Midlands Council of Churches is now bringing the application on behalf of the entire community.

Court told of terror by 'drunk' kitskonstabels

BY GAYE DAVIS,
Cape Town

Affidavits supporting the amended application allege intimidation and harassment occurring after the judge's temporary order — especially of people seen as responsible for bringing lawyers to the township.

Others detail assaults, beatings and other alleged excesses. Several residents' affidavits state they saw no point in reporting assaults to the police. Of those who did, several allege they were threatened and intimidated and one states she was told the attorney general had declined to prosecute because both she and the *kiskonstabel* were "innocent".

From papers before the court it appears the white police officer in command of the *kiskonstabels* also functions as the town's prosecutor and is thus also the local representative of the attorney general, who de-

clines whether or not to prosecute in criminal cases.

Sami, the father of two sons who trained as policemen, criticises in his affidavit the *kiskonstabels*' lack of training and puts their "misbehaviour and lawlessness" down to "sheer boredom" in a small community where, he says, little crime occurs.

"They are literally always looking for confrontation, loitering in the streets or walking round in bands of four or five or more. "Whether on or off duty they are more often than not drunk, in or out of uniform. Over weekends the position deteriorates completely as there are more of them drunk at once and they get drunker than usual."

What worried him most was that "these children" carried guns on and off duty and often while drunk. "These uncouth and rude people seem to regard themselves above the law and are presently perpetrating an unchallengeable and unbearable reign of terror and oppression in our town-

ship." Exacerbating the situation was the apparent "reluctance of the conventional police and the authorities to recognise a very serious problem, to take any action whatsoever against the *kiskonstabels* or merely even to try and curb their excesses and total abuse of their position and powers", Sami said.

Zenzile Lethwantzi states he was beaten when he went to lay charges against *kiskonstabels* (for an earlier assault) by a white police officer who allegedly told him. "Next time we are going to arrest you if you want to lay a charge against the *kiskonstabels*". Portia Dumezweni, 16, alleges a *kiskonstabel* told her. "The lawyers are not here now — we're going to beat you more and more."

The affidavits include one by an attorney who watched a *kiskonstabel* approach "with an unsteady gait" as he was taking statements from residents. The man passed by them "stood facing us, making my clients very uneasy". Later, during an *in loco* inspection, he saw a *kiskonstabel* had "lifted his gun and was clearly pointing it in our direction".

The matter is expected to be heard in February next year.

THE Eastern Cape was the frontier of resistance last year but all that crumbled in 1987.

Over the past 12 months, resistance in the townships moved from the barricades in the streets into the courts. Small legal victories have been the only weapon against repression.

The Detainees' Parents Support Committee in Johannesburg estimates that one third of all detentions under the State of Emergency have come from the Eastern Cape. This year 2 500 people from the region were detained and 500 are still being held, most of them from the United Democratic Front.

Vigilantes, municipal police and *kiskonstrabels* (special constables) have replaced the South African Defence Force.

The state's new strategy has succeeded in dividing and confusing people, says Andile Sindelo, general secretary of the Eastern Cape Youth Congress, a branch of the South African Youth Congress.

This year's detentions, harassment and intimidation have crushed the youth movements, he said. The majority of Ecaavco's regional executive was detained this year, including the president, Monde Mtanga, two weeks ago. Of the 57 youth congresses in the Eastern Cape, few are operating. An attempt has been made to revive these organisations but "people can't work effectively under the State of Emergency", Sindelo said. In the arena of education, the effect of the Emergency has had similar results.

The frontier of resistance reels under the iron fist

No area of the country has been harder hit by detentions, the policing of *kiskonstrabels* and by vigilante attacks. EDYTHA BULLBRING reports



Chris Heunis

Khaya Matso, secretary of the Eastern Cape Education Crisis Committee, says most of the local branches of the committee have been crushed. And few SRCs or Parent Teacher Student Associations have survived.

"Any struggle must have a disciplined leadership to give direction. If they are detained then it presents problems and weaknesses," he said.

Alternative government structures like street and area committees have suffered the same fate as the education and youth organisations. In Uitenhage the committees are a thing of the past as the Emergency has made it impossible for people to meet. Vigilante action and municipal police harassment has divided the community. At the beginning of 1986 only 18 of the 45 town councils under the then East Cape Development Board were still functioning. In all, 173 council-

township residents concerning the SADF and the South African Police, so prevalent in 1985 and 1986, has dropped off considerably. The monitoring groups have cited daily complaints of assault and intimidation by the municipal police, however, especially in Jansenville, Paterson and Adelaide.

It appears that the army and police have been moved into a supervisory role and that much of the immediate responsibility for controlling the townships and crushing anti-government organisations has devolved onto the municipal police and local authorities. The collusion between vigilante groups and the municipal police is evident in Uitenhage's township where clashes between the residents and the Ama-Afrika vigilante group and "greenflies" has led to the death of over 20 people.

The reasons given by Minister of Law and Order Adriaan Vlok for the majority of detentions in the Eastern Cape have been related to membership of street and area committees and UDF affiliation, according to the Human Rights Trust in Port Elizabeth. The second largest category was related to alleged involvement in people's courts.

In spite of the destruction of organisations and structures in the Eastern Cape there is still a spirit of defiance. The Eastern Cape Youth Congress is launching the "Isolate the Enemy Campaign" — the enemy being the municipal police and *kiskonstrabels*. The Education Crisis Committee is concentrating on reviving structures and disseminating educational papers among members.

And there is a mute opposition to and lack of recognition of local authorities by township residents. Last month the rally to be addressed by released ANC leader Govan Mbeki was banned. But his overwhelming reception in Port Elizabeth's New Brighton township indicates that although the Eastern Cape organisations are "largely crushed and leaderless, there is resistance to state repression. — Pen

COURTS

THE year has ended with an announcement, apparently routine, but in fact full of significance for anyone concerned with the protection of civil rights by the courts.

It was announced a few weeks ago that Natal's Judge President John Milne will take up an appointment in the Appellate Division (AD) from the beginning of 1988.

This means that this year Natal, scene of most of the recent court battles against state encroachments on civil liberties, will have lost two judges with a reputation for commitment to human rights: Judge President Milne and his acting deputy, Judge Ray Leon, who retired earlier in the year.

One legal observer said it was "very sad" that both were now lost to the province and added that their replacements, Judge Alan Howard and Judge Auret van Heerden, had reputations as "tough-minded judges who are not as partial to civil liberties as

This year's message to despondent

some of their colleagues".

Van Heerden's comments during an application for the release of seven detainees in August sparked fears about attempts to have parliament restrict access to courts.

Just before postponing the application, Judge Van Heerden remarked that detainee applications appeared to be "a cooked-up thing".

He went on to say he believed something should be done "by legislation to bring an end to this kind of thing".

These shifts in the Natal Supreme Court come two years into the national State of Emergency, when the courts — particularly the Appellate Division — are showing the effect of "Emergency law".

The most obvious indication of the

toll it is taking is the reduced number of applications being made to test the regulations, as the room to manoeuvre has narrowed.

Civil rights gains from the early part of the Emergency, which fought off a few of the worst excesses imposed by Emergency regulations, were overturned this year, either by re-worded regulations when the Emergency was re-imposed in June — or by the AD, where successive judgements have underscored the belief of the AD that the state has virtually unlimited power under Emergency provisions.

One set of AD judgements in particular stand out as an indicator of the "mind" of the Appellate Division. This is the joint ruling on three applications, one of which was brought

Just a year ago, what the state decreed, the courts dismissed. But the summer of civil liberties has ended. The wording of regulations has been tightened and the Appellate Division has stressed that the state president may enjoy almost unlimited power under an Emergency. By CARMEL RICKARD

by Emergency detainee Abdullah Mohamed Omar and five other detainees held during the 1985 "regional" Emergency.

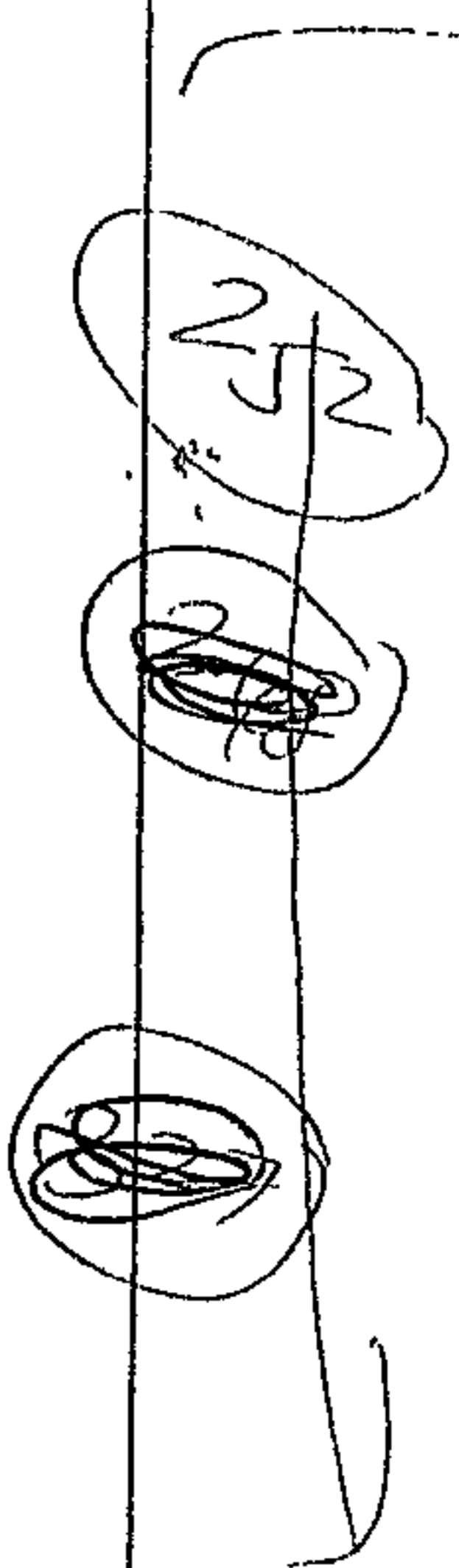
The judgements caused despondency among civil rights lawyers, who commented at the time that the message of the Omar ruling was "pack up your bags".

Briefly, the judgement dealt with two major issues: the right of Emergency detainees to be heard (the *audi*

alteram partem rule) and their right to be visited by lawyers.

On both issues, the four judges who signed the majority decision — Judge Hoexter dissented — refused to accept the argument that the Emergency regulations or rules they were asked to consider were "unreasonable" and could not have been intended by parliament.

The attitude expressed by the four was that there is a State of Emergen-



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YEAR IN REVIEW

civil rights lawyers: Pack your bags

cy which demands extraordinary powers, and the state president has a virtually unchecked discretion to issue any orders, even orders which might normally be declared void on the grounds of unreasonableness

At several points in his judgement, Acting Chief Justice Rabie admitted that the powers of the state president under Emergency regulations were "drastic", but declared that the regulation was nevertheless not so unreasonable that the court could declare it void.

On his interpretation of one regulation, the Acting Chief Justice says, "I appreciate that this view of the matter does away completely with the *audi alteram partem* rule, and that this is not a view which one should lightly entertain. I think, however,

that this is what (the regulation) entails there is no doubt that if this is the effect (of the regulations) as I consider it to be, it is a very harsh provision, but it nevertheless seems to me that, when regard is had to the extremely wide powers which the Act confers on the state president to make such regulations as appear to him to be necessary or expedient for coping with the Emergency situation, it cannot be said that the regulation in issue is *ultra vires*"

The four judges acknowledged that the principle allowing a person to be heard and put their point of view "embodies a fundamental right", but they added they could not accept the argument that the state president was not empowered to make a regulation which removed that fundamental

right "It is an Emergency measure that was intended to apply in an Emergency situation"

They went even further in removing what had been regarded as a "fundamental right" and referred to an earlier ruling by the Natal Supreme Court in the Metal and Allied Workers case

In terms of this ruling, the Natal bench declared legal access a basic common law right which only laws, and not subordinate legislation such as Emergency regulations, could remove.

Following this judgement, lawyers had been allowed to visit detained clients under the normal conditions operating when legal advisers visit any client being held in prison

However, the AD judges expressed their disagreement with this Natal judgement and the effect of their remarks has been to make legal access no longer a right. It may be refused should the authorities decide to do so

Reviewing the significant judgements of the year, security law expert and professor of law at Natal University, Tony Mathews, said the Omar ruling in effect gave the authorities *carte blanche*

"It must be seen with the AD judgement on the Castel case earlier this year Together they indicate the trend for the Appellate Division to halt initiatives taken by the lower courts (regional supreme courts) in defence of human rights"

In the Castel case, a Durban magistrate refused permission for an out-

door rally by the Federation of South African Trade Unions (The case had been initiated some years earlier, before Fosatu was absorbed into the Congress of South African Trade Unions)

The union successfully challenged his refusal to allow the rally, but the AD set aside the decision of the Natal judge, saying in effect that it did not matter about the reasons advanced by the magistrate or about his failure to give the union a hearing before deciding the matter

Mathews commented, "The AD attitude is that once the minister has banned all outdoor meetings there is no right to hold such meetings and therefore no right to be heard"

He went on "The civil rights involvement of the lower courts over the last few years has shown much more initiative and was more promising than before It seemed there might be a movement which would place the courts clearly at the centre of the clash between the rights of the individual and the state

"However from some signs of hope two or three years ago that the AD was seriously concerned about the erosion of human rights, it has become obvious that the initiative of the lower courts in the last year has been halted by the AD

"I can only ascribe it to the Emergency climate which seems to have affected all institutions in South Africa, including the courts

There are still the occasional good judgements by the lower courts — and I don't believe civil rights lawyers should give up — but the groundswell in the security field has, essentially been halted As far as Emergency law is concerned, the mood of the AD seems to be to leave it all to the authorities"

Edwin Cameron of the Centre for Applied Legal Studies at Wits said he believed the Omar and Castel judgements, together with an AD judgement last year against the Natal UDF publicity secretary, Leches Tsenoh, would be seen to form the infamous trio of the mid 1980s

"They follow a similar controversial trio of the mid 1960s In these cases, the AD ruled they should not interpret repressive legislation in a way which favours individual liberty but rather simply give effect to the presumed intention of the legislature no matter how oppressive to the individual

"In the latest trio, the AD has ignored the heavy criticism of the earlier judgements made by academics over more than 20 years"



A condemned man's father prays, in vain, for a reprieve Despite mounting pressure, the hangings have escalated

Picture GIDEON MENDEL

The two policemen, Matshwenyego Makgubudi, 29, of Attendgeville and Tshifhango Rabuli, 35, of Soshanguve near Pretoria, received sentences

as the year in South Africa's legal history when the interests of "state security" triumphed over individual

rights were freed by the Transvaal Supreme Court Bongane Dlamini and Lawrence Ntlokoa of Kagiso, Kru-

that they had not been interrogated. Section 29 allows for indefinite detention, but only for the purposes of

Execution toll reaches 164

● From PAGE 1

Centre for Applied Legal Studies, replied cautiously.

He noted that the number of executions are disproportionately higher for blacks than whites (of the 164 men executed in 1987 thus far, only nine were white).

Marcus concluded: "There is an increasing consciousness of the necessity to be colour blind in sentencing. The consciousness is still limited. It is higher among Supreme Court judges than magistrates. I don't think you can put it higher than that."

This week's hangings came after the Appeal Court upheld the sentence of death imposed on five men and one woman, the Sharpeville Six, for their part in the murder of councillor Khuzwayo Dlamini at the start of the 1984 revolt in the black townships.

One of the Sharpeville Six, Theresa Ramashamola, 24, is a woman. If she is executed — and only President PW Botha can save her now — she will be the first woman to be executed for a crime which some South Africans believe was a political action.

As the United Democratic Front put it in a statement demanding clemency: "It is apartheid that is the violent system. It is apartheid that eventually begets responsive violence from its victims. Were it not for apartheid the six South Africans would not now be sitting on Death Row."

Since the outbreak of the 1984 revolt, 44 people, all black, have been sentenced to hang for murders which, *prima facie*, have their roots in the political turmoil of our times.

Five have been executed. None has escaped the noose so far. In 1985, 137 people were hanged and 35 reprieved; 1987 has seen an increase in the number of hangings and a decrease in reprieves to 18.

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w/Mark

● To PAGE 2

ing withheld for professional reasons

Twenty-one hanged in seventy-two hours

By PATRICK LAURENCE

AS many people were breakfasting yesterday, South Africa's annual tally of executions reached an all-time high with the hanging of seven men in Pretoria.

With seven hanged on Wednesday and seven on Tuesday, yesterday's executions brought the number of people hanged in 1987 to 164, the highest annual total since Union.

Both the executions and the grisly record which they helped notch up passed virtually unnoticed. Hangings have become so commonplace that they rarely impinge on the consciousness of the public.

Only the more unusual executions attract attention: the hanging of white men, particularly if their victims are black women or well-known whites, or of guerrillas.

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w/Mark

number of executions rose steadily until the mid-1960s: the annual average from 1910 to 1947 was 21; from 1948 to 1968 it was 70.

During the mid-1960s the annual number of executions passed the 100 mark on several occasions. Then it dropped temporarily, falling to 43 in the early 1970s.

But since then the trend has been upward: in 1985 137 people were executed; now, with three weeks still to go before the end of the year, the 1987 total is 164.

The population of South Africa has, of course, increased over the past two decades. But during the period the four nominally independent TBVC states have been excised from

South Africa, thus theoretically reducing the population. Each of these states has its own gallows and own executions, although they have on occasion hired the more experienced executioner from South Africa.

Tuesday's execution of the seven men came less than two weeks after two white men, one a teenager, were hanged for the murder and rape of black women.

The execution of the two white men, Johannes Wessels, 19, and George Scheepers, was noteworthy for one reason. Very few whites have been hanged for killing blacks and none for raping black women.

Rape is a capital offence. Most blacks convicted of raping white women end up on the gallows. A previous minister of justice boasted

in 1955 that no black man sentenced to death for raping a white woman had been reprieved.

In a recent study Professor John Dugard, director of the Centre for Applied Legal Studies, identified two areas of apparent racial bias in South Africa's judicial system: inter-racial homicides and assaults and inter-racial sexual offences.

In both cases, he said, the evidence suggested the offender was likely to be punished more harshly if he was black and his victim white than vice versa.

Asked whether the hanging of Wessels and Scheepers could be seen as an indication that South Africa was shifting away from racial bias on the gallows, Gilbert Marcus, also of the

● To PAGE 2

Freedom in the

main cry

SA'S COURTS

SUSAN RUSSELL

of several lengthy treason trials around the country.

In January the two major Press groups — Argus and SAAN (now Times Media Limited) — won an order in the Rand Supreme Court invalidating an order by the Commissioner of Police on January 8 prohibiting the publication of reports about banned organisations.

New powers

The court found the Commissioner did not have the authority to grant himself the power to make such an order.

Within hours of the court granting the order, a promulgation by the State President gave the Commissioner sweeping new powers of censorship.

In March, the Johannesburg Star was granted an interim order preventing the Commissioner of Police from seizing editions of the newspaper on March 11 after it had published an amended advertisement placed by the Detainees Parent's Support Committee.

for their alleged involvement in the holding of people's courts in Alexandra. Both trials resume early next year.

The Rand Supreme Court also reflected the bitter battle between the National Union of Mineworkers and the major mining houses during this country's largest strike.

Management and the NUM both brought urgent applications during the strike, with allegations of sabotage and intimidation on one side and claims of victimisation of workers by mine security on the other.

Suspended

This year also saw a protracted court battle between former Wit Nigel MD Peter George and members of the mine's board in their attempts to oust him.

George finally took the Johannesburg Stock Exchange to court when Wit Nigel shares were suspended after he went ahead with the announcement of a share transaction between Wit Nigel and Springs Daggas.

He won his case against the JSE, who were then given leave to appeal against the order.

A lengthy Supreme Court squabble between Operation Hunger and finalist Anna Curtin over who should get the Rim Gold Rush prize also dominated headlines for a while.

Curtin and the other finalists involved in the court action eventually agreed to an order dismissing their application, and the prize was awarded to Family Ties — the original winners.

People around the country held under the emergency regulations and in terms of the Internal Security Act also challenged the legality of their detentions in Supreme Courts.

Dismally few of these succeeded. New Nation editor Zwelakhe Sisulu, National Education Crisis Committee chairman Yusimuzi Khanyile, Wits Law lecturer Raymond Suttner and UDF officials Murphy Morobe and Mohammed Valli were only a handful who failed to win their freedom.

Trade unionist Michael Roussos and Krugersdorp Residents Organisation members Lawrence Ntloko and Bongani Dlamini — all of whom were detained in terms of section 29 of the Internal Security Act — were all released by order of the Rand Supreme Court. This year has also seen the start

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about R22 500 structure in Blue Downs.

Court overturns four violence convictions

CASE TIME 2/12/87
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By SHAUNA WESTCOTT

WORCESTER Regional Magistrate Mr A J van Wyk "misdirected himself and committed an irregularity", the Supreme Court ruled this week in overturning public-violence convictions and sentences imposed on four Zwelethemba residents.

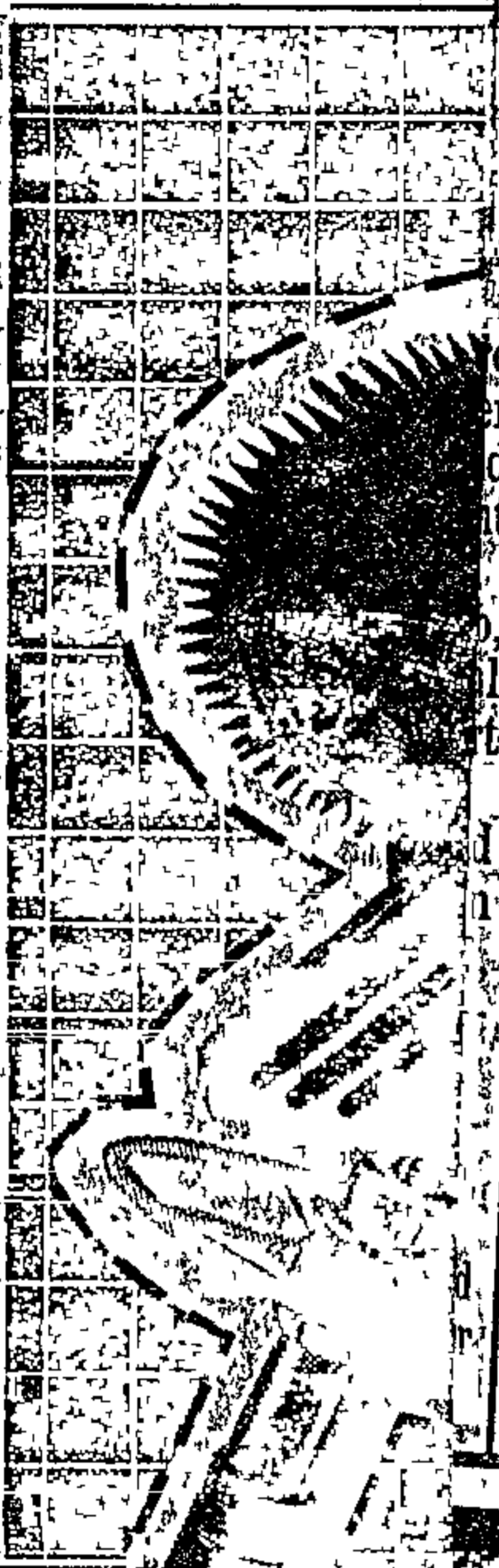
The four were convicted on December 10, 1985.

Mr Mpho Letaba, Mr Ernest Ntlantsana and Mr Ntobeko Nkwali — aged 21, 20 and 17 at the time — were sentenced to five years' imprisonment with two years suspended. Mr Xolani Ndabeni — 16 years old at the time — was sentenced to six strokes.

Their convictions followed Mr Van Wyk's refusal to grant a postponement to their attorney, Mr Alan Chiat, who then refused to cross-examine.

In this week's Supreme Court review, Mr Justice A J Lategan, with Mr Justice H C Nel agreeing, ruled Mr Van Wyk's behaviour had amounted to the denial of the basic right to legal representation, and found all subsequent trial proceedings null and void.

Mr J R Whirehead, instructed by Bernadt Vukic and Potash, appeared for the four. Mr J Reebein appeared for the state.



R63m for

South Africa's human rights record dismal

WORLD SURVEY REVEALS 10 ACTIVISTS DEAD, 2 MISSING, 500 TORTURED . . .

NEW YORK — Ten human rights activists were killed, two disappeared and nearly 500 more were tortured, detained, threatened or harassed in 39 countries over the past year, a worldwide survey revealed on Saturday.

Human Rights Watch, a New York-based human rights monitoring group made up of Americas Watch, Asia Watch and Helsinki Watch, said the largest number of cases occurred in Chile, Czechoslovakia, South Africa and the Soviet Union.

It added, however, that the number of cases cited should not be considered an index of repressiveness. "Some countries — Saudi Arabia and North Korea are examples — are so repressive that, as far as we know, no one is able to engage in human rights monitoring."

Brave souls

"Elsewhere — Indonesia, Guatemala, Romania and Vietnam are examples — monitoring human rights abuses has been so risky that only a handful of brave souls have taken up the effort to report and document on their government's abuses," it added.

The survey said five of the ten killings over the past year took place in Colombia, two in El Salvador, and one in Brazil, the Soviet Union and the Philippines. The eight killings in Latin America were by unidentified gunmen.

In the Soviet Union, Anatoly Marchenko, a member of the Moscow Helsinki group, died in prison at the age of 48 while serving a ten-year sentence. Soviet officials reported that the dissident writer had died of a brain haemorrhage but his wife

said he died after abuse by prison personnel.

In the Philippines, David Bueno, a human rights lawyer and chairman of the Laoag City Human Rights Committee, was shot dead outside his home by two men in military uniforms in October, the report said.

The report focuses on the period from December 1986 to December 1987 but includes all rights activists arrested before December who remained in detention during any part of that period.

Chile, Czechoslovakia, South Africa and the Soviet Union figure significantly in the survey because of "ongoing struggles between important human rights movements and repressive governments," the report said.

In the Soviet Union, there were no new imprisonments of human rights activists during the past year, although other forms of harassment continued, the report said.

It said the number of cases of human rights abuses cited, 46, was high because the Soviet government attempted some years ago to destroy the human rights movement of the early 1970s.

Labour camps

"During the past year, some members of that movement emerged from prison while others languished in labour camps, psychiatric hospitals and in internal exile," Human Rights Watch said.

In South Africa, no charges were specified in many of the cases of 30 detained rights activists. Other activists were restricted from carrying out their activities, the report said.

Most of about 70 cases cited in Chile involved abuses against members of the Chilean Human Rights Commission and members of so-called human rights base committees which operate on the neighbourhood level throughout the country, the report said.

Most of the 42 cases of abuses against activists in Czechoslovakia were in connection with activities to mark the tenth anniversary of Charter 77, the country's leading human rights group.

The report noted that although some of the monitoring groups cited in the report may be politically biased, the purpose in citing them "is to call attention to the persecution they endured for monitoring human rights, not to make pronouncements on the information they disseminated."

Human rights

The report also documented abuses of human rights activists in the African countries of Algeria, Burkina Faso, Burundi, Kenya, Liberia, Mauritania, Tunisia, Uganda and Zaïre.

In South Africa, many of the violations were against church councils, members of Black Sash — a women's human rights group — and the Krugersdorp Residence Organisation (KRO), which helped bring legal action against security forces, accusing them of abuses against residents in that black township.

In Burkina Faso, four trade unionists were detained in May accused by the Government of subversive activities. They were released in October after a coup during which then-president Thomas Sankara was killed by a military colleague. — Sapa-Reuter

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(252)

Courts can demand information on detainees, argues Mathews

A PROMINENT legal academic and security law expert believes the courts have the right to demand information about detainees which the detainees themselves and their lawyers are not entitled to be given

Natal University law professor Tony Mathews was commenting on the recent Appeal Court judgement on the application of two Eastern Cape detainees

Both Wellington Apleni and Tango Lamani asked for an order against the police, interdicting them from assaulting or unlawfully interrogating either detainee. At the time the two brought their applications they were still in hospital, six weeks after the alleged assaults by police

There was a conflict of evidence in the affidavits, with the detainees and the police giving very different accounts of what happened. However, lawyers for the police said they were opposed to the matter being referred to oral evidence — a virtually standard procedure in such cases — and Mr Justice TM Mullins of the Port Elizabeth Supreme Court ruled that under the Emergency regulations he could not order the detainees brought to court

Explaining his ruling he referred to the regulations which say that no-one can have access to any detainee "except with the consent of the minister" and that no-one is "entitled to any official information" about a detainee.

The ruling in effect left the detainees with no protection against the police, and could have been influen-

A recent Appeal Court judgement on detentions did not resolve whether judges may order that detainees be brought to testify. Law professor Tony Mathews has argued that they can. CARMEL RICKARD reports

tial on judges hearing similar cases elsewhere in the country

The Appeal Court judges did not resolve the issue of whether the court can order a detainee to be brought to testify, although they overturned the ruling of Justice Mullins

The judges did not base their decision on a new interpretation of the the Emergency regulations. Instead they said there was "a distinct possibility" that the two detainees would not have to give evidence in person at such a hearing

Medical evidence alone might be enough to settle the matter, or if the police refused to produce the medical evidence, the court would be entitled to draw certain conclusions "adverse to (the police)", and in either case the need for the applicants to appear and testify might not arise.

Commenting on the judgement Mathews observed that it had not decided the "very important issue of whether the court can order Emergency detainees to appear to testify about their treatment, even when the minister does not consent to this appearance

"My view of the issue is that the

court does have this power and should rule that in cases in which ill-treatment is alleged, it has the full right to order the detainee to be brought to court to give evidence

"It is very hard for proper justice to be done unless the court is prepared to take this step"

He added that the regulations say that "no person" is entitled to medical or other information about a detainee. However, he believes that since the court is not a person, it may order the information to be made available to itself, even if a detainee cannot get hold of the information

"I believe the court should have ruled it was entitled to this information because the purpose of the clause (in the Emergency regulations) cannot have been to prevent a court from getting access to the information it needs to do justice between the parties"

Although the Apleni and Lamani cases did not resolve these issues, Mathews believed the decision was nevertheless a welcome one. The judges criticised the refusal of the authorities to put full (medical) information before the court and also overruled the lower court's decision that it could not grant an interim interdict until the information was placed before the court.

On the authorities' failure to give the court the medical evidence, Mathews said, "If they are anxious as they often say they are, to prevent the illegal treatment of detainees, why are they reluctant in cases of this kind, to give the courts the full facts?"

Leave guards, judge orders security men

By MARTIN NTSOELNGOE

THE beating of security guards and a union official for union activities by two security firm officials must stop

This was ordered by Judge NM MacArthur after an urgent application was brought against K Jeacocks, area manager of Callguard Security Services, and E Nel, a supervisor, by Humbrich Sijula, James Maluleka and Vukani Guards and Allied Workers' Union official Moses Tshotetsi in the Rand Supreme Court

Papers before the court showed that Jeacocks and Nel repeatedly assaulted two of the guards and threatened to assault Moses Tshotetsi for union activities

After an undertaking was made not to assault the three men for union activities, the application was withdrawn

The return date for the order is February 16

In papers before the court the general-secretary of the union, Samson Ndou, said the three guards collected enrollment forms from the union offices on November 18, which they distributed among their co-workers interested

in the union

Six days later Tshotetsi distributed membership cards to those who had joined the union

Later that night, Sijula was taken from the Thokoza men's hostel by Jeacocks and Nel on the pretext that he was needed at work.

He was taken to a remote spot, his hands handcuffed behind his back and he was beaten up by the two men

He was then taken to Leondale Furniture Shop where Maluleka was on duty

At the shop, Maluleka was taken into a guards' room, accused of being a "terrorist" by the two men and handcuffed and continuously beaten by the two men until he lost consciousness

He was told he would not lose his job if he could supply Jeacocks with information about the union

Sijula and Maluleka were taken to the Alberton Police Station and handed over as "comrades who wanted to introduce a union".

Jeacocks and Nel allegedly also told a number of Callguard employees that they wanted to assault Tshotetsi

Union to take action?

CCAWUSA has threatened to take its dispute with Elmer Holdings to the Supreme Court if the company did not "stop hampering members' right to strike legally".

According to the union, the breakdown of this week's Conciliation Board meeting - established to resolve a wage dispute - put it in a position to embark on a legal wage strike next week.

This could affect 6 500 workers in 300 stores.

Following the breakdown of the meeting, management informed the union that bonus payments would not be made to workers engaged in industrial action this month.

Management also said it could review its wage offer.

Ccawusa said members were "entitled to bonuses".

A spokesman said the "threat" to withdraw wage proposals implied a withdrawal from negotiations. - Sapa.

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Full bench to hear Sisulu case

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12/18

By MARTIN NTSOELENGOE

A RAND Supreme Court judge has allowed *New Nation* editor Zwelakhe Sisulu to bring an application for his release before a full bench of the Supreme Court.

Two weeks ago, Judge L Harms dismissed with costs an urgent application brought by the editor for his release and the setting aside of the state of emergency.

The judge said Sisulu was involved with the National Education Crisis Committee and had addressed its meetings.

He said there were no legal grounds to release him.

This week, the judge granted him leave to appeal to the full bench of the Transvaal Provincial Division of the Supreme Court.

He said another court may come to a different decision.

In papers before the court, Sisulu's legal representatives argued that the judge should have taken account of "a detainee's right to be told why he was detained".

They based their application for leave to appeal on these grounds.

They also said it was a detainee's right to have his representation fully and fairly considered by the Minister of Law and Order.

While in jail, Sisulu was told by his lawyers that they believed he was detained because of his membership of the NECC.

He then wrote a 37-page memorandum to the Minister denying allegations regarding his NECC membership.

The memorandum was allegedly not forwarded to the Minister until the urgent application came to court.

The judge criticised the decision not to send the memorandum to the Minister.

However, he decided that the order issued on July 11 under the present state of emergency for Sisulu's continued detention, was still valid and lawful.

Political comment by ZB Molefe; news-bills by P Qoboza, headlines and subediting by Jon Swift, all of 204 Eloff Street Ext, Johannesburg.

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Isaiah Motauang wants help to recover his animals.

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STOP THE SILENCERS

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Clifford

6/12/87

By SIBU MNGADI

DETAILS of how a man had electric shocks applied to his genitals until he excreted were disclosed in the Maritzburg Supreme Court this week

from the Mpumalanga Magistrates' Court on November 19

In papers before the court, Mcoyi said he was twice tortured with electric shocks to his naked body, chained and almost suffocated in water, assaulted, and on one occasion made to clean up his excrement after being shocked on his genitals

Mcoyi said he had since gone into hiding, fearing for his life and physical safety.

Myburgh and the Law and Order Minister were given until December 21 to say why the order should not be made permanent

In an affidavit, Mcoyi said R278 000 disappeared from the safety of the Mpumalanga Magistrates' Court on November 19, where he worked as a senior clerk and pensions paymaster

The next day, police took him and six colleagues to a building near Edendale Road

During questioning, Myburgh allegedly told Mcoyi that the police had killed a suspect the previous week during interrogation and that he would suffer the same fate if he did not tell the truth

"I was then taken to the 'computer' room, a sack was placed over my head and I was slapped, kicked and pushed around

"I was forced to strip naked and my hands were handcuffed behind my back. Chains were put around my legs

"My blindfolds were removed and a tyre tube was placed over my eyes, nose and mouth," he said

Mcoyi said his head was then pushed into a bucket of water while he was given electric shocks to his toes

He was then made to lie on his back, electric wires were connected to his genitals and he was shocked two or three times until he excreted

He was then forced to clean up his excrement from the floor

Meanwhile, last week, the Maritzburg Supreme Court heard how an 18-year-old schoolboy, Hamilton Diadla, had electric shocks applied to his genitals by policemen during interrogation until he wet himself from terror and pain

He was also bringing an interdict against his alleged perpetrators

Myburgh had questioned Mcoyi in connection with the theft of R278 000

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Failure of appeal condemned

CP Reporters

INTERNATIONAL and local politicians, communities, organisations and religious groups have strongly condemned the decision of the Bloemfontein Appeal Court to dismiss the appeal by the "Sharpeville Six" against their convictions and death sentences for killing a Lekoa town councillor

The six - Mojalefa Reginald Sefatsa, 30, Reid Mabebo Mokoena, 22, Oupa Moses Diniso, 30, Duma Joshua Khumalo, 26, Francis Don Mokgetsi, 28, and Theresa Ramashamola, 24 - are charged with the killing of deputy mayor Khuzwayo Jacob Dlamini

Dlamini was killed during the uprising in the Vaal complex which began on September 4, 1984, when residents protested against rent increases and ended in confrontation with the security forces.

Two others, Motseki Christiaan Mokobung and Motsidi Gideon Mokone, who were sentenced to eight years in the same case for public violence, also had their appeal

turned down but have been granted leave to appeal

Moses Diniso's wife was so shocked she could not bring herself to cry

"It's almost two years now that we have been apart from Moses. During this time many tears have been shed. Let the Lord's will be done. I can't cry," she said bitterly

Joshua Duma Khumalo snr cried: "Oh God, save my son from the gallows. He has a six-year-old son, Lucky, to bring up."

Elizabeth Mokoena said "I am going to miss Reid. He was such a friendly person. His friends loved to call him 'Ja baas' because he always loved to shout 'Ja'."

According to legal sources, Theresa Ramashamola is the first black woman in SA to be sentenced to death for a political crime.

Another person in the group facing the hangman, Mokgesi, was a star centre-forward with NPSL first division club Vaal Professionals

The external mission of the outlawed PAC said the six were "victims of the system of apartheid and their lives had to be saved"

On the homefront, the South African Council of Churches, Azanian People's Organisation, the UDF, Cosatu, Nactu and the Black Sash have added their voices of condemnation

SACC general-secretary Rev Frank Chikane appealed to State President PW Botha to bestow a presidential pardon on the Sharpeville Six

Britain's anti-apartheid movement has also urged Prime Minister Margaret Thatcher to act urgently to try to save the lives of the six.

Meanwhile, Vaal triangle residents, too, were this week united in grief as the word spread that their fellow-residents' fate had finally been decided by the highest court in the land

According to Advocate Jack Unterhalter, for the "Sharpeville Six", there was no evidence that their



Joshua Khumalo

actions were responsible for the death of Dlamini

If the "Sharpeville Six" hang, they will bring to eight the number of people sent to the gallows since "The Save The 32 Campaign" launched in July by the SA Youth Congress.

The two already executed are Mnyanda Moses Jantjes and Mlami Wellington Mielles for the role they played in the murder of kwa-Nobuhle councillor Ben Kinikini and his family

Court upholds police right to detention

Weekly Mail Reporter

DETAINEES preparing to spend Christmas in prison and police cells received little relief from a Pretoria Supreme Court ruling this week which upheld the police's right to detain a unionist rather than charge him under ordinary law — because if found guilty he might receive only a "short sentence".

The judgement followed an urgent application for the release of Zebedia Marobella, head of the Phalaborwa branch of the Chemical Workers Industrial Union. Marobella, 24, has been in Emergency detention since June 11.

In his application, Marobella argued police had acted in bad faith in not considering action other than detention.

He was detained after making a speech which allegedly incited workers to stay away from work on June 16. Marobella pointed out in the application that his speech, tape-recorded by a policeman, had been translated into "incomprehensible" Afrikaans. In addition, he said workers and management at the Phalaborwa factory in question had agreed that black workers would not go to work on June 16.

In evidence opposing the application, Captain A Ehlers of the Phalaborwa police said the main reason for not charging Marobella under ordinary laws was he might be freed on bail or given a short prison sentence and his activities would not be curtailed.

Judge CF Eloff said he could not find the police had acted in bad faith when deciding to detain Marobella. He added that it was reasonable not to arrest Marobella under ordinary law.

The judge said Marobella's speech regarding June 16, given at a report-back meeting on June 16, was militant. But he added it was the language commonly used by unionists and activists.

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Court rules for Stofile

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EAST LONDON — An interim order allowing jailed UDF leader the Rev Arnold Stofile and three co-prisoners to register with the University of South Africa (Unisa) was granted by the Ciskei Supreme Court last Friday.

Stofile, Nelson Mzwakhe Ndlela, Sakhumzi Somyo and Mveleli Gqibithole brought an application against the Ciskei Commissioner of Prisons.

The order was granted by consent, and the matter was postponed until next year.

Affidavit

Initially, their request to study while in prison was turned down by the Ciskei prison authorities

According to an affidavit by Stofile, the prisoners had been told by Warrant Officer Ngazi Mcebidiwell Zazini of the Prisons Service that prison regulations did not allow prisoners to engage in studies which would entail them going out of prison to do practicals

In his affidavit Stofile said: "None of the courses would require us to leave the prison"

Warrant Officer Zazini replied this was as far as prison regulations would allow him to go.

Superiors

Stofile said Zazini added that if they were not satisfied with his explanation he would have to refer them to his superiors

The applicants were addressed the following day by Lieutenant Myolisi Mankayi, who said they could not study "more practical" subjects while in prison

In an answering affidavit Lieutenant Colonel Bonisile David Simandla said permission to study was always subject to good behaviour

Behaviour

"All the applicants in this matter are classified "D" group prisoners, persons with the worst behavioural patterns

"People who are allocated to this group have to prove their worthiness by continued good behaviour, whereafter they will be upgraded to 'C' or 'B', and perhaps even 'A' prisoners"

Stofile and the other three are presently serving lengthy sentences in Ciskei's maximum security prison at Middledrift for political activities

Stofile, Somyo and Ndlela want to register for law degrees and Gqibithole for a BA

The application was postponed for argument on January 15 next year.

Locate questions role of the Appellate Division

By Bruce Anderson

SPM 11/12/87

South Africa's best known judges had urged to indulge in the total onslaught rhetoric blithely from the Government and was urged daily by the SABC, Mr Edwin Cameron, an advocate and member of Wits University's Centre for Applied Legal Studies, said yesterday at a meeting to commemorate Human Rights Day.

An example was Acting Chief Justice Rabhe, who had recently given an interview to an American journalist in which he had said South Africa was fighting a war against strangers who crossed its borders carrying bombs.

Mr Cameron said recent Appellate Division decisions "created the impression of a court that is fundamentally hostile to human rights". He noted that the hearing of political and security cases seemed to be limited to a particular segment of the Appellate Division's judges, and suggested that Mr Justice Rabhe owed the public an explanation on this issue.

acquiescence in Government power at work in the Appellate Division"

Mr Cameron added that although Mr Justice Munnik's integrity as a judicial officer had been called into question by an Opposition parliamentary spokesman over the Munnik Commission, Mr Justice Munnik had declined to answer — a situation that, under normal circumstances, would be unthinkable.

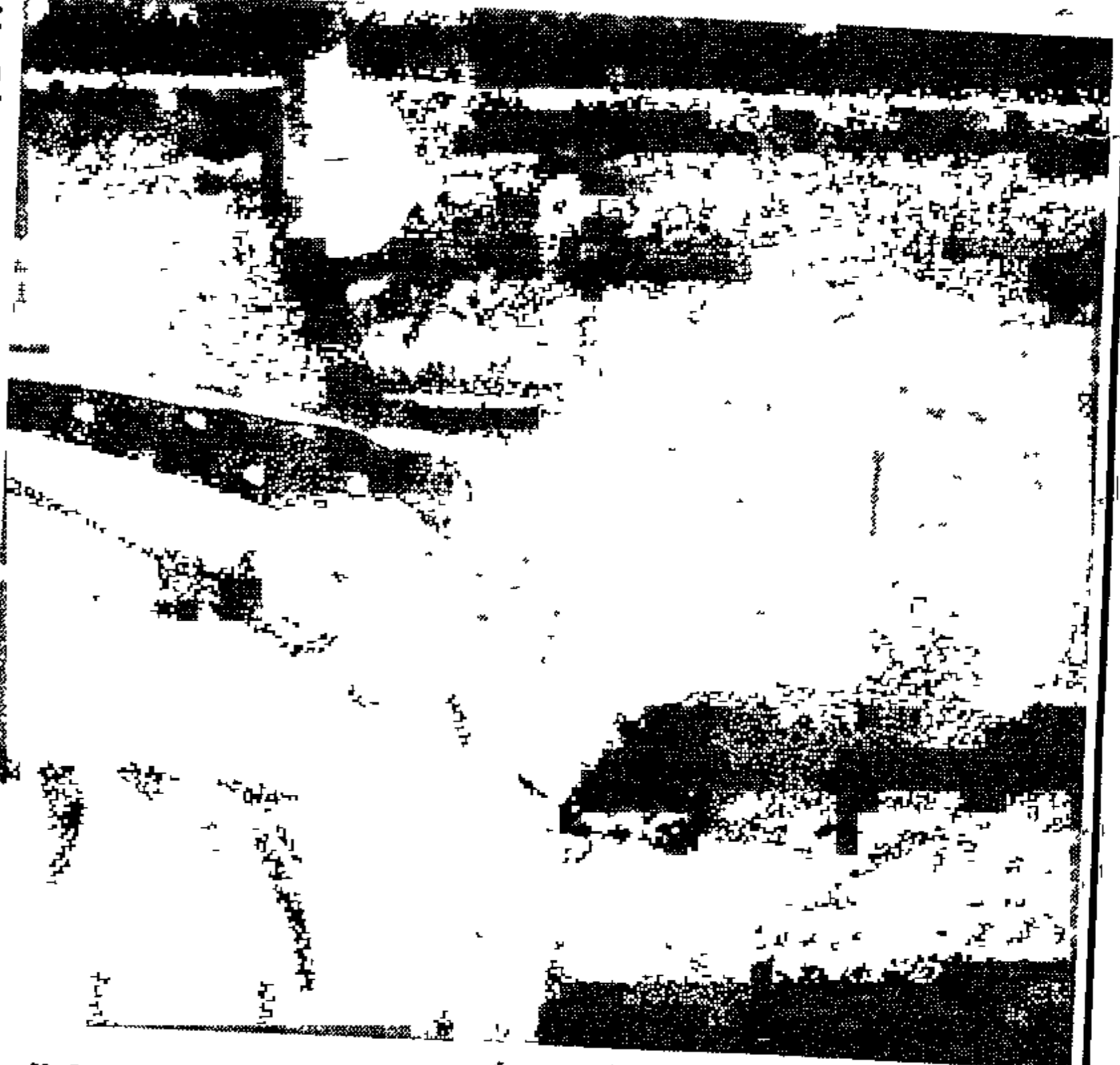
The task of the judiciary should be to "keep a vigil over such basic freedoms that remain, as the crisis deepens"

UNPRECEDENTED

"It is easy to forget that this emergency is in every sense unprecedented in our history."

Mr Cameron stipulated three conditions for the survival of the judiciary in an unfree society. Firstly, there should be genuine judicial impartiality on issues of partisan division. Secondly, the appointment and promotion of judges, and their assignment to cases, should be honest.

Thirdly, there should be genuine judicial activism on matters affecting public freedom.



Mr Edwin Cameron . . . "Recent Appellate Division decisions create the impression of a court fundamentally hostile to human rights."

1987 was 'an appalling year for human rights'

By Bruce Anderson

It had been another appalling year for human rights in South Africa, said Mr Raymond Tucker, chairman of the Witwatersrand branch of Lawyers for Human Rights (LHR), yesterday at a meeting commemorating International Human Rights Day.

Mr Tucker said that LHR wished to record its demand for the release of all detainees and the removal of press restrictions.

"We direct to those in detention and to the editors of embattled publications a message of support, and wish them strength and courage," said Mr Tucker.

GRIM SIGNIFICANCE

He said that many detainees had been incarcerated for more than a year, and some like Mr Raymond Suttner, a University of Witwatersrand law lecturer, had been in detention for 18 months.

"The Appellate Division has done little to assist the individual," said Mr Tucker. "Instead it has given the State, virtual carte blanche in the application of emergency laws and recent decisions of the AD relating to detainees represented a low water mark."

The commemoration of Human Rights Day in the present circumstances in the country took on "both a grim and important significance," said Mr Tucker.

"Grim, because the conditions grow worse and are taking on the character of permanence, important, because without constant vigilance and reminder it becomes all too easy to accept the current conditions as normal — especially when so much of what happens cannot be reported"

Justice is celebrated — with a ban

The Star's Africa News Service
WINDHOEK — Namibia yesterday celebrated its first Human Rights Day — after the Cabinet had announced a ban on all public meetings.

The ban was announced by the chairman of Namibia's National Unity Cabinet, Mr Jan de Wet.

It was imposed in terms of the Riotous Assemblies Act and was in force from Wednesday until tomorrow.

Human Rights Day marks the anniversary of December 10 1959 when several people died resisting removals from Windhoek's old location to the new township of Katutura.

Mr de Wet's conservative White National Party of South West Africa opposed the creation of the public holiday earlier this year and announced it would not take part in the commemorative service at Windhoek's "old location" cemetery.

The killings led to the formation of Swapo and the day is regarded as a landmark in the Namibian struggle for independence.

W/ Mail 10/12/87

(NS) [Signature]

WEEKLY MAIL, December 4 to

AN eagerly-awaited Appeal Court ruling has failed to clarify the crucial question of whether Emergency detainees can be called to give evidence on their own behalf.

Five Appellate Division judges were considering applications brought by two Eastern Cape detainees, Wellington Aplem and Tingo Lamani.

Both had complained of police brutality during their detention — under Emergency regulations details cannot be given at this stage — and at the time of their applications were in still in hospital more than six weeks after the alleged assaults.

They brought applications to the Supreme Court in Port Elizabeth asking that the police be interdicted from assaulting or unlawfully interrogating them, and also asked for medical records to be made available to the court.

In reply the police denied all the claims of assault but did not provide any medical evidence about why the two were still in hospital.

At the hearing it was clear there was a dispute of fact, under normal circumstances the issue would have been referred to oral evidence and the applicants — and the police — would have been called to the witness box and cross-examined on their claims. However, lawyers for the state were opposed to the application being referred to oral evidence.

After almost three weeks thought, Mr Justice TF Mullins ruled he could not order the matter should go to oral

Can a detainee be brought to court? The judges hedge

The controversy over whether detainees may be called to give evidence on their own behalf remains unresolved by a new Appeal Court ruling, reports CARMEL RICKARD

He referred to Emergency regulations which say that no-one can have access to any detainee "except with the consent of the Minister" and that no-one is "entitled to any official information" about a detainee.

The two applications were therefore turned down, leaving the detainees with no protection against the police. The effect of the judgement appeared to be to frustrate all future attempts by a detainee to bring an application against the police arising out of alleged assault. In terms of the Mullins ruling, if the police deny the detainee's claims, the matter has to end there, as the version of the detainee cannot be tested in court.

However, the judge was clearly not happy with some implications of his judgement.

He said the police had not given the court "any specific assurance that any positive steps will be taken to ensure that applicants will not be assaulted or otherwise unlawfully treated in the future".

The judge went on to warn the police "I trust that the failure of the present applicants to obtain the relief they seek will not be regarded by (the police) as an acceptance by this court that applicants' allegations are false (The police) are responsible for the physical well-being of applicants while they are in detention and the court assumes they will actively and responsibly ensure such physical well-being, and not merely supernely rely on the observance by subordinate police officials of the instructions."

The judge also said he was "concerned" and "not a little surprised" that the police had not given him any medical evidence about the applicants.

Recapping the allegations of injuries made by the two detainees, the judge described the police reply as "evasive and equivocal", he said he had no doubt the medical information was available to the police and added, "If such information reveals any suggestion of irregularities or physical violence, I would expect (an) immediate enquiry by (the police) and steps actively taken by them to prevent a repetition thereof."

Mullins granted the detainees leave to appeal. Mullins and the detainees — represented by the Legal Resources Centre in Port Elizabeth — believed the appeal judgement would decide the issue of whether a judge may order an Emergency detainee to be brought to court. However, the Appellate Division left the issue open.

While the judges overturned Mullins's decision not to allow the matter to go to oral evidence, they claimed there was a "distinct possibility" that the two detainees would not have to give evidence at the hearing.

Medical evidence alone might be enough to settle the matter, or if the police refused to produce the medical evidence the court would be entitled to draw certain conclusions "adverse to (the police)", and in either case the need for the applicants to appear and testify might not arise.

Carter backs down

CARTER Ebrahim's Department of Education and Culture has backed down and agreed, in an out-of-court settlement, to allow the school committee it sacked in October to continue functioning

The Department sacked the committee, led by Dominee A J Louw, after pupils at the school staged a three-day class boycott.

The committee decided to close the school after security police threatened to take action against the pupils

Louw's committee applied to the Supreme Court for an order declaring the department's action unlawful and asked that the committee continues operating

Convening elections

They also applied successfully for an interdict restraining the department from convening elections for a new committee

Last week Louw's attorneys received a letter from the department stating that the minister had revoked his previous decision "pending further consideration"

Louw's committee may now continue functioning until such time as its period of office expires or is lawfully terminated.

The department has agreed to pay the costs of the court proceedings



Carter Ebrahim

Sharpeville six: Appeals for clemency as court bid fails

By MONO BADELA

FOR three years, Julia Ramashamola has known her daughter Theresa was going to die.

It was in 1984 that Theresa Ramashamola was swept up in what is now known as the Vaal uprising.

"I knew then that things were going to end like this," her distraught mother said, hours after hearing that the appeal launched by her daughter and the other members of the Sharpeville Six had been turned down.

Theresa's mother, a health worker at Sebokeng Hospital, said she was not keen on talking to the press. She added: "She is not the first to go through this. There were others, like Benjamin Moloise."

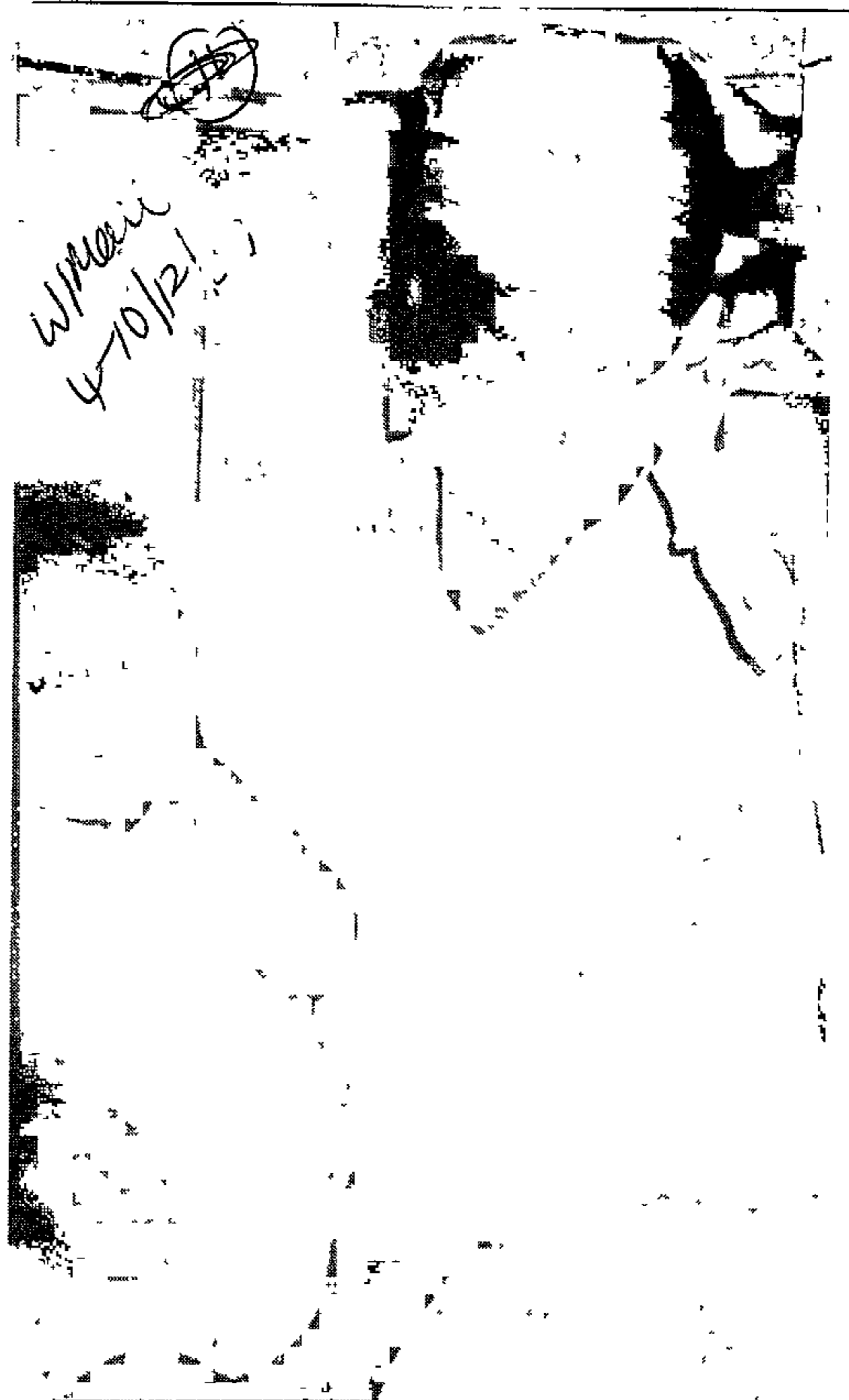
Her daughter, a restaurant attendant at the time of her arrest, is the only woman on Death Row for a politically motivated offence.

Mabel Sefatsa — Ramashamola's neighbour and the mother of Mojalefa Reginald Sefatsa, due to hang with Theresa Ramashamola — could only say "I just can't believe they can hang my son. I know he is innocent. He can't even kill a fly."

Her son is one of the Sharpeville Six on Pretoria Central Prison's Death Row. Others are Reid Malebo Mokoena, Oupa Moses Diniso, Duma Joshua Khumalo and Francis Don Mokgesi.

The appeals of six Sharpeville residents against their convictions and death sentences for the murder of Lekoa town councillor and deputy mayor Khuzwao Jacob Dlamini were dismissed this week by the Appeal Court in Bloemfontein. Dlamini was killed on September 3, 1984, the first day of the Vaal uprising, as he fled from his house which had been set alight by a mob.

Sefatsa's mother told *Weekly Mail* that Mojalefa, eldest of her six children, was the family's sole breadwinner. "He was like a father to us. I now have to look after the other five children. He knew what to do for them. I do not believe that his life and those of others cannot be spared."



Mabel Sefatsa ... "I can't believe they can hang my son"

Picture MONO BADELA

Sefatsa's wife Regina visited him on Wednesday. "Already he knew the outcome of the appeal. He is still very strong and asked that we do not give up, that we should keep on praying until the last."

Her daughter, Masefatsa, now three years old, was born two months after her father was detained.

A spokesman for the office of Johannesburg attorney Ismail Ayob said yesterday the firm was still trying to stop the six from being hanged. "We are pulling out all the stops to save the six. We are now drafting the petition to be presented to the state president for clemency. Until we get fresh evidence it is the next im-

mediate steps we can take."

Dismay has been voiced at the failure of the appeal in a number of quarters, from the Detainees' Parents Support Committee to the United Nations General Assembly.

The general secretary of the South African Council of Churches, the Rev Frank Chikane, Albertina Sisulu, co-president of the United Democratic Front, and Archbishop Trevor Huddleston, president of the Anti Apartheid Movement in Great Britain, are among those calling on the state president to show clemency.

Several public meetings have been planned in centres around the country to support the six.

Human rights report tells of 'Kei repression

By LOUISE FLANAGAN,
East London

A HUMAN rights group in Transkei has released a reported detailing extraordinary high levels of repression in the territory, with equally high levels of resistance

The figures were released last week by the Prisoners' Welfare Programmes (Prwelpro), set up in Umtata earlier this year. The report says

● Of 238 people detained during 1987, 29 are still held. One man has been held since 1985

● A total of 738 people were charged in 41 political trials. So far, charges have been dropped or the accused acquitted in 19 of these cases and there were convictions in only 10 cases

● Out of 27 court applications — almost all seeking relief from detention, assaults in detention or banishment and deportation orders — 24 led to final orders or interim relief

● There are 32 legal suits pending against the minister of police, claiming a total of R1 653 000.

● Of 155 prisoners sentenced to

death in the last decade, 85 have been executed and 33 are currently on Death Row

● There are currently 11 political prisoners serving sentences

More interesting still are the details around the figures

Since March the victims of detention now include previously powerful Transkeians who have fallen during the recent political upheavels and government in-fighting

Several members of parliament and the former head of security police are now among the detainees. The figures are updated to November 15; later figures would include the paramount chief, Kaiser Matanzima

The arbitrary nature of the detentions is clear. a woman apparently detained because police were unable to find her husband and 74 mineworkers briefly detained when they attended the funeral of a colleague

Although several banishments and detentions have been set aside by court orders, this did not prevent subsequent banishings and detentions. In one case, a detainee was allegedly held for a further two days after a Supreme Court ruling ordering his release.

Banished people seem to have fared slightly better under the new government. There are now only two effective banishments.

The section in the report dealing with legal actions against the minister of police and political trials most heavily underline repression in Transkei.

All but two of the 32 legal suits deal with unlawful detention or arrest and assaults in detention.

In one case, detainee Nomonde Matiso is claiming for unlawful detention and assault. According to the report, Matiso, a church worker, was so badly tortured in detention that she spent three months in hospital, where she was again allegedly assaulted

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