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# 'ANC no to amnesty incorrect'

Star 1/11/95

(252)

Deputy President F W de Klerk on Tuesday said it was incorrect that there was no legal provision for the granting of temporary amnesty to former defence minister Magnus Malan and the 10 retired military officers facing murder charges

De Klerk was reacting to African National Congress spokesman Carl Niehaus, who said legislation under which temporary indemnity could be granted had been repealed in the last parliamentary session. Niehaus said: "There is therefore no legal provision for President Mandela to grant temporary amnesty to Malan or anybody else."

De Klerk's office said in a statement "This, in fact, is not so. The legislation involved was extended by parliament during the last session until 17 May 1996 and will remain in effect until that date or until the Truth and Reconciliation Act comes into force."

"Deputy President De Klerk has made it clear he is not interceding on behalf of specific individuals in one specific case only."

"His argument is that temporary immunity should be available in all situations where it is obvious that the case relates to matters that should be considered by the Truth and Reconciliation Commission."

De Klerk's office's statement also referred to Truth Commission candidate Dr Alex Boraine's comment that the commission would have the power to grant or withhold amnesty, or it could decide that court cases had to be over before considering amnesty.

"This may create an incorrect impression concerning the powers and role of the commission," the statement said.

"The constitution clearly states amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past" - Sapa

# Malan may testify to truth forum

(252)  
Political Staff

ARL 2/11/95

THERE is growing evidence that the state's strategy against former Defence Minister Magnus Malan and 10 former military generals is to force them to testify before the Truth Commission — or face charges of murder when they appear in court tomorrow.

This emerged last night when Safety and Security secretary Azar Cachalia insisted that "the only way to postpone the case is if any of the persons accused say that the matter needs to be referred to the Truth Commission".

And, it was reinforced by African National Congress secretary-general Cyril Ramaphosa, who noted that the generals were free to appeal to the Truth Commission, failing which the "law should take its course".

Mr Cachalia said that if the generals were to say they intended referring the matter to the Truth Commission, "the judge would have to make a decision". But, he repeated, "there is no other basis to stop a legal proceeding".

Mr Ramphosa said the legislation which set up the Truth Commission allowed for a trial to be suspended pending the outcome of an amnesty application.

"Nobody is being thrown to the wolves, but the law should take its course," he told a media briefing at the ANC's Shell House headquarters.

General Malan and 10 retired apartheid-era military officers are due to be arrested when they appear in court tomorrow.

Freedom Front leader Constand Viljoen has announced he will seek an urgent supreme court interdict today to prevent the arrests and said he had asked for "urgent talks" with President Mandela.

According to the interim constitution, anyone who committed an offence during the course of the revolutionary and counter-revolutionary struggles of the past is eligible for amnesty regardless of whether they have been convicted or not of a crime as serious as murder.

But, it is the Truth Commission which must decide whether such people qualify for amnesty.

# Only few disputes in smooth elections

(252)  
et 2/11/78  
JOHANNESBURG: The elections appeared late last night to have proceeded well, but some disputes and trouble spots were reported.

The Mpumalanga legislature is investigating the possibility of sabotage after thousands of ballot papers went missing for more than six hours, causing thousands of voters to miss the chance to vote. Some trucks took 14 hours to make the 100km-odd journey from Middelburg to polling stations and many frustrated voters simply went home. Others waited until 4pm for voting to start.

## Violence

Violence flared between followers of competing political parties in Soweto and some townships on the East Rand.

And a provincial government spokesman yesterday hinted at the possibility of a by-election in Jabulani, Soweto. The trouble started at 7am when an elderly woman went to vote and realised that the ballot paper had no IFP emblem next to the candidate. According to Mr Bantubonke Phephu, public relations officer for the ward, IFP members went to all 13 voting stations asking to see the ballot papers.

## Gun battle

A source close to election organisers said the candidate's registration form had been checked and he had definitely registered as an independent, not an IFP candidate.

The IFP would not accept the results in a Thokoza ward where voting was suspended after a gun battle between two groups, IFP MP Ms Gertrude Mzizi said.

Police arrested two men for the illegal possession of firearms after the shooting in Khumalo Street. Spokesman Captain Wickus Weber said no one was reported wounded, however, and police would remain on the scene.

In the Eastern Cape arguments broke out at a polling station in the rural hamlet of Salem, where election officials were running an ANC recruitment table inside the voting station.

In the Northern Province at least four polling stations were attacked by youths who tore up completed and unused ballot papers and stole ballot boxes.

Sapa, Special Correspondent

THURSDAY  
NOVEMBER 2, 1995

VILJOEN DROPS BID TO HALT ARREST OF OFFICERS

# Mandela refuses to halt prosecutions

**JOHANNESBURG:** The President, referring to the pending arrest of Gen Malan, yesterday said he would not intervene and that justice must take its course.

**P**RESIDENT Nelson Mandela lashed out at the National Party yesterday, saying it was hiding a lot from the apartheid years

He would not halt the prosecution of former defence minister General Magnus Malan and 10 other top military officers accused of involvement in the murder of 13 people eight years ago

"I certainly wouldn't stop it," he said in a BBC interview

Gen Malan and the other officers are due to be arrested today in connection with the 1987 killings and "Third Force" activities against anti-apartheid activists

"When people go and slaughter innocent people, including seven children, a priest and members of his congregation — I want to know

whether that was NP policy"

The NP wants the 11 former-soldiers to be granted temporary immunity from prosecution until the Truth and Reconciliation Commission is up and running.

"Legislation provides for amnesty to be granted for crimes committed with a political objective. What is the political objective in slaughtering innocent children and the aged? They are hiding a lot and it is proper that justice takes its course," Mr Mandela said

## Clear names

Meanwhile, Freedom Front leader General Constand Viljoen said he had dropped plans to seek a court judgment to prevent the arrest of Gen Malan and the other

10 officers accused of involvement in the murder of 13 people eight years ago

He had called off his planned application to the Supreme Court at the request of the former soldiers, who wanted to clear their names as quickly as possible

The former soldiers wanted the chance to prove their innocence

Deputy President F W de Klerk, speaking moments after casting his vote in the local government elections in Queenswood yesterday, said the NP will stand by Gen Malan and his co-accused

Mr De Klerk said the generals were entitled to even-handed action from the law, in the same way that people like Magoo's Bar bomber Mr Robert McBride had gained amnesty. It had never been NP policy to sanction the killing of civilians and assassinations, and anybody who said that was telling a lie, he said — Reuter, Sapa

(252) CT 2/11/95

(252)  
AMNESTY

## Collision course

Fm 3/11/95

The charging of the 11 former security force officials this week (see page 47) comes against the background of rightwing Afrikaner attempts to secure amnesty for their members implicated in apartheid crimes

Hearings will soon begin to determine the composition of the Truth Commission — the constitutionally mandated body that will, among other matters, determine who qualifies for amnesty for "acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past"

The enabling law, the Promotion of National Unity & Reconciliation Act, is aimed at unveiling the true history of political violence from 1960 until December 5 1993, the date enshrined in a "post-amble" to the

interim constitution of 1993 This date will continue to cause controversy, particularly since President Nelson Mandela, on the eve of the community election, again refused the Freedom Front's request that it be advanced to May 10 1994, Inauguration Day

Any alteration of the date would require a constitutional amendment, the Act refers merely to "the cut-off date contemplated in the constitution" So it would require a political decision by the ANC to heed the pleas of Freedom Front leader Constand Viljoen

At specific issue is the fate of the rightwing bombers who allegedly caused the deaths of 23 people in the run-up to the April 1994 poll Mandela last Thursday accompanied Viljoen to Pretoria to meet the families and legal representatives of those charged with the bombings Afterwards he said the trials should go on, clemency could be considered afterwards

"I regret that General Viljoen should leave with empty hands," Mandela said And speaking at an election rally that night, Viljoen indicated a new, chilling divide between his party and the president "Without the extension of the amnesty date, reconciliation with the Afrikaner is impossible, regardless of the sweet-talking"

Viljoen is widely seen as a leader of considerable integrity The DP's Dene Smuts puts it this way "We respect General Viljoen for the attempts he makes to shoulder responsibility for the events of the past, in contrast to a range of other leaders His insistence that he should probably be charged with sedition for planning possible resistance before the 1994 election, and that right-wingers now facing charges or sentences may have been influenced by him, is the latest example of leadership quite beyond the call of duty"

If the amnesty cut-off date stays as it is, deeds which fall outside the Truth Commission's ambit include the Heidelberg Tavern massacre, political killings in KwaZulu-Natal early last year, and whoever turns out to have been responsible for the Shell House shootings, which Mandela himself says he authorised On Shell House, silence has reigned since Mandela's admission

Mandela did not rule out a later amendment of the cut-off date However, three factors — apart from the imminence of the local elections — may have persuaded him to keep December 5 1993 for the present

□ For all Viljoen's tough talk, the Front does not represent the majority of Afrikaners The NP, which voted for the National Unity Act and participates in government, has more of a claim for that status — particularly if brown Afrikaners are taken into account,

□ A point repeatedly made by the DP is that the Act exchanges justice for amnesty, and that flexible cut-off dates (in Smuts's words) "spell soft justice at a time when

accountability before the law must be restored" Mandela understands this His argument is that the Shell House shootings were justifiable self-defence, not in the same league as random attacks on civilians by automatic rifles and bombs, and

□ The cut-off date was agreed at Kempton Park and is part of the interim constitution The "post-amble" made no provision for any party to bargain over the date, and the agreement preceded the atrocities that occurred in early 1994

It is widely known that Mandela and Viljoen have achieved considerable respect for each other Indeed, after this week's poll, a series of meetings is planned between the ANC and the Freedom Front to examine the entire issue of Afrikaner self-determination The announcement of these talks was jointly made last week by ANC secretary-general Cyril Ramaphosa and the Front's Corné Mulder It was necessary to hold a series of meetings "when the process will not be subject to time constraints associated with these (local) elections"

Any concession on the amnesty date could be negotiated in these talks It is curious, however, that the ANC appears to have chosen to deal at this level with the Freedom Front, as somehow representing "the Afrikaner," excluding its formal partners in the executive, the NP

The AWB — whose men face trial for the bombings — has called for the prosecution of ANC members responsible for the Shell House killings "If this is not done, then the blatant anti-white nature of the new SA and its judicial system will be obvious to all," it says

The aims of the Promotion of National Unity & Reconciliation Act do not include routine amnesty for those who have violated human rights in the past The Truth Commission must build up a comprehensive, and balanced, assessment of who did what, and when And who knew It must test all claims for amnesty against the nature of the offence — its motive, circumstances, and gravity

But if the ANC is to avoid the charge that the commission could degenerate into a one-sided witch-hunt, the ghost of Shell House needs to be laid to rest

The hearings of the Truth Commission next year look set to provoke extreme political animosity Even a "soft" cut-off date will not alter that ■

# Force: Apartheid's chickens Caprivi camp at

Mail and Guardian reporters

**G**ENERAL Magnus Malan and 10 former colleagues were arrested because police seized top-secret documents linking them to an Inkatha hit-squad and the birth of the "Third Force"

KwaZulu-Natal's cautious Attorney General Tim McNally ordered the men's arrest because of information in a secret file handed to him by the province's crack investigation task unit set up by Safety and Security Minister Sydney Mufamadi.

The Mail & Guardian has established the ITU has evidence about a secret subcommittee of the State Security Council (SSC) which facilitated the training of a hit-squad loyal to Inkatha. The squad is accused of carrying out political assassinations in KwaZulu-Natal, and its establishment in 1986/87

**The truth commission will only work if the government has the resolve to prosecute those who don't make disclosures. What is happening now is a precondition for the commission to work**

— chaired by former chief of the army General "Kat" Liebenberg — was to facilitate a programme to train and arm 200 young men loyal to Inkatha to counter the growing popularity of the United Democratic Front and perceived military strength of the African National Congress military wing, Umkhonto we Sizwe in KwaZulu-Natal during the 1980s

It was this team of highly-trained hitmen dubbed the Caprivi 200, which is accused of the 1987 Kwa-Makutha massacre in which 13 civilians including six children were indiscriminately slaughtered

The SSC subcommittee arranged for the group to be sent to the Caprivi Strip in 1986 where they were trained by SADF special forces in offensive warfare techniques

On the basis of evidence collected so far the office of the Natal attorney general has presented

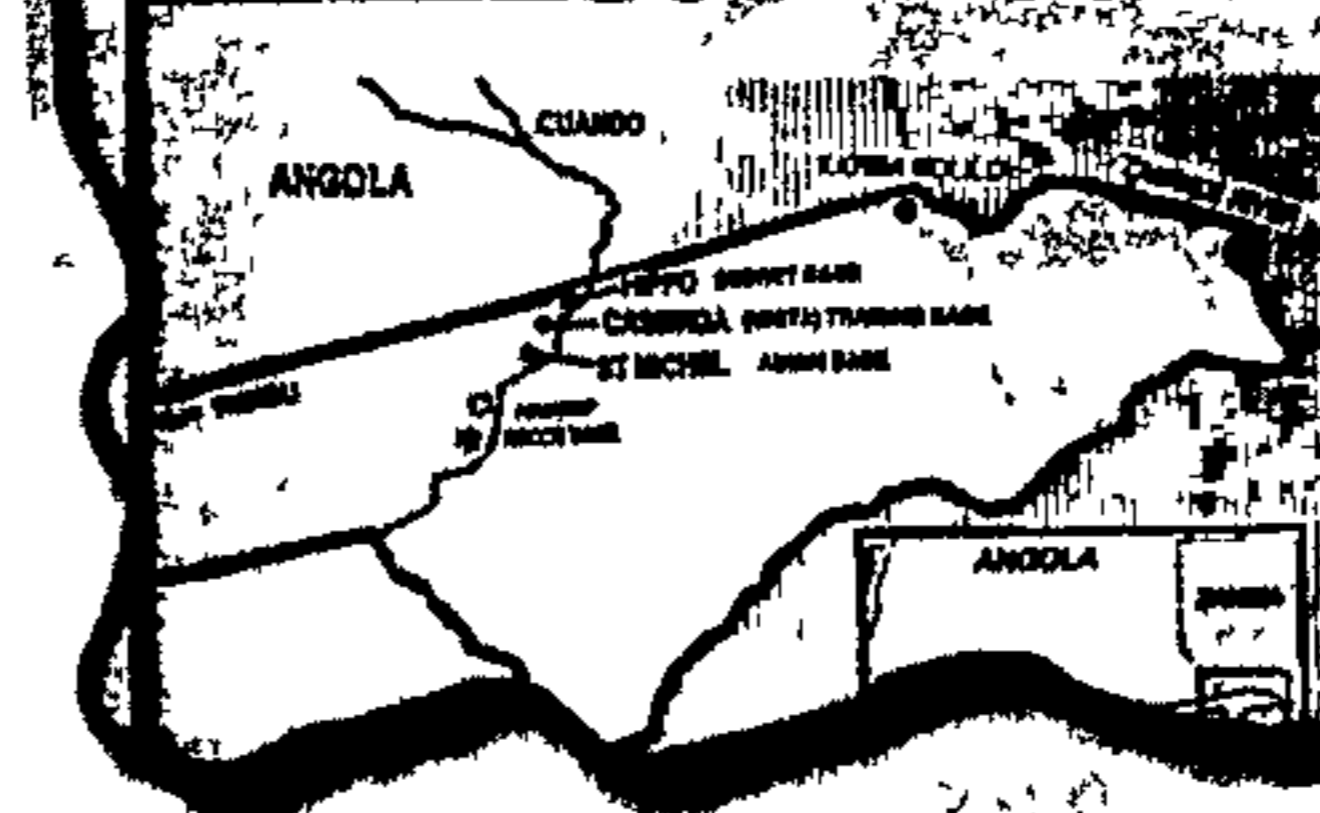
the courts with two legs to a trial around the KwaMakutha killings, one of the most gruesome massacres in KwaZulu Natal's ongoing civil war

The first leg involves charges against members of the Caprivi 200 team accused of carrying out the massacre

The second and latest involves General Malan and his former colleagues who will be accused of setting up the Caprivi force

# come home to roost with the arrest of retired generals and a the heart of evidence a

## Caprivi base where SADF officers gave lessons in guerrilla Inkatha's secret tr



AN elite unit of Inkatha fighters has been trained in guerrilla warfare by South African army officers at a secret base in the Caprivi Strip. The base, called Hippo and located on the banks of the Cuando River, was the seat of Eastern Mafikele, led under the command of Chief of Staff Lieutenant-General. This division of the South African Defence Force took over control of the intelligence guerrilla group, known as the Inkatha Central Intelligence Organisation in the 1970s and helped it train the clandestine force that it is today. The Inkatha training base fell under the command of the SADF. A training base in

Our story which first exposed the Caprivi camp in September 1990

In the first case, among the seven accused are four KwaZulu policemen who went for training at the Caprivi Strip Peter Msane, Celukwanda Ndlovu, Prince Mkhize and Martin Khanyile. Accused with them are former military intelligence officer Brigadier John More, who will be accused of assisting with planning, and Colonel Louis Botha, who will be accused of clearing tell-tale signs of the slaughter. The seventh accused is IFP deputy secretary-general MZ Khumalo allegedly in control of the Caprivi men when they returned to KwaZulu-Natal

after their training. Freedom Front leader General Constand Viljoen said he was sure IFP leader Mangosuthu Buthelezi knew of the involvement of Malan and military officers in operations designed to beef up Inkatha's military strength. "I am sure this was dealt with by the previous National Party government and the KwaZulu homeland government. Surely they should have discussed it government to government," Viljoen told reporters at an election rally in Vereeniging. "They have been involved in reinforcing the KwaZulu people and Chief

Buthelezi (then chief minister of KwaZulu homeland) in order to defend themselves against the onslaught of the United Democratic Front and ANC revolutionary war"

The crackdown by Mufamadi Malan and his colleagues could lead to further arrests and convictions. Azhar Cachalia, secretary of Safety and Security, this week told M&G the success of the truth commission depended on the vigorous prosecution of people from security forces — and also the ANC — refuse to come clean about past

# 'No reconciliation truth' — massacre

*(252) MG 3-9/11/95*  
**E**RNEST THUSINI used to be a religious leader. But it was the brutal murder of five of his children at KwaMakutha on January 21 1987 that brought him into politics. "I think the attack motivated me to go into politics because I believed I had to do something to help enable these changes to take place. Once there was change it would give me the self-fulfillment that my children did not die for nothing," the African



The aftermath Survivors of the KwaMakutha massacre

# Former top cops show support

*(252) MG 3-9/11/95*  
**F**ORMER defence minister Magnus Malan said the arrests yesterday of himself and 10 former military officials were the "biggest crisis for democracy in South Africa". Speaking to journalists after the 11 men appeared in court in connection with the 1987 KwaMakutha massacre, Malan shouted over dozens of black protesters outside the Durban Regional Court, who yelled "murderers" and sang in Zulu. Earlier, inside the courtroom, dozens of former police and military heads, as well as former law and order minister Adriaan Vlok and former police commissioner Johan van der Merwe, lined up to shake the hands of the stony-faced accused after bail conditions were set.

# without survivor

National Congress Durban Metropolitan councillor said this week. Thusini and his wife Faith were among five survivors of the gruesome massacre, saved by a wardrobe which hid them from the attackers' view. His sons Sanele (4) Mbusa (6) Vukle (7) and Phumzile (8), and daughter Nomfundo (10), were less fortunate. Lashing out at attempts this week by Deputy President FW de Klerk and Freedom Front leader Constand Viljoen to have the arrests of former defence minister Magnus Malan and 10 former military officials quashed, Thusini says "Without truth there can be no reconciliation". "In no way will I accept it if those guys just sweep it under the carpet. There has to be truth and it has to be the real truth. It's not even proper for them to ask for a blanket amnesty because morally as a human being, you cannot escape letting the country know what it needs to know. It would be cynical and hypocritical for them to try to use some route to escape," he said.

Thusini argued that if Malan and company were able to escape "the rule of law" it would mean nothing had changed in South Africa. "You don't change by voting, change has to come from within". While Thusini feels that "if there is concrete evidence people should have to face trial before seeking amnesty" he supports the truth and reconciliation process — even for the men who caused him the "devastating" loss of his children. "It was something that was agreed by all the parties in order to heal the wounds of the past. We need to know what happened. I believe that even though my children won't come back, if the truth can come out it will help to heal the whole country."



General amnesty? From left Former generals Magnus Malan, Tienie G most senior of the 11 accused

# Caprivi camp was first expose

*(252) MG 3-9/11/95*  
**T**HE Weekly Mail (now the Mail & Guardian) first exposed the existence of the Caprivi 200 hit-squad in 1990, when it reported the group was trained at a secret training base called Hippo on the banks of the Cuando River in the Caprivi Strip. The base was not far from the Angolan border and was controlled by the South African military's chief of staff intelligence. At least two batches of Inkatha fighters — each about 100 strong — were trained to use AK-47s, RPG-7 rocket launchers, G3 automatic rifles, Browning machine guns and anti-personnel mines. The course at Hippo lasted seven months and included lessons on urban and guerrilla warfare, use of explosives and demolition methods. The South African Defence Force officer in charge of training was M "Jakes" Jacobs, a former instructor for military special operations. Jacobs and Brigadier Cor Van Nerk, former director of the militia Special Tasks 2 unit, are among military officers charged with Malan in connection with the KwaMakutha massacre. The ITU made a vital breakthrough in its investigation into Third Force violence in February this year when Daluxolo Luthuli, former commander of the Caprivi 200, decided to defect from Ulundi and co-operate with the ITU. At the time, Luthuli told M&G's lance reporter Enoch Mthembu

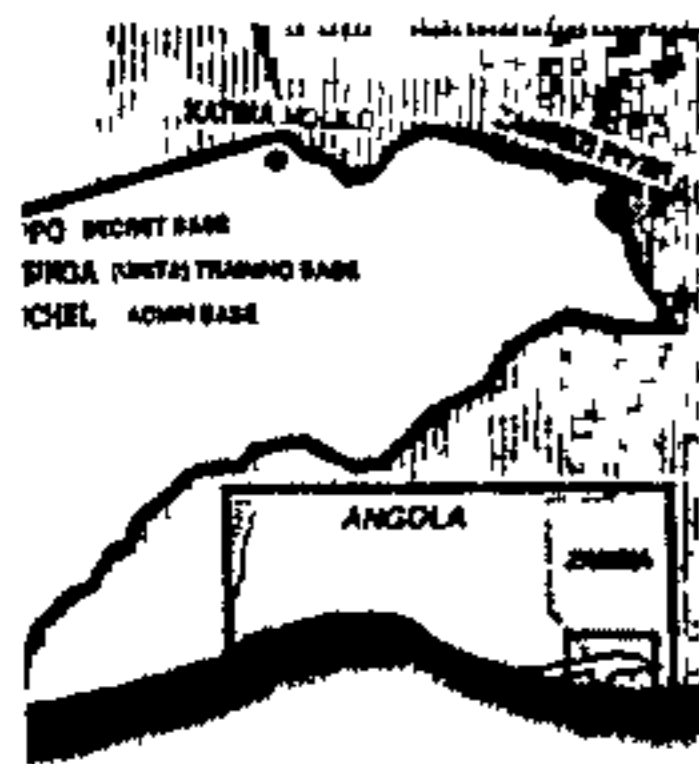
oost with the arrest of retired generals and a former defence minister

# Part of evidence against generals

*(Handwritten: MGT 3-9/11/95)*

base where SADF officers gave lessons in guerrilla tactics

## Inkatha's secret training base



AN elite unit of Inkatha fighters has been trained in guerrilla warfare by South African army officers at a secret base in the Caprivi Strip.

This base, called Hippo and located on the banks of the Cuando River 50km west of Kamiso Mallie, fell under the control of Chief of Staff Intelligence.

This division of the South African Defence Force took over control of the Mozambique guerrilla group, Renamo, from the Rhodesian Central Intelligence Organisation in the 1970s and turned it into the clandestine force that it is today. The Inkatha training base fell under its control.

### ENOCH KOCH reports on evidence of a Renamo connection

... was involved in support for Renamo and has received Mozambicans, Angolans and former Zimbabwean dissidents into its ranks.

The Hippo base trained at least 200 Inkatha guerrillas in 1986. The SADF officer in charge of training was Major "Jakes" Jacobs. He was assisted by a lieutenant, a sergeant and another officer. Some recruits remember being sent by four white men who slapped them on the back and joked about how they were going to make soldiers of them.

At least two batches of Inkatha fighters, each about 100 strong, were trained to use AK-47s, RPG7 rocket launchers, G3 submachine guns, Browning machine guns and anti-personnel mines. The course at Hippo lasted seven months and included lessons in urban and guerrilla warfare, use of explosives and demolition, and counter-intelligence — a form of military intelligence work.

The recruits were never told where the base was but remember seeing elephant graffiti and foxes. Some were led to believe that they were in Zimbabwe. After training was completed, the recruits were divided into...

where some of them were required to train other Inkatha members. One of these units spent two weeks at a farm north of Pretoria, where they went on a refresher course.

These details have been denied by the government of KwaZulu and a representative of the SADF told said he had no knowledge of the Inkatha training base. However, they have been verified by a former member of the military's Civil Co-Operation Bureau (CCB), a member of the SADF who served in the Caprivi Strip region at the time, and by Inkatha members who were trained at Hippo and have made statements to lawyers about their experiences.

There are also reports that there was, at Hippo, a refresher course for...

of the Caprivi camp in September 1990

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after their training.  
Freedom Front leader General Constand Viljoen said he was sure IFP leader Mangosuthu Buthelezi knew of the involvement of Malan and military officers in operations designed to beef up Inkatha's military strength.  
"I am sure this was dealt with by the previous National Party government and the KwaZulu homeland government. Surely they should have discussed it government to government," Viljoen told reporters at an election rally in Vereeniging.  
"They have been involved in reinforcing the KwaZulu people and Chief

Buthelezi (then chief minister of the KwaZulu homeland) in order to defend themselves against the onslaught of the United Democratic Front and the ANC revolutionary war."

The crackdown by Mufamadi on Malan and his colleague could lead to further arrests and convictions. Azhar Cachalia, secretary for Safety and Security, this week told the M&G the success of the truth commission depended on the vigorous prosecution of people from security forces — and also the ANC — who refuse to come clean about past acts

of violence.  
"It was clear that several of those who have been charged in this case would not have co-operated with the truth commission. The commission will only work if the government has the resolve to prosecute those who don't make disclosures — and this applies to members of the liberation movement and the state's forces. What is happening now is a precondition for the truth commission to work."  
Howard Varney, a lawyer advising the ITU, said this week the Malan case was at such a sensitive stage he could not discuss it with the press.

## Indemnity may be hard to come by

*(Handwritten: MGT 3-9/11/95)*

HERE is only one route open to General Magnus Malan if he wants to avoid the trial which is ahead of him.

He and his co-accused can ask the court in Durban for a stay of proceedings because they wish to take their case to the Amnesty Committee within the Truth and Reconciliation Commission when it is set up early next year.

Then the Natal attorney general, in consultation with that committee, may decide to ask the presiding judge for charges to be withdrawn and for the matter to be handled by the truth commission. The judge may refuse, and the decision of the court will be final.

But the attorney general may also decide to turn down the request for the matter to be referred to the Amnesty Committee, especially if the charges relate to murder.

But even if the case is referred to the truth commission, amnesty will not be automatic. Questions of proportionality will temper mercy.

There have been two previous procedures for indemnity since the African National Congress was unbanned. The first was in 1990, when the National Party government needed a device to negotiate with exiled members of the ANC who were also wanted for various breaches of the law.

The device was complemented by the Further Indemnity Act of 1992. Killers from the right wing, the ANC, Inkatha, and the Pan Africanist Congress were released from prison and indemnified. But only a handful of security force members sought indemnity from prosecution. At no time did former President FW de Klerk advise soldiers and policemen to seek indemnity under that Act.

Neither Malan nor his co-accused asked for indemnity until shortly before last year's general election. Then Malan and about 3 500 former and serving members of the security forces attempted to get indemnity in a mass application. Their applications could not be processed because none of those seeking indemnity specified any crimes.

And now it is too late. That legislation has fallen away.

It would seem, therefore, that Malan and his co-accused have probably got a long trial ahead of them.



General amnesty? From left: Former generals Magnus Malan, Tienie Groenewald and Jannie Geldenhuys — the most senior of the 11 accused

## Caprivi camp was first exposed five years ago

*(Handwritten: MGT 3-9/11/95)*

THE Weekly Mail (now the Mail & Guardian) first exposed the existence of the Caprivi 200 hit-squad in 1990, when it reported the group was trained at a secret training base called Hippo on the banks of the Cuando River in the Caprivi Strip.

The base was not far from the Angolan border and was controlled by the South African military's chief of staff intelligence.

At least two batches of Inkatha fighters — each about 100 strong — were trained to use AK-47s, RPG7 rocket launchers, G3 automatic rifles, Browning machine guns and anti-personnel mines. The course at Hippo lasted seven months and included lessons on urban and guerrilla warfare, use of explosives and

demolition methods.  
The South African Defence Force's officer in charge of training was Major "Jakes" Jacobs, a former instructor for military special operations. Jacobs and Brigadier Cor van Niekerk, former director of the military's Special Tasks 2 unit, are among the military officers charged with Malan in connection with the Kwa-Makhutha massacre.

The ITU made a vital breakthrough in its investigation into Third Force violence in February this year when Daluxolo Luthuli, former commander of the Caprivi 200, decided to defect from Ulundi and co-operate with the ITU.

At the time, Luthuli told M&G freelance reporter Enoch Mthembu he

acted as chief of staff for the Caprivi 200 and also Inkatha's military council between 1987 and the early 1990s.

"They (the paramilitary units) were killing Inkatha opponents, that is ANC leaders, with instructions from IFP leaders. Sometimes they would kill ANC people at their own discretion and then report back to their seniors so that cover-ups could take place," he said.

Luthuli said during the interview he had decided to defect from Inkatha because he regretted his role in the hit-squad network.

Many of the Caprivi 200 are still employed in old KwaZulu Police structures now absorbed into the South African Police Service.

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# Attorneys warn on illegal debt recovery

Susan Russell

THE Association of Law Societies (ALS) has made an urgent appeal to Justice Minister Dullah Omar to set up effective measures for recovering debt to replace those, allowing for the imprisonment of debtors, which were struck down by the Constitutional Court in September.

An article published in the November issue of the attorneys' journal *De Rebus* quoted ALS director of professional affairs Arno Botha as saying that it was now up to the minister to take steps to fill the void left by the Constitutional Court judgment. Botha also said that an ALS dele-

gation had already met Omar twice on the issue and had submitted detailed and well-argued recommendations on how the question of debt recovery should be handled.

Legislation which provided for the imprisonment of debtors in terms of section 65 of the Magistrate's Act was held to be unconstitutional by the court and the offending provision was struck down. At the Constitutional Court hearing of the issue, the ALS argued against scrapping the relevant provisions of the Act.

During argument, the ALS conceded that the existing procedure was unconstitutional, but submitted it should be retained until replaced by alterna-

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tion that did conform with the constitution. ALS president Tony Hardy has said illegal methods of debt recovery would increase if the Magistrate's Courts did not have effective powers to enforce the payment of debt.

De Rebus said that according to Hardy the only way to counter unlawful methods of debt recovery was to introduce an efficient, effective and inexpensive procedure to bring a debtor able to pay his debts, to court and if necessary to commit him to prison as an "example to himself and others".

Responding to the judgment in *De Rebus*, Transvaal Law Society President Danie Olivier said the attorneys' profession had a direct interest in debt

collection. The question now, he said, was whether they should ask Parliament to amend the Act to allow civil imprisonment of a debtor who appeared before a magistrate and who wilfully remained in default.

Such legislation would have to comply with the guidelines set out in the Constitutional Court judgment. "The alternative is to consult as widely as possible with financial institutions and other organisations before approaching government to amend the legislation," Olivier suggested that a series of seminars be held urgently to debate the issue between the legal profession, financial institutions and other interested groups.

# Truth probe nominees cut back to 46 (252)

Star 4/11/95

Cape Town — The list of nominees for the Truth and Reconciliation Commission has been trimmed to 46, and interviews of potential commissioners will start on November 13, selection panel chairman Nicholas Haysom said yesterday.

The selection panel considered only 160 of the original 299 proposed candidates when it met in Johannesburg on Thursday, he said.

"The panel was most impressed with the quality of the nominees, many, if not all, of whom would have graced the Truth and Reconciliation Commission," Haysom said in a statement.

The final list of 46 was not a shortlist as such, but constituted a list of persons the panel would wish to interview. The list was somewhat larger than originally intended.

But Haysom said he believed that some of the nominees would withdraw once they appreciated the degree of commitment which would be required of them over the follow-

ing 18 months to two years.

The nominees include Archbishop Desmond Tutu, Black Sash veteran Mary Burton, South African Council of Churches leader Dr Frank Chikane, Anglican priest and apartheid-era bomb victim Michael Lapsley, human rights lawyer Essa Moosa, former Eastern Cape district surgeon Wendy Orr, poet and philosopher Adam Small, theologian Charles Villavicencio, and former National Party MP Wynand Malan, who later left the party to become a political independent.

Prominent nominees who were not chosen included Stellenbosch academic Sampie Terblanche, University of Cape Town professor David Welsh, television personality Denis Davis and former Daily Dispatch newspaper editor Donald Woods.

Interviews will be held in Cape Town, Johannesburg and Durban.

The public has been asked to comment on the list by November 11 — Sapa-Reuter.

# Wendy Orr, Tutu nominated for Truth Commission

(252) ARG 4/11/95

JOHANNESBURG — Wendy Orr, the doctor who exposed police brutality against political detainees in the 1980s, is set to become a Truth and Reconciliation commissioner

Dr Orr is one of 46 candidates to be interviewed from November 13 by a panel appointed by President Nelson Mandela Nobel Peace Prize winner Archbishop Desmond Tutu and the Rev Frank Chikane are also candidates

The panel agreed on a list of 46 nominees after considering 160 of the 299 candidates, panel chairman Nicholas Haysom said yesterday

The panel said it had addressed both the "track record" of the nominees as well as the need to ensure the list was representative of South Africa's population "in regard to gender, race and profession".

Mr Haysom said further interviews would take place in Johannesburg and

Durban in the same week as interviews in Cape Town

The list of nominees is Franz Au-cherbach, Alex Boraine, Mary Burton, Frank Chikane, Murray Coetzee, Chris de Jager, Andries du Plooy, Bongani Finca, Sisi Kamphephe, Paddy Kearney, Edwin King, Michael Lapsley, Richard Lyster, Bongani Majola, Wynand Malan, Thomas Manthatha, Jabulani Maphalala, Mandla Mchunu, David McQuoid-Mason, Shenaaz Mendez, Jan Mettler, Hlengiwe Mhize, Stanley Mogoba, Margaret Majapelo, Essa Moossa, Dan Morkel, Peter Mothle, Malikolo Motumi, Dumisa Ntsebeza, Rashid Omar, Pieter Oosthuizen, Wendy Orr, Tumba Pillay, Dianne Prinsloo, Mapule Ramashala, Faizel Randerera, Thabo Rangaka, Mcdard Rwelamira, Solly Sithole, Adam Small, Yasmin Sooka, Desmond Tutu, Hendrik (H W) van der Merwe, Charles Villa-Vicencio and Glenda Wildshut — Sapa

## Probe into advocates remains under wraps

By MARLENE BURGER

TRUSTEES of Lawyers for Human Rights are waiting to be told when they will discuss an independent investigation's findings on two unorthodox payments involving top human rights advocates Brian Currin and Jules Browde.

The probe followed disclosures that LHR issued a R56 771,91 cheque in August last year to pay Mr Currin's personal taxes and that three months earlier, former employee Siphon Mahamba had been paid R30 000 in settlement of a claim for remuneration without the knowledge of the LHR management committee.

The payment was authorised by Mr Browde, chairman at the time of LHR's board of directors.

The money was paid into Mr Browde's bank account and put through the books as a consultancy fee. He then issued a personal cheque to Mr Mohamba, now an associate of Mr Currin's in a private consultancy.

Durban advocate Navi Pillay said trustees were "having a problem" finding a date on which all of them could attend what will be their first meeting since election about nine weeks ago. Until then, the contents of the report would remain confidential, she said.

(252) ST 5 11/95

# Blacks for Truth body

By Manthata Tsedu

At least 25 of the 46 nominees short-listed for appointment to the Truth Commission are black

This contrasts significantly with the list of nominees released early last month wherein blacks constituted less than a third of nominees. The dismal showing by blacks then had raised concern that the commission, which will look into political crimes of the past, would be dominated by whites.

The 46 include well-known figures such as Archbishop Desmond Tutu, Bishop Stanley Mogoba, Reverend Frank Chikane, lawyer Mr Dumisa Ntsebeza, Dr Wendy Orr, attorney Sisi

Khampepe and Professor Adam Small

The 46 names will be trimmed down to 25 before being presented to President Nelson Mandela and the cabinet for the appointment of between 11 and 17 of them into the commission. Interviews with the panel will be conducted in Durban, Cape Town and Johannesburg from November 13, selection panel head Professor Fink Haysom, said in a statement.

People wishing to comment on either the list or specific individuals may submit their comments to Denzil Potgieter at Private Bag X256, Cape Town or fax (021) 461 6560 before November 11.

The other commission nominees are

Dr. Franz Auerbach, Alex Borame, Mrs Mary Burton, Rev. Muna Coetzee, Adv Chris de Jager, Rev. Andries du Plooy, Rev Bongani Finca, Mr Paddy Kinnear, Judge Edwin King, Rev Michael Lapsley, Mr Richard Lyster, Prof Bongani Majola, Mr Wynand Malan, Mr Tom Manthata, Prof Jabulani Maphalala, Prof Mandla Mchunu, Prof David Mc-Quoid-Mason, Ms Sheenaz Meer, Mr Juan Mendez, Rev Jan Mettler, Ms Hlenguwe Mkhize, Dr Margaret Mojapelo, Mr Essa Moosa, Prof Dan Morkel, Mr Peter Mothle, Ms Malikolo Motumu, Imam Rashid Omar, Adv Pieter Oosthuizen, Mr Tumba Pillay, Dr Dianne Prinsloo, Dr Mapule Ramashala, Dr Faizel Rander, Dr Thabo Rangaka, Prof Medard Rwelamira, Adv Solly Sithole, Dr Yasmin Sooka, Prof Hendrik (HW) van der Merwe, Prof Charles Villavicencio and Ms Glenda Wildshut.

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## Victims' families join together to challenge Truth Commission

252 Star 6/11/95  
BY MONDLI MAKHANYA  
Political Reporter

The Azanian People's Organisation and families of apartheid-era atrocity victims are to launch a constitutional court challenge against the Truth Commission.

The challenge was agreed to by the parties at a weekend meeting in Johannesburg.

It will be officially announced today.

Families involved in the challenge include those of late Black Consciousness leader Steve Biko and slain activists Griffiths and Victoria Mxenge.

These families have been outspoken in their condemnation of the truth body and

they instead advocate the prosecution of the perpetrators of apartheid crimes.

According to Azapo sources, the court action will seek to declare the Promotion of National Unity and Reconciliation Act unconstitutional, and therefore render the setting up of the Truth Commission impossible.

The decision comes soon after the Justice Ministry announced the list of 46 names of people who will shortly be interviewed for the Truth Commissioners.

The list of names includes Archbishop Desmond Tutu, Methodist Presiding Bishop Stanley Makgoba and former Democratic Party co-leader Wynand Malan.

## Lawyers back attorneys-general

PRETORIA — Recent events involving KwaZulu-Natal attorney-general Tim McNally serve to underscore the need for the political independence of attorneys-general, says the Association of Law Societies (ALS).

According to the November editorial of the ALS monthly journal *De Rebus*, "prosecutorial independence is a necessary precursor to meaningful judicial independence".

The editorial said: "Political action, were it to be permitted, would undermine that independence."

The ALS has called for the appointment of a national attorney-general in the light of the events surrounding McNally.

Meanwhile, *De Rebus* reports. at

BD 6/11/95

torneys have been assured by the Legal Aid Board that outstanding fees will be paid to them, in spite of reports in the media about a lack of contingency reserves. (252)

The assurance came from aid board director Nic Pretorius after deputy auditor-general Bertie Loots told journalists the board would be underfunded by at least R40m.

The board had failed to provide for at least R55m in contingent liabilities for claims not yet disposed of, Loots had said.

"I wish to assure legal practitioners who perform legal aid services on instruction of the LAB that they will indeed be paid for their services," said Pretorius. — Sapa.

## Boeing wins contract for SAA's R3,5bn fleet upgrade

Stephané Bothma

BD 6/11/95

SAA has placed a R3,5bn contract with the US Boeing Company for the purchase of nine new aircraft to meet the growth in the carrier's international passenger and cargo services, Public Enterprises Minister Stella Sigcau announced on Friday.

This is SAA's largest single order in its 61-year history and includes two Boeing 747-400 and seven Boeing 777-200s. The new aircraft will meet SAA fleet requirements up to 2000.

In terms of the contract, Boeing and the company which will supply the engines had agreed to place offset contracts in SA to the value of 80% of the contract constituting R2,8bn, Sigcau said at Johannesburg International Airport.

The suppliers of the engines of the aircraft have not yet been selected. Three manufacturers, General Electric, Pratt & Whitney and Rolls Royce will compete for the contract and the successful supplier will be announced later this month.

Details of the nature of the counter-trade has not been finalised, but SAA deputy CE John Hare said Boeing was currently looking at training facilities in the country.

"My department will work with Trade and Industry in monitoring the process."

Should the offset be in the form of

cash contributions for training programmes, the amounts payable by Boeing and the engine manufacturers would be approximately R110m.

Initial financing for the aircraft will be from Transnet — a minimal down-payment — but further predelivery finance will be negotiated with the US Export-Import Bank and other SA and international banks, Transnet chairman Anton Moolman said.

Sigcau said the new aircraft would be major earners of foreign exchange and of major importance to the development of new jobs opportunities in operating and maintaining the aircraft.

An increase in passenger and cargo growth of more than 20% has put pressure on the availability of capacity on SAA international aircraft. This, together with the need to replace some of the older aircraft — all five Boeing 747-200s in SAA's fleet are already more than 22 years old — has necessitated the acquisition of the new aircraft.

The world's three largest aircraft manufacturers, Boeing, Airbus Industrie and McDonnell Douglas had tendered for the contract.

Deliveries of the first Boeing 777s will start in 1997 and they will be used mainly to Europe and the Far and Middle East. The two 747s will be delivered in 1997 and 1999 and will compliment the existing four aircraft on routes to the US and UK.

SAA currently operates 29 Boeings.





# Omar will contest Azapo truth probe bid

By **MONDLI MAKHANYA**  
Political Reporter

Justice Minister Dullah Omar has told the Azanian People's Organisation he is prepared to contest the organisation's bid to declare the Truth Commission unconstitutional.

His spokesman Sue de Vilhiers said the minister had written to Azapo's lawyers informing them that while every citizen had the right to approach the Constitutional Court, he was satisfied the Truth Commission complied with the constitution.

"The constitution, drawn up by everyone in the Kempton Park talks, said Parliament would decide on the issues of amnesty and reconciliation, and that is what the Act is about," said De Vilhiers.

The challenge is to be made in conjunction with the families of Black

Consciousness leader Steve Biko, who died in police custody, and of Griffiths Mxenge, who was allegedly killed by security force hit squads.

Announcing the court challenge

## “ **No indemnity for apartheid perpetrators** ”

yesterday, Azapo president Mosibudi Mangena said the organisation was seeking to have the Promotion of National Unity and Reconciliation Act declared "constitutionally unsound". He said it violated the separation of powers between the judi-

cial, executive and legislative wings.

"It is our view that adjudication on legal or criminal matters must be left to the judiciary," he added.

"Thus legislation takes away the right of citizens to find redress in the courts in situations where they have been grossly wronged."

The international community had already declared apartheid a crime against humanity, and indemnifying perpetrators of apartheid was also a violation of international law.

"It is therefore unlawful for the South African state to seek to immunise against prosecution individuals who have committed crimes against humanity such as systematic torture, genocide, the murder of civilians in prisons (and) in residential areas around the country, and cross-border attacks in neighbouring countries," said Mangena.

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(252)

# Attorneys-general rally to support McNally

Star 7/11/95  
BY HELEN GRANGE

The provincial attorneys-general are adamant that their independence to prosecute as they see fit is protected under existing laws despite recent allegations that their KwaZulu Natal colleague, Tim McNally, was politically influenced to charge former defence minister Magnus Malan and ten others with murder.

McNally had previously been accused of being reluctant to prosecute people accused of hit squad crimes in the province, but last week charged the 11 retired high-ranking military officers of being implicated in the murder of 13 people in 1987, raising the suspicion that he had been subjected to political pressure.

He vehemently denied this alle-

gation.

(252) (S)

The Star canvassed attorneys-general yesterday about their independence and they agreed that the existing Attorneys-General Act of 1992 and the Interim Constitution offered adequate protection of their independence. There was no need for a national attorney-general, as has been mooted by some law organisations recently.

They also rallied to support McNally in his latest decision, saying they were confident of his integrity in the matter.

Philip van der Merwe, editor of the attorneys' journal *De Rebus*, commented after writing on the issue in a recent editorial:

"I assume McNally decided to prosecute Malan when more evi-

dence was added to the docket recently, justifying a change in his legal status from state witness to murder accused," Van der Merwe said.

The editorial of the latest edition of *De Rebus* says that the independence of prosecution is a necessary precursor to meaningful judicial independence - a situation which was adequately catered for already.

At the same time, accountability was reinforced by means of a parliamentary justice committee which held public hearings with the attorneys-general and exchanged views on their decisions.

At the last meeting of this committee in September, McNally had undertaken to review his decision not to prosecute six policemen for the death of a suspect in custody.

## Unity Act challenged

Nomavenda Mathiane

BD 7/11/95

THE Azanian People's Organisation, along with the families of Steve Biko and Griffiths Mxenge, plan to take the truth commission legislation to the Constitutional Court

In a letter to Justice Minister Dullah Omar, seen as a preamble to Constitutional Court action, Azapo and the families argue that the Promotion of National Unity and Reconciliation Act takes away citizens' right to legal redress in situations where they have been wronged.

They said SA considered itself a law-abiding state. It was unlawful for it to "immunise against prosecution individuals who tortured and committed genocide".

Azapo secretary-general Janus Kgokong, said it was strange that while most countries emerging from oppression had sought and prosecuted human rights violators, SA was bent on letting criminals "get away with murder".

He found it ironic that while Judge Richard Goldstone was in Europe helping bring Bosnian violators to book, the SA state was letting its own perpetrators go free.

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# Bid to bring unity to black business

Vera von Lieres and John Dlodlu

SENIOR officials from SA's leading business federations met in Johannesburg yesterday in an attempt to forge unity among the country's black business community.

The meeting was attended by representatives from the National African Federated Chamber of Commerce (Nafcoc) and the Black Management Forum (BMF).

Co-operation between the major players in black business — such as Nafcoc, the Foundation for African Business and Consumer Services (Fabcos) and the National Black Business Caucus — has been a scarce commodity in the past.

Fabcos spokesman David Moshapalo said black business had failed to be effective, because of being "too splintered" in its approach.

"This initiative is an attempt to bring together the black voice. As black business we agree on common objectives, but differ on the principles and processes to bring them about."

Caucus senior officials said they knew of the initiative, but none of their representatives could attend yesterday's meeting. Executive director Danisa Baloyi was reportedly expected to attend.

Previously, there had been tension between the caucus and Nafcoc over which body legitimately represented black business.

Black Management Forum official Bhekis Sibisi said the initiative's car-

dinal aim was to create a single voice.

He ruled out any possibility of a new organisation being formed or a new black economic empowerment vehicle being established, as was speculated.

Lobbying government would be on the agenda, which would be drawn up next week after all stakeholders had been consulted.

Sources close to black business said the real test of the new initiative would be the ability to rally all the players.

Although sources said the idea of the initiative came from Deputy President Thabo Mbeki, his economic adviser Moss Ngoasheng denied any knowledge of Mbeki's involvement. However, government officials previously criticised black business for lacking unity. Ngoasheng said government would deal with the mooted lobby like any other group.

Moshapalo said the fact that Nafcoc and Fabcos were both involved in the initiative meant the two organisations were "drawing closer together" and exploring common areas.

Early this year the divisions in black business became apparent again, with Nafcoc and Fabcos split over business's representation in the National Economic, Development and Labour Council.

The dispute arose over whether the two black groupings should be part of Business SA (BSA). Nafcoc pushed for separate black representation in Nedlac, while Fabcos opted to join BSA.

At present Nafcoc and BSA represent business interests in Nedlac.

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## Omar ready for challenge

Political Staff (252) ARG 7/11/95

JUSTICE Minister Dullah Omar has told the Azanian People's Organisation (Azapo) he is prepared to contest the organisation's bid to declare the Truth Commission unconstitutional

Mr Omar's spokeswoman, Sue de Villiers, said the minister had written to Azapo's lawyers informing them that while every citizen had the right to approach the Constitutional Court, he was satisfied the Truth Commission complied with the constitution

"The constitution, which was drawn up by everyone in the Kempton Park talks, said parliament would decide on the issues of amnesty and reconciliation and that is what the Act is about"

The challenge is to be made in conjunction with the families of Black Consciousness leader Steve Biko, who died in police custody, and that of assassinated lawyer Griffiths Mxenge

Announcing the court challenge yesterday, Azapo president Mosibudi Mangena said the organisation was seeking to have the Promotion of National Unity and Reconciliation Act declared "constitutionally unsound"

"This legislation takes away the right of citizens to find redress in the courts in situations where they have been grossly wronged," he said

# First child court hailed

*Sowetan 7/11/95*

(252)

**Sowetan Correspondent**

THE Johannesburg Magistrate's Court has become the first court in the country to prove it takes the plight of child abuse victims seriously.

Yesterday marked the official opening of a small, child-friendly room adjacent to the regional child court.

It was decorated with murals and containing toys, curtains and comfortable chairs.

The room is monitored by a closed circuit camera that links the testimony of child abuse victims to the court.

This method is sparing little witnesses the trauma of appearing in the witness stand before lawyers and magistrates clad in black robes and opposite the suspected perpetrator.

## **Court intimidates**

A court is an intimidating place for most people, and testifying in court is generally regarded as a traumatic experience. Child Abuse Alliance (CAA) chairwoman Meryll Kantor said at the official opening of the children's court ante-room yesterday.

However, children with a history of abuse often feel victimised in court, as if they are being prosecuted, and not appearing as a victims in the case.

By removing the child from court, placing him or her in a colourful, comfortable environment with a trained intermediary alongside to illicit responses and re-phrase difficult questions put by the court, the child is protected from the trauma of taking the stand, Kantor said.

In addition, the court benefits from the child being relaxed while answering questions.

## **Free mural art**

Kantor said the project was initiated by the Child Protection Unit, and coordinated by the CAA, with the services of mural artist Alan Coleman provided free.

She said the Protea Magistrate's Court in Soweto would be the next court to have a special children's room.

The CAA hoped that yesterday's event, which was attended by officers of the courts, government representatives, child care organisations and the media, would start a nationwide trend towards protecting the rights of child victims in court, Kantor said.



BY PATRICK BULGER  
Political Correspondent

# New legislation allows president to declare emergency

Star 8/11/95

(252)

The declaration of a state of emergency in societies is seldom free of controversy, given that political elites often cite the protection of the public interest to act against a particular interest. South Africa has not been an exception in the past and needs to be challenged to avoid a repeat in the future.

Throughout the 1960s and again in the 1980s the National Party government declared several emergencies, ostensibly in the interests of ensuring the safety and security of the Republic and its citizens.

In the event, however, such emergencies were useful and indeed essential tools of political suppression in the ongoing battle between government and its then-proscribed political opposition.

The advent of democracy and the coming of the constitutional state has not, unfortunately, made emergency legislation any less necessary. Indeed there are persistent rumours that a state of emergency will at some stage be invoked in KwaZulu Natal as tens of people continue to die in violence in that province every weekend.

Thus far, however, the current Parliament has acted in this realm only by lifting the emergency in that province declared by the previous government.

As a final resort in ensuring the viability of the state as both legal and political entity, Parliament this year passed new emergency legislation, the essence of which is in line with both the spirit and the letter of the interim constitution.

To this end, the State of Emergency Act of 1995 repeals a whole range of security-related legislation, in particular the Public Safety Act of 1953 in terms of which previous emergencies had been declared. Also re-

pealed, of course, are the laws that provided for emergencies in the independent homelands.

The new legislation entails a role for the democratically elected Parliament where previous legislation was insistent that an emergency was the prerogative of the executive alone. The law also omits previous provisions which enabled the president to declare "unrest areas" which were basically mini-states of emergency which could be declared in certain specified areas without having to incur political embarrassment.

## To deal with war, invasion or insurrection

The law provides only that the president may declare an emergency for no longer than 21 days "unless it is extended for a period of no longer than three months or consecutive periods of no longer than three months at a time, by resolution of the National Assembly adopted by a majority of at least two-thirds of all its members"—the same requirement adopted in the case of a change to the constitution.

While the new emergency legislation provides the means for the mechanical approval for a declaration, the power to declare an emergency is part of the Interim Constitution. The constitution allows that certain constitutional rights may be limited by the so-called "limitation" clause which says rights may be suspended if such suspension is "reasonable" and "justifiable in an open and democratic society based on

freedom and equality", and provided that the "essential content of the right in question" is not negated.

In terms of the new legislation, the president may in the Government Gazette declare an emergency in the Republic or any part of it.

The law provides for the president to issue regulations that would cater for the specifics of any eventuality or, in the words of the legislation, "to deal effectively with a war, invasion, general insurrection or disorder or national disaster".

The onus is on the president to make known the contents of regulations.

The law is a piece of empowering legislation which provides the president the power to make specific and detailed regulations. Included are the powers to confer on persons or bodies (usually the security forces) the power to act in terms of the law. The president may also prescribe penalties which will be invoked in the event of disobedience, but "No term of imprisonment provided for in terms of or under any regulation contemplated in this section shall exceed three years".

There are two areas of public life over which the president's prerogative is not extended: the president may not compel anybody to render military service except that military service laid down in the Defence Act, and he may not interfere with the country's democratic structures, to wit "any law relating to the qualifications, nomination, election or tenure of office of Members of Parliament or a provincial legislature, or to the sittings of Parliament or a provincial legislature or to the powers, privileges or immunities of Parliament or a provincial legislature or of the members of committees thereof is amended or suspended".

Clearly, such temporary deprivation of rights as the society considers essential and as is provided for in the statute is not a decision lightly taken.

# Child witnesses given their own courtroom

Star 8/11/95 (252) (28)

By Daisy Jones

When bewildered child-abuse victims are requested to testify in South African courts, the youngsters are either confronted with the intimidating prospect of a room full of imposing adults, or an adjoining chamber is rigged up temporarily for trial.

However, the Johannesburg Magistrate's Court has become the first court in the country to alleviate this stress factor for child witnesses.

This week was marked by the official opening of a small, child-friendly room adjacent to the regional children's court. It is decorated with murals, curtains and comfortable chairs, with toys on hand.

The room is monitored by a closed-circuit camera that links the testimony of child-abuse victims to the court, sparing little witnesses the trauma of appearing in the witness stand before lawyers and magistrates clad in black robes, and opposite the suspected perpetrator.

Court is an intimidating place for most people, and testifying in court is generally regarded as a traumatic experience, Child Abuse Alliance

(CAA) chairman Meryll Kantor said at the official opening of the children's court ante-room on Monday

Children with a history of abuse often feel victimised in court; as if they are being prosecuted.

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In addition, the court benefits from the child being relaxed while answering questions.

Kantor said the project was initiated by the Child Protection Unit and co-ordinated by the CAA, with the services of mural artist Alan Coleman provided free

She said the Protea Magistrate's Court in Soweto would be the next to have a special children's room.

The CAA hoped that the opening event, attended by officers of the courts, government officials, child-care organisations and the media, would start a nationwide trend towards protecting child victims from the traumas of their court cases.

# TRENDS

## US blacks 'believe Aids is genocide'

➤ One in three black Americans believes that Aids was created by whites with blacks as targets as a form of "genocide" - The Times News Service

## Puzzling village of little people

➤ A village of dwarfs in southwestern China is baffling experts who are at a loss to explain the tiny stature of more than one quarter of the population. Anhui reported recently - AFP

DON'T MISS ...

Tomorrow in TRENDS

### Electric car in SA?

South Africa could lead the world with a silent non-polluting electric car

Friday in TRENDS

### Balm for fashion

New directions soothe not only fashion's customers but also its tarnished image

# Making the law simply affordable

(252) / 8/11/95

**T**he South African public right now does not have direct access to the usually expensive expertise of advocates. Next year, an arbitration and mediation centre will be in place to make the law more affordable and accessible to more people.

At present, members of the public with legal problems have to go through attorneys, who then refer involved cases to advocates. Most of the cases are settled in court after enormous expense, says Bar Council chairman Michael Kuper, SC.

Arbitration and mediation are universal trends, says Kuper, who is spearheading the new initiative.

In Europe, alternative dispute resolutions are preferred routes because there is a belief that public justice is slow and often unsatisfactory. People also tend to feel they can do better if they take control of the process and participate in it themselves.

An arbitration is the resolution of a dispute between two parties through a third person acting as a private judge. Both the conflicting parties choose the person and are contractually bound by the decision or resolution.

A mediation is an attempt to help opposing parties reach agreement through an intermediary.

In general terms, the Bar is taking such a decision to be "in sync" with the changing South African society, but there are other related and specific reasons, Kuper says.

The number of civil cases is tripling, yet the number of magistrates to cope with the added load has not increased.

"The system is buckling under the load. A huge case load has shifted from the supreme court to the lower courts, which does not have the necessary infrastructure to cope," Kuper says.

The new facility will be a public service at a fee lower than the nor-

The traditionally conservative South Africa is following the v trend by setting up its own alt dispute resolution facility for t  
Glenda Daniels reports

mally high advocates' charge

It is an important contribution in terms of public duty, but from the Bar's point of view it will be an opportunity for younger advocates to involve themselves in commercial cases.

"We will be able to monitor junior advocates and then say to the public that we are satisfied with the quality of their work," he says.

South Africa has a volatile labour situation and the latest trend now, says Kuper, is to use arbitration and

large, two bitter too much time an reach agreement help warring fact tribution, Kuper s  
It would also b resolve outstandu estates with a me in court.

While all th sound ideal for th Africa, there has b versy around the n

One criticism because the centre plush Sandton.

Kuper disputes in recent years, n been reluctant to ce tral business distric most attorneys' offi CBD. Now, 90% of from the northern s

The public's poi portant and has to count, he says. Als be sent to wherever Some companies, fo require their pre premises.

"If it becomes cle for a similar facility East or West Rand or we will open up the Kuper

Another allegatio is under threat bec will be admitted t Court, previously the advocates. And with

**Advocates will be sent where they are needed**

mediation in settling disputes. Both business and labour are choosing this alternative dispute resolution method more and more.

Unions and companies are seeing the value of using an able, independent and quick adjudication service to reach a fair resolution that is acceptable to both parties.

The facility is also expected to be used in matrimonial matters. This would not be to institute divorce - this has to go through the supreme court - but rather for the division of the parties' estate which can often be an acrimonious affair.

Even when an estate is not too



# law 'dable

8/11/95  
JK

conservative Bar in  
following the world  
up its own alternative  
on facility for the public.

## reports

large, two bitter parties can spend too much time and money trying to reach agreement. A mediator can help warring factions gain a fair distribution, Kuper says

It would also be much cheaper to resolve outstanding matters about estates with a mediator rather than in court.

While all these advantages sound ideal for the changing South Africa, there has been some controversy around the initiative.

One criticism is that it is elitist because the centre will be based in plush Sandton.

Kuper disputes this, saying that, in recent years, most clients have been reluctant to come into the central business district. Ten years ago, most attorneys' offices were in the CBD. Now, 90% of attorneys operate from the northern suburbs, he says

The public's point of view is important and has to be taken into account, he says. Also, advocates will be sent to wherever they are needed. Some companies, for instance, often require their presence on the premises

"If it becomes clear that the need for a similar facility develops in the East or West Rand or in Soweto then we will open up there as well," says Kuper

Another allegation is that the Bar is under threat because attorneys will be admitted to the Supreme Court, previously the sole domain of advocates. And with the added com-



Legal moves .. Bar Council chairman Michael Kuper SC says that through the new alternative dispute facility more people will use the expertise of advocates.

petition advocates have to look elsewhere for work.

Kuper dismisses the idea that competition with attorneys is a threat, because he says the special skills that advocates provide will always be needed

The new facility is the most obvious change about to happen to the traditionally conservative Bar, but

there are other changes and trends which are taking place in the legal world

Kuper says that there are more women senior advocates now than before. Two women have recently been appointed acting judges. Women have become the leading practitioners in matrimonial matters, often a confrontational arena.

He predicts that women's involvement in law, at a senior level, will increase.

"We are seeing more of people who were previously disadvantaged, for instance, blacks and women."

The Bar also hopes to set up a law clinic next year to provide a direct service for the underprivileged.

# Management of Legal Aid Board under fire

Tim Cohen

CAPE TOWN—The Legal Aid Board's management was hauled over the coals yesterday by the parliamentary public accounts committee, for inadequate financial controls.

Board chairman Nic Pretorius conceded that problems existed, but said the deficiencies in the board's internal checking and control were mainly attributable to a lack of sufficient and sufficiently qualified staff.

Documents that were presented to the committee stated that the board found itself to be in a "rather adverse situation".

Suggestions made by the committee in respect of the 1992/93 financial year were more or less the same as those suggested the following year, but the board was in no position to implement the proposals, the document stated.

"Unfortunately it must also be mentioned that the audit of the 1994/95 financial year, which is at present being finalised, revealed that many of the shortcomings still exist," the documents stated.

At issue was the auditor-general's finding that "stale" cheques to the

(252) BD 8/11/95  
value of R1m had not been written back, that debtors to the value of R647 000 were not recorded, that no provision was made for bad debts and that the board was underfunded by R55m

The Legal Aid Board has taken issue with the auditor-general on the question of whether it is underfunded, arguing that this amount consisted of contingent liabilities which were not necessarily immediately pending

The board was refused permission to develop a reserve fund to cover these liabilities, but in any event it had been able to meet all its obligations

Pretorius said the board realised that a suitably qualified person was needed to ensure that the board's finances were properly managed and its books properly kept

But he pointed out that the salaries the board was able to pay made it difficult to retain the services of competent members of its financial staff.

Pretorius reported that the investigation into possible fraud by members of the legal fraternity and staff of the board was still going on. He said this was likely to be completed by the end of the month.

# Kwazulu-Natal probes claims of govt bribery

Farouk Choithia

**DURBAN** — Kwazulu-Natal local government and housing MEC Peter Miller said yesterday that two separate investigations were under way in the wake of allegations that officials from his department were "dishonest" and had received bribes for work done.

Miller's announcement came hard on the heels of the arrest of Ladysmith assistant town treasurer Stanley Smith on fraud charges.

Police spokesman May Henry Budhrum said Smith — along with a second person, Martha Naudé — appeared in the Ladysmith Magistrate's Court last month. The case was postponed to December 11. Smith was released on R2 000 bail and Naudé on R10 000 bail.

Miller said Smith's arrest had provided a lead, and there were allegations that Ladysmith-based local government and housing department officials may have been involved in receiving bribes and kickbacks.

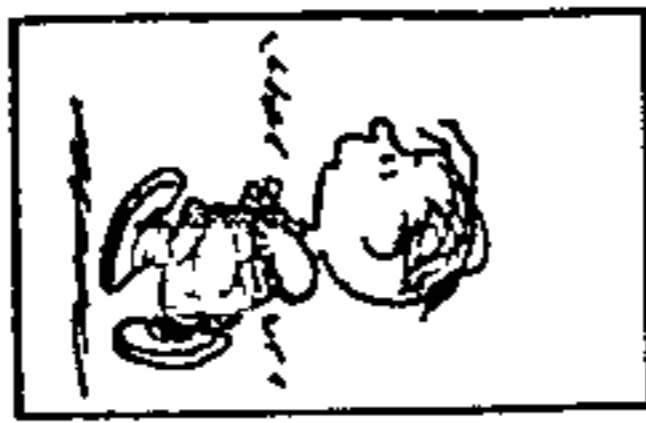
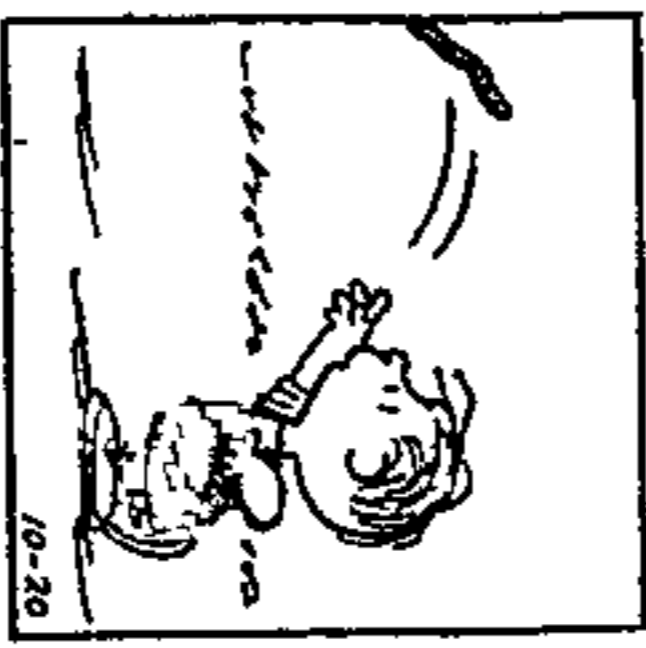
Miller said independent auditors were investigating the matter in co-operation with the police. The provincial auditor-general had been informed. More arrests were imminent.

Miller said irregularities had also been discovered in the administration of a housing scheme in Austerville in Durban, a project the department inherited from the former House of Representatives. Indications were that both government officials and persons in the private sector were involved in the irregularities.

Miller said he was fully committed to rooting out any cases of corruption and dishonesty in his department. The matter had been referred to the police commercial branch for investigation.

## PEANUTS

By Charles Schulz



## Stephané Bothma 'proved Afrikaner support'

**PRETORIA** — Local election results showed that the Freedom Front had the support of the majority of Afrikaners in the country, party leader Constand Viljoen said yesterday.

He said his party would remain independent and would not form any alliances with the NP or the ANC, but talks would be held with the CP in an attempt to unite the Afrikaner.

Comparisons between the results of last year's general elections and last week's community elections showed in some cases that support for the Front had increased by up to 95%, Viljoen said.

Based on election results — despite the fact that the majority of

## Poll 'proved Afrikaner support'

farmers in the Northern Transvaal and Free State did not vote — the Front had received 4% of the votes. Afrikaners constituted 7% of SA's total population, he said.

The positive results confirmed his party's policy of self-determination and also finally established which party spoke on behalf of the Afrikaner.

"One of the main objectives of the Freedom Front remains to establish a political position of strength for the Afrikaner in the country, despite our small numbers, and to ensure cultural and territorial self-determination," Viljoen said.

With the local elections, the Front had established its structures countrywide with about 300 elected councillors, FF chief whip Joseph Chiole said.

The FF estimated that in a general election it could achieve about 1.7 million votes.

"We believe that the remaining CP supporters will vote for the Freedom Front in a future election," Chiole said, adding that in not one instance in last week's elections did his party register a drop in support.

On the indictment of former Defence Minister Magnus Malan, Viljoen said that if no prima facie evidence existed, an Afrikaner backlash could be expected.

## Mandela praises role of lawyers in the struggle

Susan Russell (252)

FEW people realised how important lawyers had been in the struggle for democracy in SA, President Nelson Mandela told senior officials from the International Bar Association and lawyers organisations from about a dozen African states when he received them at his official residence in Pretoria yesterday.

Also at the informal meeting were SA Bar

Council chairman Malcolm Wallis SC and Roger Cleaver of the Association of Law Societies. The lawyers are all attending the International Bar Association's three-day conference which opened in Sandton yesterday.

Mandela was to have delivered the business law section's 25th anniversary lecture tomorrow, but is now unable to do so due to his commitment to attend the Commonwealth heads of gov-

ernment meeting in New Zealand later this week.

His lecture on "The Rule of Law — Cornerstone of Economic Progress" will be delivered by Justice Minister Dullah Omar instead.

A special session of the conference for officials from the various African Bar Associations and Law Societies on independence of the judiciary was cancelled so that the representatives from Algeria, Ghana, Malawi, Kenya, Uganda,

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# BRENNMILL

Representatives from 40 countries are attending the conference, covering a range of issues including constitutional law, joint ventures, family law and ethics, and project finance.

# Omar calls for tighter law on firearm ownership

Crime Reporter

JUSTICE Minister Dullah Omar has called for tighter firearms legislation to prevent licensed gun-owners lending their firearms to criminals.



Dullah Omar

Mr Omar said he would ask the Minister of Safety and Security, Sydney Mufamadi, to review the firearm laws which allowed a gun-owner to lend a firearm to anyone of his choice for a few weeks, provided he gave the "borrower" a signed and dated note of consent.

The note could be renewed as often as desired, which Mr Omar said meant a person who did not or might not own a firearm could carry a firearm, although officially on a temporary basis.

Police said this practice had "flooded" the Cape Flats gangland with registered

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visited three policemen who were shot and wounded in the heart of the Elsies River gangland at the weekend.

The police's anti-gangsterism drive slowed down the flow of unregistered guns into the hands of gangsters, which prompted gangsters with criminal records to have their wives and girlfriends apply for licences to buy firearms.

Mr Omar said a legal gun in the hands of a criminal was just as dangerous as an unlicensed firearm in his possession.

He added that the existing gun laws could also be more strictly enforced to clamp down on irresponsible gun-owners who did not exercise proper control over their firearms.

"We are very concerned about registered firearms being misused," said Mr Omar. *ARC 8/11/95*

"The present situation where any person may borrow a gun from an owner is unacceptably dangerous."

Members of the Western Cape Anti-Crime Forum joined Mr Omar when he

Three gang unit members searched a group of 20 suspicious-looking people late on Saturday but returned to their minibuses when they found only two legally owned revolvers.

A crowd gathered and the police van came under fire. The three policemen were wounded.

● The police are forging ahead in the Cape Flats to combat gangsterism and the gun and drug-trafficking which accompanies it.

A police spokesman said anti-crime operations were staged regularly and resulted in the arrest of 255 suspects in connection with a wide range of crimes.

The arrests included nine people for murder, six for rape, 21 for robbery, and 19 suspects for attempted murder

## HRC aims 'to be accessible'

BLOEMFONTEIN: The Human Rights Commission should be accessible and should promote a human rights culture, commissioner Dr Max Coleman says

He said yesterday the HRC would operate on the basis of Chapter 3 of the interim constitution (the Bill of Rights) until the final constitution came into force

(252) CT 8/11/95

Sapa

BY KARIN SCHIMKE  
Political Staff

# Panel to interview truth probe nominees

(252) 9/11/95

Interviews with the 46 nominees for the Truth and Reconciliation Commission begin in Cape Town on Monday, and the public is invited to submit views or questions about the composition of the list of nominees and individual candidates.

An interviewing tour will take the panel, appointed by President Nelson Mandela to decide on candidates for the commission, from Cape Town to Durban and Johannesburg. The panel will interview the nominees in Johannesburg next week on Friday, on the last leg of the tour. A spokesman at the Ministry of

Justice said "This list of 46 candidates is not the short list as such, but constitutes a list of persons whom the panel would wish to interview in order to obtain a better knowledge of each individual."

The original list of nominees consisted of 299 candidates and the 46 were chosen on "track record" while also taking into consideration that the commission needed to be representative of South Africa's population in regard to gender, race, profession and region.

After next week's interviews a

final list of 25 will be drawn up and handed to Mandela and his Cabinet for a decision.

The commission will be made up of between 11 and 17 people.

"The panel believes the possibility exists that some of the nominees may yet withdraw their nominations once they appreciate the commitment which will be required of them over the next 18 months to two years," said the spokesman.

The list of nominees is

Dr Franz Auchterbach, Dr Alex Boraine, Mary Burton, the Rev Dr

Frank Chikane, the Rev Murray Coetzee, Adv Chris de Jager, Ds Andries du Plooy, and the Rev Bongani Furca.

Sisi Kamphophe, Paddy Kearney, Judge Edwin King, and the Rev Michael Lapsley, Richard Lyster, Prof Bongani Mapola, Wynand Malan, Thomas Marthatha, Prof Jabulani Maphalala, Prof Mandla Mchunu, and Prof David McQuoid-Mason. Shenaaz Meer, Juan Mendez, Ds Jan Mettler, Hlangirwe Mkhize, the Rev Dr Stanley Mogoba, Dr Margaret Majapelo, Essa Moosa, Prof

Dan Morkel, Peter Moshley, Mankolo Motum, Dumisa Nisebeza, Imann Rashid Omar, Adv Pieter Oosthuizen, Dr Wendy Orr, and Thumba Pillay

Dr Dianne Prinsloo, Dr Mapule Ramashala, Dr Faizel Randera, Dr Thabo Rangaka, Prof Medard Rwelamuna, Adv Solly Sithole, Prof Adam Small, Dr Yasmin Sooka, Archbishop Desmond Tutu, Prof Hendrik (FW) van der Merwe, Prof Charles Villavencio, Glenda Wildshut.

Correspondence in this regard should be addressed to Advocate Denzil Potgieter, c/o Ministry of Justice, Private Bag X256, Cape Town, 8000. Faxes can be sent to (021) 461 6560.

**THURSDAY**  
NOVEMBER 9, 1995

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**BRIEFS**

**Representation  
not priority — DP**

(252) 09/11/95  
RAINBOW representation in the Truth Commission was neither legally necessary nor desirable, the Democratic Party said yesterday

"There is no requirement in the Promotion of National Unity and Reconciliation Act that the commissioners should be representative of South Africa by race, sex, region or profession or any other basis," human rights spokeswoman Ms Dene Smuts said.

She said a statement by Mr Fink Haysom, accompanying the release of the pre-selection panel's 46 names had stated that representation was to be taken into account

But the act required "fit and proper persons who are impartial and who do not have a high political profile" and did not set any other criteria. The DP had opposed the inclusion of a representation requirement and succeeded

# Mandela 'will not grant amnesties'

ET 9/11/95

PRETORIA: President Nelson Mandela said he would act without fear or favour in his handling of political debates on pending prosecutions in kwaZulu/Natal but would not grant amnesties or interfere with the trials

The President's office said Mr Mandela would not pardon former defence minister General Magnus Malan or 17 others facing trial in connection with the murders of 13 people, including 11 women and children, at a prayer meeting in kwaMakutha in 1987

"Although there are exceptional powers to grant pardon under the constitution and for granting indemnity or amnesty under the Promotion of National Unity and Reconciliation Act, the President does not ordinarily have the power to intervene in such prosecutions and it would be improper for him to do so"

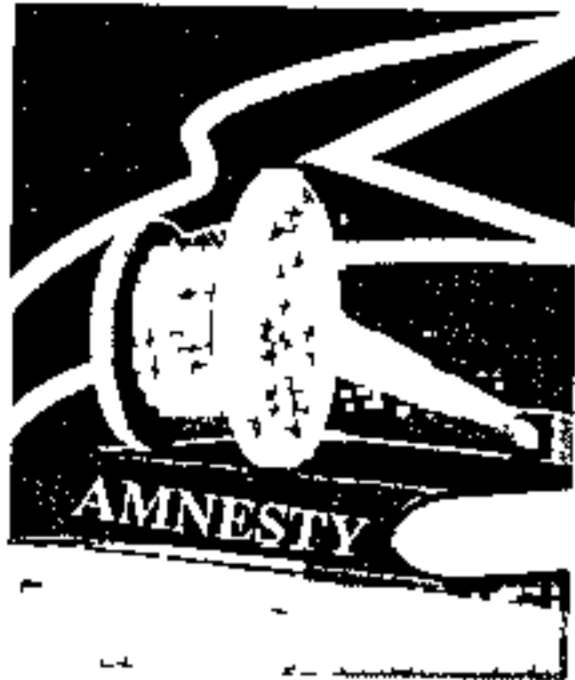
The arrests and pending prosecutions arose out of a concern to deal with the legacy of violence in kwaZulu/Natal — Reuter



MAGNUS MALAN

# Suspicion of selective prosecution

The truth about past conflict may ensnare rather than liberate



The decision to prosecute former Defence Minister Magnus Malan for murder is as risky as it is sensational. Arraigned with Malan are 10 former high-ranking security force officers, including two

past Chiefs of the Defence Force, Jannie Geldenhuys and Kat Liebenberg. Their presence in the dock adds to hazard as well as the drama.

To press ahead with the prosecution is to place the delicate process of reconciliation in jeopardy, for one primary reason. The prosecution is seen by many, especially in the white and, more particularly, Afrikaner communities, as selective and even vindictive. Denials only strengthen convictions that the prosecution is part of a political agenda.

The timing is another reason, the announcement having been made on the eve of the November 1 local government elections. No amount of persuasion that this was coincidental will remove the suspicion that it was part of a political agenda to bolster the ANC, to placate those in the black community who thought that President Nelson Mandela had paid too much attention to white anxieties and fears and not enough to black grievances and expectations.

Mandela has meanwhile rejected pleas by National Party leader F W de Klerk to grant temporary amnesty to Malan and his co-accused and refused to heed warnings from Freedom Front leader

Constand Viljoen that the trial could rekindle the fires of rightwing rebellion and threaten reconciliation. "Nobody should lecture me about reconciliation," Mandela insists. "I started reconciliation in SA after a lot of humiliation."

The role of KwaZulu-Natal Attorney-General Tim McNally has not helped. McNally's decision to charge Malan and his co-accused came after he had been sharply criticised by ANC leaders, including ANC secretary-general Cyril Ramaphosa, for "protecting" Inkatha Freedom Party leaders and security force officers from prosecution and then interrogated by the parliamentary

committee on justice for his "political bias."

The impression has been created that McNally was lent on by the ANC. It is pertinent to note the ANC's changed stance after actively accusing McNally of allowing his judgment to be influenced by political factors, it now insists that he is an independent judicial officer whose decision, having been made on judicial grounds, cannot be interfered with.

The reaction of De Klerk to the debate over Malan's trial is also pertinent. "The (amnesty) process must be even-handed," he says. "There cannot be one set of rules for former insurgents and another set of rules for members of the former security forces and government. Selective prosecutions are totally unacceptable." The IFP has used even stronger language. "SA has now moved into an era of subjective and selective justice. Equality before the law has been replaced by partisan witch-hunts which brings the process of national reconciliation in doubt."

Inkatha has been even more critical of the Investigation Task Unit (ITU) — whose in-

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become virtually impossible if the prosecution process moves up a rung or two and is aimed at political leaders who served in the old order and who helped to bring about the new dispensation, notably De Klerk. Significantly, Safety & Security Minister Sydney Mufamadi has spoken of putting De Klerk in the dock if "the evidence" demands that he should be indicted.

There are, broadly, two responses to the allegation of selective prosecution and, with it, selective morality.

One is to deny that double standards are being applied, that prosecution of security force officers for past atrocities is being pursued with much more vigour than prosecution of ANC guerrilla commanders for equally heinous deeds. The second is to argue that crimes perpetrated in defence of apartheid cannot be equated with crimes committed in the offensive against apartheid, that the murderous actions of the former security forces are more reprehensible than those of their guerrilla foes.

Varney, a lawyer, represents the first line, when he insists that his task unit is not involved in "a balancing act" but that, instead, it is simply following the evidence unearthed in terms of its mandate to investigate allegations that death squads operated within the KwaZulu Police.

Jon Qwelane, a black journalist and columnist, personifies the second when he writes "An even more spurious argument equates the monstrosity of apartheid with the efforts to topple it. This is like saying that the slave who manages to get his own whip and then lashes back as ferociously at his

heartless slave driver is also guilty of assault."

But neither argument is convincing logically and neither is likely to defuse anger at what is widely — but not universally — perceived as selective prosecution and morality.

The evidence obtained by investigators is determined in large measure by the questions they themselves ask. In the specific case of Varney's ITU the direction of the investigation is determined by its terms of reference. They are — to quote from documents released to the media by Mufamadi — to investigate allegations that hit squads



Groenewald



Modise



Malan

investigations were primarily responsible for the indictment of Malan & Co — and its convener, Howard Varney. "The ITU has been given carte blanche to seek revenge against former political adversaries from (Varney's) days as a United Democratic Front leader in the Eastern Cape. The ITU is a Trojan horse for the ANC."

The prosecution of Malan, and the suspicion that it has aroused of selective prosecution, has — at the very least — complicated fulfilment of the objective of national reconciliation to which Mandela's Government of National Unity is constitutionally and morally bound. The task will

LOCAL GOVERNMENT

# Electoral lessons

(262) FM 10/11/95

The ANC's victory could prove embarrassing as demands intensify

In styling the community elections "a victory for democracy," President Nelson Mandela sensibly placed the emphasis where it belonged. There was no discernible note of ANC triumphalism.

Speaking from the Carlton Centre in Johannesburg last Friday, after it had become evident that the ANC had reinforced its position as the major political force in the land, he used key phrases such as "responsibility" and "accountable structures of governance" to project a message of stability and national affirmation — precisely what a jittery electorate, business and foreign investors wanted to hear.

Fears of an intensification of political violence were quelled. Though this did not mean that South Africans have learnt to settle their political differences at the ballot box, the kinds of daily death toll and massacre that preceded the 1994 election were not repeated. Unfortunately, of course, KwaZulu-Natal has yet to vote.

The arrest of former Defence Minister Magnus Malan and other securocrats allegedly linked to death squad activities in the Eighties had no immediate effect on rightwing Afrikaners, whose uprising has been foretold too often to be convincing. Instead, the marginalised CP saw its opportunism (or desperation) repudiated by gains for the Freedom Front.

That leaves Constand Viljoen with a conundrum: he represents those who aspire to a *volkstaat*, but the idea of such an entity is fading like a mirage and cannot galvanise enough Afrikaner voters to break the hold of the NP.

For their part, the Nationalists used statistics to talk away the prospect of waning coloured support in the Western Cape. NP leader F W de Klerk expressed himself "relatively satisfied" with the outcome and promised "the NP is not only going to give a good account of itself in 1999, we are going to shock the ANC right down to its foundations."

Wishful thinking? To some extent, yes, but analysis of the community elections has been marred by at-

tempts to make comparisons with the April 1994 poll that are simply unscientific. Last week's community elections were *sui generis* and there should be no swift rush to judgment. For one thing, no local election in SA has ever carried the national reso-

lution. It is a Zulu party — but not that any other party can claim a percentage of the overall vote. There was no overall vote.

□ For percentage comparisons to make sense, they would have to compare like

with like. The 1994 election was fought on the basis of proportional representation (PR), but this time only 40% of the component vote for, say, a town council was allocated to PR. The remaining wards were elected by direct vote and split 50-50 between black and non-black areas. The overall number of seats won by any party cannot be translated into a national per-



Mandela



Sexwale



Buthelezi

centage figure for that party. It can reasonably be said that the ANC won 62,6% of the 1994 poll, but to state that it won 70% last week is statistical juggling. And the allegiances of the independents should also be factored into such calculations — and some of them may really be independent.

□ If the number of voters in 1994 — ignoring ballot-box stuffing and assorted chicanery — provides a notional total of 100% of those eligible to vote, the registration requirement for the community elections, even when only measured in those areas that actually voted, reduced the number of eligible voters to well under 80%, and

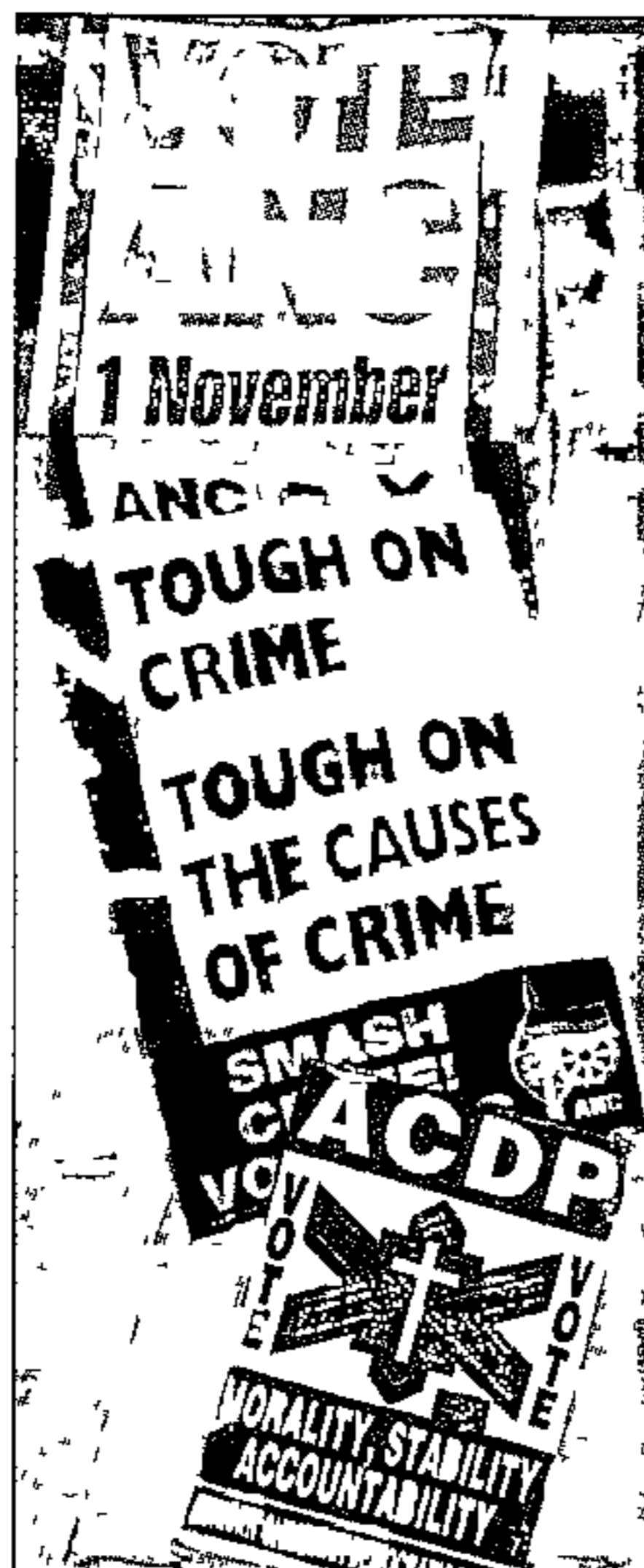
□ Of that figure, an even lower number actually voted — perfectly normal in local elections. But again, any basis for comparison with the 1994 "100%" poll falls away.

Given these provisos, what do the runes indicate? Is it true, as Mandela put it, that "all South Africans have shown a remarkable maturity and took the lead in breaking the racial moulds of the past?"

In the sense that many previously white-dominated councils will now be black-dominated, the mould has certainly been broken. And this has occurred as part of a negotiated process: the Local Government Transition Act was intended as complementary to the interim constitution of 1993, which enabled last year's national and provincial elections.

But there's little doubt that South Africans vote according to traditional party allegiances — and these are largely determined by those familiar constraints of race, class and wealth.

Thus the Democratic Party appears to



Election aftermath reflecting national issues

nances accorded the November 1 poll. After 18 months of the Government of National Unity (GNU), the parties in parliament evidently felt the need to test the waters of popular opinion — which was why issues such as crime and federalism rather than council housing and potholed roads emerged as campaign vote-catchers.

From the ragbag of statistics that emerged after the election, most of the parties — excluding the CP, the PAC and the ACDP — were able to reassure themselves that they were on track, had won back ground or had done as well as they could realistically have hoped (see *Current Affairs*).

Yet, at this stage, statistical comparisons serve propaganda alone. The poll cannot be compared with that of April 1994 because of at least five highly complex and interwoven factors.

□ The elections took place in seven provinces, not nine. Western Cape towns voted but the exclusion of the Cape Town metropolitan area and rural districts means any assessments of swings in the coloured vote must wait until next year.

□ Since KwaZulu-Natal did not vote, Inkatha's virtual no-show elsewhere may in-

operated within the KwaZulu Police. A separate investigation unit has not been set up to investigate allegations that death squads operated from within the ANC's self-defence units or, before that, by units of the ANC guerrilla army, Umkhonto we Sizwe.

Allowance must be made for a modification in the terms of reference of Varney's ITU. It was instructed to investigate reports that the former chairman of the Natal Midlands region of the ANC, Harry Gwala, ran hit squads against his rivals in the ANC-SACP alliance. But even then the primary thrust of the ITU's investigations has been against the KwaZulu Police and its allies in the security forces, though Inkatha has suffered as much attrition through assassination of its leadership corps as, if not more than, the ANC.

One might note *en passant* that police investigators failed to find meaningful evidence in the probe into the Shell House massacre partly because Nelson Mandela obstructed inquiries by denying them entry to the ANC headquarters immediately after the shooting on March 28 1994.

To return to the point at issue, Qwelane's analogy is false in two important respects.

The ANC guerrilla campaign in the Eighties cannot be equated with that of a rebellious slave. In retrospect it is clear that the ANC was not in the desperate position of a slave. It was backed militarily by the Soviet Union and supported by a growing international sanctions campaign, while demographic and political pressures in SA had thrown the minority regime of P. W. Botha on to the defence.

Moreover, as Qwelane well knows, the ANC guerrilla campaign degenerated at times into indiscriminate terror, in which unarmed civilians of all races were the main victims, including, on at least one occasion, a pregnant black woman. Think of the lumpet mine attacks on Wimpy bars and the car bombs in Pretoria at rush hour, adjacent to Ellis Park in Johannesburg as rugby enthusiasts were leaving the stadium, and outside a crowded Magoo's Bar in Durban.

It is relevant that the ANC asserted that it represented a higher "revolutionary morality" and that these attacks contravened its own code of conduct and the Geneva Protocols, to which it was a signatory.

If Malan is to be prosecuted for the Kwa-Makhutha massacre, in which 13 people, including seven children were killed, allegedly by SADF-trained Inkatha loyalists, why should Mandela's Defence Minister, Joe Modise, escape prosecution for attacks on civilians in his capacity as the ANC's guerrilla commander during the armed struggle?

Why, on the same logic, should Steve Tshwete escape prosecution for his espousal of armed attacks on the white community in an interview with *The Times* and *The New York Times* in mid-1988?

Why, too, should Mandela himself escape prosecution for his apparent role in thwarting the course of justice by refusing to allow police to enter Shell House to confiscate weapons for ballistic testing after the shooting of Zulu protesters last year?

These questions will be chorused repeatedly as indignation builds up over the trial of Malan and his co-accused. Like the trial, they will reopen old wounds, rekindle resentments and impede the task of reconciliation.

Consideration of the background to the KwaMakhutha massacre is relevant. Scrutiny of the chronology of violence in the township at the time —

January 1987 — shows that the massacre did not occur in a vacuum. It was preceded by petrol bomb attacks on Inkatha-aligned residents and resulted in the death of at least two Inkatha notables, the wife of a school inspector and a township councillor.

The chronology raises an old and probably unanswerable question: who threw the first stone in the as yet unresolved strife between Inkatha and the ANC? The politically correct answer in the new ANC-controlled SA is Inkatha. Reality, however, is more convoluted.

It is arguable that an attempt by ANC-aligned comrades to coerce Inkatha into accepting its school boycott campaign in the early Eighties was as important a factor in the genesis of the conflict as Inkatha's intolerance of a rival claimant to power in the Zulu heartland. Inkatha is almost invariably blamed for the violence which flared on the Reef in June 1990 after the freeing of Mandela. But examination of the sequence of events shows that the spiral of violence in the Vaal townships — where it started — began with the burning of houses occupied by Inkatha supporters in Evaton.

Study of the events on the ground similarly shows that the Boipatong massacre of June 1992 was preceded by attacks on Inkatha members or sympathisers at the nearby KwaMadala hostel, including the necklacing of a township woman for daring to consort with an hostel man.

Prosecutions for past atrocities after there has been agreement in principle on the need for amnesty and reconciliation seem calcu-

lated to reactivate disputes, especially if they are perceived to be selective and appear — as with the pending Malan trial — to pre-empt the Truth Commission.

Those who want to disentangle the past and prosecute the villains will find another impediment to fulfilment of their quest. Apart from being incredibly intricate, the skein of past events does not divide neatly into good and evil. Even the supposedly great division between the ANC and its security force foes was linked by spies and double agents on both sides of the divide.

It is now known that two top ANC men, Solly Smith and Francis Meli, were Military Intelligence agents, trapped into betrayal by their own inner human weaknesses and susceptibility to alcohol.

Smith, Paul Trehwela notes in an illuminating article in *Searchlight South Africa*, was a member of Imbokodo, the ANC's dreaded security department. Trehwela's observation raises two questions: how many more Imbokodo men were MI agents and how amenable will the ANC be to a thorough name-naming of Imbokodo's penetration by MI?

On the first question, it should be noted that the 1984 mutiny in the Angola camps by ANC guerrillas was prompted in part by the conviction that Imbokodo was corrupt and riddled with MI agents, who, in turn, were simultaneously accusing the mutineers of being misled by "State spies" within their ranks.

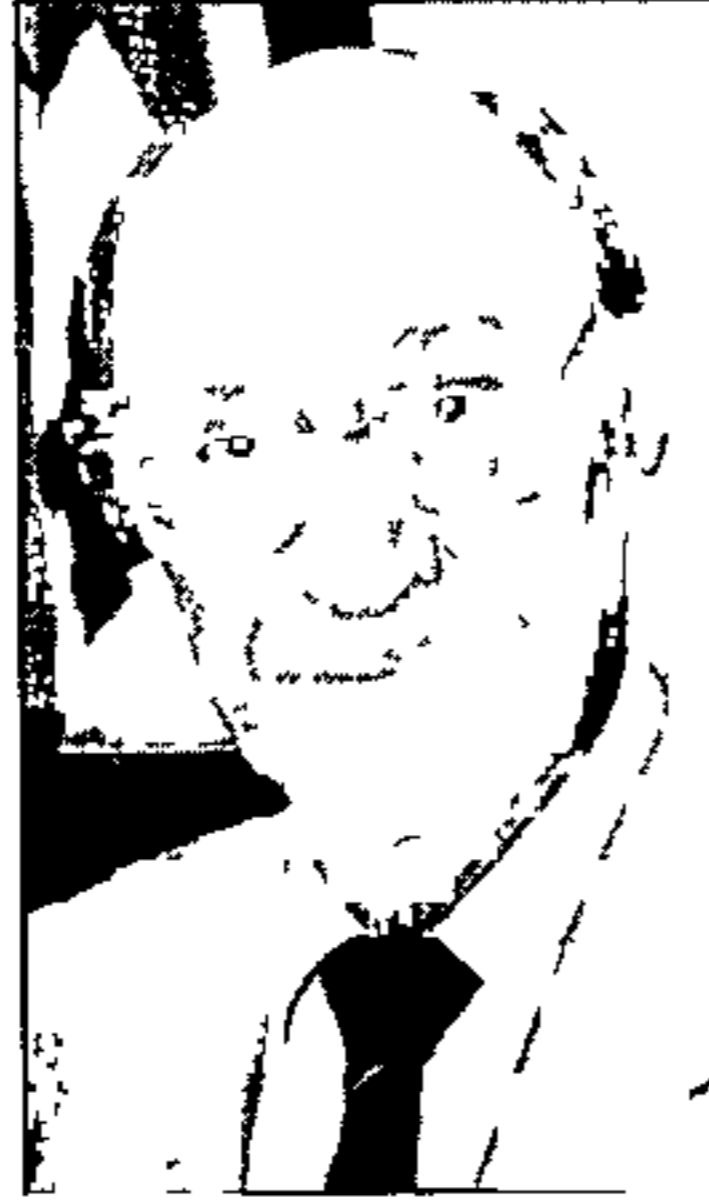
As Trehwela, a Marxist who became disillusioned with the ANC and its Communist Party ally, puts it: "Real patriots were hunted down as 'enemy agents' while real agents urged on the hunt."

It is common knowledge that the crushing of the rebellion, which included summary executions, torture and ill-treatment of the mutineers, was approved by the ANC political leadership at the time as well as by the Imbokodo hierarchy. One of the men involved in putting down the rebellion was

Sizakele Sigxashe, a former ANC intelligence head who is today director-general of the National Intelligence Agency.

It is doubtful whether the ANC really wants the full truth of past events to emerge, its insistence on establishing the truth commission notwithstanding. The biblical promise that "the truth shall set you free" may apply in a moral sense. But in the hard world of political realities the past is probably best left to historians to unravel in their own scholarly way over decades.

Instead of opting for selective disclosure — which, like selective prosecution, fans the fires of anger and recrimination — politicians should rise above the past. ■



Liebenberg



Geldenhuys

MAKGoba AFFAIR

# A matter for a neutral tribunal

**Predictably** the controversy over William Makgoba, a deputy vice-chancellor at the University of the Witwatersrand, has become a racial issue. Ranged against one another are senior academics at the university, including eight deans, and a loose alliance of Makgoba, black students — or vocal elements within their ranks — and unionised black workers on the campus. The first camp is almost entirely white, the second almost exclusively black.

For that reason alone the decision by the executive of the University Council to refer the dispute to an independent tribunal whose members should be of unquestioned integrity and academic reputation and should, ideally, be drawn from outside South Africa. The *FM* believes that at least one of the members should be black. In the present dispute, where colour has become an issue, that would be prudent.

These factors aside, there is another reason the university executive council decided to refer the dispute to an independent tribunal. Makgoba's refusal to attend an on-the-record meeting called by the university vice-chancellor and principal, Robert Charlton, to give him — in Charlton's words — an opportunity to show that the allegations against him "lacked weight and substance" and that there was no need for further proceedings against him.

Makgoba, as a letter from his lawyers to Charlton makes clear, believes that Charlton has already prejudged the issue. "Decisions have already been made (all that) the university needs to do is to go through the formalities to arrive at the predetermined conclusion," his lawyers say. Charlton denies these allegations. In view of them, however, he says he had no alternative but to refer the matter to the executive of the university's council. The council's decision to ask an independent tribunal to adjudicate meets a demand by Makgoba that the complaints against him be "tested under oath".

Three interrelated charges are understood to have been levelled against Makgoba in a letter signed by 13 senior university academicians. They are that his curriculum vitae — which was a factor in his selection as a deputy vice-chancellor — contains inaccuracies, that he is administratively incompetent, and that he has made irresponsible statements maligning his (white) colleagues.

Since the controversy has been placed, at Makgoba's insistence, before a quasi-judicial body, the *FM* believes that the hearings should be open like those of the courts. It has now become a matter of public interest and justice must be seen to be done. ■

THE RABIN ASSASSINATION

# The caravan must move on

**Assassination**, like warfare, has a long history as an extension of diplomacy or politics by other means. But, from Cain and Abel to Julius Caesar, Abe Lincoln, the Archduke Ferdinand, Rasputin and the Kennedy brothers to Chris Han, it seldom achieves its objectives.

That may be scant consolation for the friends and family of Israeli PM Yitzhak Rabin, as the civilised world (a definition that excludes Saddam Hussein, who criticised CNN for "biased" reporting of the event, because it dared to express sorrow) mourns his murder by a fanatic's hand, but at least there is no good reason to fear that his passing will derail the Middle Eastern peace process.

The tragedy reminds us forcibly that, ultimately, no leader of a democratic country can be given 100%, 24-hour-a-day protection. And some societies are more vulnerable — and violent — than others.

We are lucky that our own progress to democracy was able to absorb the killing of Chris Han with so little disturbance — a tribute to the forbearance and understanding of his ANC colleagues. We might not be so lucky should there be a recurrence, regardless of where the next victim stood in the political spectrum.

Heads of State and government around the world will be reviewing their security — and, indeed, not just their own, but that of other public figures. The dilemma is between increased safety and a tolerable lifestyle.

Significantly, Rabin's widow scoffed at the suggestion that he would have worn a bulletproof vest, even if he'd been offered one. Can we envisage people like Queen Elizabeth, Bill Clinton or Nelson Mandela wearing such a garment every time they meet their public? And what about a shot to the head, or a car bomb?

The right to bear arms was put into the US constitution to protect the freedom of the individual. Sadly, excessive ownership (and hence use) of arms has become a major threat to the survival of civilised society. Anti-gun ownership campaigns generally make matters worse, relieving the law-abiding of their potential (if seldom effective) defence, but leaving criminals and thugs untouched.

We live in an ever-more violent society. Public figures know and accept the risks, but that does not lessen our shock when one succumbs. What really matters is that the actions of madmen and fanatics should not divert humanity from doing the things it knows to be right. ■

# Truth nominees in the dock

Gaye Davis

**H**UMAN rights organisations are scrutinising the background and track records of nominees for the Truth and Reconciliation Commission, and will be making submissions to the special panel which starts interviewing 46 candidates on Monday.

Indications are that questions will be raised about some of the nominees in terms of the criteria set down to guide their selection that they should not have a high political profile and should show a demonstrable commitment to human rights.

Pretoria advocate Professor Pieter Oosthuizen, nominated by the League of Former Police Officials, was a member of the team which prosecuted Communist Party leader Braam Fischer, who was sentenced to life imprisonment. He also prosecuted in the mammoth 1967 trial of Swapo members, including its founder, Andimba Herman Toivo ja Toivo.

The trial in Pretoria attracted international attention as it was the first time the Terrorism Act of 1967, which was made retroactive to 1962 and put the burden of proof on the accused, was used. The United Nations declared the trial illegal.

"I was attached to the office of the Johannesburg attorney-general at the time and as such I prosecuted. I was an official of the state," Oosthuizen

said this week.

Freedom Front nominee advocate Chris de Jager enjoyed a high political profile as an MP and the founder of the Afrikaner Volksunie (AVU). He was the chief negotiator for the Conservative Party and the AVU during 1993 and is a part-time member of the Vokstaat Council. He has already been selected to sit on the Human Rights Commission and may have to withdraw from it if selected for the truth commission as it seems unlikely he would be able to serve on both.

Questions may also be raised about two other nominees, Mitchell's Plain Uniting Reformed Church (formerly the Dutch Reformed Mission Church) clergyman Ds Jan Mettler and Free State University law-faculty dean Professor Dan Morkel. Both have served on the Publications Appeal Board, for some, this raises concerns about their commitment to transparency.

Another nominee, Professor Jabulani Maphalala, describes his nationality in his CV as "native African South African of Zulu extraction". An associate professor of history at the University of Zululand, which nominated him, he has written about the role of Inkatha as "a national and cultural liberation movement" and spent time in Germany on a scholarship from the Konrad Adenauer Foundation.

University of the Western Cape academic Professor Adam Small's acceptance of his nomination by the Demo-

cratic Party has raised eyebrows. Writing in a regular weekly newspaper column, Professor Small has questioned the need for the "melodrama" of a truth commission and its cost, suggesting matters should be left to the law.

Azapo has objected to the nomination of theologian Dr Frank Chikane on grounds that when he was general-secretary of the South African Council of Churches his involvement with the United Democratic Front impeded Azapo's access to foreign funding.

**T**he 46 nominees, selected from a preliminary list of 160 names drawn from a total of 299 candidates, will be interviewed during the course of next week.

Conducting the interviews will be a panel chaired by presidential legal adviser Professor Nicholas Haysom. It includes the South African Council of Churches' Brigalia Bam, Senator Rossier de Ville, ANC MP Baleka Kgositsile, Jody Kollapen, Jayendra Naidoo, IFP MP Professor Harriet Ngubane, Senator Ray Radue and Bishop Peter Storey.

On Saturday, the panel will draw up a list of 25 names to go before President Nelson Mandela and the Cabinet for the final selection of "11 to 17 impartial, fit and proper persons". Integrity, impartiality and trustworthiness will be key attributes sought, and a willingness to serve on the commission full-time will stand in nominees' favour.

(252) M+G 10-16/11/95

# Growth needs rule of law — Mandela

(252)  
BD 10/11/95  
Susan Russell

DEVELOPING countries had a major responsibility to create an environment, through the rule of law, that was conducive to real development and prosperity, President Nelson Mandela told an international group of lawyers in Sandton last night.

His address to the International Bar Association SA conference was read on his behalf by Justice Minister Dullah Omar. Mandela is attending the Commonwealth meeting in New Zealand.

Mandela said that at the same time, develop-

ing countries had to strike a balance between the needs of the business community and expectations of workers and the poor. SA wanted to be a country that was a good neighbour and equal partners with countries on this and other continents, securing its rightful place within the world's economic and political systems.

"To succeed in these goals, we have fortunately laid a solid foundation with the acceptance of the values and principles that guarantee the rule of law in our interim constitution," Mandela said.

He said government's efforts to lead the coun-

try along a path of sustained growth and at the same time to foster social upliftment and address crime and corruption were guided by the universally accepted norms constituting rule of law.

Last year's elections had given SA a unique opportunity to transfer itself into a just and democratic order that made the constitution, with its Bill of Rights, the highest law of the land, binding on all organs of state.

This brought to an end "an era in our history in which .. our people were subjected to the legal doctrine of parliamentary sovereignty"

# Leaders struggling to deal with Nigeria

AUCKLAND — Commonwealth leaders struggled yesterday to find some way, short of expulsion, to punish Nigeria for flouting the group's rules on good government by confirming death sentences on Ken Saro-Wiwa, president of the Movement for the Survival of Ogoni Peoples, and eight others for the murder last year of four moderate Ogoni leaders.

The question of how to respond to errant military governments such as Nigeria's was set to dominate the agenda at the Commonwealth's biennial summit, which starts today.

Despite widespread outrage over the sentences, diplomats said there was a strong current against kicking Nigeria out of the Commonwealth. Influential figures including SA's President Nelson Mandela, Malaysian Prime Minister Mahathir Mohamad and New Zealand Prime Minister Jim Bolger, the summit host, all spoke out yesterday against expelling Nigeria. Said Mandela "We feel that we

must try to keep in contact to ensure the situation does not worsen."

However, Anglican Archbishop Desmond Tutu took a much harder line, saying Nigeria should be expelled and comprehensive sanctions applied.

"The Nigerian military government is either deliberately cocking a snoot at the Commonwealth heads, or preparing the way for a cynical ploy in which it will reverse this decision to stave off pressure over other human rights violations."

His comments followed Mandela's statement that SA would stick to its policy of "gentle diplomacy" to push Nigeria towards democracy.

The Commonwealth Harare Declaration in 1991 laid out the group's main values, including democracy, human rights and honest government. Now the heads of state are being asked to consider means to ensure the words become reality. — Sapa-AFP, Reuter.

BD 10/11/95 See Page 12

# Growth needs rule of law — Mandela

Susan Russell (252) BD 10/11/95

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# Constitution

Continued from Page 1

Under the ANC proposal, he said, "all legislation which affects provincial competencies will have to go to the council of provinces which, in turn, will have the power to stop the passage of

of disagreement." Constitutional Assembly chairman Cyril Ramaphosa, referring to the behind-the-scenes meetings, said: "The issues set out as options are matters where parties are still involved in the process after 18 months is that no one has started hitting the table." Ramaphosa predicted the final con-

## New judges for electoral court

Municipal Reporter

(252)

THREE new judges have been appointed to the Special Electoral Court which will decide the dispute over the Cape metropolitan boundaries. ARG 10/11/95

The court's chairman, Judge J W Smalberger, has indicated that the court will definitely sit before the end of the year, and most likely before December 15.

However, reports that the court will convene next week are not accurate because the court is still in the process of gathering submissions.

The appointments are to fill three vacancies which existed on the five-bench court when judges Ismail Mahomed, John Didcott and Advocate Jan Heunis resigned.

The three new judges are Edwin King of the Cape bench, Vuka Tshabalala of the Ciskei bench, and Mohamed Nafsa of the Transvaal bench. The other member of the bench is Judge P J van der Walt.



# Disagreement on bill of rights issues

CLIVE SAWYER  
Political Correspondent

(252)  
ARG 11/11/95

CONSTITUTIONAL negotiators have ended this year's talks on the bill of rights with several issues unresolved — among them a proposal to reintroduce the death penalty.

The multiparty constitutional committee this week agreed to "flag" several issues for revisiting when the committee meets again in January.

Issues about which negotiators could not agree included

- Whether the right to life should be qualified by a provision for a court to pronounce the death penalty for a crime for which this is prescribed by parliament;

- A proposal that every person will have the right "to be secure in, and control their own body".

The National Party said this could introduce a constitutional right to abortion on demand.

- A proposal by the Democratic Party, vehemently opposed by the African National Congress, to limit the right to strike only for the purposes of collective bargaining, and not for political purposes.

- Language and culture rights;

- An ANC proposal that an act of parliament set the rules for access to information held by the state, or any person "required for the exercise or protection of any right".

However, the shape of a future South Africa became clearer with parties agreeing to the phrasing of several rights in the present draft.

In some cases, even though there was agreement, terminology still has to be defined.

This was the case with a clause providing for the validity of marriages concluded under "religious law".

While this clause will be included in the subsequent draft of the constitution, discussion is pending about the meaning of the term "religious law".

Clauses accepted with little debate included those guaranteeing equality before the law, affirmative action, and protection from discrimination.

The right to privacy, including the right to freedom from searches of the person, home or property, or seizure of property, was accepted.

There was agreement on freedom of expression, including freedom of the press and other media, and freedom to receive and impart information and ideas.

However, disagreement remained on provisions on media financed or controlled by the state.

The draft discussed yesterday said the state should ensure its media were "impartial and present a diversity of opinion".

# Advocate says defamation law must echo new democracy

By CARMEL RICKARD

ONE of South Africa's top advocates has strongly criticised the law on defamation, saying it is out of touch with the importance of freedom of expression in a democratic society.

Speaking at the influential International Bar Association conference in Johannesburg last week, Wim Trengove, SC, the director of the constitutional litigation unit at the Legal Resources Centre, said that the law of defamation was designed to strike a balance between freedom of expression and individual reputation.

However, the present balance was essentially the same as that fixed in the 17th century. Since then, there had been important changes in society and its values. It was incongruous to cling to the balance formulated in the days

before representative democracy and the mass media.

Referring to the defamation case brought by former police general Lothar Neethling against the Vrye Weekblad over squad activities, Mr Trengove said it clearly illustrated how the present common law balance between freedom of expression and the protection of an individual's reputation was "out of keeping with the values of our society and our constitution".

General Neethling lost his action in the Supreme Court but was later vindicated in the Appeal Court, where it was ruled that the common law on defamation protected the general Justice Gus Hoexter, who

wrote the decision for the Appeal Court noted that a newspaper "elects to vilify the plaintiff" entirely of its own accord. "Therefore justice demanded that it should publish 'at its peril'." If the paper is subsequently sued, the paper would have to "establish what (it) should have troubled to verify before (it) maligned the plaintiff".

Commenting on this decision, Mr Trengove said, "Let us assume that Vrye Weekblad had exhausted all its sources of verification and that there was no more that it could do to check its story. Why should it be exposed to liability even after taking all the care that a reasonable newspaper would?"

"Is it appropriate that it should be told that the only way to avoid the risk of massive civil liability is not to exercise rea-

sonable care, but rather, not to publish at all?"

He said as long as the law gave this message to the media it would have a "chilling effect" on the publication of matters of public interest.

The law recognised that political debate ought to be free from the fear of defamation action, and therefore extended an absolute privilege to what is said in Parliament.

Mr Trengove argued that it made no sense for this protection from defamation to be limited to political debate within Parliament, and that it should be extended to cover "the political debate in society itself".

He said it would be in keeping with the values of society and the constitution to recognise that the media fulfilled a special function demanding special rules.

(252) ST 12/11/95

Mr Trengove said it was not clear why, when two fundamental values — an individual's right to reputation, and freedom of the press — had to be balanced, it should be done in a way that was "so generous in its protection of the one and so meagre in its protection of the other".

Mr Trengove's address to the International Bar Association session on freedom of expression and defamation, came the day after the Constitutional Court heard its first press freedom and defamation case.

One of the issues argued in that case is which court should have jurisdiction to oversee changes to the common law on defamation — the Appeal Court, whose judges have been responsible for a series of decisions constricting press freedom, or the new Constitutional Court?



SECOND TIME LUCKY... Neethling successfully appealed against a defamation ruling



NEED FOR CHANGE... Wim Trengove says that the law on defamation in South Africa is outdated

# Internal inquiry finds lawyers guilty of poor book-keeping

(252) ST 12/11/95

By MARLENE BURGER

AN INTERNAL inquiry by Lawyers for Human Rights has found that proper accounting procedures were not followed last year when two controversial payments were made to senior staff.

The inquiry also found that serving and former employees were dissatisfied with the management of the body during the tenure of former national director, Brian Currin.

Fikile Bam, the acting chairman of LHR, said yesterday that some of the organisation's trustees at a seven-hour meeting on Tuesday took such a serious view of the report that they wanted to meet again this weekend.

"We will do so as soon as possible," he said.

The inquiry was ordered by the trustees after the Sunday Times last month reported allegations by a former employee that R56 000 of LHR money had been paid last August to the Receiver of Revenue to cover Mr Currin's personal taxes. Another R30 000 had been paid to Sipho Mahamba, a former employee and now Mr Currin's business associate, in settlement of a pay claim.

The payments were made without the LHR secretariat's knowledge.

Mr Bam said Tuesday night's meeting, the first since the trustees were elected three months ago, had been a "long and lively" debate. It was attended by both the former chairman of the national council, Jules Browde SC, and Mr Currin.

"There was a lot of anger, but we are satisfied that there will be no recurrence of such transactions in future," said Mr Bam.

He said the trustees had decided not to make the 12-page report public.

He said new allegations made to the two investigators — an attorney and an

accountant — had "nothing to do with money".

"In giving verbal evidence, however, people opened their hearts and minds and, in some cases, offered quite emotional views."

"We are not trying to sweep anything under the carpet, but it would be unwise to make public information provided confidentially until we have had the opportunity to consider it fully," he said.

The trustees released a statement on Friday night agreed to by all parties.

It said the investigators and trustees accepted that the payments were properly authorised by Mr Browde on behalf of the LHR in consultation with some council members and the auditors.

However, the investigators found that the manner in which the payments were made and reflected in the books did not comply with generally accepted accounting procedures.

On the subject of Mr Currin's tax payment, offset against money he claimed he was owed in lieu of leave when he resigned from LHR last year, the trustees said the "concealment" of the nature of the transaction from the LHR secretariat was "unsatisfactory" and placed

To Page 2 ⇨

## Poor book-keeping

ST 12/11/95

From Page 1

him "in a situation of conflict of interest".

The payment to Mr Mahamba, made at Mr Currin's behest through Mr Browde's personal bank account, had been "routed in an incorrect manner" intended to bypass the secretariat.

The trustees were concerned about the "inappropriate" manner in which the transactions were recorded. Mr Mahamba's payment, for example, was entered as a consultancy fee.

The trustees found, however, that there was no connection between this payment and Mr Currin's

business association with Mr Mahamba.

Mr Browde had acted in good faith, and was not personally responsible for the "unusual" accounting procedures adopted.

Jody Kollapen, Mr Currin's successor as national director, said yesterday that arrangements had been made for Mr Currin to repay R5 000 of his tax loan. The amount is the difference between what was paid to the Receiver and what was found to be due to Mr Currin when he left.

Mr Browde declined to comment, while Mr Currin said yesterday that he had been accountable not to the secretariat but to the national council.

ARG 13/11/95



Prof Hendrik van der Merwe

# Hearings for truth panel members get under way

(252)

**MICHAEL MORRIS**  
Political Correspondent

**PUBLIC** interviews began today to choose members of the Truth and Reconciliation Commission, the body which will investigate secrets of the apartheid era

The first of 15 prospective candidates faced questioning about their political views, their views on the work of the commission and their reasons for wishing to serve on the body

The first witness, Hendrik van der Merwe, said retribution was a crucial element of truth and reconciliation, but it could take the form of embarrassment or humiliation through public exposure

Professor Van der Merwe, a Quaker and conflict resolution expert — who was until recently director of the Centre for Conflict Resolution at the University of Cape Town — said the element of punishment was vital if the commission was to succeed

“My feeling is that some form of punishment is essential in a society like ours. It is part and parcel of our moral code, our legal system and our theological belief, and I feel that the public embarrassment that would come with revelations to the commission is a form of punishment.

“I argue that this is the easiest punishment perpetrators must be able to get away with”

Professor Van der Merwe said that while setting up a commission of this kind ran the risk of “causing problems” in society, “I believe the benefits it can bring outweigh the disadvantages”

“I believe not doing something about the wrongs of the past and the necessary steps for healing will do more damage than any harm that might come through mismanagement or abuse of the opportunity”

He said the essence of the commission should be peace and justice, two concepts which were essentially in opposition. It was in the light of this tension between peace and justice that some form of retribution was necessary, and that forgiveness should go hand in hand with public exposure

Responding to questions from the panel, Professor Van der Merwe said that while it was not possible to be neutral about moral issues, impartiality was an essential quality for those who served on the commission

The second candidate questioned today — Glenda Wildschut, chairperson of the trauma centre in Cape Town — stressed the need for commissioners to empathise and be able to listen to both victims and perpetrators in order to understand the abuses of the past and the feelings of the victims

# Call to revoke indemnities rejected

BY JOVIAL RANTAO  
Political Reporter

The ANC yesterday rejected Deputy President F.W. de Klerk's call that the 117 temporary indemnities granted to senior ANC members should be revoked, and called on senior officials from the former government to confess their involvement in apartheid crimes.

ANC spokesman Ronne Mamoepa said the 117 indemnities to ANC leaders such as Deputy President Thabo Mbeki, Transport Minister Mac Maharaj and Defence Minister Joe Modise, were granted after they had fully divulged their involvement in underground ANC structures and the struggle against the former government.

(252) Star 13/11/95  
"The NP and former cabinet ministers have not come clean. Immunity can be given only to people who confess

"We've never denied anything. When they filled in indemnity application forms, our members disclosed their involvement in the struggle against the former government," Mamoepa said.

During his visit to the Northern Cape this weekend, De Klerk said if President Mandela and Safety and Security Minister Sydney Mufamadi were saying the courts should be activated to deal with all charges for political crimes, irrespective of the Truth Commission and other allied processes, then the temporary indemnity granted to 117 senior ANC members should be revoked.

"Then I say the police and attorneys-general should be instructed to reopen all prosecutions and investigations which were suspended in terms of the negotiation process. If former defence force chiefs were to be charged on the basis that people under their command had committed crimes, then Defence Minister Joe Modise should also be charged for crimes committed under his command," De Klerk said.

Mamoepa said the trial of former Defence Minister Magnus Malan and 10 former South African Defence Force officers should be viewed as a criminal case and should not be politicised.

The 11 former SADF officers, who are all out on bail, are expected in court on December 1.

## Omar calls for revamp of laws

~~251~~ 252 ~~253~~

Ladysmith - Laws should be changed to clamp down on teenage criminals, and magistrates' judgments should be cross-checked by community members, Justice Minister Dullah Omar said yesterday

Addressing a public forum in Ladysmith in KwaZulu Natal's Midlands, Omar praised the Constitutional Court decision to abolish the death penalty but said violent crime would only subside once courts were functioning properly

One of the biggest problems was that courts were lax in giving criminals strict and consistent punishment. Another difficulty was that the majority of criminals was not being apprehended.

"Almost every complaint from the public revolves around the fact that criminals are not being made to account for their crimes," Omar said.

One necessary change in judicial legislation would be to call in community members as court assessors to cross-check magistrates' judgments.

Some magistrates still resisted the idea of court assessors, despite the fact that they would soon be compulsory, Omar said - Sapa

Star 13/11/95

# Banning books will become difficult

(252) Wyndham Hartley



BD 13/11/95  
treme violence

CAPE TOWN — New publication laws which will make it more difficult to ban films and books, and which will replace the infamous Publications Control Board, were tabled in Parliament last week.

The Films and Publications Bill says specifically that the protection of race relations and state security should reside with the law courts, not a state board.

The new measures seek to protect children from pornography by the implementation of age restrictions and packaging rather than banning. "Bona fide" artistic and scientific works will be protected and may be restricted only through age limitations.

Distribution of material to adults will be restricted only in the case of child pornography, certain mixtures of sex and violence, bestiality and ex-

Distribution to adults will be prohibited also where a publication, as a whole, promotes hatred against the religious convictions of a section of the population. Bona fide religious works will be exempted.

The legislation is based on the deliberations of a task group appointed by Home Affairs Minister Mangosuthu Buthelezi. The task group considered about 1 600 representations from the public and interested organisations.

It decided current legislation "regulates the domain of the adult too strenuously", infringed on the freedom of adults to make a choice, was too vague and was subject to abuse.

Introduced by Deputy Home Affairs Minister Penuell Maduna the legislation will be presented to the portfolio committee on home affairs before being placed before the National Assembly and Senate in the new year.



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**International share issue**



**FOOT SOLDIERS:** These schoolgirls were part of a walk for peace from Muizenberg to St James organised by the Cape Town branch of Amnesty International yesterday

PICTURE: ALAN TAYLOR

## 'Expose evil to aid human rights'

**CAROL CAMPBELL**

A HUMAN rights culture could be protected by exposing activities, such as hit-squads, that flourished in the dark, scientist and activist Professor George Ellis said yesterday.

He was speaking at the end of Amnesty International's walk for peace in Muizenberg.

Amnesty International's secre-

tary-general Mr Pierre Sane, Professor Charles Villa-Vicencio and Rabbi David Sherman were among about 100 people who took part in the walk from Sunrise Beach in Muizenberg to St James

"People understand what basic human rights are but can be misled in many ways and need some training in seeing what is happening," Prof Ellis said

It was important to build up a public spirit that resisted efforts by the government or any other agency to take away people's freedom and dignity, he said

The community needed to work to create a society that valued humanity and human life. One way in which this could be achieved was for the community to elect leaders who stood for these values

ECT 13/11/95 (252)



# 'Victims need restitution, not retribution'

Report 14/11/95 (252)

Tutu appeals to the selection panel as it begins interviewing candidates for the Truth and Reconciliation Commission

One of the first candidates to be interviewed for a seat on the truth and reconciliation commission, Anglican Archbishop Desmond Tutu, said yesterday that its purpose should be restitution for victims and not reprisal and retribution against those who came forward to confess their crimes against humanity.

Tutu was speaking in Cape Town yesterday before the selection panel for the commission, which has now started interviewing candidates. Tutu said he had been looking forward to his retirement and was reluctant to serve on the commission.

Its members will be confirmed by President Mandela; probably next month, after the selection panel has presented him with a shortlist from the 46 candidates to be interviewed in Cape Town, Johannesburg and Durban. The commission will consist of between 11 and 17 members.

Tutu told the selection panel that South Africa could not afford a trial like that at Nuremberg in Germany for Nazis accused of war crimes at the end of World War 2. He said the commission should include "ordinary people" who had themselves

been victims during the apartheid years.

"We shouldn't just be objective in a cold, cerebral kind of way. Perhaps many of those who have been victims of the atrocities committed by people on all sides are so-called ordinary people, often those who the world considers to be small people," he said.

The selection panel, chaired by Prof Nicholas Haysom, is interviewing the candidates to narrow the shortlist of 46 to 25 names.

One of those interviewed yesterday was Anglican priest Michael Lapsley, who lost both his hands in a parcel bomb explosion in 1990. He told the selection panel his experiences could contribute to the healing task of the commission.

"As someone who has suffered grievous bodily injury, I bring a very particular understanding of healing and a commitment to the healing of the nation," said Lapsley. "I realised

soon after I was bombed that if I was going to spend my life pursuing those who did it to me I would remain their victim, but now I am the victor."

Lapsley said the perpetrators needed to know they would be treated fairly, justly and with compassion, but also needed to recognise the horror they had caused.

Tutu said appointing victims as commissioners would give the body more credibility than if it consisted mainly of academics and celebrities.

He said reconciliation was not cheap, but that forgiveness depended on confession. The emphasis had to be on healing. "We can't just say 'Let bygones be bygones', because then they will never be bygones and they will return to haunt us forever."

Commissioners should be impartial and have a record of concern about human rights, he said. - Sapa, Reuters



Tutu ... reconciliation is not cheap.

# Truth commission selection begins

Wyndham Hartley (252)

CAPE TOWN — Archbishop Desmond Tutu said yesterday he was reluctant to serve on the truth commission.

A panel appointed by President Nelson Mandela began interviewing 46 nominees for the commission at public hearings in Parliament yesterday. The interviews will be completed by the end of the week, raising the possibility that Mandela could finalise appointments by next week.

Tutu, among the first to be inter-

viewed by the panel, headed by Mandela's legal adviser Fink Haysom, said he had been looking forward to retirement when the Council of Bishops asked him to accept nomination to the truth commission.

While SA could not afford another Nuremberg, bygones could not simply be allowed to be bygones. True reconciliation was a costly business which depended on forgiveness, and forgiveness depended on confession, he said.

Continued on Page 2

BD 14/11/95

## Commission (252)

Continued from Page 1

The interviewing panel — NP senator Ray Radue, Freedom Front senator Rosier de Ville, Jody Kollapen of Lawyers for Human Rights, National Economic, Development and Labour Council executive director Jayendra Naidoo, ANC MP Baleka Kgotsitsile, IFP MP Harriet Ngubane and Methodist bishop Peter Story — will interview the 46 nominees in Cape Town, Durban and Johannesburg this week. They will then recommend 25 names to Mandela. Between 11 and 17 commissioners will be chosen.

Asked about his political profile —

those of "high political profile" are to be excluded from the commission — Tutu replied: "I was bang in the middle of politics." However, he had never been a card-carrying member of any party.

Black Sash national president Mary Burton, nominated by the National Association of Democratic Lawyers, said she, too, had been politically involved. "But the Black Sash has always treasured its independence from political parties." She said the organisation had been critical of the excesses of the opponents of apartheid as well as abuses committed by the state.

Father Michael Lapsley, whose hands were blown off by state agents, said that as a victim who had healed, he had a particular perspective to offer the commission.

# Talking the first step towards truth

□ 'It's essential to open the wounds... cleanse them' — Tutu  
*April 14/11/95* (252)

ALMOST chillingly, the bursted silver of Father Lapsley's clawed "hands" catches the light sharply with every gesture he makes

The bright, stiff hooks at the ends of his arms are compelling

There's no avoiding the flinty imagery, fiercely symbolic as it is not only of the explosion that tore off this Anglican priest's hands as he opened a letter in his Harare home in April 1990, but of the countless apartheid atrocities that claimed the lives and limbs of thousands and the happiness and well-being of many more

It is the grim secrets of these events that have called the Truth and Reconciliation Commission into being

In Father Lapsley's case, his own painful journey, in overcoming the temptation to self-pity and the desire for revenge, reflects the ideals of truth and reconciliation

"I realised soon after my bombing," he said at yesterday's public hearing, "that if I spent the rest of my life pursuing the perpetrators, I would remain their victim. Now I see myself as the victor."

But if he were chosen as a member of the commission, he would consider it "inappropriate" for his own case to be investigated

Father Lapsley, now the full-time chaplain at the Trauma Centre in Cape Town, saw the fundamental task of the commission as being a "bridge be-

tween our horrendous past and a different kind of future", and believed his own experience would be particularly useful

"For someone who has suffered grievous bodily injury, I bring a very particular understanding of the feeling and commitment of the healing of the nation"

His sense of this "healing" had been broadened through his work at the Trauma Centre, which had brought him into contact with victims of police torture, and of torture at the hands of the African National Congress, and with traumatised soldiers

"We have divided memories and a divided understanding of what we did to each other and this commission will be the start to getting an agreed body of knowledge"

This was essential, not to forget the past, but to "lay it to rest"

The emphasis should be on acknowledging and "reverencing" the stories of victims, many of whose "stories" had never been heard, and "where possible" providing reparation

Perpetrators would "need to see that they will be treated justly, firmly and compassionately, yet they must see the horror of what they have been party to or have done" Confronting this reality was painful, but also liberating

He also noted that it would be important that the commission's members were drawn from the widest possible back-

## BACKGROUND TO THE NEWS

**BRIDGING** "our divided memories, our divided understanding of what we did to each other" is at the heart of letter-bomb victim Michael Lapsley's vision of the Truth and Reconciliation Commission. He speaks not as a victim hunting down the faceless operatives who blew off his hands and half-blinded him, but as an aspirant candidate to the commission, to help others lay to rest their own anguished and unexplained pasts. Political Correspondent MICHAEL MORRIS reports on the first day of hearings for shortlisted commission candidates.

grounds so that it would be understood and taken seriously by the widest section of society

Balancing all these things — justice, compassion, reparation, the needs and rights of individuals and those of society, and, above all, confronting the truth — emerged in one form or another in the responses of all the aspirant candidates who appeared yesterday

Earlier, Anglican Archbishop Desmond Tutu described having just visited Nuremberg and Dachau and being confirmed in the view that this was not the way to go in South Africa

"My own hope is that while you do not want people to believe they can get away with atrocities and crimes with impunity, the emphasis would be on restitution, and on the victims, rather than on reprisals and retribution, or facilely

cause if you seek to cover a wound that is dirty, it will become septic"

He felt there should be a scale of atrocities so that amenity would be automatic for some categories, but that "beyond that level, the full extent of the law should operate. People might get to be found guilty, but it does not mean the sentence will be carried out. But the country should see that crimes are taken seriously. The sense of revulsion has to be taken seriously"

Like Father Lapsley, the Archbishop said that while the commission would need objective experts, it could not rely on a "cold and cerebral" approach

"There must be empathy too. Many of the victims of atrocities are so-called ordinary people, small people, and it would enhance the credibility of this opportunity if those small people knew that the commission understood their story from the 'inside'"

Exposing the truth in the fullest possible sense was the key, said another aspirant candidate, Black Sash president Mary Burton. However, she cautioned that reparations to individual families and individuals may not be possible, or fair

It might simply not be possible for everyone to tell his or her own story, and there would be risk of many deserving cases not getting reparations

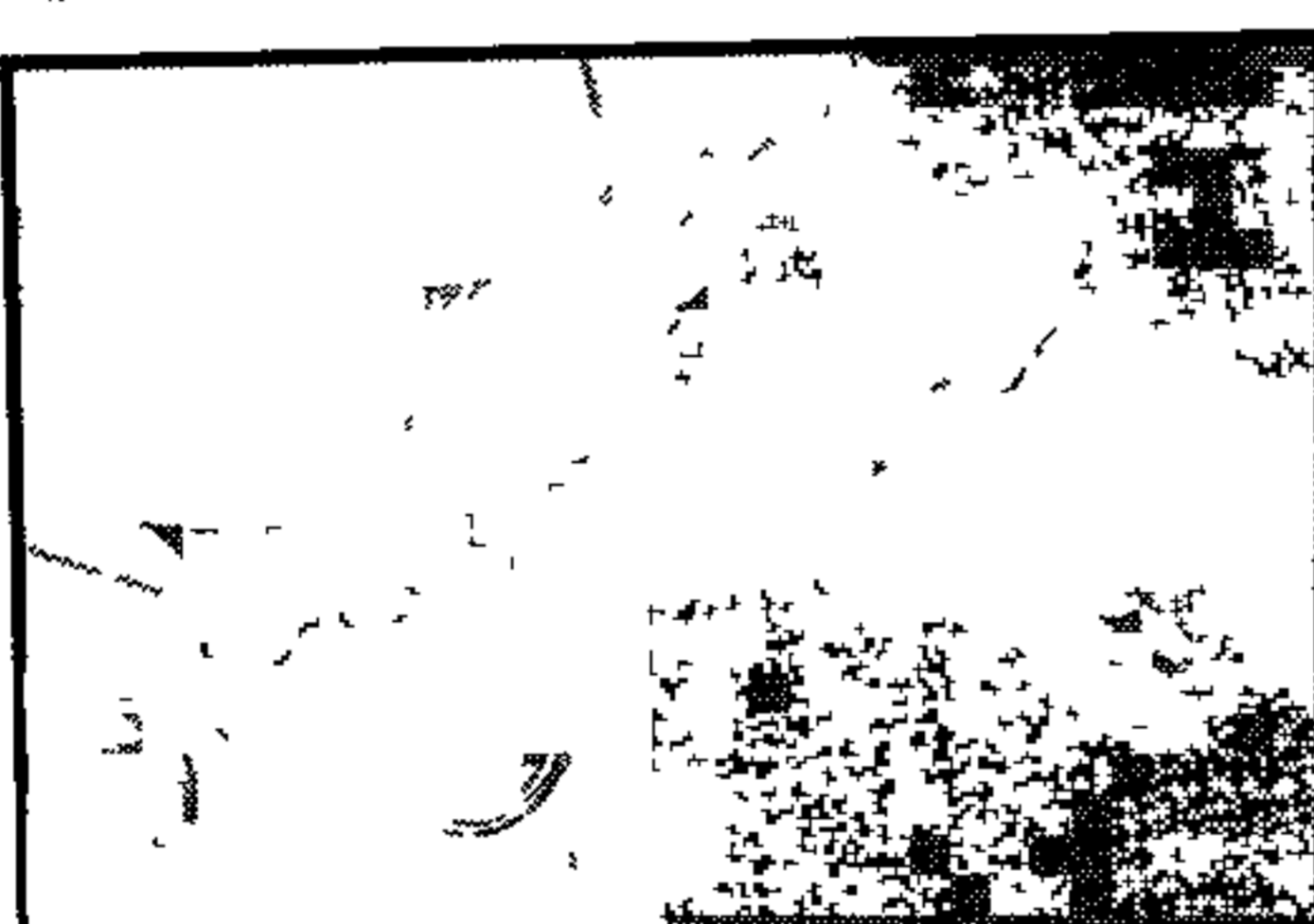
symbolic reparations but for me, the broadest reparation should come from the section of society which benefited from apartheid, from all of us with white skins who benefited from privilege and it should take the form of being prepared to put taxes willingly and ungrudgingly towards improving the lives of others. That, to me, is the best reparation. It requires some kind of change of heart and soul in society, and I think the commission can contribute to that"

Mrs Burton said that while it was particularly reprehensible when servants of the state committed gross violations of human rights, this did not mean people who committed violations in other organisations were "less guilty"

However, cases would have to be judged individually because of the "state of war" that existed in the past

● The panel, appointed in terms of the Truth and Reconciliation Act, is chaired by Fink Haysom, legal adviser to President Mandela, and comprises Senator Ray Radue (National Party), MP Rosier de Ville (Freedom Front), Jodie Koppelman (Lawyers for Human Rights), Jayendra Naidoo (Nedlac), MP Baleka Kgositsile (African National Congress), MP Harriette Ngubane (Inkatha Freedom Party) and Methodist Bishop Peter Storey.

Forty-six shortlisted candidates — from 299 nominees — are being interviewed at public hearings



Michael Lapsley

speaking of letting bygones be bygones"

It was essential to "open the wounds, to cleanse them, be-

# Victims should serve on truth panel

ARCHBISHOP Desmond Tutu says the Truth Commission probing apartheid-era crimes should include "ordinary people" who have been victims

He was among the candidates questioned yesterday, the first day of interviews of potential commissioners

"We shouldn't just be . . . objective in a cold cerebral kind of way," Archbishop Tutu said

"Perhaps many . . . who have been victims of the atrocities committed by people on all sides are so-called ordinary people, often those whom the world considers to be small people"

Appointing victims would give the commission more credibility

Asked if he thought victims would be impartial, Archbishop Tutu said he knew several people who had suffered under the apartheid regime and who had forgiven their tormentors.

"My experience (in Germany) confirmed in my view that certainly in South Africa we could not be able to afford a Nuremberg-type of situation," he said.

"The emphasis should be on restitution and the concern for the victims much more than reprisals and retribution"

The past had to be opened like a festering wound before healing and forgiveness could take place.

The panel is to select a shortlist of 25 candidates, from whom President Nelson Mandela will appoint between 11 and 17 — Reuter

CT 14/11/95

# Gruelling slog lies ahead for truth commissioners

ARG 15/11/95

(252)

## BACKGROUND TO THE NEWS

DURING the past two days, all of the 17 Cape Town commission candidates — as much as the members of the selection panel — have raised questions of principle and practice that will determine the workings and outcome of the truth and reconciliation process.

They range in scope from the composition of the commission, the back-up and support commissioners will need, the handling of atrocities and the possibility of treating the most serious abuses differently, restitution and reparations, publicity for the work of the commission and whether the media should have free access to proceedings.

For the most part, these are questions that remain unanswered. Some will necessarily be left to the commission itself to determine

What is clear though, is that this 11 to 17-strong board will sit down to a gruelling, full-time, two-year slog in its attempt to establish as much of the truth about the grievously awful secrets of the past as possible, and who the perpetrators were, and leave the victims and survivors, the perpetrators and the nation itself feeling that justice has been served and the needs of reconciliation met

Naturally, there are risks.

Alex Boraine, Director of the Justice in Transition, and one of the candidates who appeared yesterday, cautioned that one of the most important things the commission would need was "strong administrative leadership". It was all very well having honest, impartial individuals to work through the stories and claims and details of events, "but unless you have the necessary drive and determination, this huge task will simply not be accomplished"

The essential challenge was to come to terms with the past, to consolidate the peace, "without wrecking the fragile democracy".

A large, multi-disciplinary support staff was needed. The

**MORE than 10 000 cases have already been lined up for the long-awaited Truth and Reconciliation Commission. But what has emerged from the public hearings for aspirant members is that much important work remains to be done to prepare the commission for its grim task of trawling 33 years of apartheid-era atrocities, and, at the end, convincing South Africans that the task was redemptive, not vengeful, impartial yet rigorous, and a step towards a new human rights culture. Political Correspondent MICHAEL MORRIS reports.**



**THOUGHTFUL:** Former vice-rector of the University of the Western Cape Jaap Durant listens attentively during yesterday's hearings.

commission itself was too small to encompass all the skills and back-up the process would require.

"If there is no strong management, the whole thing might falter and just stumble along," he warned

Another candidate, Charles Villa-Vicencio, professor of theology at the University of Cape Town, said that if the commission was "sensitively and well handled" it could contribute to a "national catharsis" but if it was "arrogantly or insensitively handled, it would lead not to catharsis but a national haemorrhage and that would be a disaster".

He, like others who have appeared before the selection panel, stressed the importance of creating an opportunity for the "little people's stories" to be heard, not merely those of

luminaries such as Steve Biko and Matthew Goniwe.

Former head of the Western Cape peace committee — and once vice-rector of the University of the Western Cape — Jaap Durant predicted that the commission would face "very difficult situations" in the course of its probe and there were bound to be differences of opinion on the meaning, for instance, of neutrality and impartiality.

"I can foresee that there will be differences of opinion, but it will be up to the members of the commission, as they work through the process, of 'finding themselves' and achieving their own clarity. The commission will have to find its feet and be willing to learn from one another."

Dr Boraine, like panelist Bishop Peter Storey, also felt

strongly that there was no place on the commission for individuals who were directly linked to the administration of apartheid, in whose name atrocities were committed

"If there are people who were directly involved in the implementation of apartheid, which brought about the violations, it is my view that they should not be on the commission.

"Having a broadly representative commission is one thing, but having people who were part of the system which was itself a violation, sitting on the commission, would be a contradiction in terms."

He also believed victims and survivors ought not to serve on the commission because of the risk of a conflict of interest, and that if they were to, and were then allowed to bring their own cases before the commission, it would lead to "an impossible situation".

In philosophically discursive responses which appeared to test the patience of the selection panel, poet and academic Adam Small — the last of the 17 aspirant candidates to appear yesterday — said that while he had been critical of the notion of a truth and reconciliation commission, it had now become a *fait accompli* and he would support it with all his heart.

Nevertheless, he felt that "what it will be able to achieve is going to be very limited". The country could learn to live with that "as long as we don't believe the problems of the past will lie behind us".

He promised that if he was selected to serve on the commission, his would be a critical voice especially "if it looks as if there is going to be too easily a handling of issues".

● The selection panel moves to Durban today for the second round of hearings, then to Johannesburg for hearings tomorrow and Friday.

It will recommend a shortlist of 25 candidates to President Nelson Mandela.



BIEBER

# Truth body warned to be very cautious

'The heart of the commission is an attempt to heal the nation'

SAPA

Cape Town

University of the Western Cape academic Prof Adam Small yesterday said the Truth and Reconciliation Commission would be treading dangerous ground and would have to exercise extreme caution.

Small was one of the 46 candidates being interviewed by a selection panel to draw up a short list of 25 names from which President Nelson Mandela will appoint the 11 to 17 members of the commission in December.

"The commission must go wisely and compassionately, even in respect of evil," Small said. "What the commission will achieve is very limited and we will have to live with it."

Small, who has written against the idea of such a commission, indicated he would fully commit himself if appointed.

Another candidate, formerly also of UWC, Prof Jaap du Randt, said the commission would not have an

Jan 15/11/95 (252)  
"easy ride". It would have to have the support of the people, because there would be tension and some would try to undermine its work.

Justice in Transition director Dr Alex Boraine told the panel. "The heart of the commission is an attempt to heal the nation."

He was opposed to victims or survivors being appointed to the commission because there would be a conflict of interest.

Since it was to be a human rights commission, people who had been directly involved in pursuing a policy that by nature violated human rights could also not be appointed.

Cape Town Muslim leader Imam Rashid Omar said the commission offered the opportunity to break with the past and help lay the foundation for a human rights culture in South Africa. It would also benefit a healing process already under way, he said.

The selection panel has ended its Cape Town leg of interviews and moves on to Johannesburg and Durban.

## Church's role in reconciliation

BY TAMSEN DE BEER

The South African Council of Churches (SACC) yesterday reasserted the need for the counselling and support of victims and perpetrators of crime if the Truth and Reconciliation Commission was to succeed.

At a press conference, the SACC emphasised the

role of the church in the truth and reconciliation process, as well as in providing support to violence-stricken areas of the country.

SACC representatives included Methodist Bishop Stanley Mogoba and Anglican Archbishop Desmond Tutu, two of the 46 candidates shortlisted for the commission.

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# Naidoo

# Africa must act against abuses

Renee Grawitzky

AFRICAN countries had to have the courage to stop blaming the rest of the world for the continent's problems and begin taking responsibility to ensure they acted decisively against corruption and abuses of human rights, Minister without Portfolio Jay Naidoo said yesterday.

Speaking at the launch of the UN Development Programme's Human Development Report 1995 in Africa, he said "We as people in Africa have to challenge the vested interests of foreign donors and ensure that assistance from the international community

fits in with our priorities"

Naidoo said the objective of the RDP was to ensure through consultation with affected communities—that the real needs of South Africans were being addressed.

In addition, government had to ensure that services were being delivered properly and money spent was achieving its objective, for example, in education and training, Naidoo said.

The majority of South Africans were illiterate, yet 25% of the total budget went into education which was more than the total budget of Tanzania, he said.

If people were not being ef-

fectively trained or educated the money would be redirected away from bureaucracy, Naidoo said

He said government was committed to the empowerment of women and this was reflected in the number of women parliamentarians.

The first woman who had been appointed to the highest executive level in government was the director-general of the health department.

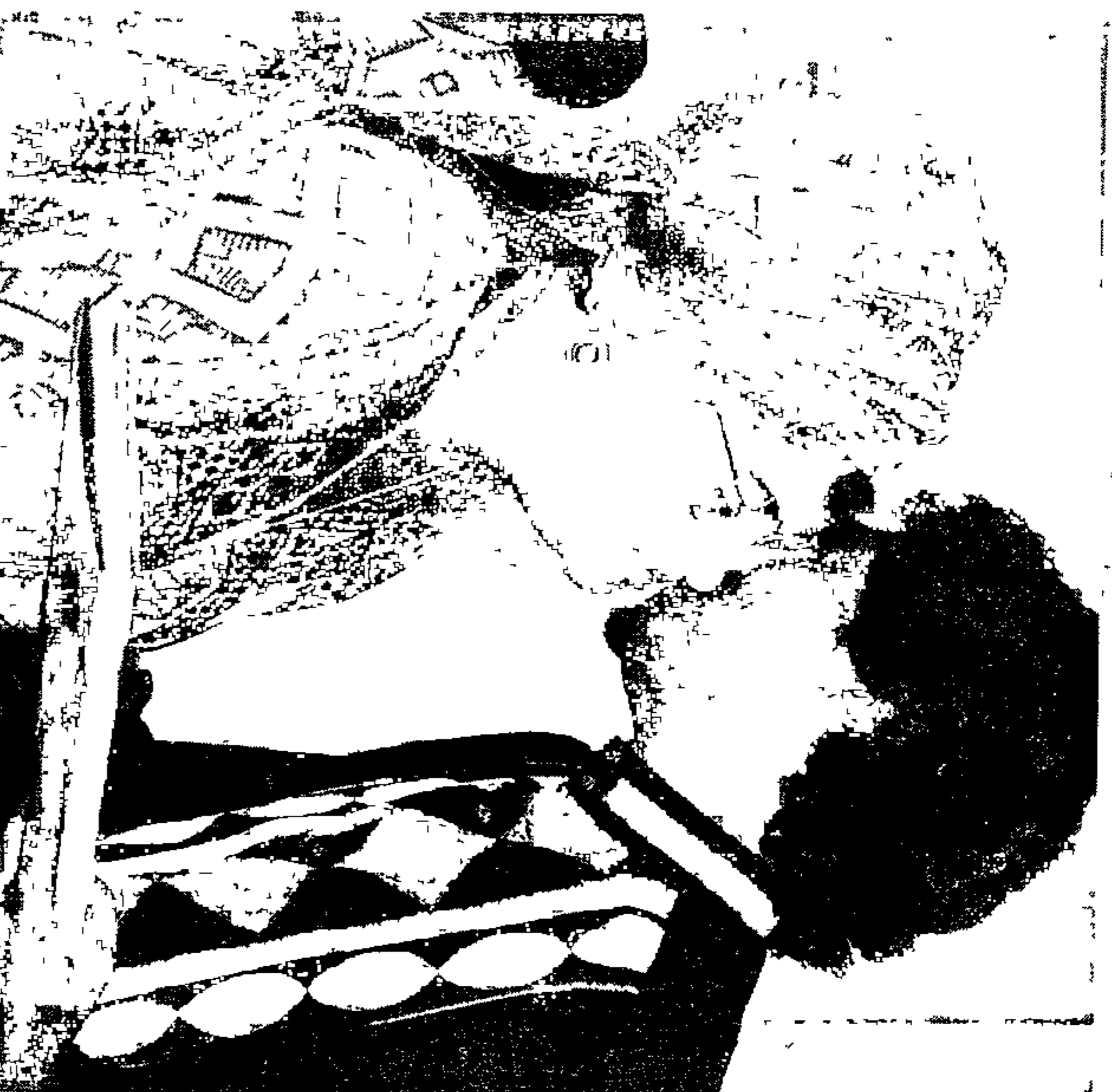
He said that close to 25% of households were headed by women, and attempts were being made to monitor the extent to which women were being empowered.

A representative for the

UN said the Human Development Report — which focused on women — subscribed to the view that development could be sustained only if it centred on people.

During a workshop earlier this week, delegates discussed the report and issues around the lack of statistics about violence in the home and an economic assessment of unpaid labour.

Some discussion arose as to whether the report adequately addressed the extent of the abuses on human rights. Some delegates argued if "women's rights are human rights" why were these statistics excluded. According to sources, dele-



Minister without Portfolio Jay Naidoo receives a copy of the Human Development Report 1995, published by the UN Development Programme, from UNDP Bureau for Africa assistant administrator and regional director Ellen Johnson Sirleaf during the launch of the report in Africa yesterday

Picture ROBERT BOTHA

gates from the Development Programme explained that attempts to obtain data on such abuses had not been fruitful.

In addition, attempts at collating such data would have put in jeopardy the collation of data around the human development index.

A delegate from Botswana argued that the report could have contributed to masking the realities of people's experiences, including the extent of the abuse of human rights in a number of African countries.

It was argued that because the report looked at averages, situations in specific countries were not necessarily clearly reflected.

# 'Human rights vital'

□ Must form part of SA foreign policy, says Amnesty

ARG 15/11/95

(252)

## Staff Reporter

SOUTH Africa lacks a clear vision of how a commitment to human rights will inform and shape its foreign policy

But they are integral to its constitution, said secretary general of Amnesty International Pierre Sané

Mr Sané was delivering a concluding document on Amnesty International's three-week visit to the country yesterday. Amnesty International made a number of recommendations after visiting all the provinces

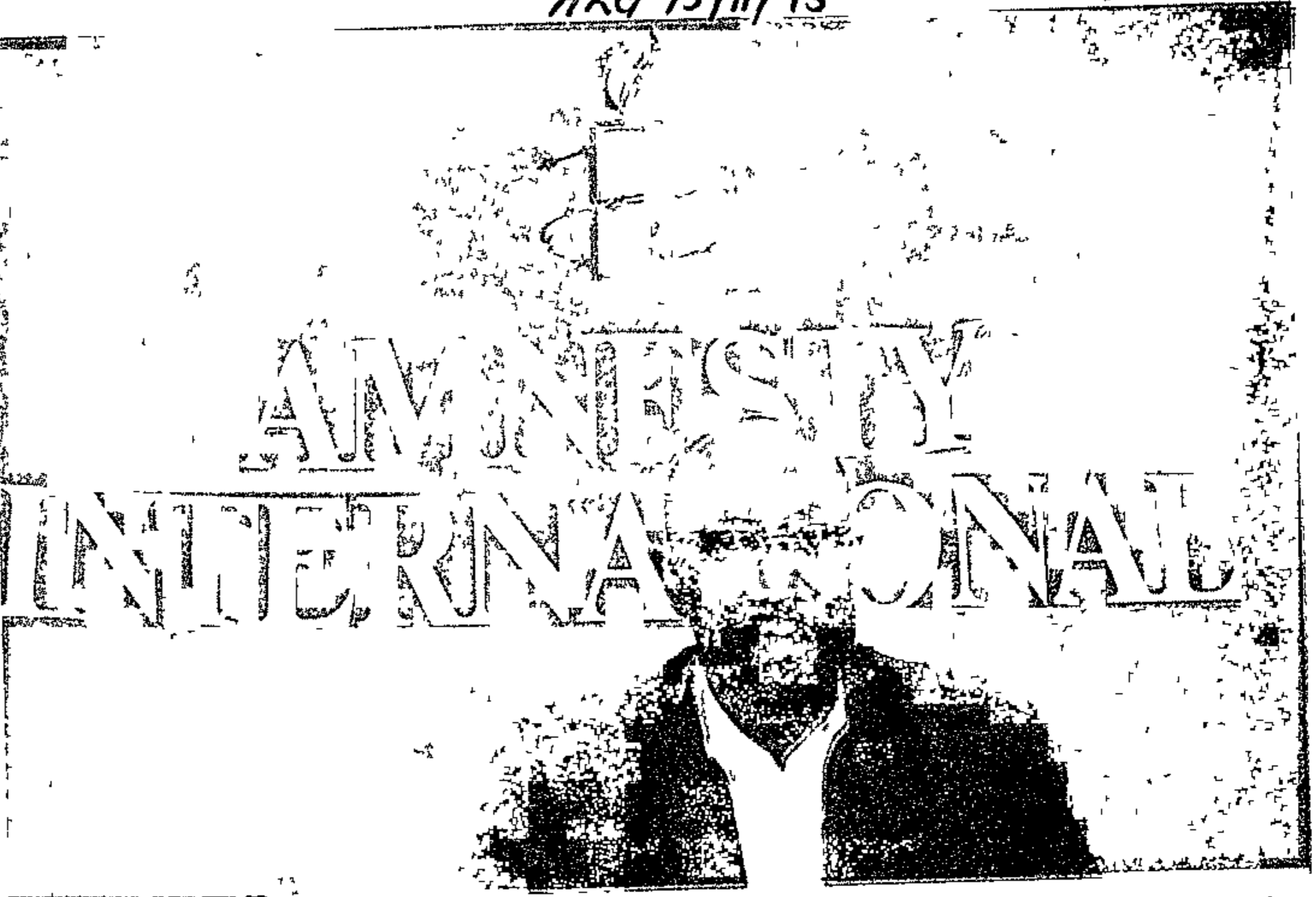
During the visit, which included high-level discussions with government officials, parliamentary and political leaders, non-governmental organisations and the victims of human rights violations, Amnesty International tried to learn more about major areas of concern

The delegation raised a number of foreign policy issues with the government, including the then impending execution of Nigerian human rights activist Ken Saro-Wiwa and eight other activists

The delegation felt South Africa and other countries reacted too late to human rights abuses in Nigeria.

Mr Sané said that if international pressure on Nigeria had come earlier and been stronger and louder, the executions could have been prevented

Another concern related to South Africa's foreign policy. The organisation regretted the government had not yet ratified core international human rights treaties, including the International Covenant on Civil



Picture BRENTON GEACH, The Argus

**AMNESTY VISIT:** Secretary General of Amnesty International Pierre Sané who says South Africa lacks a clear vision on human rights.

and Political Rights and the optional protocols — the International Covenant on Economic Social and Cultural Rights, the Convention Against Torture and the African Charter on Human and People's Rights.

The human rights organisation called on the government to ratify those core human rights treaties by 1996

Mr Sané said Amnesty International welcomed the government's steps to subject arms trade to cabinet scrutiny. He said another hopeful sign was the recent decision by the Constitutional Court to rule the

death penalty unconstitutional

In a paper on KwaZulu-Natal, Amnesty International researcher Mary Rayner said there was alarm at the killings and other acts of intimidation

She said the delegation received reports of collusion between perpetrators of human rights violations and local police. The violations included assaults, torture and shootings by members of the South African National Defence Force.

The human rights organisation makes several recommendations including,

- Military and police personnel should be held accountable for their actions, and

- Political leaders should clearly state that supporters should not be involved in political violence

On the issue of torture, the group called on the government to implement independent police complaints mechanisms to investigate allegations of police torture.

Amnesty International also commended the establishment of Truth and Reconciliation Commission



# Adam Small

## issues warning

*Sowetan 15/11/95 (252)*  
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Another candidate, formerly also of the UWC, Professor Jaap du Randt, said the commission would not have an "easy ride" It would have to have the support of the people because there would be tension and some would try to undermine its work

Justice in Transition director Dr Alex Boraine told the panel "The heart of the commission is an attempt to heal the nation"

He was opposed to victims or survivors being appointed to the commission because there would be a conflict of interest

Since it was to be a human rights commission, people who had been directly involved in pursuing a policy that violated human rights could also not be appointed

Boraine said the media would play an important role in the proceedings, but would have to be very responsible because of the sensitivity involved

Cape Town Muslim leader Imam Rashid Omar said the commission offered the opportunity to break with the past and help lay the foundation for a human rights culture in South Africa

It would also benefit the healing process, which was already under way

The selection panel has completed its Cape Town leg of interviews and moves to Johannesburg and Durban - *Sapa*

# Rights violators must be barred

CT 15/11/95

(252)

## POLITICAL STAFF

AMNESTY INTERNATIONAL called yesterday for people found guilty of gross violations of human rights by the Truth and Reconciliation Commission to be barred from holding any office where they would have responsibility for prisoners or law enforcement.

The call follows a three-week visit by Amnesty International secretary-general Mr Pierre Sané, who said his organisation was concerned amnesty provisions in the Promotion of National Unity and Reconciliation Act might contribute to the perpetuation rather than the eradication of human rights violations.

The group believed amnesty should not be given where torture or extra-judicial executions were involved, because it sent out a clear message that these crimes went unpunished.

The second day of interviews for the short list of 25 nominees for the 11- to 17-member truth commission continued yesterday.

Professor Adam Small, who has written several articles opposing the concept of a truth commission, said he believed what the commission would be able to achieve was limited. He would support the commission, however, "provided no one believes that the

moment we have had the commission our problems will be over"

University of Cape Town political science Professor André du Toit said he did not believe the commission was a moral compromise, even if it was part of a political compromise.

If each individual were to be prosecuted, sufficient evidence would have to be assembled to prove guilt beyond reasonable doubt. Prof Du Toit questioned just how many of these prosecutions would be successful.

Once in court the victims would be subjected to a hostile cross-examination. Would this make sense in terms of reconciliation?

Another UCT academic, Professor Charles Villa-Vicencio, said the commission should not only focus on high-profile cases such as those involving Steve Biko or the Cradock Four.

The commission must deal with the lesser-known cases as the high-profile ones.

The committee conducting the interviews will now move to Durban for a day, and then wind up the hearings with a two-day sitting in Johannesburg.

The short-list of 25 names will be submitted to President Nelson Mandela this weekend.

# Truth Commission could escalate KwaZulu violence – prof

Star 16/11/95

(252)

Durban – Truth Commission investigations of human rights violations in KwaZulu Natal could run into serious difficulties, candidates for the commission told the selection panel in Durban yesterday

Continuing violence in the province meant the truth might hurt people living in violent communities, candidates warned. Confessions might lead to retaliatory attacks in the highly-charged political atmosphere of KwaZulu Natal

"We have a situation in the province where gross human rights violations are still going on in an overt and general way," said Prof Mandla Mchunu of the University of Natal. "The province is going to represent one of the major challenges to

the commission."

Mchunu warned of possible negative side-effects on the national government if and when government members were implicated in human rights violations. The government should prepare itself for possible crises stemming from the commission, he said

"I'm not saying the GNU is a holy cow. I'm saying there must be dynamic and serious disagreement during the course of the inquest, and the GNU must be shaped by the threats this represents. It would be tragic if the commission simply disregards the GNU"

KwaZulu Natal historian Prof Jabu Maphalala told the panel the commission would have to be aware

of the serious historical grudges endemic among people of the province

"There are many issues that have been left hanging, without reconciliation and which in part help to explain the violence in this province," he said

Many grudges stemmed from the colonial era, including atrocities committed during the time of Shaka and the South African War

The difficulties in KwaZulu Natal should not be underestimated, said Richard Lyster, provincial director of the Legal Resources Centre

"It will be particularly difficult to operate effectively in the province at this time," he said

Practical issues such as the pro-

tection of witnesses would have to be considered

"It will take more than this commission to stop the violence in this province," Lyster said

However, despite the difficulties, candidates were unanimous in their belief that uncovering the truth would ultimately lead to reconciliation between opposing groups in the province

"Uncovering the truth will help people to realise what really went on in the past and could therefore impact on the present," Mchunu said

The selection panel is currently touring the country preparing a short list of 25 nominees which will be handed to President Nelson Mandela next week – Sapa

# Truth body 'must not tell all'

Farouk Chothia

(252)

80 16/11/95

DURBAN — The truth and reconciliation commission might have to withhold from the public information which could precipitate the collapse of the government of national unity, nominee Prof Mandla Mchunu of Natal University's Centre for Socio-legal Studies said yesterday.

He said the commission would not be operating in a vacuum and its work would "threaten" the government.

It might be necessary, therefore, to withhold certain sensitive information from the public. In such circumstances, the commission could hold discussions with political parties to seek a way out.

Mchunu appeared before an interview panel, appointed to select commissioners, in Durban yesterday.

He said there needed to be an awareness that the commission could be only a "facilitator" for reconciliation.

Civil society would have to continue the process of achieving reconciliation.

Interviewer Bishop Peter Storey said Mchunu held a "low level of ex-

pectation on what the commission will achieve". Interviewer Prof Harriet Ngubane said she was concerned that there were only six nominees from KwaZulu-Natal All had legal and academic backgrounds. Observers said only one of them, Zululand University historian Prof Jabu Maphalala, was seen as IFP-aligned. The rest were perceived to be closer to the ANC.

Nominee Richard Lyster of the Durban Legal Resources Centre said the problems the commission would face in KwaZulu-Natal should not be underestimated. The commission focused on past conflict, but conflict had not ended in KwaZulu-Natal. The situation would be exacerbated by the fact that the commission would begin its work when political parties would be involved in a local government election.

Nevertheless, the commission could contribute to peace efforts. IFP and ANC supporters would realise that a third force, and not their parties, had started the war in the province.

Comment: Page 18.

## Rules Board 'committed to streamline procedures'

Susan Russell

BO 16/11/95 (252)

THE recently appointed Rules Board, set up by Justice Minister Dullah Omar to streamline court procedures, met for the first time in Pretoria yesterday.

Board chairman Judge R Zulman said that it had committed itself to streamlining court procedures to promote quick and affordable access to justice.

The Board, he said, envisaged the introduction of a core set of rules applicable to all courts which would simplify procedures.

A justice department spokesman said the Rules Board had appointed eight committees to facilitate its work in overhauling procedures in respect of matters such as family courts, legal costs, supreme and magistrates' court rules and the rationalisation of rules of the former TBVC states.

The committees will report back to the Board during January next year, the spokesman said.

In addition the Board has invited members of the public and other interested parties to make written submissions on any issue relating to court rules and procedures by December 1 this year.

Members of the Board under Judge Zulman are Judges H Mall and E Cameron, Valerie Gqiba, P Solomon SC, V Niles-Duner SC, M Steyn, I Ayob, C Loots, T Jika, D Potgieter and B Nomjana.

# Truth commission procedure flatters to deceive

(252) RD 16/11/95

IN STARK contrast to the controversy that its creation has provoked, and the trauma with which it will deal, this week's rolling tour of public interviews of truth commission candidates has been strangely low-key.

The gentle, unpretentious chairmanship of presidential law adviser Fink Haysom has enabled a critical process to be conducted in a suitably calm and measured setting.

Yet, like the public interviews of candidates for the Constitutional Court just more than a year ago, the process as a whole raises more questions than it answers.

First and foremost, there is the question of the conceptual underpinning of the public interviews. The model established in the case of the Constitutional Court judges has been followed with the truth commissioners a mixed bag of politicians and "experts" to publicly interview candidates in order to produce a short list from which the president, in consultation with his cabinet, make the final selection.

Unlike with the Judicial Services Commission (JSC) last year, however, Haysom's panel is not the creator of statute and so its role and function is even less clear-cut. More-

over, unlike the JSC which published a seven-page set of guidelines for questioning candidates for nomination to the Constitutional Court, this panel has no written document to guide them.

The Act states only that the truth commissioners shall be "fit and proper persons who are impartial and who do not have a high political profile". Haysom adds that his panel has a "basic set of criteria in mind" which adds a "proven track record on human rights" and the requirement to be available full time for the likely two-year duration of the commission. In addition, the panel, according to its chairman, is looking for the nominees' perspective in "relation to the tension that exists between truth and justice" as well as "what qualities they thought commissioners should have".

These criteria sound reasonable enough, but where do they come from? Have they been plucked from the air? What about other possible criteria — race and gender sensitivities, representivity, for balance between rural and urban, between victims and non-victim, for example. Set against the experience of the JSC in October 1994, there are positive aspects that should not be ne-

## RICHARD CALLAND

In the main, for example, the same — or similar — questions are being asked of all the candidates. This is an improvement on the JSC process where the range of questions was enormous, giving rise to possible unfairness. Further, all the panelists are playing their part. Although the JSC was admittedly a much larger panel — 16 as opposed to eight — a significant number of those panelists played virtually no part in the proceedings. In fact, my own study of the JSC process showed, for example, more than half of all the questions were asked by just three members of the panel, and that of the substantive questions dealing with issues of constitutional law more than 50% were asked by Prof Etienne Mureinik and almost 70% by him and chairman Judge Arthur Chaskalson.

This week the questions have been less probing, perhaps because the people who are most expert on the subject of truth and reconciliation and who have given most thought to the issue at stake are nearly all among the nominees. As with the JSC members last

year, the panelists have not been provided with any specific training. Hence the questions during the first two days of the hearings in Cape Town this week were rarely anything other than the general and/or benign. It cannot be said that the nominees were tested, publicly, in any substantive way. Given all this and given the severe time constraints — as with the judges last year, so this week nominees have been limited to about 45 minutes of questioning — the questions must be asked: what exactly does the process seek to achieve, other than a rather superficial legitimisation of the selection process?

More than anything, the fact remains that the actual decision-making of the commission remains secret. The deliberations of the panel as with the JSC last year will not be open — and there are good arguments in relation to this — but quite wrongly there is no duty upon the panel to publish its reasons for its final selection.

The point then is this although the interviewing of nominees is transparent in the sense that it is taking place in public — something that is, of course, welcome in itself — the basis on which the candidates

are actually chosen is far from open.

In other words, the process flatters to deceive. As with last October, the greater flaws in the current model of selecting the various and many commissions that are so central to the country's continuing transition is less the interviewing process than the half-baked acceptance of the principle of transparency and accountability. Until the selection panels are compelled to publish their reasons, and to open their process of decision-making to greater public scrutiny, the system will remain fundamentally flawed.

The JSC process was a step in the right direction, but the truth commission selection procedure that is unfolding with understated fascination this week demonstrates there has been no progress down the road towards true openness. Bolder steps should now be taken — and can still be taken — to enhance the legitimacy not just of the truth commission but of the other bodies responsible for putting into effect many of the most important aspects of SA's transition to democracy.

□ Calland is head of Idasa's parliamentary information and monitoring service.

## LETTERS

# 'End torture' call

□ International pressure against practice increasing

ARLT 16/11/95 (252)

**JOHN YELD**  
Staff Reporter

AN INTERNATIONAL movement against torture and torturers has started and may prove as significant for human rights as the campaign which led to the abolition of slavery in the previous century

This was one of the points made by Terence Dowdall of the Cape Town-based Trauma Centre for Victims of Violence and Torture in his address to the 7th international symposium *Caring for the survivors of torture Challenges for the medical and health professions* at the Waterfront yesterday

He also suggested human rights issues should be taught at schools

The symposium, which runs until Friday, is organised jointly by the Trauma Centre and the International Rehabilitation Council for Torture Victims in Copenhagen, Denmark

It is being attended by about 300 delegates, including psychologists and doctors from more than 70 countries, and is the first conference on torture to be held in Africa

Speaking on "Torture and challenge — lessons from the South African struggle", Mr Dowdall said a "very important" course on health and human rights had been introduced into the curriculum for medical students at the University of Cape Town.

The students were given scenarios and were asked to make an appropriate response. At the start of their training, half of them agreed that some degree of torture was legitimate in crime-solving situations

The issue of the torture of people accused of crimes had to be addressed "very firmly", Mr Dowdall said

"However horrific their crimes, it is essential to be vigilant against this practice (of torture) which inevitable undermines community policing

"There are no circumstances whatsoever in which torture is justified."

Human rights issues should be entrenched in the school curriculum, and children should be taught to recognise incitement and "creeping human rights abuse", Mr Dowdall suggested

"Children need to be taught the horror and futility of genocide and human rights abuses



**'SEND A STRONG MESSAGE':** Anglican archbishop Desmond Tutu appeals to torture symposium delegates to protest against the hanging of nine Nigerian activists.

Picture BRENTON GEACH, The Argus

## Tutu asks symposium for condemnation of Nigeria

**Staff Reporter**

**DELEGATES** to the international symposium on torture should join the world in expressing outrage at last week's hanging of nine Nigerian activists, says Anglican archbishop Desmond Tutu.

Archbishop Tutu, who was given a standing ovation before inaugurating the

symposium yesterday, urged the delegates to send a "strong message" condemning the hangings

From their struggle against apartheid, South Africans knew how much they had depended on international support.

In those "dark days" anti-apartheid activists were only sustained by the know-

ledge of support from people around the world, Archbishop Tutu said.

"There were very many dark days, and we sometimes wondered if God supported us"

He asked for a strong message "so that our brothers and sisters in Nigeria know the world cares".

they need to be able to recognise hate slogans and destructive agendas for what they are"

Earlier, Amnesty International secretary-general Pierre Sané said police routinely used torture throughout Africa as a tool to solve crime

In South Africa there was a "disturbing pattern" of the use of electric shocks and suffocation by specialised units of the police, such as murder and robbery squads.

As recently as last month, a suspect had been picked up by policemen in Kathlehong on the East Rand and tortured by being kicked, punched, assaulted with a knife and suffocated with a piece of rubber tubing.

When the suspect had even-

tually been taken to the police station, the duty policemen had refused to take him into custody because of his injuries

Because suspected criminals did not have the support of society at large, police felt justified in using torture as an instrument to fight crime, Mr Sané said

In Africa, torture was also used as an instrument of oppression by governments against their political opponents, and as a weapon of war by states, factions and armed groups

"South Africa has not been alone in its use of torture," he said, citing instances in the Sudan, Kenya and Nigeria

Referring to the Nigerian kin of hanged activist Ken Saro-

Wiwa, he said hundreds of Ogonians had been subjected to a harsh prison routine and systematic abuses that amounted to torture, and Mr Saro-Wiwa had been tortured before being hanged

"What enrages me is that the killers and torturers of Ken may escape justice," Mr Sané said

There was more than one solution to the use of torture and the most difficult (aspect) was when there was war.

Amnesty International was planning a world-wide campaign against torture during 1998 — the 50th anniversary of the United Nations' Universal Declaration of Human Rights — "to remove from humanity this vulgarism of the past".

## More affordable justice planned

Staff Reporter

(252)

MOVES are afoot to make justice more affordable, with the new Rules Board committing itself to "streamline court procedures".

In a statement issued by the Department of Justice, it said the board, which had its first meeting on Tuesday, had committed itself to "streamlining court procedures... to promote speedy and affordable access to justice".

The board has set up eight

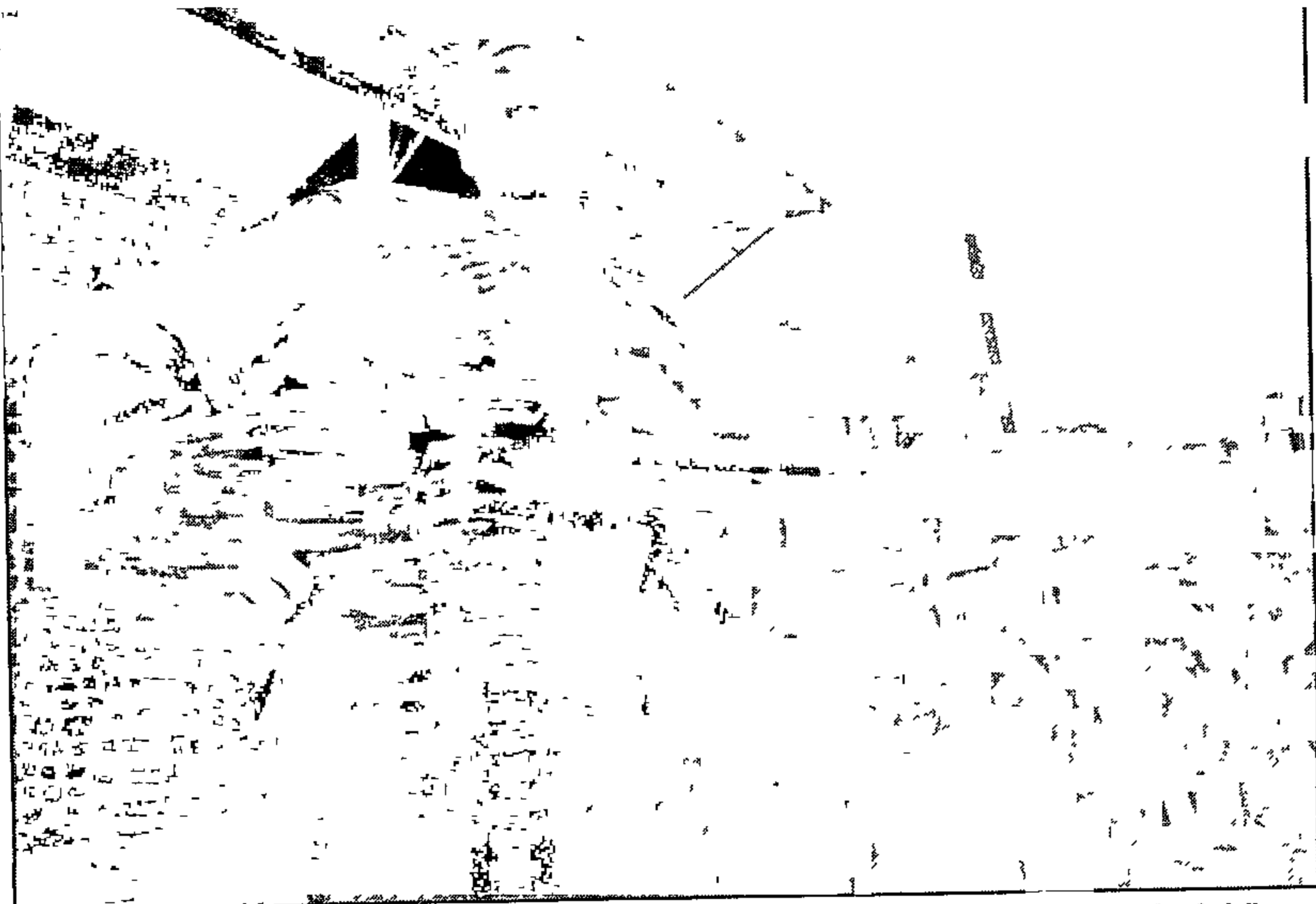
committees, and intends implementing a "core set of rules" for all courts, to simplify court procedures.

The committees will report back to the board in January

● The board would like interested parties to send submissions on court rules and procedures to: The Secretary of the Rules Board for Courts of Law, Mr C H Greyvenstein, Private Bay X 81, Pretoria, 0001

ARLT 16/11/95





The face of tragedy ... A government soldier stands guard in a street in Sierra Leone. As a result of civil wars like the one in this country, Africa has the highest number of refugees in the world.

# Human rights need protecting

*Sowetan 16/11/95 (252)*

By Mathatha Tsedu  
Political Editor

Southern Africa is a bright spot in a dismal report on the refugee problem

**T**HE UNITED NATION'S High Commissioner for Refugees says there is growing international consensus that prosecution and punishment for crimes against humanity is an effective way of preventing abuses

In its publication *The State Of The World's Refugees - In Search Of Solutions*, the UNHCR says when crimes against humanity are committed "with total impunity by known individuals, potential human rights violators are sent a strong message that they can indulge in such behaviour without any fear of retribution"

The creation of war crimes tribunals by the UN Security Council for Yugoslavia and Rwanda were significant developments. They "could set an important precedent for trials of individuals responsible for human rights abuses"

## Human rights violations

The report cautions, however, that the international community's efforts to restore, maintain and promote human rights in countries that have suffered large-scale violence should not be a substitute for national investigations and prosecution of human rights violations

Enforcing this accountability by individuals was problematic, the report admits, because of the potential conflict between the need for justice on the one hand, and the need for reconciliation on the other

"Would the final stages of the transition to majority rule in South Africa, for example, have been accomplished so smoothly if the many agents of apartheid had been threatened with punishment for their wrongdoing?"

"And who of the many thousands of people (both black and white) who played a part in sustaining the apartheid state would be held to account for their past?" the report asks

But central to the UNHCR's approach is a belief that the world's

refugee problem is a result of abuses by states and organisations. People leave their homes and countries as law and order break down because they fear for their lives

In situations where governments are involved in abuses, the imposition of trade, oil and transport sanctions becomes inevitable. These were used with clear effect in South Africa during the apartheid era and recently in Yugoslavia

## Nigerian military regime

Last weekend's action by the Commonwealth conference against Nigeria for the brutal slaying of political opponents supports the UNHCR's point, as the world tries to enforce a code of conduct on Nigeria's military rulers. The military actions in the country's Ogoni area have created thousands of displaced people who need assistance

In some cases, incentives - as were used in Eastern and Central Europe in March - do the trick. Countries in the regions, that wanted to join the European Union, were told their applications for membership would only be considered if they could prove they had taken steps "to resolve border disputes, establish good relations with their neighbours and address the question of ethnic minorities"

This was particularly important as the wars in the regions were more and more seen as ethnic cleansing, with whole communities migrating either because of their ethnic orientation or religious beliefs

The UNHCR's 264-page report adds that the nature and scale of modern conflict, including the intentional targeting and displacement of huge numbers of civilians, are increasingly rendering traditional approaches to the world's refugee problems inadequate

It calls for innovative pro-active and preventative measures which must start with accepting that the right to

seek asylum must be "scrupulously respected"

Saying the world was full of unresolved and potential crises, the report argues that lasting solutions "will only be found if a concerted effort is made to protect human rights, to keep the peace within and between states, to promote sustainable development and to manage international migration"

Shocking statistics in the report reveal the extent of the problem facing the UNHCR. While it dealt with 2,4 million refugees and displaced people in 1975, today the number is 27,4 million

This includes 14,4 million refugees in other countries, 5,4 million internally displaced people, four million returnees and another 3,5 million from assorted groups

## Refugees

Africa has the highest number, 43,3 percent of the total, followed by Asia with 29 percent. Asia, however, shows a reduction from 45,6 percent of the total in 1990. Europe comes third with 23,9 percent. Four countries - Iran, Zaire, Pakistan and Germany - host more than one million refugees each

Of the global figure of 30 million internally displaced people, 16 million are in Africa

Between them, Rwanda and Burundi have the highest concentration of displaced people in the world, with at least two million Rwandan refugees on the Tanzanian and Zairean borders

Africa, however, also provides the UNHCR with one of its biggest success stories. 1,7 million Mozambicans were successfully repatriated from Malawi, Zimbabwe, South Africa, Swaziland, Zambia and Tanzania

Southern Africa is another a bright spot in the report. The political settlements in South Africa, Angola and Mozambique have led to a reduction in the number of refugees in the region

VICTIMS MUST HAVE REDRESS

# SA should ratify Convention Against Torture — Tutu

AP/WIDE WORLD

**THE STATE SHOULD PROSECUTE** torturers to the fullest extent of the law, Archbishop Desmond Tutu told a conference in the city yesterday. **ANTHONY JOHNSON** reports.

**ARCHBISHOP** Desmond Tutu called on the government yesterday to accede to and ratify the United Nations Convention Against Torture.

The government should also contribute to the UN voluntary fund for the victims of torture, he told more than 300 delegates from 70 countries at the opening of a conference entitled Caring for the Survivors of Torture, at the Waterfront.

Such a stand would signal the government's clear stand against torture, compel the state to prosecute torturers to the fullest extent of the law, make provision for the redress of victims and allow for the extradition of torturers who were not South African nationals.

Although human rights were enshrined in the constitution and the Bill of Rights, there was much more that South Africa could do to prevent it at home and abroad.

## Shameful

South Africa had a long and shameful history of torture, a technique that was used by the state in an effort to break the back of the liberation movements for over 30 years, he said. Citizens of frontline states had also been subjected to torture by the apartheid government.

Archbishop Tutu added that it was important not to turn a blind eye to the actions of the former liberation movements.

Preventing torture was not the responsibility of the government only, but of all citizens, he said.

The archbishop paid tribute to those at the conference who had helped South Africa become a democracy. He gave special thanks to the people and government of Denmark for the role they had played over the years in building respect for human rights in SA.

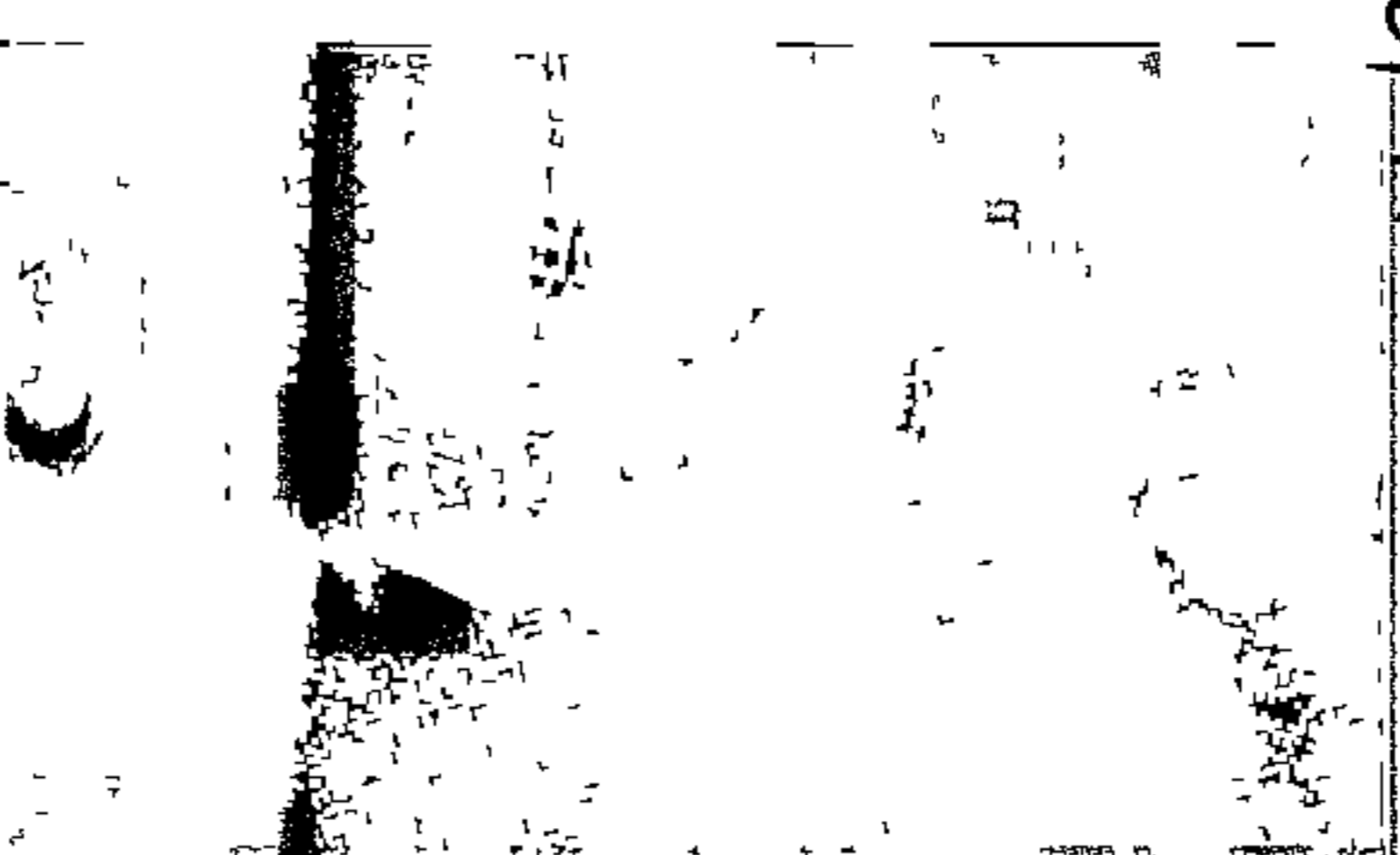
In the keynote address to the conference, the medical director of Copenhagen-based International Rehabilitation Council for Torture Victims, Dr Inge Genetke, said government-sanctioned torture was still practised in 89 countries.

Torture — the most effective weapon against democracy — was practised in more than half the UN member countries, she said. Victims of torture from 55 countries were being treated in Denmark.

(252) CT 16/11/95



**STOP THE TORTURE:** About 300 delegates from 70 countries attending the seventh international symposium on Caring for the Survivors of Torture, which began at the Waterfront yesterday. The three-day conference was opened by Archbishop Desmond Tutu, who urged the government to sign the United Nations Convention Against Torture. **PICTURE: CLIVE SMITH**



**SURVIVOR'S HANDS:** The hands of a woman who survived torture in the apartheid era. **PICTURE: AP**

# Panel interviews truth commission nominees

BD 17/11/95 (252)

Kevin O'Grady

MONEY would "never be enough" to compensate victims of apartheid, and other more symbolic forms of compensation should be found, Methodist Church presiding bishop and truth commission nominee Stanley Mogoba said yesterday.

He was being interviewed in Johannesburg by the presidential panel set up to recommend potential commissioners to President Nelson Mandela. "We need symbols of retribution and reconciliation, for example naming parks and places after people so their families would know their suffering was not in vain," Mogoba said.

Former NP, DP and independent MP Wynand Malan, nominated to the commission by Business SA and the Afrikaner Handelsinstituut, told his interviewers "I supported apartheid. Especially when I was very young I saw this as the only moral way out of the conflict".

Malan earned praise from interviewers for being the only nominee to admit support for the policies of the former government.

Asked by Methodist Bishop Peter Storey if he believed he could em-

pathise with right-wingers sufficiently to encourage them to testify honestly, he said "I know exactly where they come from".

Sparks flew in the interviewing room at the Sandton hotel when former senior state prosecutor Pieter Oosthuizen, responsible for the prosecutions of Braam Fischer and Namibian Herman Toivo Ja Toivo, took the nominee's seat. "I prosecuted in terrorist trials not because of my personal views but because I was instructed I can say without doubt that I acted fairly and did not do anything to prejudice any of the people I prosecuted," he said.

He claimed he had undergone a conversion similar to that of Saul on the road to Damascus.

Northwest theologian and rector of the Potchefstroom Theological Seminary Andries du Plooy admitted under questioning that he remained a member of the Afrikaner Broederbond, and said he did not believe this should jeopardise his appointment.

Other nominees interviewed yesterday included University of the North law faculty dean Bongani Majola, Women for SA's Dione Prinsloo and University of the Free State law faculty dean Dan Morkel.

## Law mystifies many rural people — Omar

Staff Reporter (252) ARG 17/11/95

TO many rural South Africans, the law as practised in the courts is "strange, unfathomable, mystifying and often frightening", says Minister of Justice Dullah Omar.

In his opening address to a legal forum in Durban on access to justice, Mr Omar said that a Bill of Rights was pointless unless citizens were made aware of their rights, of their importance, and how to use them effectively.

"To make justice accessible to the majority of people, an affordable, 'user-friendly' legal process is required to ensure that all — even the poorest of the poor — have access to justice," said Mr Omar.

"This necessitates an extension of advice offices and paralegals, as well as an increase in state-funded legal assistance — whether through the legal aid board or an extension of the public defender scheme."

He added that access to justice was an inseparable aspect of democracy.

IAL

# Bid to split with past

By Mzimasi Ngudle

Afrikaaner with apartheid links plead for nomination to Truth Commission

**F**OUR of five Afrikaner nominees to the Truth Commission were at pains to explain their break with the past during interviews in Johannesburg yesterday

Professor Pieter Oosthuizen, a member of the team which prosecuted the late SA Communist Party member Bram Fischer for treason, retorted sharply when asked what the victims of human rights would think of him as a truth commissioner. "We have found a democracy which must be guarded as a cherished possession of the nation", Oosthuizen, who was nominated by former police generals, said the point of departure must be the present situa-

tion and the past

Professor A du Plooy, a theologian from Potchefstroom University who said he was still a member of the Afrikaner Broederbond, said for reconciliation to be possible, it was necessary that people should repent

"I am a member of the Afrikaner Broederbond which contributed successfully and pro-actively to the transformation to a new South Africa I am not part and parcel of those who oppressed people," he said

Former National Party MP and founder member of the Democratic

Party Mr Wynand Malan said it would be a big mistake if the Commission reflected the divisions in the society

He said the choice should be made on the basis of the nature and personality of the nominees. He saw the Truth Commission, not as the last word but as an integral part of reconciliation

Professor Daniel Morkel, a dean in the faculty of law at the University of the Orange Free State, said he was conscious of the wrongs which were perpetrated against blacks during his time as a State advocate

Methodist Church Bishop Stanley

Mogoba said South Africa needed "light in the dark and secret pockets" which have proliferated in the country

"Deep and genuine reconciliation will come when the commission creates trust and encourages openness and healing instead of becoming a witch-hunt or a police force," he said

Mogoba said symbols played a greater role in reconciliation, suggesting that public places such as parks be named after victims of human rights violations

The selection panel, which is chaired by Professor Fink Haysom from the President's Office, winds up its hearings today and will give President Nelson Mandela a shortlist of 25 nominees next week

(252) Kowalean 19/11/95

# SA's 'watchdog' is still relevant

By Russel Molefe

THEOLOGAINS took a brave stand in the 1980s when the apartheid regime unleashed violence and brutality against blacks fighting for their liberation

In 1985 they produced the *Karros Document* in which they declared the apartheid regime "tyrannical, totalitarian and an enemy of the people which needed to be replaced by another government"

They wrote "We cannot expect the regime to experience a conversion and totally abandon its policy. It can only be replaced by another government - one that has been elected by the majority of the people"

Today this regime has been replaced by a government that has a mandate from the majority of people. But theologians, under the auspices of the Institute of Contextual Theology

(ICT), believe society is still fraught with serious contradictions and conflicts

The killings are still continuing in another form, such as through the intense political violence in KwaZulu-Natal, taxi wars and criminal terror

## New crisis

The ICT recently held a conference in Johannesburg at which the question of whether South Africa was facing a "new" crisis and the relevance of the *Karros Document* today were fiercely debated

However, Dr Molefe Tsele told *Sowetan* the conference did not want to simply re-enact the mood and spirit that captivated the Karros theologians in 1985

"We needed to draw together the strands of a process that was undertaken this year to reflect on the new political situation from the point of view of

the poor," Tsele explained

"We also wanted to measure the success of our democracy from the point of view of what it promises those who are the most disadvantaged in our communities."

Tsele mentioned some of the major factors that have created an atmosphere of uncertainty in society

● Truth and reconciliation are being sacrificed to political convenience,

● The notion of critical solidarity with the present Government is still ambivalent,

● The problem of the seduction of power and the new trappings of government is another contentious issue, and

● The troubling lack of awareness of the problems linked to assuming positions of power

Tsele said the new political dispensation needed to be celebrated as

something struggled for and as a new, open space to make the people's ideals a reality

However, he warned that such triumphalism needed to be couched in the realism that "we may have a democratic political structure but we do not have a democratised economic structure"

Professor Bongangalo Goba also emphasised that the greatest need today was for a just economic order

"As long as any of our people are without jobs and living in hovels, and as long as there are taxi wars and terror in our townships, we must continue to say that Uhuru is not yet here and the *Karros Document* is still relevant," he said

Goba further argued that theologians must provide the moral basis for economic justice and develop new types of ministry to promote economic justice



Rev Frank Chikane ... a leading force behind the *Karros Document*.

# Truth candidates talk

ET 17/11/95 (252)

JOHANNESBURG. The panel of white and black candidates for the Truth and Reconciliation Commission convened today in a series of 100 candidates during their session here.

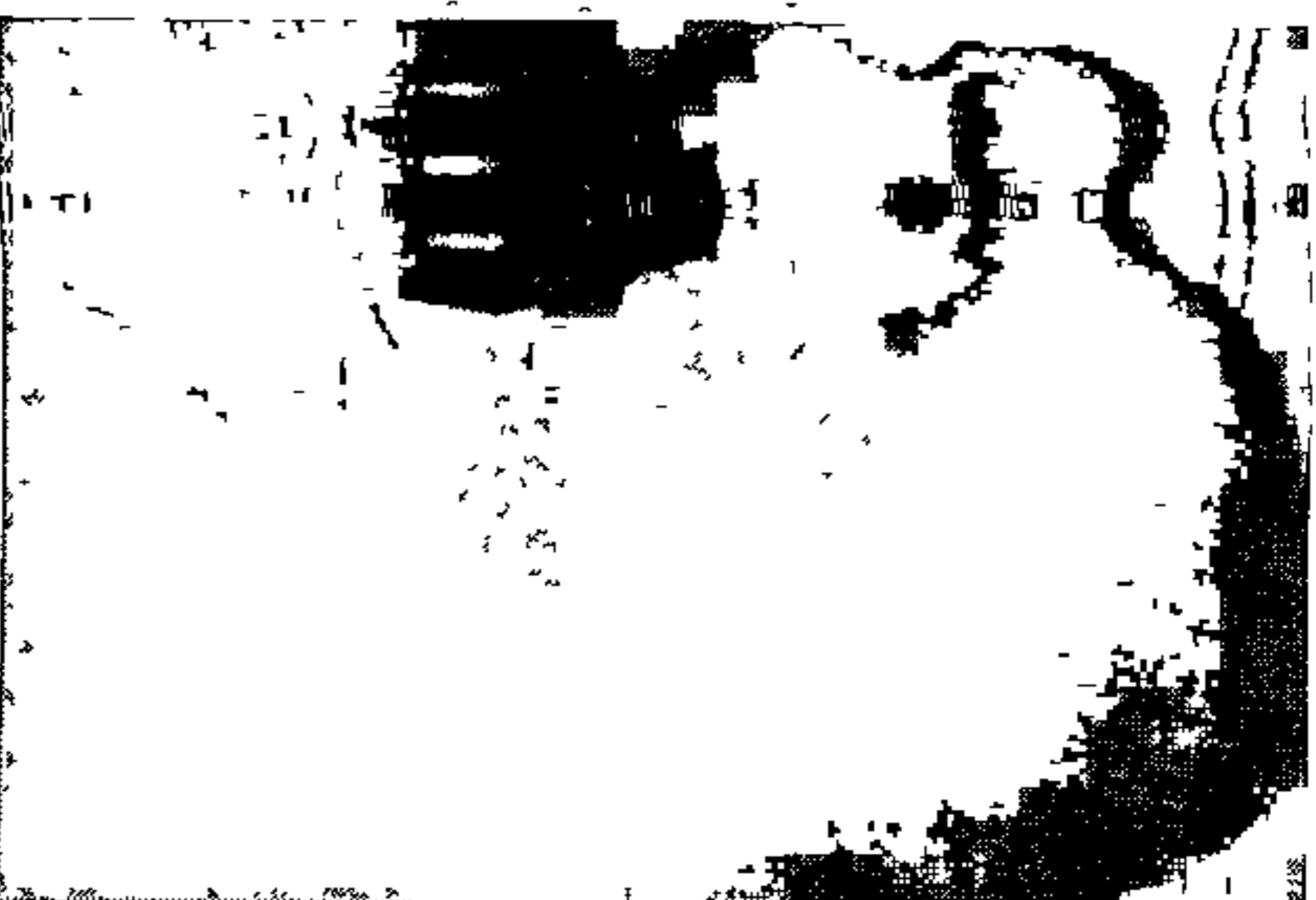
Candidates included Methodist leader Bishop Stanley Mngobu, former National Party member and Democratic Party co-founder Mr Vincent Mabin

and Professor Pieter Oosthuizen, a former state adviser who prosecuted in the trials of anti-apartheid activists during the 1960s and helped draft the Termination Act.

All candidates agreed that reconciliation, and not a witch hunt, was needed if South Africa was to be reborn as a nation - vjg

# Families of Biko, Mxenge challenge truth probe

(252) Star 18/11/95



**JOINING FORCES** - The families of slain activists Steve Biko (left) and Griffiths Mxenge (right) are taking

Even before it has got under way, the truth and reconciliation process is under pressure, on the one hand from those responsible for apartheid and on the other from some of its victims. **SAM SOLE** reports

The families of slain anti-apartheid leaders Steve Biko and Griffiths Mxenge, have joined hands with the Azanian People's Organisation to, challenge Truth Commission legislation in the Constitutional Court.

And while the Freedom Front has shelved plans to launch a constitutional challenge to the arrest of Magnus Malan and other generals, National Party leader F W de Klerk has called for the removal of temporary indemnity given to 117 ANC lead-

ers and the investigation of charges against them.

Attorney C O Morolo, acting for the Mxenge and Biko families, has written to Justice Minister Dullah Omar requesting a meeting to discuss a constitutional challenge of the Promotion of National Unity and Reconciliation Act.

Black Consciousness leader Biko died in 1977 of brutal injuries, sustained in detention. Durban lawyer Mxenge was stabbed to death, allegedly by askaris operating under the orders of Vlakplaas commander Dirk Coetzee.

### Null and void

The move by the families is an effort to ensure the murders are prosecuted. Morolo says the families wanted the Act declared null and void.

"Our clients will content that the state has no power to deroga-

te from its obligations in terms of international law to prosecute and punish conventional war crimes and crimes against humanity and peace."

Still less has it power to remove from the victims of such crimes their rights to seek redress from courts of law.

Both families have said they want those responsible for the murders to be prosecuted and punished before there can be any talk of reconciliation.

Although the constitution makes an explicit commitment to amnesty, it also makes commitments to international law and due legal process. The court will have to weigh up how these potentially contradictory injunctions are to be married.

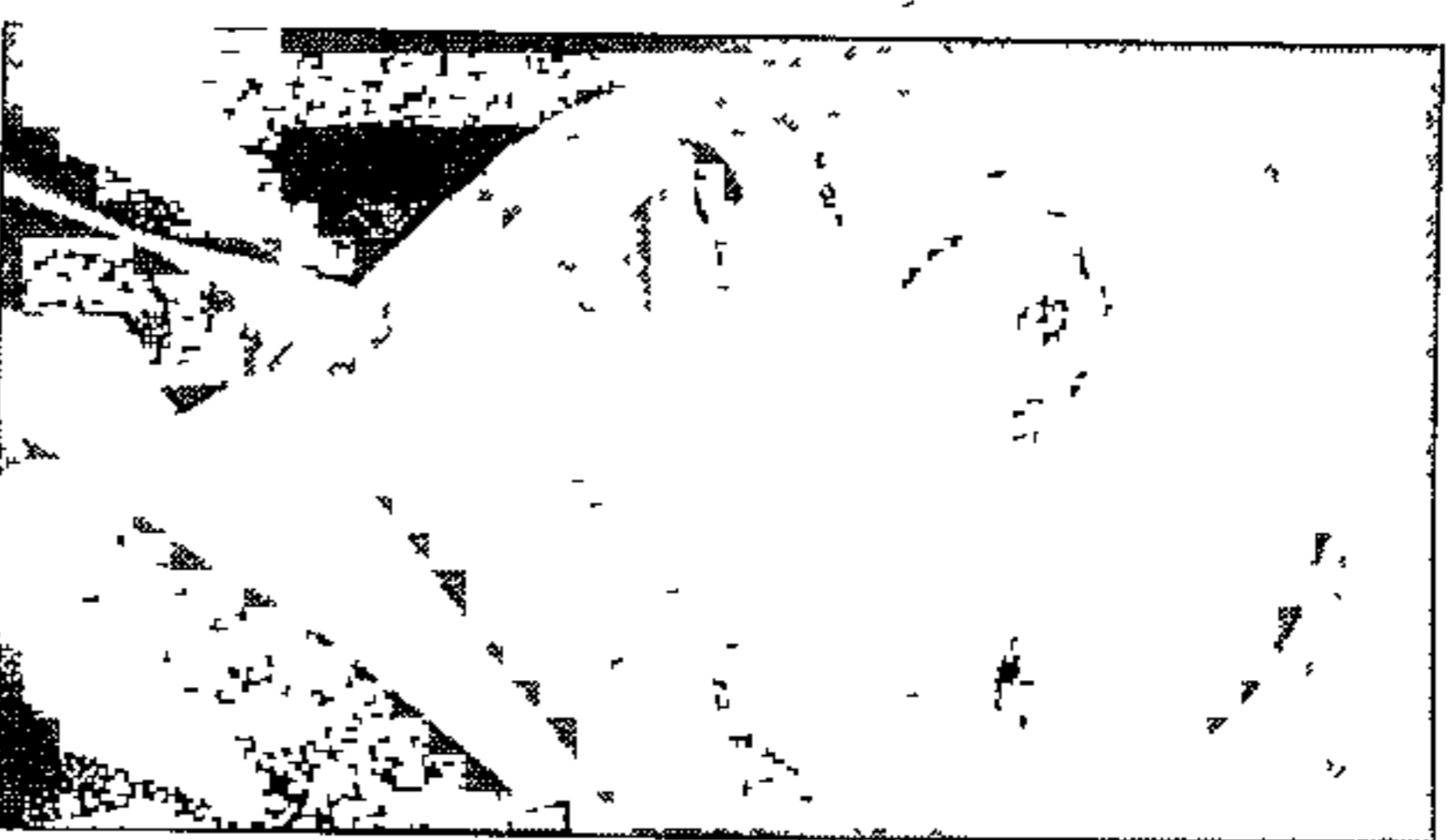
Meanwhile, De Klerk has told supporters that if President Nelson Mandela and Safety and Security Minister Sydney Mufamadi were now saying the

courts should be activated to deal with all charges for political crimes, irrespective of the Truth Commission and other allied processes, then the temporary indemnity granted to 117 senior ANC members should be revoked.

"Then I say the police and attorneys-general should be instructed to reopen all prosecutions and investigations which were suspended in terms of the negotiation process," he said.

### Charged

If former defence force chiefs were to be charged on the basis that people under their command had committed crimes, then Defence Minister Joe Modise should also be charged for crimes committed under his command. The playing fields had to be levelled regarding all crimes committed in the political conflict, De Klerk said.



**AN EYE FOR AN EYE:** Defence Minister Joe Modise (left) should also be charged for past crimes, says NP leader F W de Klerk (right)



# Truth body 'will release pain after years of torture'

Star 18/11/95

(252)

Torture has become an instrument of repression for dictatorships worldwide, says visiting Danish expert on the subject, Inge Genefke. **BRONWYN WILKINSON** reports

The Truth Commission will give South African torture victims an opportunity to be rehabilitated through a process of recognition and healing, says Danish doctor Inge Genefke.

Genefke, who has had 20 years' experience with torture victims, spoke to the *Saturday Star* this week, shortly before her address to an international symposium organised by the International Rehabilitation Council for Torture Victims (IRCT) in Cape Town.

The symposium was held on the theme "Caring for survivors of torture challenges for the medical and health professions".

Genefke, trained as a neurologist in Copenhagen, has conducted significant research and clinical work with torture victims and is now the IRCT's medical director.

The most important part of the rehabilitation of the victims is the recognition of the problem, says Genefke, adding that the Truth and Reconciliation Commission will provide a unique opportunity for this.

Genefke explains that torture methods around the world are similar, adding "The torturers learn from each other".

She says the torture process usually starts with the arrest, which usually takes place at night, and is accompanied by a formidable display of power and an unnecessary use of force.

"The 'softening phase' which often follows usually consists of a couple of days and nights of unsystematic violence with beating, kicking and other humiliations," she says.

Later on, the real systematic torture starts, when the torturers explore their victim's weak spots and try to break them down.

"The final result may be a human being with little self-respect and a broken-down personality, together with a false medical certificate denying any form of maltreatment. The final result may also be death - the torturers disposing of the corpse by hiding it in a mass grave."

Genefke says systematic torture usually consists of physical and psychological forms which are performed at the same time, with long-term results.

She says the sophisticated torture methods used today can destroy personality and self-respect. She describes it as a new

science - one that is often practised with psychological and medical assistance.

Physical torture methods include electric shocks to the most sensitive areas of the body. The victim may be suspended for hours on end by the arms or legs. Their head is forced under water until just before the victim suffocates or drowns. The skin is burnt by cigarettes or red-hot irons. The victims are usually beaten systematically and sexual assaults are common. Trained dogs are often used for direct attacks or for the rape of both men and women. The situation during deten-

almost suspended animation. Victims may be forced to torture one another. For all the time of their detention, the victims do not know what is going to happen. Political and ethical values are particularly attacked when the torturers force their victims to sing songs that praise everything they have been fighting against.

The effects of torture are longlasting and Genefke says torturers are able to break down their victims' ability to live a full life after their release.

Deep feelings of guilt and shame often occur. The feeling of guilt may be caused by the mere fact of survival while friends may have died under similar circumstances; or perhaps the victim may have been forced to give information that may have harmed friends. The guilt may also be produced by what Genefke calls the impossible choice - the victims have to choose between, for instance, revealing the names of their friends and seeing their family members tortured.

Regardless of what the victims choose, the end result is always disastrous.

Symptoms include anxiety, memory gaps, depression, low self-esteem, changed personality, nightmares, difficulty in concentrating, withdrawal, fatigue, headaches and sexual disturbances.

Decades of research have revealed several surprises, says Genefke. First, torture causes after-effects which last long after release.

Second, the researchers initially thought the aim of torture was to obtain information, but its real object is more sinister - to break down and destroy the identity.

Third, torture is government sanctioned and victims are usually leading personalities. These victims are then sent back into society suffering the after-effects and their families and children naturally suffer.

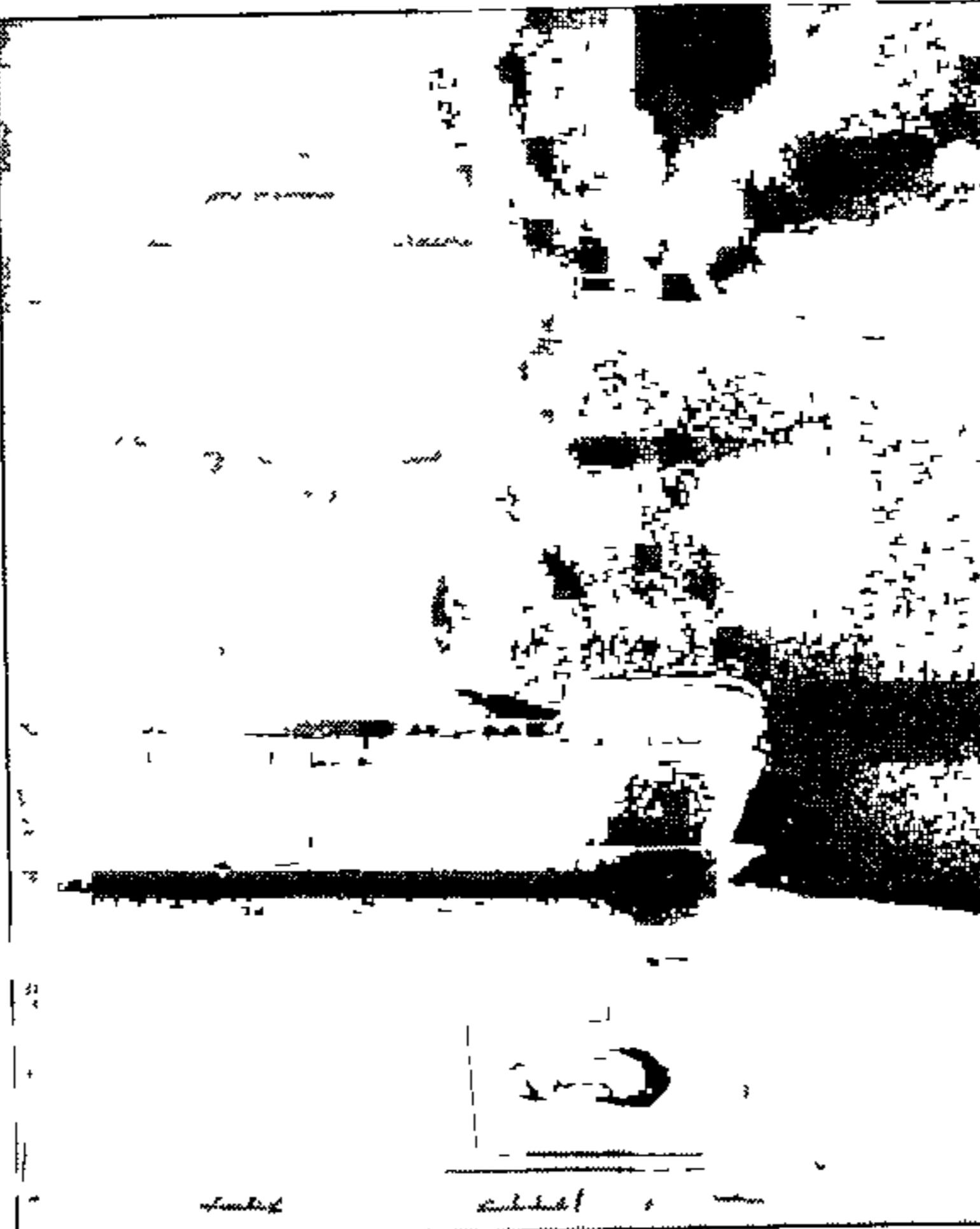
"This is how a dictatorship creates fear and repression. That is the way governments keep their power. The whole country is held in a grip of terror, and torture becomes a general, but not a recognised, health problem," says Genefke.

The social analysis made by health professionals concludes that government-sanctioned torture is the most efficient weapon against democracy.

The final surprise, says Genefke, is that victims can be rehabilitated.

Research shows government-sanctioned torture is practised in 79 countries, most of which are members of the UN.

South Africa has not yet ratified the UN Convention Against Torture, which has been signed by 84 of its 185 member states.



**OLD WOUNDS:** A torture survivor from the apartheid era sews her old identity document on to a banner displayed in Cape Town recently during a conference on torture and the rehabilitation of its victims. PHOTOGRAPH AP

tion is worsened by filthy food and drinking water and by the severe limitation of movement. Sanitary conditions are extremely poor.

On top of these horrors come the psychological methods. The breakdown of the personality usually begins at the time of arrest with the removal of personal belongings. Names are replaced by numbers and the guards must be addressed with respect. Perhaps the most damaging of all is for victims to be forced to witness the torture of close relatives.

Victims are blindfolded and deprived of sleep and social contact. They may be held in total isolation for months or even years. Mock execution forces the individual to transgress reality into a nightmarish state of

## SA, UN stand against torture

PARLIAMENT was in the process of ratifying the United Nations convention prohibiting torture, Justice Minister Dullah Omar said.

*AKG 18/11/95*  
The government signed the convention in 1993, but never ratified it.

"It is appropriate that the South African parliament of democratic South Africa should be the body to ratify the convention," Mr Omar said.

Speaking at the closing ceremony of an international conference on torture, Mr Omar said the standard for respect for human life and dignity in this country had been set by the state

when the death penalty and corporal punishment were declared unconstitutional. (252)

However, the state had a far greater responsibility.

"It must ensure that its officials do not kill or violate and that they respect human dignity.

"It must create conditions which make it difficult, if not impossible, for citizens to kill or violate each other's rights. It must, in short, create a climate of respect for individual human rights by every citizen in the conduct of his or her daily life" — Sapa

# 'Now tell us the truth about that massacre'

CP 19/11/95

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By SIPHO KHUMALO

A CONTROVERSIAL academic who wants to be a commissioner in the Truth and Reconciliation Committee this week had to explain his alleged involvement in an attack by Inkatha zealots at the Zululand University (Ongoye) in 1983

The attack left five students dead and scores maimed and injured

Professor Jabulani Simon Maphalala, who admitted his Inkatha membership to the selection panel this week, was a lecturer at the university at the time

The rampaging Inkatha supporters were apparently enraged by students who had objected to the holding of a rally at the university to commemorate King Cetshwayo's death

At the time it was alleged that Maphalala had led the Inkatha supporters in their attack — but he denied this

This week the matter was raised again in Durban when the Truth and Reconciliation Commission selection panel interviewed Maphalala

Maphalala was asked by panelist Baleka Kgosi-tse to explain his involve-

ment in the Ongoye massacre

Maphalala said a group of students had opposed the holding of the rally, saying it would just be an Inkatha rally

"I came in as a historian and explained the necessity of such an event. But after that the university was flooded with pamphlets saying I must be stoned

"My office was later set on fire and flooded with water," he said

After that there had been a clash at the university in which five students were killed, he said

"I had nothing to do

with that — but it was reported that I was involved," he said

Maphalala told the panel he had taken to court the paper that had reported he was involved and it had apologised

Maphalala was also questioned about an incident in which students had demanded he be sacked for allegedly firing shots on campus. The university had advised him to stay at home until the matter was resolved

Maphalala said he had fired no shots and had been allowed back at the university after no witnesses came forward

# Summit tackles state torture

By CHARL DE VILLIERS

SUDANESE human rights lawyer Abdel Bagi El-rayah will limp for the rest of his life, thanks to nine hours of immersion in a barrel of ice in a National Islamic Front torture den six years ago.

He was tortured for 48 terrifying days in a security agency "ghost house" in Khartoum.

His story reflects a widespread phenomenon which 300 delegates gathered in Cape Town this week will discuss.

Brought together by the International Rehabilitation Council for Torture Victims and the Cape Town-based Trauma Centre, they heard that an estimated 79 governments sanction torture.

South African Justice Minister Dullah Omar told delegates only 84 of the UN's 185 member states subscribed to the UN Convention Against Torture.

The medical director of the Copenhagen-based rehabilitation body, Inge Genefke, said victims were usually personalities — such as leaders of ethnic minorities, human rights activists or professionals.

An East Rand clergyman and victim of police harassment in the late-80s, the Rev. Peter Moerane, told the conference of an initiative in South Africa to reach out to the security forces with an invitation of confession, healing and reconciliation.

Dutch Reformed Church police chaplains and the East Rand police commissioner were encouraging police officers to take part in a "dialogue on fear".

"Most people who are called perpetrators of violence carried out atrocities under orders," he said.

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# Apartheid's white elite gild their past with compassion

ST 19/11/95

(252)

**CHRIS BARRON finds that would-be truth commissioners who supported apartheid are as rare as hen's teeth**

BY THE close of play on Friday, the selection panel for the truth and reconciliation commission might have been excused for wondering why such a commission was necessary at all.

If its interrogation of candidates proved anything it was that, unknown to the rest of the world, the old South Africa was awash with compassion, impartiality and concern for human rights.

Especially compassionate, impartial and concerned about human rights were the white Afrikaners who formed the elite of apartheid South Africa and now seem almost desperate to dispense reconciliation to those who were less enlightened.

These compassionates were perhaps best represented by Professor Dan Morkel, head of the faculty of law at the University of the Orange Free State and South Africa's cultural attaché in West Germany during the 80s.

How did he qualify for a role as one of the country's supreme moral adjudicators, he was asked by one of eight inquirers in a fairly swish Sandton hotel on Thursday.

"I am a committed and devout Christian," he replied. "My religion teaches me

love and compassion. I have a proven record of impartiality, and am committed to the promotion of human rights."

How did he square this with his willingness to work for the apartheid government? After all, proposed a member of the selection panel, "there was a perception in the 80s that diplomatic appointments reflected the government."

Professor Morkel said he could recall saying in his interview that "if you think I am going to defend apartheid you are wrong".

"In this new South Africa finding people who supported apartheid in the past is as difficult as finding hens' teeth," was the not altogether uncynical reply of Bishop Peter Storey. "Would you indicate when it

was you found you had to change your heart about apartheid? Clearly you were part of the elite that governed."

Professor Morkel said he had grown up in a political situation that had been thrust upon him. "At the same time I grew up in a Christian home. My mother was very devout and taught me compassion. I have always had compassion for the black people. Exactly when I realised it was the system that was wrong I cannot say. My compassion stems from way back. I gave my heart to the Lord when I was 12."

It must have been at about the same age that a former MP for the National Party and the Democratic Party, Wynand Malan, gave his heart to apartheid.

With refreshing candour Mr Malan said "I heavily supported apartheid, especially when young. I saw it as the only way out of the conflict."

To give an idea of the kind of political situation that had been thrust on him, he disclosed that his grandmother thought Dr Verwoerd was a *kaffirboetie*.

Fortunately for him and his future prospects as a truth and reconciliation commissioner, however, former National

Party MP Ray Radue, now a senator and member of the panel, "accused me of being a socialist in Parliament", Mr Malan remembered.

Asked if he would be able to empathise with the multiple killer Barend Strydom if he appeared before him on the commission, Mr Malan said it would be "hell of a difficult to say. I empathise with him. But I know exactly where Barend Strydom comes from."

Pretoria advocate and former Conservative Party MP Chris de Jager, nominated to serve on the commission by the Freedom Front, got the hang of things quite early in his interrogation.

"You were leader of the (CP) Opposition at one stage?" the chairman of the

panel, Frank Haysom, asked him. "No well, unfortunately not," he responded.

It took a 36-year-old medical doctor from Tokoza to get to the nitty-gritty of truth and reconciliation. One of her patients is a young boy whose spine was fractured by a bullet during political violence in 1993, widely believed to have been inspired by forces of the old order.

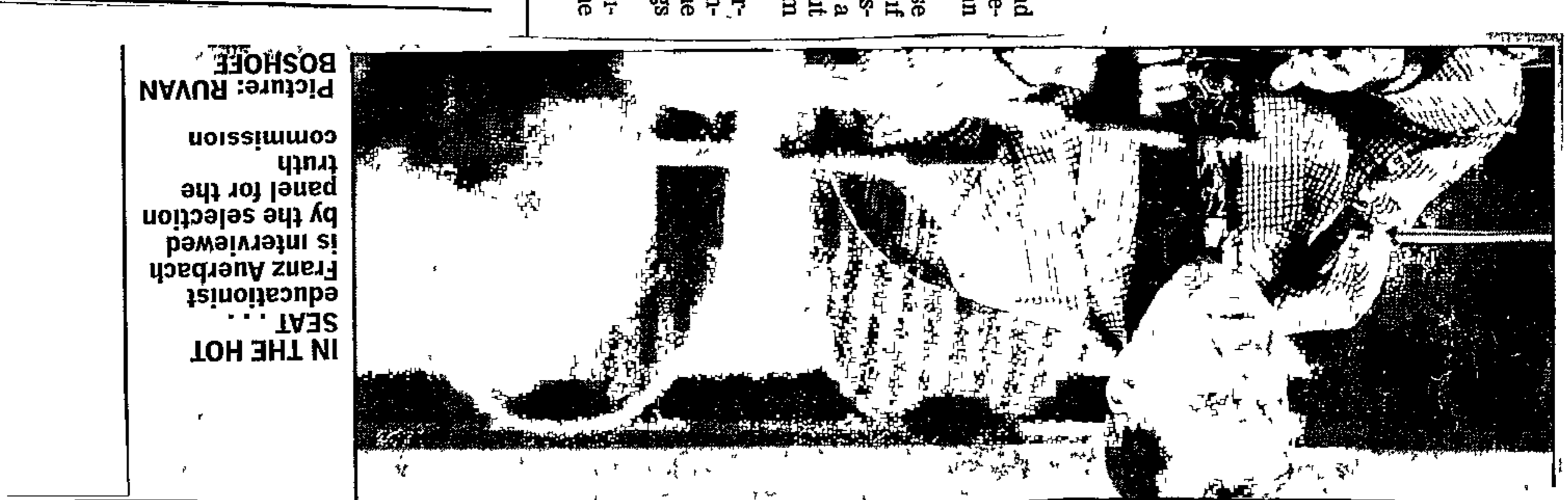
This boy's mother is a domestic worker and the family cannot cope with his medical expenses. "Temba is paralysed from the waist down, he is incontinent, he needs everything you can think of," said Dr Margaret Mojapelo.

Reconciliation was all very well, she said, but victims of apartheid like Temba

needed something more tangible from the commission. "What happened in the townships was genocide. The damage involved millions of people and is still with us today. Wounds physical and emotional are still gaping from these times."

Only "massive state rehabilitation" would help heal them, she said.

"Communities are still in pain, still bleeding. Once reparations have happened, then the process of forgiveness and reconciliation will make sense. Reconciliation cannot take place in a vacuum."



IN THE HOT SEAT... educationist Franz Auerbach is interviewed by the selection panel for the truth commission. Picture: RUVAN BOSHOFF

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# Currin report kept secret

(252)

Sunday Times Reporter  
ST 19/11/95

TRUSTEES for Lawyers for Human Rights will not release a 12-page report compiled by independent investigators who probed two unorthodox payments by LHR last year

The report was debated at length by the organisation's 12 newly elected trustees in a meeting lasting more than seven hours on November 7

The trustees were asked not to take copies of the report away with them. They decided not to make the contents public but to meet again as soon as possible to consider claims by serving and former employees about management of the organisation during the tenure of Brian Currin, the organisation's former director.

This week, only two of the 12 trustees contacted admitted they had the report, but said in the light of the decision, they were not prepared to discuss it or make a copy available to the newspaper

The acting chairman of the board of trustees, Fikile Bam, said last weekend that it would be "unwise" to release the report until the trustees had considered it fully.

The investigation followed disclosures in September after a memorandum to LHR staff by Ahmed Motala, former director of litigation, in which he claimed that the organisation had paid R56 000 to the Receiver of Revenue in August last year in respect of Mr Currin's personal taxes, and R30 000 to former project director Sipho Mahamba in settlement of a pay claim. The transactions were approved by advocate Jules Browde SC, then chairman of the organisation's LHR's national council, without referral to the organisation's secretariat.

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# Mandela to get truth probe shortlist

BY MANDOLI MIAKHANYA

Political reporter

President Mandela will this week receive the names of 25 people from whom he will choose the members of the Truth Commission.

The selection panel, which interviewed 46 nominees last week, met at the weekend and cut the number down to 25.

The panel has concluded its work and will hand over the shortlist to the president some time this week, said Justice Ministry spokesman Sue de Villiers.

It is from this list that Mandela will choose between 11 and 17 commissioners who could spend up to two years probing atrocities committed by successive apartheid governments and their opponents in the liberation movements.

It is expected that the Truth Commission will be named within two weeks, enabling it to start its work early in the new year.

Mandela and Justice Minister Dullah Omar will then also name the procedures that will have to be followed by people bringing cases before the commission.

# Truth commission faces a testing time

(252) BD 20/11/95

Wynndham Hartley

CAPE TOWN — Danger Profound risk Potentially divisive Could increase violence But, absolutely necessary These were some of the views emerging from last week's interviews of candidates for the truth commission. Not that these things have not been said before, but these are the words of those who will sit on the commission and will have to make it work, make it achieve its legislated objective of recording the truth and promoting national reconciliation.

Between 11 and 17 of the 46 nominees interviewed last week will be chosen from a short list of 25. President Nelson Mandela, after consultation with the Cabinet and his partners in government, is expected to announce the successful candidates late this week.

The commissioners chosen will be divided into three committees. One, on human rights abuses that will have the enormous task of compiling a report on the human rights abuses in the struggle against and the battle to retain apartheid over the past 30 years. There are apparently already about 10 000 cases which could come before the human rights committee and, without doubt many of these will require oral evidence before the committee. Given that the life of the commission is limited to 18 months, unless the

constitution is changed to extend its life, this is a mammoth task.

The second committee will consider the granting of amnesty to those who admit to past human rights abuses. Given that there are already potentially more than 3 000 police applications alone, and that evidence will have to be heard to support each case, the commission will have to process eight cases each working day if it is to discharge its duty in 18 months. Impossible.

## Compensation

The third of the committees is that which will decide on reparations to victims. This is the trickiest of the lot. When one considers all the gross abuses in all the years of apartheid rule, from assaults to murders, from detention without trial to torture, it is obvious that there could be tens of thousands of potential claimants for compensation.

The numbers, particularly when relatives of ANC bombings, families of necklaced black town councillors and similar victims of liberation activities are also taken into account, make monetary compensation unlikely.

Candidates said the real danger for the commission was if it in any way appeared to be biased. This would then result in increased national division and not in reconciliation. And there was, many remarked, the spectre of in-

creased violence should this happen. Perceptions of the possibility of increased conflict centre on the reaction of those who fought for apartheid should they end up believing that they have not had the same treatment as members of the liberation armies who have already been amnestied or indemnified. Justice Minister Dullah Omar's frequent assertions that those who committed crimes in the fight against apartheid are morally superior to those who did so in support of it has done little to diminish those fears.

There is also serious concern that evidence heard on crimes and atrocities in war-torn KwaZulu-Natal could lead to revenge attacks. But an interesting alternative vision has been offered: that the revelation of the extent to which state or third force activities have pitted family against family, community against community and political party against political party will diminish rather than increase tensions between ANC and IFP supporters. The problem is there is no way of knowing what the effect will be.

The detractors of the idea of the truth commission say it is not worth the risk. But it has to be remembered that the constitution insists that appropriate structures should be created to deal with amnesty and the promotion of national reconciliation. There are many liberation movement members, including those who placed

bombs and committed murders, who already enjoy protection from prosecution or have been granted amnesty. There is really no alternative to a commission of some sort if a blanket amnesty is undesirable.

Fink Hayson, who chaired the interview panel, posed an interesting question to candidates during their interviews. Where should the line be drawn between a vigorous pursuit of the truth and the need to be perceived as impartial? Most of the candidates agreed that this was the essential challenge, they said they did not know where that line was but insisted that if the commission was to succeed the correct placement of that line was critical.

## Democracy

Archbishop Desmond Tutu raised another interesting perspective during his interview. He said that delving into the darkness of the human rights abuses of the last 30 years would be so traumatic that it was not inconceivable that they would need special counselling to complete the task.

Those who will face the test and will have to decide where the lines will be drawn will begin to make those decisions later this week after the announcement of their appointment. There is no doubt that the way in which they do their work will be of crucial importance to SA's fledgling democracy.



# Clear the users' path to justice, says Omar

BO. 20/11/95

(252)

Susan Russell

ACCESS to justice was an inseparable component of democracy, Justice Minister Dullah Omar told participants at the start of a three-day legal forum in Durban on Friday.

The forum, organised by the justice department, was convened to look at ways of improving and facilitating public access to justice and the legal system.

Omar said the law, the courts and the legal profession were essential parts of any democratic society. The law provided the basic structure to safeguard individual rights and enforce government duties.

Changes to the legal system were required because the needs of society changed. "That is not only inevitable, but essential," Omar said.

The minister said although there were some complaints that changes were happening too slowly, there was some merit in not being unnecessarily hasty.

Omar said the practical tasks were immense and he cautioned against change for its own sake. "We need to begin, not from our own perspective as members of the legal profession, but from the perspective of the consumer of law and justice, namely the individuals and groups that form civil society."

"It is their needs and aspirations that we must take into consideration. We must clear all the obstacles which make their ac-

cess to justice difficult or impossible. This has to be done in a practical manner to make democracy and justice real for them."

Omar reminded delegates that the problem of access to justice was not only an SA one and that there was a continuous search worldwide to make justice more accessible to all citizens.

The minister also said that legal pluralism had not been properly recognised in SA. The dominant "Western law" was implemented either by replacing or adapting the indigenous legal systems, mainly to buttress colonial or apartheid rule.

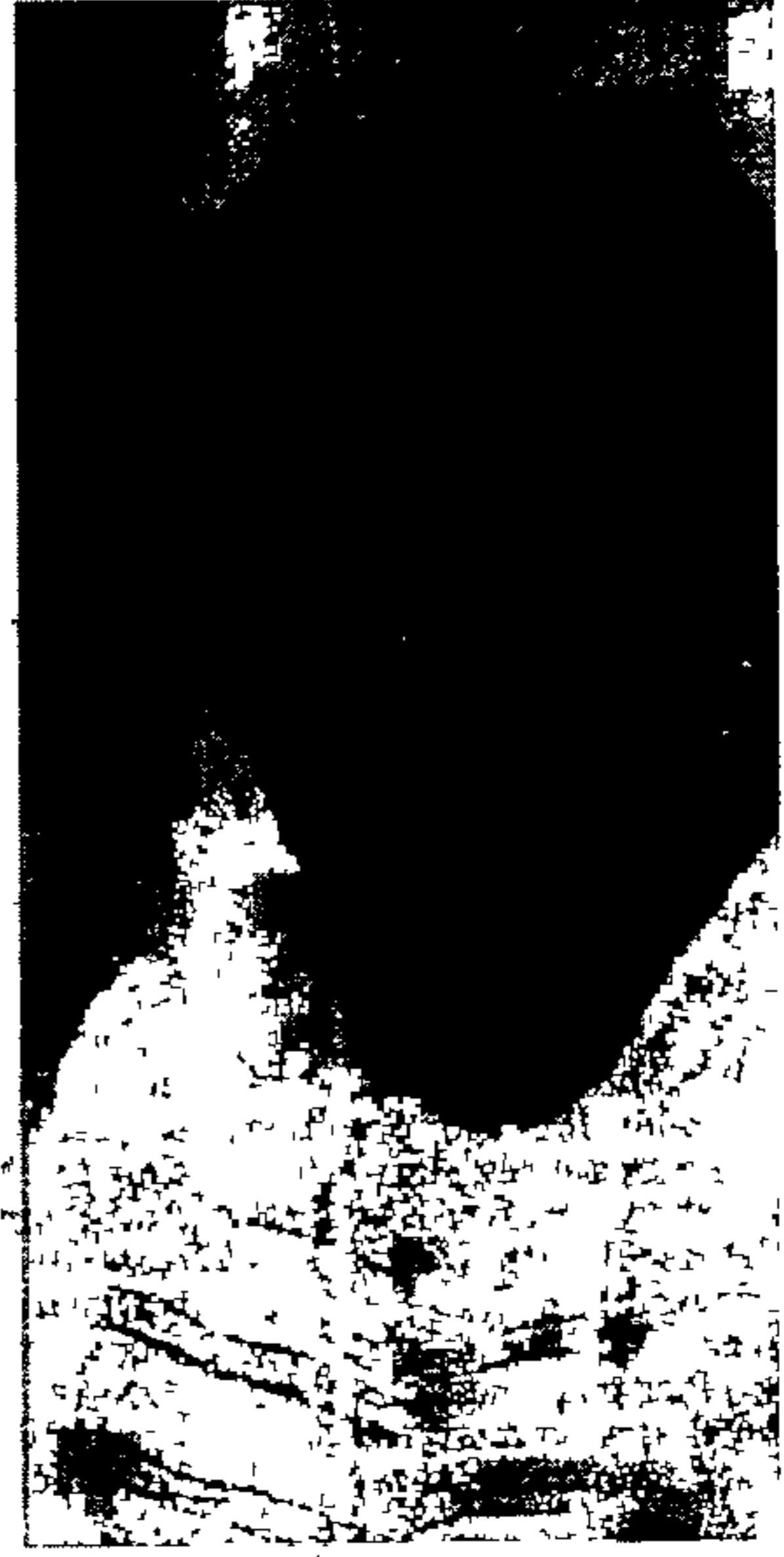
"Although every citizen does not always come into direct contact with the justice system, they must be empowered by the knowledge that the laws and institutions forming the basis of their system are there to uphold their rights and enforce responsibilities over every member of their community," he said.

Omar said SA now had a Bill of Rights, but rights were useless unless people were aware of them. "Illiteracy and/or lack of legal knowledge render legal rights illusory."

He said access to justice also required that people should be able to use the law or the court without the intervention of lawyers for less complicated matters.

This required a simplification of court proceedings and the law, and more use of alternative dispute resolution mechanisms.

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Truth Commission nominee Yasmin Sooka, right, is questioned by ANC MP Baleka Kgotsile, left, and SA Council of Churches secretary-general Hlope Bam on Friday. Picture: NICKY DE BLOIS

# Mandela gets truth group list today

Kevin O'Grady

PRESIDENT Nelson Mandela will receive a short list of about 25 Truth Commission nominees today, after interviews with 46 candidates were completed in Johannesburg last week. He is expected to name between 11 and 17 commissioners this week.

The presidential panel, headed by Mandela's legal adviser Fink Haysom, which interviewed nominees had been unable to give Mandela their final shortlist at the weekend as planned, a panel spokesman said yesterday.

Meanwhile, a number of nominees expressed opposing views during the final day of interviews at a Sandton hotel on Friday on whether information revealed to the commission implicating senior members of government in gross human rights abuses should be made public.

Labelled the Prof Mchunu Test after nominee Mandla Mchunu, who first raised the issue of secrecy during his interview in Durban

last week, the panel asked most nominees whether they believed sensitive information should be suppressed by the commission.

Frank Chikane, a recently appointed adviser to deputy president Thabo Mbeki, said: "We would be creating an injustice. It would mean the more powerful get away with it and the less powerful do not. This would be the time to say to those in leadership: rather disclose and deal with it now and save the nation from a worse scenario," Chikane said "If they wait until some gruesome act is revealed, we will be in difficulties."

Labour lawyer S Khamphophe said "the principle of accountability may have to be overridden by the need to advance reconciliation ... that will probably be the evil the commission will have to live with". She said: "If making known findings will threaten reconciliation, the commission should not make public its findings."

Umtata-based attorney Dumisane Ntsebeza said: "If a commissioner came across verifiable

information, the nature of which was so delicate — for example the direct involvement in human rights abuses of the former State President — that (it) would bring about a civil conflagration (he) would have to consider it very carefully."

However, there was a danger that the commission's work could be "brought into disrepute if the only consideration was that a person was highly placed and therefore a holy cow".

Pretoria advocate Solly Sithole said the "suppression of truth is not part of the mandate of the commission ... the commission is not enjoined to suppress the truth for whatever noble motive. Suppressing the truth is as bad as per-juring the truth."

"Amnesty is the key to the whole thing. It is the attracting force for those people to come forward and talk about the atrocities they committed," Sithole said.

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Comment: Page 14

# Truth probe candidates shortlisted

(252) Sowetan 20/11/95  
Mandela may appoint between 11-17 nominees to commission

By Mzimasi Ngudle

**C**HAIRMAN of the panel selecting candidates to the Truth Commission Mr Fink Haysom said yesterday that a short list of nominees would be presented to President Nelson Mandela today.

Haysom refused to release the names, but it is believed the list includes known human rights activists and lawyers, as well as religious leaders

The following are among those reportedly shortlisted for appointment to the Truth Commission following interviews in Cape Town, Durban and Johannesburg

Anglican Archbishop Desmond Tutu, Methodist Bishop Stanley Mogoba, Dr Alex Boraine, Ms Mary Burton, Dr Frank Chikane, Mr Dumisa Ntsebeza, Dr Fazel Rander, Ms Hlengiwe Mkhize, Mr Peter Montlha and Professor Andre du Toit

Others are Mr Bongani Finca, Mr Christiaan du Rand, Ms Bongani Kham-

pepe, Father Michael Lapsley, Mr Richard Lyster, Mr Bongani Majola, Mr Wynand Malan, Professor Daniel Morkel, Dr Wendy Orr, Mrs Yasmin Sooka, Mr T Pillay and Mr T de Jager

## On the short list

Mr Thomas Manthata and Dr M Ramashala, who are respectively reported to be in Holland and the United States, are also believed to be on the short list

Mr Justice Edwin King's name has also reportedly been included

Others also believed to stand a chance are Dr Franz Auerbach, Professor D McQuoid-Mason, Professor M Rwelamira, Advocate MNS Sithole and Ms S Meer

The selection panel, which had to go through more than 300 nominations, made a shortlist of 25 nominees after interviewing 46 nominees last week

Mandela is expected to appoint between 11 and 17 nominees as Truth Commissioners

# Mandela, and PW swop warnings on trial of the generals

CLIVE SAWYER  
Political Correspondent

WILDERNESS. — President Nelson Mandela and former President P W Botha have exchanged dire warnings of awakemng "the tiger of the Afrikaner" and the wrath of the mass of the people.

The warnings followed discussions on the handling of the prosecution of former security force generals.

Following a two-hour and 20 minute meeting today at Mr Botha's home, Die Anker, Mr Mandela said Mr Botha was a key figure in efforts to ensure peace and security in the country. ARG 11/11/95

They had discussed the trial of General Magnus Malan and other top former security force officers.

Mr Mandela said he had told Mr Botha that any suggestion the prosecutions were politically motivated was tantamount to questioning the integrity of the police and KwaZulu/Natal Attorney-General Tim McNally.

Mr Mandela said he would not interfere in the independence of the judiciary.

Replying to Mr Botha's warning that "the tiger of the Afrikaner" would be awoken by the prosecution of the generals, Mr Mandela said: "Our people fought and gained independence without asking the permission of anyone.

"We have now tasted freedom and they will . . . to keep their freedom pick up stones and bring down bombers and crush military tanks, so determined are they"

Mr Botha said he and Mr Mandela had had a discussion about the history of the Boer people and the Xhosa people. He said he would not appear before the Truth and Reconciliation Commission.

"I am not going to repent. I am not going to ask for favours. What I did I did for my country, my God and my people, and all the people of South Africa."

"If generals Malan and (Janne) Geldenhuys are prosecuted in a wrong way, things can lead to disaster."

Mr Botha emphasised he was not a member of any political party. He said he had warned Mr Mandela that the present "American" system of government in South Africa would destroy the president himself if he did not take care about the wrong way certain people were taking.

Freedom Front leader Constant Viljoen, who was also present at the meeting, asked Mr Mandela to put a moratorium on all prosecutions of this kind until the Truth and Reconciliation Commission had been established.

Mr Mandela said he had noted what General Viljoen had asked for.

# Panel gives Mandela list of 25 for truth and reconciliation commission

BY KAIZER NYATSUMBA  
Political Editor

South Africa's truth and reconciliation commission (TRC) which will inquire into past human rights abuses began to take shape yesterday when the eight-member panel appointed to interview nominees presented President Nelson Mandela with a list of 25 prospective commissioners

The racially balanced list of nominees - at least 14 blacks (10 of them Africans) - which will now be whittled down to the constitutionally prescribed minimum of 11 and maximum of 17 commissioners after Mandela has conferred with his multiparty Cabinet next week

The shortlist - at least seven of the nominees are women - contains no surprises

It includes such predictable names as Anglican Archbishop Desmond Tutu, who is a hot favourite for the chairmanship, Methodist Church Bishop the Reverend Dr Stanley Mogoba, Black Sash president Mary Burton and Justice in Transition director, Dr Alex Boraine

The only major surprise is the inclusion of former Conservative Party MP advocate, Chris de Jager, who was one of the CP's negotiators at the multiparty talks at the World Trade Centre in 1993

*Star (252) 21/11/95*  
The list contains at least six clerics Reverend Murray Coetzee, Reverend Bongani Finca, Father Michael Lapsley and Imam Rashid Omar, as well as Tutu and Mogoba. There are also a number of lawyers, including Dumisa Ntsebeza, De Jager, former Democratic Party co-leader Wynand Malan and Peter Bill Motlale.

Also on the list are Professor Andre du Toit, Sisi Kamphophe, Richard Lyster, Professor Bongani Majola, Thomas Manthatha, Professor Dan Morkel, Dr Wendy Orr, Dr Mapule Ramashala, Dr Yasmin Sooka, Cape Town-based trauma specialist Glenda Wildschut, Hlengiwe Mkhize, Tumba Pillay, and Dr Faizel Randera

In a statement announcing the names yesterday, Professor Fink Haysom, who chaired the panel which interviewed the nominees, said the panel had shortlisted 49 of the 299 nominees, but interviewed 48 because one of the shortlisted nominees withdrew

Interviews were conducted in Cape Town, Durban and Johannesburg last week

"The panel is of the view that there were many candidates who are not on the shortlist who would have graced the truth and reconciliation commission.

"The panel believes that the candidates now shortlisted exhibited the necessary commitment to the

three ideals embodied in the National Unity and Reconciliation Act - a commitment to national reconciliation, a commitment to truth and a commitment to human rights

"The panel is further of the view that the candidates shortlisted exhibited the capacity to discharge the functions of a commissioner impartially," Haysom said.

He said the eight-member panel - made up of himself, the SACC's Hlope Bam, the Methodist Church's Bishop Peter Storey, Lawyers for Human Rights' Jody Kollapen, Nedlac's Jayendra Naidoo, ANC MP Baleka Kgositsile, Freedom Front Senator JR de Ville and National Party Senator Ray Radue - gave consideration to the talents and expertise that the individual candidates could bring to the commission.

The panel had also considered the nominees' ability "to bring to the commission their life experiences and understanding of different communities and sections of the South African population"

In its report to Mandela, the panel of interviewers expressed concern that KwaZulu Natal "may not be adequately and effectively represented on the shortlist", and recommended that consideration be given to "a further candidate or candidates from the KwaZulu Natal province who would enjoy the confidence of the people of that province"

AFP

# Kwazulu-Natal underrepresented on truth commission shortlist

Wyndham Hartley

CAPE TOWN — Nobel peace prize winner Archbishop Desmond Tutu and former CP MP Chris de Jager have been included on the list of 25 candidates for the truth commission that was handed to President Nelson Mandela yesterday.

However, troubled Kwazulu-Natal is poorly represented. Mandela has been asked to give special attention to including more candidates from the province. Mandela will, in consultation

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with the Cabinet, choose between 11 and 17 commissioners from the list.

The submission of the short list by the selection panel, headed by Mandela's legal adviser, Pink Hayson, is the penultimate step in the process which began with submitting 299 nominations. These were reduced to 49, interviewed by the panel last week.

Tutu is widely expected to be appointed commission chairman. Also on the short list is Father Michael Lapsley, who had his hands blown off by a letter bomb posted by SA

security agents while serving as the ANC's chaplain in Zambia. Others are Muslim priest Imam Rashid Omar, former Eastern Cape district surgeon Wendy Orr and former NP and DP politician Wynand Malan.

Hayson said the panel was concerned that Kwazulu-Natal might not be represented adequately on the short list, and had asked the president to consider further candidates from Kwazulu-Natal. He said the short-listed candidates exhibited commitment to the three ideals embodied in

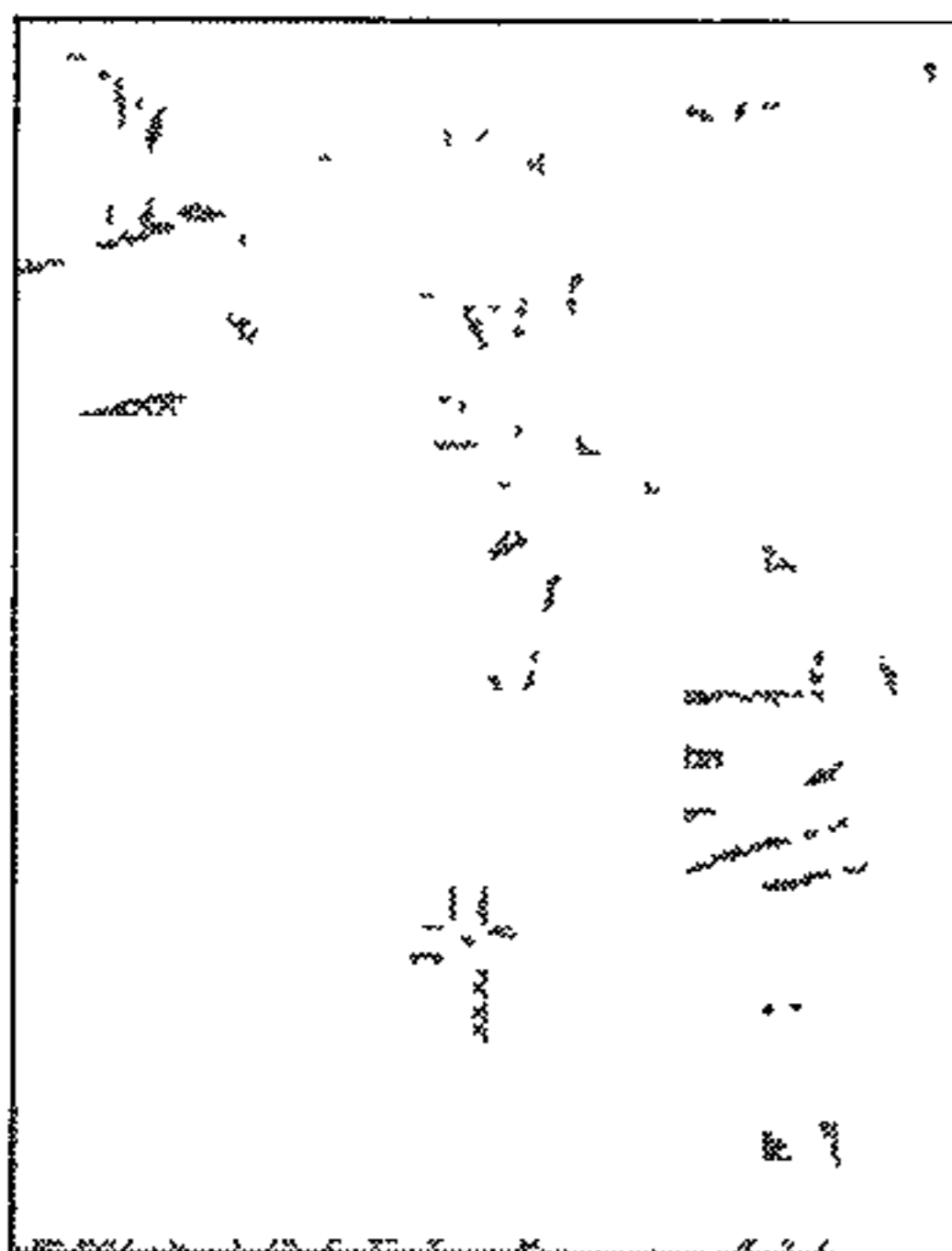
the National Unity and Reconciliation Act — national reconciliation, truth and human rights. The panel believed they would discharge their functions impartially. The ANC said the list was a fair reflection of SA society.

Also listed are Justice in Transition director Alex Boraine, the Rev Murray Coetzee, University of Cape Town politics professor Andre du Toit, Sisi Kamphpe, human rights lawyer Richard Lyster, University of the North academic Prof Bongani Majola, civic activist Thomas Manthatha, University

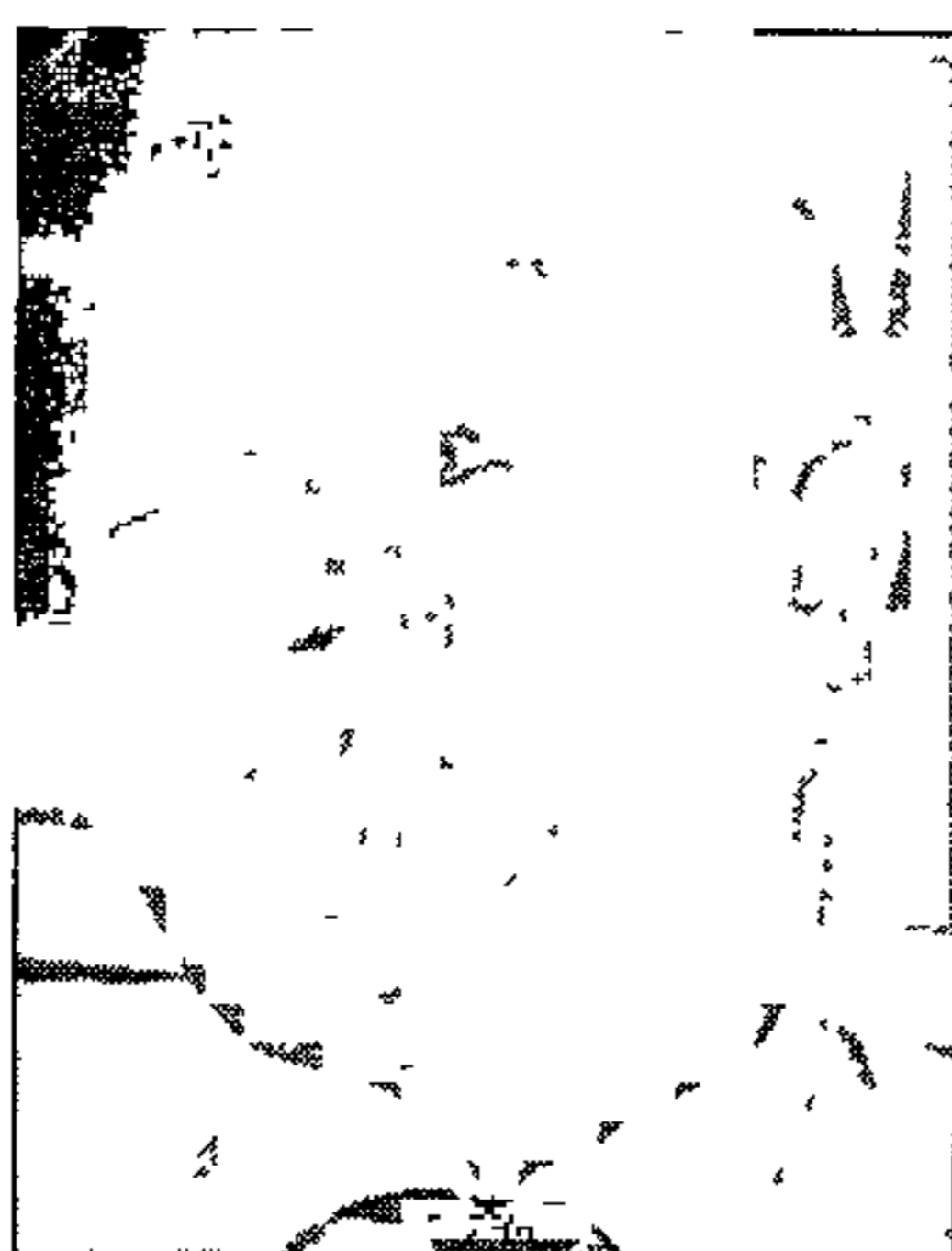
of the Free State law faculty dean Prof Dan Morkel, Black Lawyers' Association president Dumisa Ntsebeza, Dr Mapule Ramashala, World Council for Religion and Peace president Dr Yamin Sooka, Glenda Wildschut, the Black Sash's Mary Burton, Eastern Cape churchman and former Ciskei commissioner the Rev Bongani Fungela, church leader the Rev Stanley Magobane, health department director Hlangiwe Mkhize, Peter Mofhe, Durban lawyer Tumba Pillay and Human Rights Committee vice-chairman Faizel Randera.

# Commission's short list

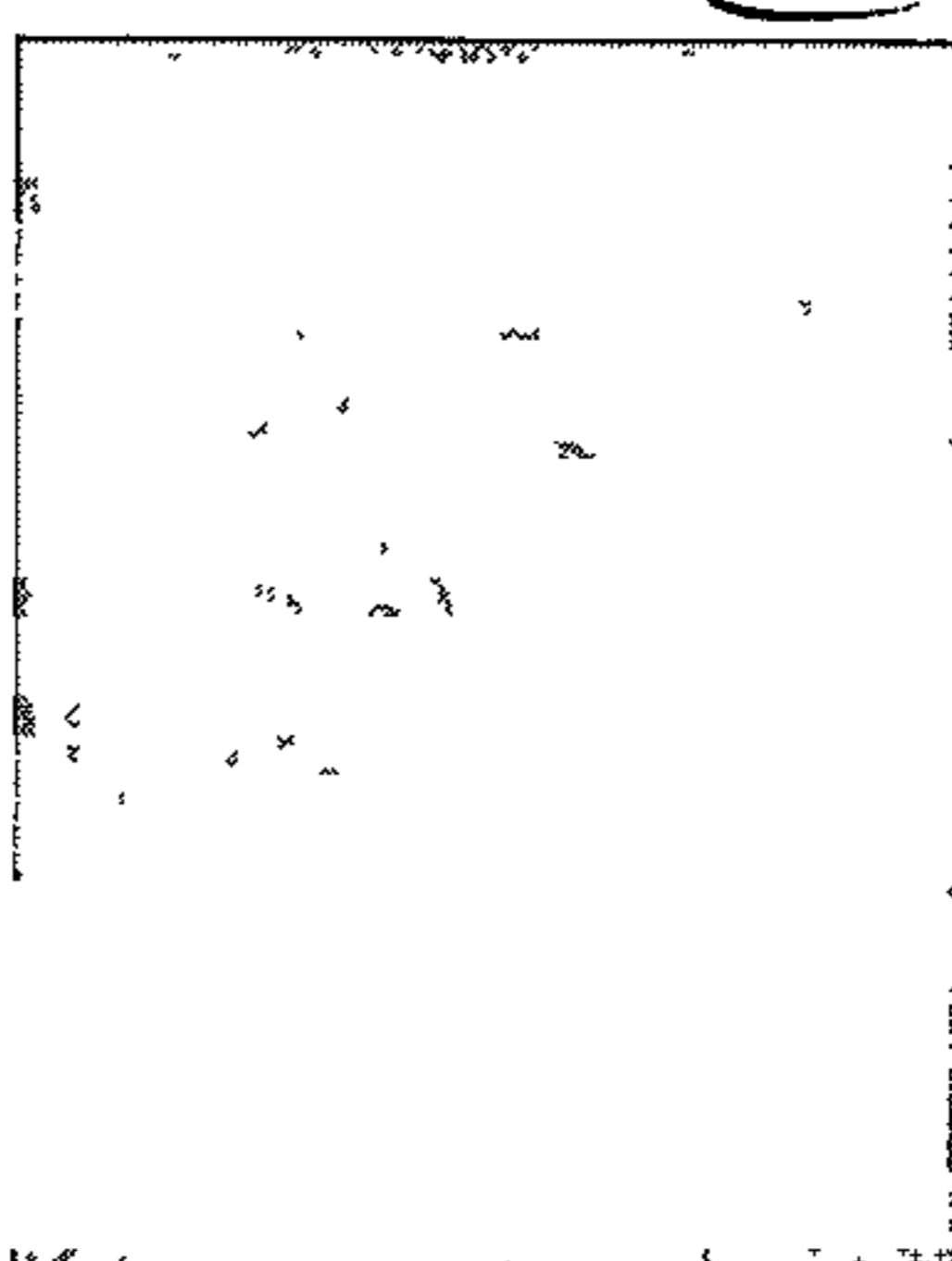
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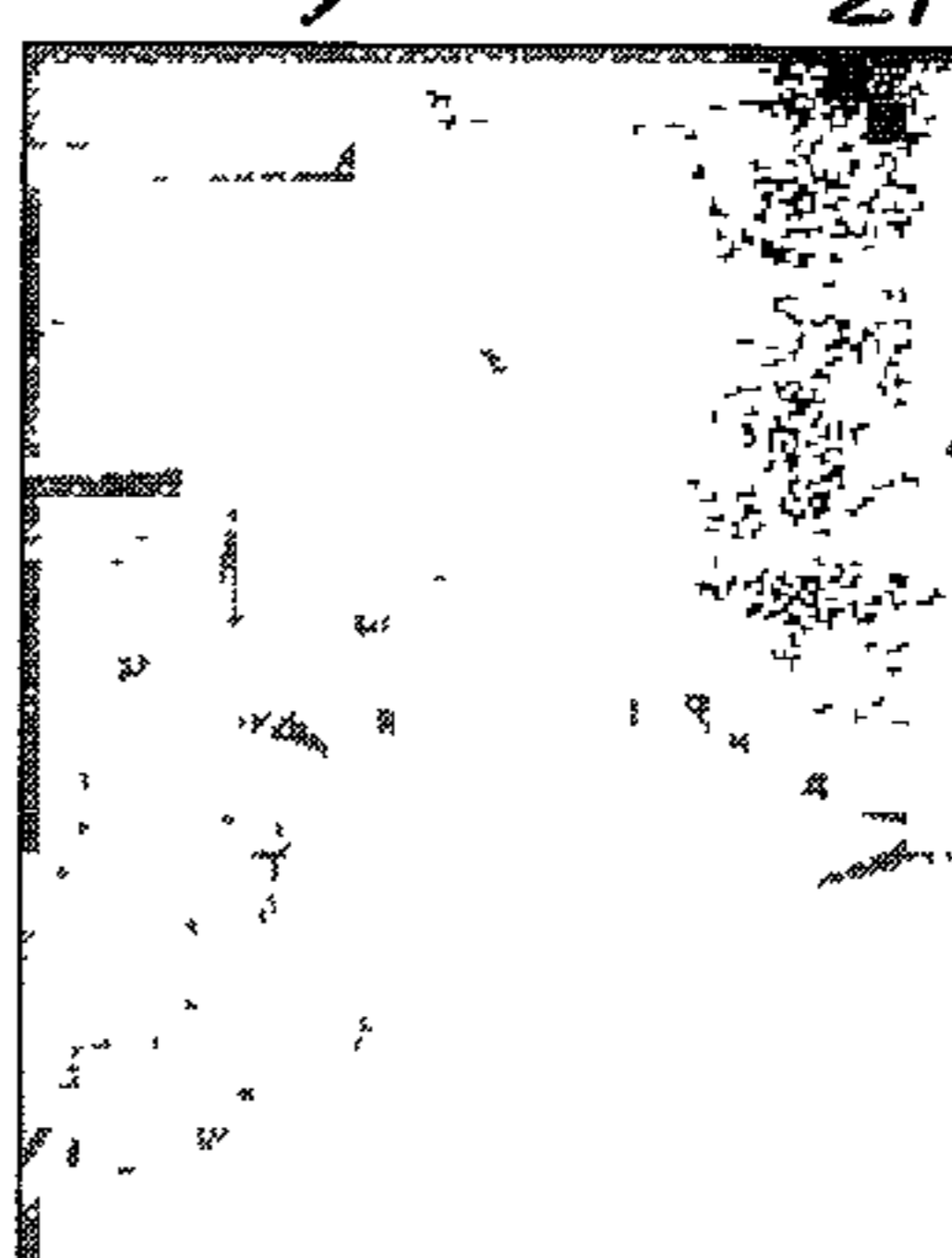
Desmond Tutu



Tom Manthata



Wynand Malan



Dumisa Ntsebeza



Stanley Mogoba

## PETER MONTHLE

Lawyer Peter Monthle, a legal adviser to the premier of the Northern Province, was a co-founder of Lawyers for Human Rights

He holds a Master of Law degree from Georgetown University in Washington, United States

He has served as head of the office of the International Organisation for Migration in South Africa and has worked with the United Nations High Commissioner for Refugees

## FAZEL RANDERA

Dr Fazel Randera was a member of a committee of the National Medical and Dental Association that investigated the poisoning of former South African Council of Churches leader the Reverend Frank Chikane in 1989

Since 1986 Randera has worked extensively with human rights lawyers, providing medico-legal reports on people who suffered physical and psychological abuse at the hands of apartheid policemen

## DUMISA NTSEBEZA

Attorney Dumisa Ntsebeza was banished several times to Cala, his home village in Transkei, by former bantustan leader Kaiser Matanzima

He served as founder president of the National Association of Democratic Lawyers and later as president of the Black Lawyers Association (1989 to 1991)

He is now the BLA's publicity secretary

Ntsebeza has represented human rights activists in the former Transkei and other parts of South Africa. He still serves as chairman of the Prisoners Welfare Programme

## MARY BURTON

Ms Mary Burton was national president of the Black Sash from 1986 to 1990 and is still a member of the organisation which staged protests against apartheid repression

She has been involved in discussions and workshops relating to the Truth Commission

## ALEX BORAINÉ

Dr Alex Boraine now serves as executive director of Justice in Transition, formed in August last year to focus on redressing past human rights violations

Boraine, ordained Methodist Church minister in 1956, also served as executive director of the Institute for Democracy in South Africa from 1986 to 1994

Before his resignation in 1986 to form Idasa with Dr Frederick Van Zyl Slabbert, Boraine served as a member of parliament of the former Progressive Federal Party

## THOMAS MANTHATA

Mr Thomas Madikwe Manthata is now doing a Master's degree in International

### By Mzimasi Ngudle

THE panel appointed by the Government to select a short list of nominees for the Truth and Reconciliation Commission has finally trimmed down the number of candidates to the required 25

al Studies in the United States

As a former fieldworker of the Dependents Conference and coordinator of the Death Row Ministry under the auspices of the South African Council of Churches, he had close interaction with victims of apartheid

After the famous Delmas treason trial in 1985, he was imprisoned on Robben Island until 1989

## YASMIN SOOKA

Ms Yasmin Sooka, a lawyer, is the national president of the World Conference on Religion and Peace

She served as a member of the legal task force in the National Coordinating Committee for the Repatriation of South African Exiles

## HLENGIWE MKHIZE

Ms Hlengiwe Mkhize, the national director of Mental Health and Substance Abuse, is a psychologist who specialises in treating people traumatised by violence

Nominated by the Women's Development Foundation, Mkhize is also a member of the South African Black Social Workers' Association as well as the International Society of Medicine and Law

## WYNAND MALAN

Mr Wynand Malan will be remembered for his surprise resignation as a National Party MP under former state president PW Botha

He then formed the National Democratic Movement, which later merged with the Progressive Federal Party to form the Democratic Party

He quit politics in 1989 and practices as an attorney and as a value systems management consultant

## BONGANI MAJOLA

Professor Bongani Majola holds a Master's degree from the Harvard Law School in the United States

From an ordinary clerk in the then Department of Bantu Administration and Development in the early 1970s, Majola worked his way up to his present position as dean of the faculty of law at the University of the North

## MICHAEL LAPSLEY

Father Michael Lapsley, a veteran anti-apartheid activist, lost both hands and an eye when a parcel bomb was posted to his house in Harare, Zimbabwe

In 1991 the New Zealand New Year's Honours List awarded him the Queen's Service Medal for service to

the communities of Southern Africa

He currently serves as a chaplain to the Trauma Centre for the Victims of Violence and Torture in Cape Town

## SIBONGILE KHAMPEPE

As a lawyer, Mr Sibongile Khampepe appeared for the United Democratic Front, Pan-Africanist Congress and affiliates of the Congress of South African Trade Unions and the National Council of Trade Unions

Khampepe is a member of the Black Lawyers Association and runs a law practice

## C DE JAGER

Mr Christiaan de Jager, a lawyer, is a member of the *volkstaat* council

## BONGANI FINCA

The Reverend Bongani Finca, together with South Africa's ambassador to the former Ciskei homeland, was appointed an interim administrator by the Transitional Executive Council after military ruler Brigadier Oupa Gqozo's administration collapsed

He is now president of the Eastern Cape Provincial Council of Churches and a member of the national executive committee of the South African Council of Churches

## ANDRE DU TOIT

Academic Andre du Toit, a professor of political studies at the University of Cape Town, appeared as an expert witness for the defence in many political trials

He has published several works on political violence and the anti-apartheid struggle in South Africa, and was also a political columnist for the *Cape Times*

## STANLEY MOGOKA

Bishop Stanley Mogoba, a recipient of the Peace Award of the Swiss Foundation for Freedom and Human Rights, is now the bishop of the Methodist Church of Southern Africa

Mogoba spent four years on Robben Island for his anti-apartheid activities

He is also chancellor of the Medical University of South Africa

## RICHARD LYSER

Lawyer Mr Richard Lyster has been director of the Legal Resources Centre in Durban since 1990

He has served on the arbitration panel of the Independent Mediation Service of South Africa and is a member of its mediation panel

Lyster is the author of *Unemployment Insurance Law*, published in 1983

## DESMOND TUTU

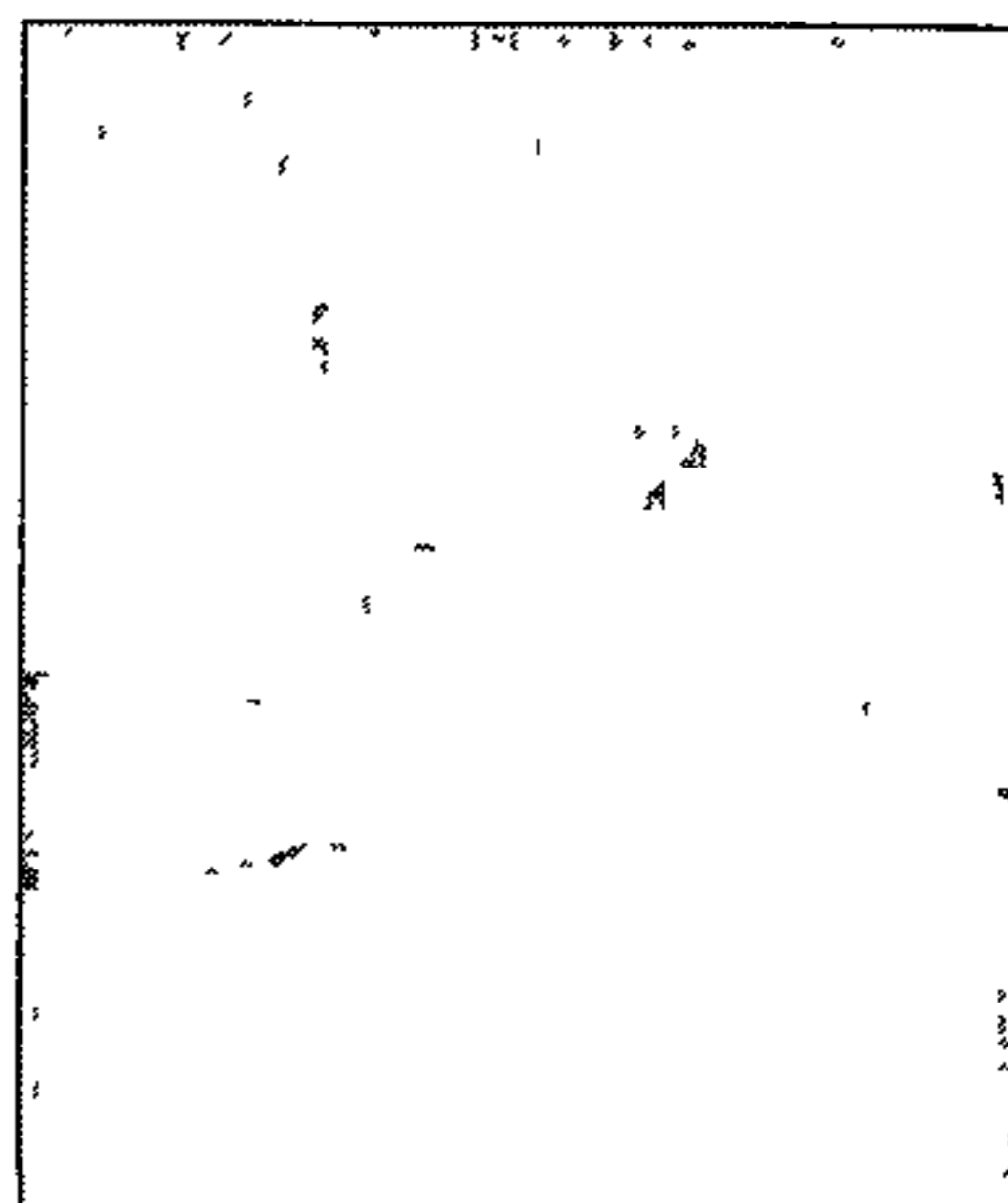
One of three Nobel Peace Prize winners from South Africa, Anglican Archbishop Desmond Tutu is a household name

He stood his ground when the liberation movements were banned and the security forces were ruthlessly suppressing all dissent

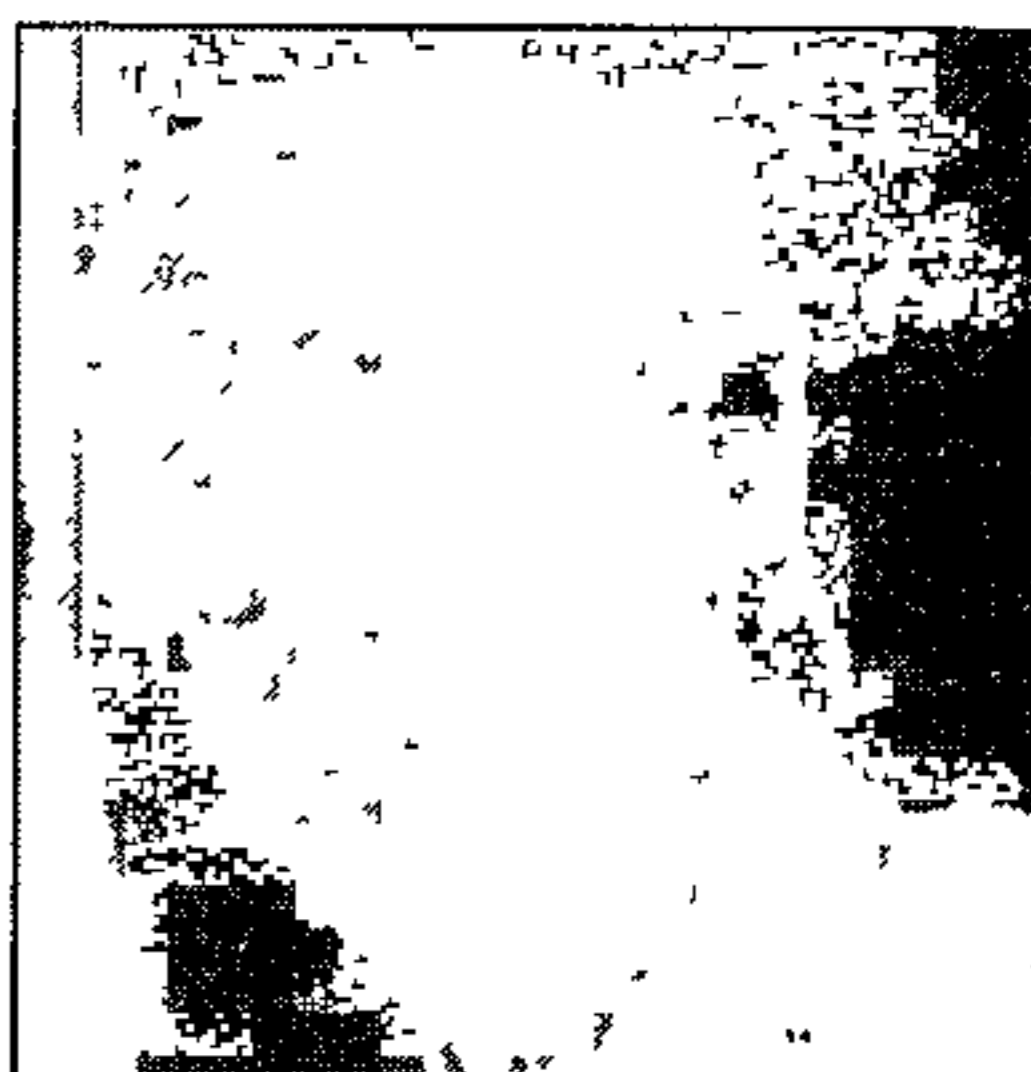
## WENDY ORR

Dr Wendy Orr compiled a list of detainees who were tortured in Port Elizabeth in the mid-1980s

She successfully filed an interdict against the Minister of Law and Order to prevent police from assaulting detainees



Mary Burton



Alex Boraine

JSE		Share prices on the Johannesburg Stock Exchange				
Johannesburg Stock Exchange		These were prices at close of market N B The JSE does not operate on public holidays Prices courtesy of Frankel, Pollak, Vinderine Inc				
Name	Buyer	Seller	Last	High	Low	
1 Nail	R1,50	R1,55	R1,50	R2,00	R1,20	
2 Kilimanjaro	R2,85	R2,90	R2,90	R3,50	R2,70	
3 African Life	R7,10	R7,20	R7,15	R7,35	R4,60	
4 Metropolitan	R46,00	—	R46,00	R46,00	R25,75	
5 Corp Africa	R1,10	R1,20	R1,20	R1,40	R1,00	
6 Real Africa Investment	R2,50	R2,70	R2,50	R2,70	R2,00	

**GLOSSARY:** Buyer: Price at which the share was bought Seller: Price at which the share was sold Last: Last traded price on the share High: Highest level share reached this year Low: Lowest level the price reached this year

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## Govt ministries want 240 laws passed in '96

GOVERNMENT ministries have given notice of some 240 pieces of legislation they want Parliament to consider next year.

A list compiled by Parliament's head of legislation, Mr Kallie Pauw, includes 40 bills that have already been tabled.

Among them are the National Education Policy Bill, National Gam-

bling Bill, a bill to crack down on child pornography, and draft legislation that will give labour tenants rights to farmland they have occupied for years.

Draft laws which are mostly still being vetted by state law advisers but which it is hoped will be adopted before Easter include legislation on national lotteries, the Commission

on Gender Equality, the kwaZulu Ingonyama Trust, and freedom of information.

Another 152 bills are "in the pipeline" for next year.

Eleven of them will come from Health Minister Dr Nkosazana Zuma, who has listed abortion and sterilisation bills and a tighter anti-smoking laws as priorities — Sapa

CT 21/11/95

(252)



# President to see PW about trial

**ANTHONY JOHNSON**  
POLITICAL CORRESPONDENT

CT 21/11/95

(252)

PRESIDENT Nelson Mandela is to meet former president Mr P W Botha this morning to discuss the Truth Commission and the prosecution of General Magnus Malan and 10 other top former military officers on 13 counts of murder

Freedom Front leader General Constand Viljoen is also to attend the meeting, at Mr Botha's home in Wilderness

News of the potentially explosive encounter came soon after the announcement that eight Capetonians — including Archbishop Desmond Tutu — were among those on the shortlist for the 25-member Truth Commission

Between 11 and 17 of the candidates are to be chosen by Mr Mandela to sit on the commission after he has consulted the cabinet next Wednesday

Presidential spokesperson Mr Parks Mankahlana said last night that Mr Mandela "deemed it desirable" to discuss with Mr Botha the prosecution of senior military officers who served under the former government

The Truth Commission was also likely to feature in the discussions, scheduled to last up to two hours, he said.

## Truth Commission

General Viljoen, who had been highly critical of the decision to prosecute the former military top brass, was accompanying Mr Mandela because "he has been involved in a number of constructive discussions with the President and in this regard constitutes a valuable partner in working towards resolving the problems of the country".

A third of the Truth and Reconciliation Commission candidates chosen for the shortlist from 49 nominees are from Cape Town. One is from kwaZulu/Natal

The other seven Cape Town candidates are: director of Justice in Transition Dr Alex Boraine, Dutch Reformed minister the Rev Murray Coetsee, UCT political scientist Professor Andre du Toit, Ms Glenda Wildschut of the Trauma Centre for Victims of Violence and Torture, former Black Sash president Mrs Mary Burton, and Father Michael Lapsley, who lost both hands in a letter-bomb

Panel chairperson Dr Fink Haysom said in a statement yesterday that the selection panel had been concerned that kwaZulu-Natal was represented adequately on the shortlist. He asked Mr Mandela to consider figures respected in the province for the commission

The panel said it had not included the Rev Frank Chikane, head of South African Council of Churches, in the list as it had not received his guarantee of availability in time. However, he had since said he would be available and Mr Mandela would be advised of this

The selection panel said it had not included Mr Justice Edwin King of the Cape Supreme Court in the shortlist, but would recommend he sit on an Amnesty Committee

# Magistrate leading inquiry faces corruption charge

Star 22/11/95

(252)

A magistrate recently appointed to lead a government commission of inquiry was arrested on Monday in connection with corruption, the Department of Health said yesterday.

Senior regional magistrate H H van der Watt appeared on Monday on a charge of corruption in the Pretoria Magistrate's Court.

The case was postponed to February 3.

A police spokesman said an amount of R3 150 was involved.

President Nelson Mandela on

August 1 appointed Van der Watt chairman of a commission of inquiry into the Protein Energy Malnutrition Scheme.

"As a precautionary measure, it was decided to relieve him of his responsibilities as chairperson of the commission with effect from Tuesday, November 21," the department said in a statement in Pretoria.

A decision on a new chairman would be taken in due course, the statement added.

-Sapa.



Old habits but the wagging finger does not rule any more P W Botha addresses a press conference with President Mandela at his retirement home in The Wilderness, George yesterday. They and Freedom Front leader Constand Viljoen discussed "lowering temperatures" over the Truth Commission.

# I won't stop Malan trial, Mandela tells PW

Star 22/11/95 (254) (252)

By MONDLI MAKHANYA AND REUTERS

President Mandela yesterday stood firm in his refusal to interfere in the trial of former military generals, when he rejected former state president P W Botha's calls for a moratorium on the prosecutions.

He also turned down a request by Freedom Front leader General Constand Viljoen that imprisoned Afrikaner Weerstandsbeweging members be allowed to spend Christmas with their families.

Mandela told Botha and Viljoen at Botha's home, in The Wilderness near George, that he wanted to leave to the courts the trial of former defence minister Magnus Malan and 10 other military men.

He said the trials should go ahead because it was necessary that

people should not be treated differently because they had served in the present or previous governments.

"I said that in this case I will not interfere. The independence of the courts must be respected. That is my position. It is inflexible," Mandela said.

"Don't awaken the tiger in the Afrikaner," Botha said. "But don't awaken at the same time the tiger in the Xhosa people, in the Zulu people, in the Tswana people. We are a multicultural people."

Presidential spokesman Parks Mankahlana said that while the president was committed to ensuring reconciliation remained on track, he was adamant about not interfering in the administration of justice.

"He is saying that nobody is above the law and nobody should be seen to be above the law," said

Mankahlana.

The president also used his meeting with the two men, who wield considerable clout in right-wing and military circles, to plead with them to "assist him in lowering temperatures" around this question.

Botha had asked Mandela to impose a moratorium on the trials of security force operatives - including Malan and the other generals - until the truth commission begins its work, so that such people could have the option of testifying.

Mandela pointed out that the "Malan 11" could apply for amnesty - or he and the others could use the courts to get their trial delayed until the truth commission began its work.

The meeting was the most crucial in a series of briefings Mandela has been holding with role-players

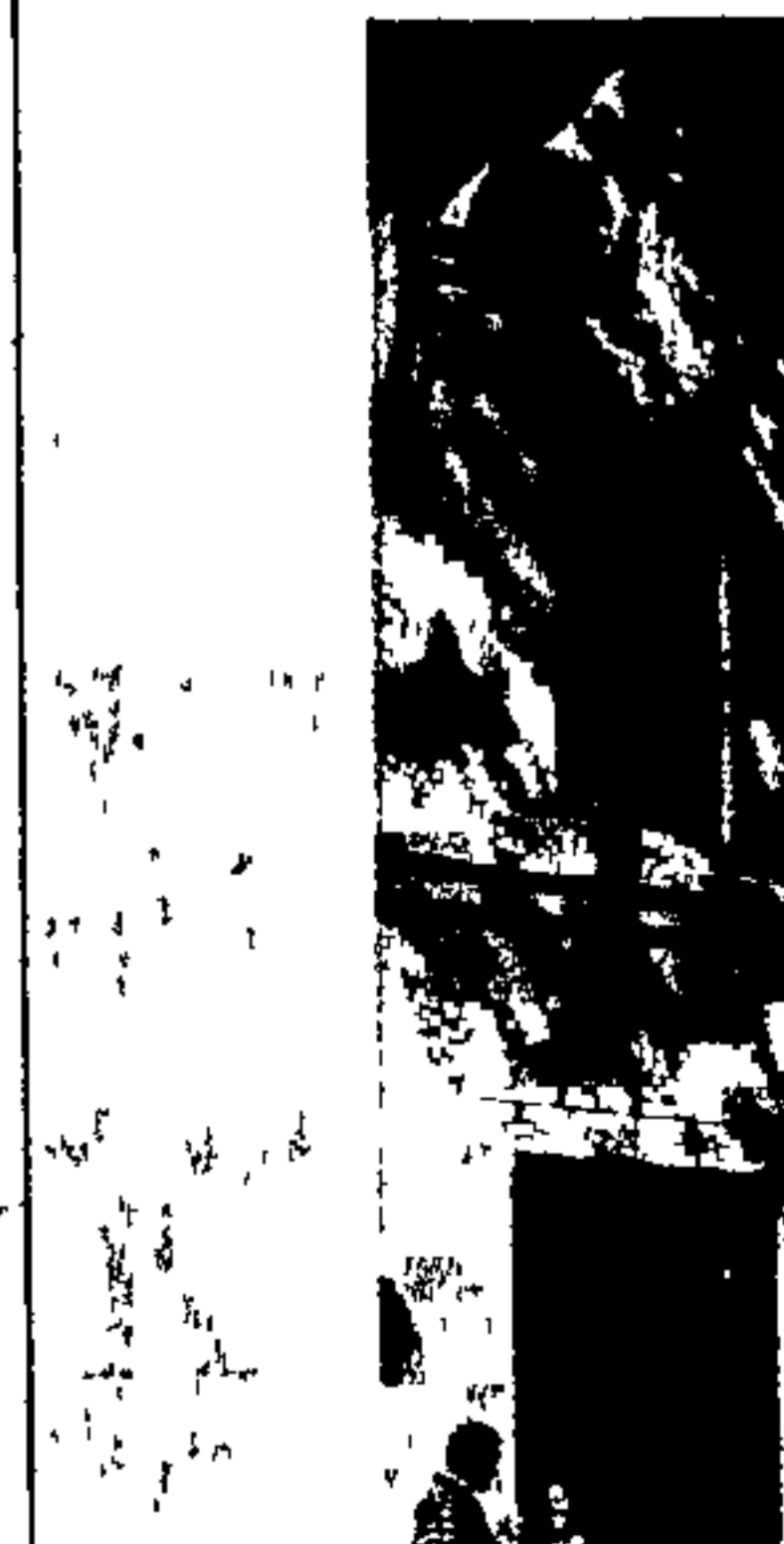
about the trial and the impending truth commission. He has been trying to allay fears of a witch-hunt and to prevent instability.

Mandela explained that he was also under pressure from his own supporters, who had endured detention without trial.

Botha told a media conference after the meeting that he would not testify to the truth commission and warned the Government not "to awaken the tiger in the Afrikaner".

"I am not going to the truth commission. I am not going to repent. I am not going to ask for favours. What I did, I did for my country, for my God, for my people and for all the people of South Africa," Botha said.

He added that records in arch-  
To Page 2



ay November 22 1995

'I won't stop

Malan trial'

From Page 1 (252)

ives would attest to the fact that he had nothing to hide, or to apologise for Star 22/11/95

Mandela said he had asked for the meeting with Botha to explain his position on the arrest of Malan and 10 other top military veterans. The president said he explained that the arrests were initiated by police and the attorney-general and not by his Government.

Mandela also paid tribute to Botha for having begun, together with him, the process of change in the 1980s.

# Defence law 'violates' right of access to courts

BD 22/11/95 (252) (252)

Susan Russell

A SECTION of the Defence Act which limits the time period during which a member of the public may institute a claim against the security forces for damages is a violation of the guaranteed right of access to the courts, the Constitutional Court heard yesterday.

The constitutionality of section 113(1) of the Defence Act was challenged on similar grounds in two separate applications heard simultaneously by the Constitutional Court.

In terms of the Act a member of the public suing the defence force must institute action within six months of the event leading to the litigation or else they lose their right to do so. In addition the prospective litigant must give the defence force one month's notice of their intention to sue before instituting action.

The first application challenging the provision was argued on behalf of a former member of the SANDF's now disbanded covert Civil Cooperation Unit, Lafras Luitjigh, who wishes to pursue a

R1,1m claim for payments which he alleges he is still owed by his former employers.

The second application was brought on behalf of an Alexandra youth, Leach Mokela Mhloani, who instituted action against the defence force after he was shot and badly wounded in the leg by a member of the security forces in May last year.

It was argued on behalf of counsel appearing separately for the pair yesterday that section 113(1) was a violation of both the equality clause in the constitution as well as section 22 which guarantees the right of access to the courts.

The court was told that the section violated the equality clause because it unequally favoured the SANDF over litigants, who would not be constrained by the same limitation in civil actions against other parties.

Counsel for Mhloani, Gilbert Marcus SC, said it was integral to any society that respected the rule of law that it was the courts that were entrusted with dispute resolution.

"The alternative," he said, "is

self help and chaos."

Marcus said that although section 133(1) of the Defence Act did not stop a litigant from going to court it did make it more difficult.

An absence of provisions giving the judges hearing the matter in the lower courts a discretion to extend the six month prescription was, on the face of it, a violation of section 22, he said.

The defence force opposed the application. It was submitted on their behalf that the prescribed six-month period was necessary because the SANDF was, and still is, a large organisation with all sorts of administration difficulties. It also had a large staff turnover despite the fact that there no longer was national service. These circumstances made it necessary to deal with claims as timeously as possible.

Counsel for the SANDF, J van der Merwe SC, submitted that section 113(1) was reasonable and justifiable.

He also argued that the section did not curtail a person's access to the courts.

## Zwelethini and ANC hold 'fruitful' constitutional talks

BD 22/11/95

Farouk Chothia

DURBAN — Zulu King Goodwill Zwelethini held "fruitful" talks with the ANC yesterday on a constitution for KwaZulu-Natal, but was disappointed at the IFP's failure to pitch up for a meeting on Monday.

An ANC delegation led by ANC national chairman Jacob Zuma tabled its constitutional proposals at a meeting at one of the king's Nongoma palaces.

The meeting took place against the backdrop of an invitation by Zwelethini to the seven political parties in KwaZulu-Natal to hold talks with him on the role they envisaged for the monarchy in the provincial constitution.

Zwelethini's spokesman Sifiso Zulu said the monarch would present his proposals after studying the parties' views.

He was surprised that the IFP, after scheduling a meeting with him for Monday, had failed

to turn up.

KwaZulu-Natal premier Frank Mdlalose's office said the IFP was not in a position to present its proposals to Zwelethini because the original plan was that the constitutional committee, made up of representatives of all seven parties, would meet the monarch.

A royal family source said Zwelethini was disappointed also that the IFP in its proposals had reduced him to monarch of KwaZulu rather than of the whole province.

The IFP altered its position to accommodate the NP and DP, whose support it needed to obtain a two-thirds majority for a constitution. The NP and DP insisted on the compromise on the grounds that non-Zulus could not be expected to pay allegiance to Zwelethini.

However, the ANC and PAC identified Zwelethini as the constitutional monarch of the whole province.

## Plot to kill Phosa to be probed

Kevin O'Grady

NATIONAL police commissioner George Fivaz has ordered a top-level investigation into gun-running activities in Mpumalanga, and into an alleged plot to assassinate the province's premier, Mathews Phosa.

Phosa said yesterday he had met both Fivaz and Safety and Security Minister Sydney Mufamadi to discuss the alleged involvement of policemen and soldiers in gun-running syndicates in Mpumalanga.

"We agreed the investigation started by Mpumalanga should be continued with vigour and anyone found to be involved should be arrested and prosecuted," Phosa said.

There had been a "huge flood of arms" from Mozambique.

It was also agreed at the meeting that there was substance to allegations of a plot to assassinate Phosa. A senior policeman had been appointed to head both investigations.

# Human rights lobby group to help victims

(252) *Sawyer*  
2/11/15

By Paddy Harper

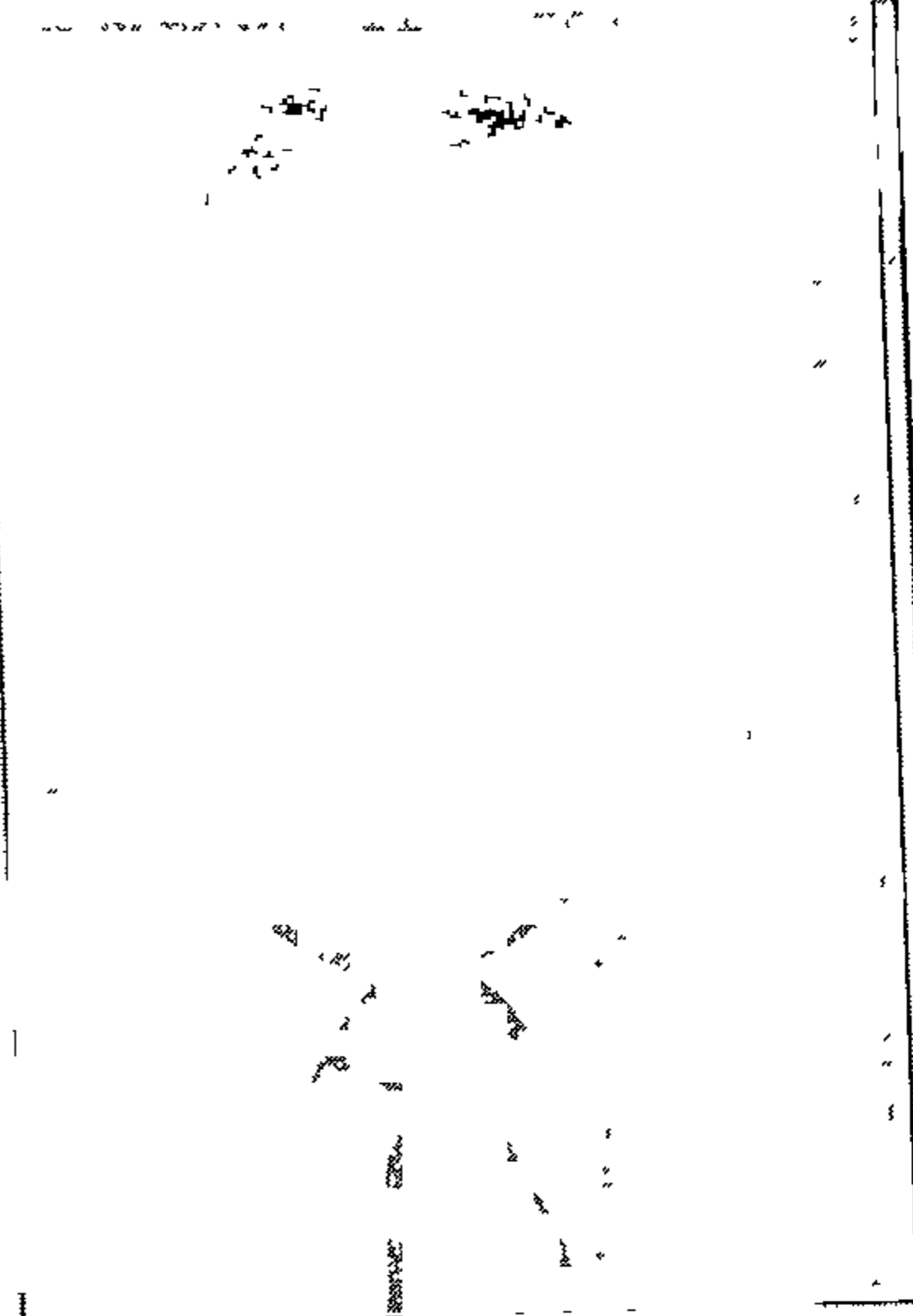
The Department of Justice will establish a psychological counselling programme for survivors of violence who may give evidence before the proposed Truth and Reconciliation Commission.

The project's aim is to help prepare victims of violence who may give evidence before the proposed Truth and Reconciliation Commission.

The 24 organ...

involved in documenting human rights abuses in the province and counselling has been a common theme...

group...



Minister of Justice Dullah Omar will be lobbied to establish a psychological counselling programme for survivors of violence who may give evidence before the Truth and Reconciliation Commission.

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# Botha snubs Mandela over Truth Commission

By Raffiq Rohan  
Political Correspondent

**A**N UNREPENTANT former state president, Mr. P.W. Botha, yesterday bluntly told President Nelson Mandela that he would not appear before the Truth Commission.

"I'm not going to the Truth Commission. I'm not going to repent. I'm not asking for favours. What I did, I did for my country and God and all the people of South Africa," Botha said.

The two met at Botha's Wilderness residence in George to discuss the murder charges against former defence minister General Magnus

Malan and several army chiefs. Mandela, on the other hand, was equally firm, saying that South African justice must take its course.

Mandela said the arrest of Malan and others was a decision of the police's investigating unit as well as the attorney-general of Kwazulu-Natal.

Mandela insisted that no one, no matter how senior, was above the law. "There's no reason whatsoever why the police and the attorney-general should not take action against people who are believed to have committed criminal offences simply because of their positions," said Mandela.

Referring to Afrikaner anger at the

arrest of the generals, Mandela said he had been warned of the repercussions that might take place.

"I pointed out they must not use that language when they are speaking to me. I will not interfere and I will not give them indemnity because I treat them in exactly the same manner our people are treated."

"When our people asked for indemnity they were asked to state the crimes they had committed and for which they wanted indemnity. And we did so. If these generals want indemnity they will have to follow exactly the same course."

Mandela referred to his own arrest and court case which lasted four and a

half years.

"When we were discharged at the end of that trial (in 1964) I was ruined as an attorney. We did not create any trouble because we respected the decision of the court."

Mandela dismissed threats of a backlash. "Our people fought for their independence. We have now tasted freedom and I can assure everybody we are determined to keep our independence."

Mandela said he was told by Botha not to "arouse the tiger among Afrikaners" — a sentiment supported by the generals.

"I also said we must be careful not to arouse the tiger among the masses

of the people in the country. It is our duty as leaders to resist thinking through our blood, but to think through our brains."

"I am the President of this country and leader of the majority party. We have a mandate to build our country and I will not deviate from that perspective."

Botha sat stern-faced while Mandela spoke. He was adamant that if the generals "were prosecuted in a wrong way" it could lead to disaster. He did not explain what the "wrong way" was. Botha insisted that he was not a member of any political party any longer. He said the National Party did not know where it was going

'DON'T AWAKEN THE TIGER,' BOTHA WARNS

# I will not testify — PW

ET 22/11/95

(252) ~~(252)~~

**IN A MEETING** with President Nelson Mandela — at his retirement home in the Wilderness — former president P W Botha has said he will refuse to testify in front of the Truth Commission and has warned the President “not to awaken the tiger in the Afrikaner”.

**F**ORMER South African president Mr P W Botha has bluntly told President Nelson Mandela in their first public encounter yesterday that he will not repent nor testify to the Truth Commission and he warned Mr Mandela not to awaken the “tiger” in the Afrikaner.

Mr Botha said he would not testify as he had acted for “God, his people and all the people of South Africa”.

Mr Mandela responded “Our people have tasted freedom and they will pick up stones, bring down bombers and crush military tanks to keep their independence and their freedom”.

The exchange took place at Mr Botha’s home in Wilderness yesterday at Mr Mandela’s request and was also attended by Freedom Front leader General Coetzee and Viljoen.

Their meeting was intended by Mr Mandela to explain his position on the arrest of former defence minister General Magnus Malan and 10 other top military veterans.

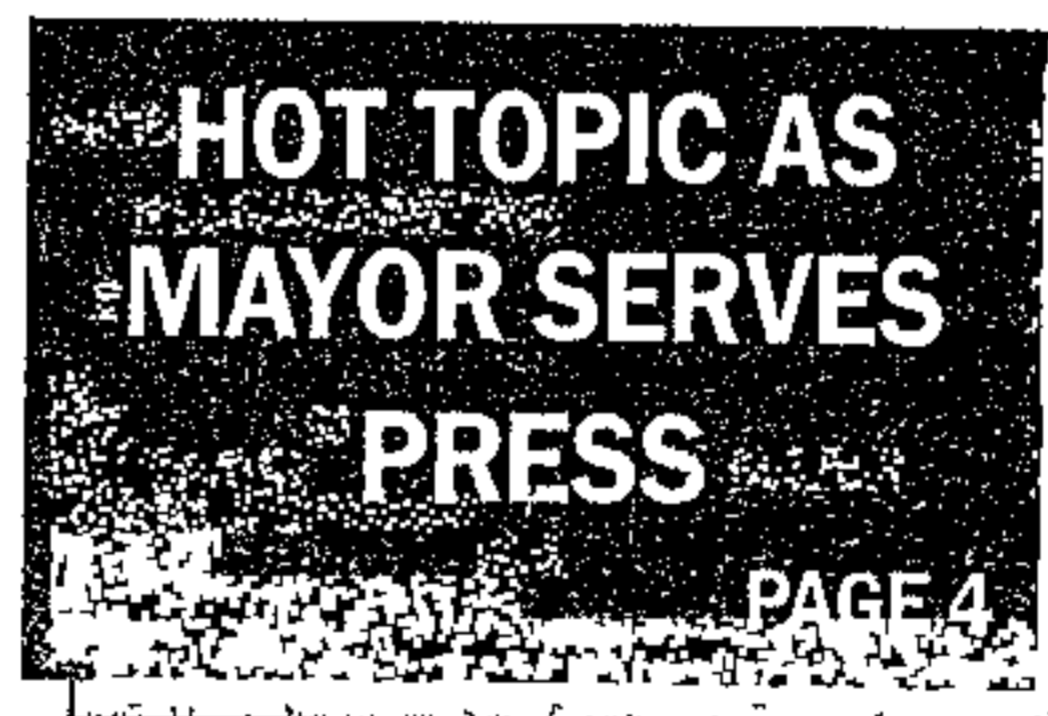
They face murder charges relating to the killing of 13 people in kwa-Zulu/Natal in 1987 and are scheduled to appear in court, for the second time, in Durban on December 1.

Mr Botha, president when Gen Malan was defence minister and Gen Viljoen chief of the defence force, said “I am not going to the Truth Commission. I am not going to repent. I am not going to ask for favours. What I did, I did for my country, for my God, for my people

and for all the people of South Africa”.

Mr Botha appealed to Mr Mandela to declare a moratorium on the prosecution of apartheid’s leaders.

After the meeting, which appeared to have been amicable, Mr Botha said he was concerned about unspecified “tendencies” in South Africa’s new democracy. “The president is calm and I am calm, but he must stop the rot in this country,” Mr Botha said.



The meeting lasted for two hours and 20 minutes.

Mr Mandela confirmed after their talks that Mr Botha had “asked me to impose a moratorium on all prosecutions until the Truth and Reconciliation Commission has been established, so people can decide what to do in regard to allegations against them”.

Mr Mandela said it was not the first time Mr Botha had sought a moratorium and added “I would like to leave everything to the courts”.

Mr Botha said all the decisions of his government were recorded in archives which would prove he had nothing to

apologise for

Mr Mandela said he explained to Mr Botha the arrests were initiated by police and the attorney-general and not by his government.

“The independence of the courts must be respected. That is my position. It is inflexible”.

Mr Mandela said no one should be treated differently because of the position they hold or had held under a previous government.

“There is no reason whatsoever why the police or the attorney-general should not take action against people simply because of their position”.

He had pointed out this was not the practice in democratic countries and had referred to the impeachment of former president Richard Nixon by the United States congress and the jailing of two corrupt Italian premiers.

Mr Mandela said he had been warned that there could be “repercussions” if the generals were found not guilty after they had been humiliated by being brought before the court. He said he and 155 freedom fighters had been freed after a 4½-year prosecution in the treason trial of the early 1960s.

“I was ruined as an attorney. We did not create any trouble because we respected the decision of the court”.

“I gave a warning that our people fought and gained independence on their own without asking permission from anybody. We have now tasted freedom and I can assure everybody that they are so determined to keep their independence, their freedom that they will pick up stones, bring down bombers and crush military tanks, so determine they are” — Sapa-Reuter

● See Page 3



**OLD FOES:** Former president Mr P W Botha (left), President Nelson Mandela and Freedom Front leader General Constand Viljoen stroll through Mr Botha's residence in Wilderness after a meeting about the Truth Commission

PICTURE AP



## McNally tries to reassure PW over Malan prosecution

~~254~~ (252)  
Durban - Former president PW Botha need not fear that ex-defence minister Magnus Malan and 19 other murder accused would be prosecuted "in a wrong way", KwaZulu Natal Attorney-General Tim McNally said yesterday.

McNally said in a statement he would lead the prosecution team next year in the Durban Supreme Court trial of Malan and 19 others charged with the 1987 murder of 13 people in an attack in KwaMakutha.

He was responding to reports quoting Botha as having warned President Nelson Mandela at a meeting on Tuesday that if Malan and other former security chiefs "are prosecuted in a wrong way, then things can lead to disaster".

In his statement, McNally said: "It is planned that I will personally lead the prosecution team."

He said indictments and notices of the trial would be served on the 20 accused at their Durban Regional Court appearance on December 1.

"The notices of trial will indicate Monday, March 4, 1996, as the date on which the trial commences in the Durban Supreme Court," he said.

Malan and 10 other top former military officers were arrested and charged on November 2 when they appeared in the Durban Regional Court. They were all released on bail of between R3 000 and R10 000.

The other accused include Brig John More, Col Louis Botha, "MZ" Khumalo and six IFP recruits - Reuters

Star 23/11/95

Destiny

## DRAFT CONSTITUTION

## Parties split on property rights issue

BD 23/11/95 (252)

Jrew Forrest

NEARLY half the clauses in the draft constitution's Bill of Fundamental Rights are still in contention, with the right to property the issue over which parties are most sharply divided.

Releasing a working draft of the final constitution in Johannesburg yesterday, Constitutional Assembly chairman Cyril Ramaphosa said that the areas of dispute were not major and that consensus could be reached "quite easily". The deadline for the finalisation of the constitution is May next year.

However, DP leader Tony Leon yesterday indicated that much hard bargaining on the Bill of Rights lay ahead. The NP was also widely at odds with the ANC on a range of clauses.

There is broad interparty agreement, sometimes with minor differences of formulation, on such issues as human dignity, freedom and security of the person, slavery and forced labour, privacy and the freedoms of religion, movement, association and assembly.

A major coup for the negotiators is the lengthy clause on states of emergency, where con-

sensus has been reached on a range of detailed safeguards.

But different options reflecting divergent party positions are given for 15 of the Bill's 33 clauses. Leon said that even in areas where the draft document reflected substantial agreement, there was room for further debate.

The DP might, for example, revisit the labour relations clause to see whether "it does not provide greater inoculation for the unions than the Labour Relations Act". It would also push for a "much more modest" formulation of socioeconomic rights such as those relating to housing and health.

The property clause in the Bill remains the biggest bone of contention, with both the DP and NP insisting on its inclusion. Leon said ANC proposals would "render all property rights vulnerable, ring the death knell of investment and sow insecurity in the markets".

One ANC option envisages the dropping of the clause. An alternative option, Leon said, clearly exempted land reform measures from the requirement that compensation paid for expropriated property take ac-

count of its market value.

The NP said last night it viewed the property clause as one of the most fundamental in the Bill. The ANC proposal "gave government carte blanche to arbitrarily nationalise property or deprive their rightful owners of their possessions without compensation".

Deputy Constitutional Development Minister Valli Moosa said that in the interests of land reform, the ANC wanted to ensure that the constitution did not freeze property relations. Internationally, property guarantees were not seen as an essential ingredient of a Bill of Rights, he said.

Also at issue is a clause guaranteeing freedom of economic activity, with the DP and NP insisting on its inclusion as a safeguard against excessive state interference and the ANC arguing that the constitution should not prescribe economic policy. The NP said it regarded the right as "vital to a modern democratic state".

Parties are also divided over whether the Bill should give employers' the right to lock out

Other contentious issues include

The equality clause, with the DP advocating tightening of the affirmative action subsection

The extent to which juristic persons, like companies, should enjoy constitutional rights.

The right to life, where the NP favours provision for the death penalty.

Meanwhile, Sapa reports the PAC said the working draft of the final constitution made no attempt to accommodate the "African experience", instead only marginalising traditional institutions, law and authority.

PAC constitutional affairs spokesman Richard Sizani said that while the draft measure was a "marked improvement" on the interim constitution, it still represented a largely classical Western liberal constitutional order.

"No serious attempt has been made to accommodate the (black) African experience, which indeed is the largest experience in the SA society."

"We call on all Africans, be they workers, peasants, students, traditional leaders, business (or) religious persons (or) the intelligentsia to make their voices heard in the Constitutional Assembly," he said.

# Death penalty: Draft document keeps options open on the hangman's noose

JOHANNESBURG. — Provision is made for both the retention and abolition of the death penalty in the proposed Bill of Rights in the working draft of the final constitution

In the clause on the right to life, the first option says "everyone has the right to life (and the death penalty is hereby abolished)".

The second option says "everyone has the right to life, and the right not to be deprived of life except by execution of a court sentence following conviction for a crime for which the death penalty is prescribed by an Act of parliament".

Options are also given in several other areas, including those clauses dealing with freedom of expression, economic activity, property, education, and the rights of arrested, detained and accused persons.

A highly contentious issue in the property options is whether the state's ability to pay compensation should be a criteria in deciding compensation amounts for expropriated property.

There is largely agreement that individuals and communities dispossessed of land after June 19, 1913, as a result of discriminatory laws or practices,

ARG 23/11/95  
have the right to restitution of that land or other equitable redress.

Parties agree that everyone has the right to basic education, including adult basic education, in a state or state-aided institution.

They also have the right to establish and maintain, at their own expense, private educational institutions.

These private institutions must not discriminate on the basis of race, must be registered with the state, and maintain standards that are not inferior to those at comparable state-aided institutions.

(252)  
Parties agree on the rights of South Africans not to be subject to slavery, servitude or forced labour; to freedom of religion, belief and opinion; to an environment not harmful to their health or well-being; to have access to adequate housing, health care, food, water and social security; to use the language and participate in the cultural life of their own choice, as long as this does not violate anyone else's rights; and to have access to the courts.

There is also agreement on conditions for the declaration of states of emergency and on children's rights. — Sapa.

# Trying to heal the scars of the past

By Betsy Spratt

WHEN delegates to the Seventh International Symposium on Caring for Survivors of Torture gathered at Cape Town's Castle of Good Hope recently, it was not to recall atrocities committed at the prison, but to make peace with a past that has left a scar on the

nation's consciousness

"We came here to reclaim this place," said Mr Thomas Winslow of the Trauma Centre for Victims of Violence and Torture, the non-governmental organisation which co-sponsored the three-day conference in conjunction with the International Rehabilitation Council for Torture Victims

in Copenhagen, Denmark

The conference on torture, the first and largest ever in Africa, was the seventh in a series of gatherings held worldwide to teach medical and health professionals new techniques for treating torture survivors

"It was especially designed to bring healthcare workers from around Africa together to work on new methods of treating torture survivors," said Winslow, "to begin the process of creating a torture-free Africa from Cape Town to Cairo"

## State-sponsored violence

More than 300 survivors, human rights activists and medical workers delivered papers on topics ranging from "Do we treat the perpetrators of state-sponsored violence?" to "Helping to restore lost self-esteem"

The lectures were held at Old Breakwater Prison and the Castle of Good Hope, venues which dredged up painful memories for many participants

"There was one medical doctor from Greece who had been detained and tortured and was terrified when she saw the gates of Breakwater prison," said Winslow

"But she remembered a line from (the Italian poet) Dante 'To walk through these doors and leave the past behind' It helped her make it through"

Attending the closing ceremonies at the Castle of Good Hope provided healing for many other delegates, who for the first time walked through the doors of the castle prison built in the 1600s

It had been a place of incarceration, where sailors, slaves and criminals were routinely tortured until the British colonialists abolished public tor-

ture in 1797

"We have reclaimed that history," said Winslow, as survivors of torture from Brazil, Turkey, Greece and 70 other countries danced to traditional music and feasted on African delicacies

"To come to a place where there has been so much pain and suffering and turn it into a place of joy is quite an accomplishment"

However, the main goal of the conference was to unite organisations specialising in the treatment of torture victims and to bring greater awareness of the fact that state-sponsored torture is not a thing of the past

"Now, instead of being political, it's being used on criminal suspects who are routinely tortured," Winslow said

At a conference held the day before the symposium, the International Council for Torture Victims announced the Cape Town Declaration, a call to nullify the clause in the United Nations Convention Against Torture which allows nations to use torture for legitimate reasons

During the closing ceremonies of the symposium, Minister of Justice Dullah Omar announced that the Government will begin the process of ratifying the UN Convention Against Torture, a step which will oblige the country to take measures to prevent torture

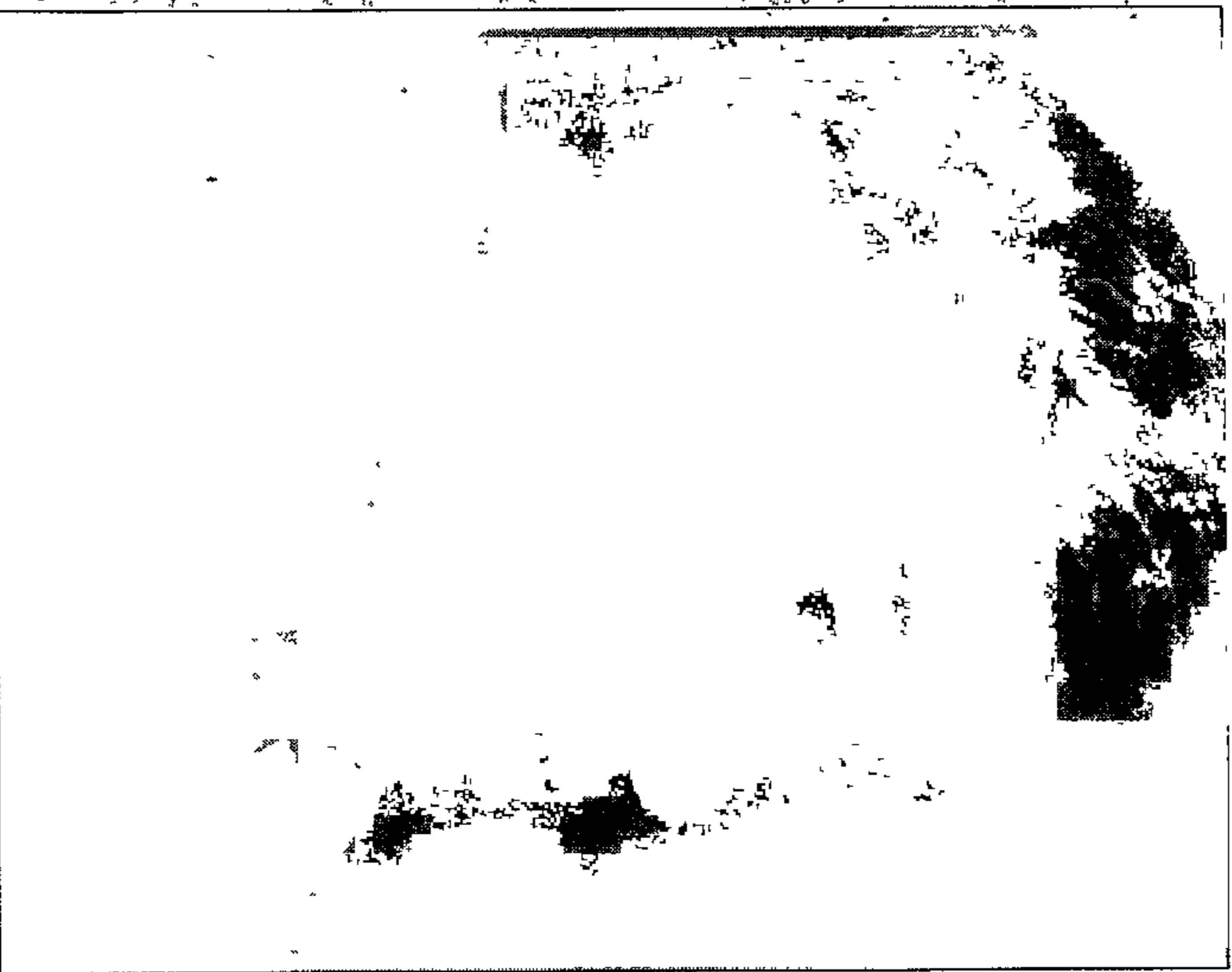
The convention will be signed into law by President Nelson Mandela after being debated by a Select Committee, sent to Parliament and then forwarded to the Cabinet for approval

## Torture victims

To help provide redress for torture victims, the UN currently has a Voluntary Fund containing R7 million, Winslow said, a fund to which the Government of South Africa contributes. The fund could provide redress for victims in Namibia, Zimbabwe, Angola, Mozambique and Lesotho who were tortured by South Africa's apartheid regime

"Torture rehabilitation has to be on the agenda of the country," said Winslow

"It is all part of a process of opening up, a chance to speak about what, in the past, had been unspeakable"



Justice Minister Dullah Omar ... announced that South Africa plans to ratify the UN Convention against Torture



Johannesburg Stock Exchange

## Share prices on the Johannesburg Stock Exchange

These were prices at close of market  
N B The JSE does not operate on public holidays  
Prices courtesy of Frankel, Pollak, Vinderline Inc

Name	Buyer	Seller	Last	High	Low
1 Nail	R00	R00	R00	R00	R00
2 Killmanjaro	R00	R00	R00	R00	R00
3 African Life	R00	R00	R00	R00	R00
4 Metropolitan	R00	R00	R00	R00	R00
5 Corp Africa	R00	R00	R00	R00	R00
6 Real Africa Investment	R00	R00	R00	R00	R00

**GLOSSARY** Buyer: Price at which the share was bought Seller: Price at which the share was sold Last: Last traded price on the share High: Highest level share reached this year Low: Lowest level the price reached this year

# McNally to prosecute generals

A-G says there need be no fear of case being handled 'in the wrong way'

By Sowetan Correspondent

**K**WAZULU-NATAL attorney-general Tim McNally will personally lead the prosecution team in the multiple murder case against former defence minister Magnus Malan and others when it starts in the Durban Supreme Court on March 4.

A total of 20 accused, including Malan and 10 high-ranking former security officers, will be served with Supreme Court indictments and trial notices at their next regional court appearance on December 1.

The case involves the alleged "third force" massacre of 13 people, among them several women and children, at KwaMakhutha, in January 1987.

The accused also face charges relating to their role in assisting the Inkatha Freedom Party to establish an offensive paramilitary unit.

McNally announced the trial date one day after President Mandela met former president PW Botha and Freedom Front leader Constand Viljoen at Botha's retirement home in the Wilderness to discuss the pending case and the Truth and Reconciliation Commission.

Botha warned Mandela not to "awaken

the tiger in the Afrikaner" and expressed fear that the prosecution was politically motivated.

But Mandela replied that he would leave everything to the courts.

And McNally said yesterday. "Mr Botha need have no fear that the accused will be prosecuted 'in the wrong way'. It is planned that I will personally lead the prosecution team."

Malan is the first cabinet member of the former National Party government to be charged in court for alleged crimes associated with the struggle between the forces who upheld apartheid and those who opposed it.

The list of witnesses is being finalised, and McNally refused to respond to speculation that Deputy President F W de Klerk and IFP leader Chief Mangosuthu Buthelezi could be on it.

"The witnesses will be finalised in the indictment," was all he would say. Malan and his 10 co-accused will be added to the list of nine others accused of murder in connection with the massacre in 1987.

Malan's arrest and first court appearance earlier this month led to a flurry of activity in top police circles, sparked off by fears of a rightwing backlash.

*Sowetan*  
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# Nigeria SA 'watershed'

ET 23/11/95

JOHANNESBURG President Nelson Mandela's decision to spearhead calls for sanctions against Nigeria over its human rights policy represents a watershed in South African foreign policy, analysts said yesterday.

"This is a watershed in terms of our low profile in the past, but also a watershed in that it is an African state taking responsibility for an African problem," said Mr Greg Mills, director of studies at the SA Institute of International Affairs.

Mr Mandela has called for a southern African summit to discuss measures against Nigeria's military rulers over the hanging of nine minority

rights activists. The summit is expected later this month or in early December.

He has also pressed Britain and the United States to impose an oil embargo on Nigeria and urged the Shell oil company to curtail its operations there.

Mr Mills said he had just returned from the United States, where Mr Mandela's stance on Nigeria at the recent Commonwealth summit in New Zealand and at home had won praise. "The United States in particular has welcomed South Africa's stand and regarded it as long overdue." —  
Reuter

# No agreement on death penalty

CT 23/11/95

(252) 5-30

JOHANNESBURG The proposed Bill of Rights in the draft of the final constitution released yesterday makes provision for both the retention and abolition of the death penalty

In the clause on the right to life, the first option says "everyone has the right to life (and the death penalty is hereby abolished)"

The second option says "everyone has the right to life, and the right not to be deprived of life

except by execution of a court sentence following conviction for a crime for which the death penalty is prescribed by an act of Parliament"

Options are also given in the clauses dealing with freedom of expression, economic activity, property, education, and the rights of arrested, detained and accused persons

There is largely agreement that individuals and communities dis-

possessed of land after June 19 1913, as a result of discriminatory laws or practices, have the right to restitution of that land or equitable redress

Parties agree that everyone has the right to basic education, including adult basic education, in a state or state-aided institution, as well as the right to establish and maintain, at their own expense, private educational institutions — Sapa

## TRUTH AND RECONCILIATION

**Nats trapped by one-sided amnesty**

**This week's** visit by President Nelson Mandela and Constand Viljoen to former President P W Botha came against a backdrop of rising disquiet about the prosecution of the generals, and fears that the Truth Commission could turn into a one-sided tribunal.

In terms of the interim constitution of 1993, indemnity for political crimes is meant to apply to antagonists on both sides of the struggle divide. However, this ideal of reconciliation is perceived as having been compromised by the arrest of Magnus Malan and Co (*Leaders* November 10)

And because of an extraordinary failure by the Nationalists to obtain indemnities for its operatives in 1991 and 1992 — when ANC cadres received such “pardons” to enable them to return to SA — a one-sided assessment of past human rights violations is almost inevitable.

According to political analyst Lawrence Schlemmer, writing in Sacob's latest *Quarterly Political Notes*, the Nats' failure to protect its own side now means that “any former government official or operative is liable for prosecution unless he testifies to the ... Truth & Reconciliation Commission, after which he may be granted amnesty ...

“In this situation, the ANC has achieved something of a masterstroke. It can now force or effectively prevail upon previous government personnel to admit to the political crimes committed in the days of apartheid on pain of possible prosecution, with possible consequences which will severely damage the public reputations of its two strongest opponents, the National Party and Inkatha”

In a letter to Safety & Security Minister Sydney Mufamadi, former Commissioner of Police Johan van der Merwe has outlined the excesses of the struggle as seen by the NP. He claims that between 1976 and 1990, 623 acts of terrorism and sabotage were committed by ANC agents — leading to 153 deaths and 1 158 wounded.

These figures would appear to exclude random community violence, including necklacings, directed against local government figures — real or imagined — during the “ungovernability” campaign. They also exclude the more recent Shell House killings, for which Mandela has accepted overall responsibility.

Among those who benefited from indemnities in 1991-1992 are Deputy President Thabo Mbeki, four Ministers and two provincial ANC leaders. According to Schlemmer: “Most former government per-

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sonnel in relevant positions assumed that an agreement had been negotiated which would give them the same protection as the ANC operatives. They were even asked to complete documentation which they assumed to provide the necessary safeguards

“As it now appears, however, no formal indemnity was ever secured for former government personnel, which, whatever one feels about it, is inexplicable and a serious reflection on the strategic competence of the former government's negotiating team.”

The incompetence probably arose because the NP was too arrogant to believe it might have to secure indemnity for what had been done to defend apartheid — and because it believed it had done what was called for in the circumstances

Nevertheless, General Viljoen has warned Mandela of possible rightwing reaction if the trials continue and if the cut-off date for amnesty is not extended to May 10 1994.

Viljoen's presence with Mandela at the Botha meeting raises the prospect of how Botha plans to respond — if at all — to the latest developments



## TRUTH AND TORTURE

### Tutu's counsel

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The composition of the Truth Commission is likely to be known soon. Interviews have been conducted in various centres, and a shortlist of 25 names handed to President Nelson Mandela, who will consult Cabinet and select between 11 and 17 people.

What role Archbishop Desmond Tutu will play in the work of the commission — which has three committees dealing with human rights abuses, amnesty, and reparations — is not yet known. It seems probable that he will be involved. And given his commitment to reconciliation, that could help assuage fears that the commission will be turned into a one-sided tribunal.

What is certain is that SA is about to be collectively seared by revelations of torture — whether in apartheid's prisons or ANC struggle camps where mutiny occurred, physical abuse of dissidents was rife. Many were killed or disappeared — and the Truth Commission's essential focus will be upon these victims.

Inaugurating an international symposium on "Caring for Survivors of Torture" in Cape Town last week, Tutu pointed out that the constitution now guarantees freedom from torture. He called on parliament to ratify the UN Convention Against Torture since this would "compel the State to prosecute torturers to the fullest extent of the law, it will ensure that the government offers training in human rights to all members of the security forces, it will place a moral obligation on the State to provide redress and restitution to victims of torture, and it will put pressure on SA to extradite torturers to the land of their crimes."

This, of course, would seem to pre-empt some of the work to be performed by the Truth Commission — and compromise that of the amnesty committee if those who engaged in torture are to be prosecuted to the "fullest extent of the law." In fact, Tutu's statement raises afresh the question of ex-

actly how the Truth Commission will be able to conduct itself impartially.

As the *FM* has pointed out before (*Current Affairs* November 3), the Promotion of National Unity & Reconciliation Act exchanges amnesty for justice. But once such a principle has been accepted, it has to be applied even-handedly. If Tutu's remark at the torture conference is taken at face value, the threshold at which he would not grant amnesty is, precisely, torture — politically motivated or not.

Tutu also spoke of a new development that has affected the Anglican Church's Trauma Centre for Victims of Violence & Torture. "Your work is only just beginning in SA. As the political situation in our country normalises, as the Truth & Reconciliation Commission begins its work, as more and more refugees from war-torn African countries like Rwanda and Angola flee across our borders, you will find that your work is growing."

"We were naive to think that with the end of apartheid and the election of a new democratic government, the work of a torture rehabilitation centre would be nearing its end. On the contrary, your mission — to heal our nation, to mend the wounds of the tortured body of Christ — is only just beginning."

□ In his appearance before the selection panel for the Truth Commission, Tutu suggested that commissioners might themselves be in need of counselling because of the nature of the material with which they will have to deal. ■

## Victims urged to 'khulumani' (speak out)

(252) Star 24/11/95

BY HELEN GRANGE

Victims of violence have been given an opportunity to formally "speak out"—and in so doing, understand the process before they give evidence at the yet-to-be-established Truth and Reconciliation Commission.

Small support groups, dubbed "khulumani" (speak out), have mushroomed around the country on the initiative of the Centre for the Study of Violence & Reconciliation (CSV), with the objective of unifying victims of apartheid crimes and prompting them

to tell their stories

It is hoped that many of those who come forward to "khulumani" will repeat their stories at the Truth and Reconciliation Commission—with the purpose of purging the past and beginning the healing process

"The commission is not about granting amnesty to people who violated human rights. It is a fight for the restoration of the dignity and honour of our people," Justice Minister Dullah Omar said at the launch of an educational video on "khulumani" recently

He reiterated that amnesty was not

automatic for those who applied for it. Each application would be considered on its own merits

The "khulumani" educational video, which documents the stories of a number of Soweto residents who have lost one or more of their relatives to violence under the previous government, is being screened in township communities around the country

In addition, the CSV together with The Storyteller Group have published a colour comic book titled *Truth and Reconciliation*. These are being widely distributed

eat of right-wing action fails to impress

# Mystery witness protected overseas

(252) (252) MGT 24-30/11/95

A key witness, who could provide explosive evidence in the trial of General Magnus Malan and other officers, is under protection overseas

**S**EVERAL men, including at least one white former officer, are overseas on a witness protection programme and will be key players in the murder trial of General Magnus Malan and his co-accused

According to senior political sources, one of them could emerge at the trial as important as policeman Charlie Kloppers, alias Q, was when the Goldstone Commission of Inquiry made startling claims about the Third Force just before last year's democratic elections

The *Mail & Guardian* knows the identity of the witness who will testify against his former bosses

He and others on the witness protection programme overseas will give evidence to support information contained in a top-secret file which was handed to Natal's elite Investigative Task Unit earlier this year by military intelligence officers in the South African National Defence Force

Three weeks ago the M&G published details of some of the allegations contained in the documents which will be put to Malan and his colleagues — that a secret sub-committee of the State Security Council established a military training project in the Caprivi Strip for at least 200 Inkatha members

Now a string of witnesses who are under state protection will be called to

support the allegations in the secret file.

The indictment will be handed down to Malan, in his capacity as former minister of defence, and nine senior officers in the former SADF next Friday. Also joined in the indictment are six former KwaZulu policemen accused of killing 13 people including six children at Kwa-Makhutha in 1987

Among other prominent figures who feature on the list of the accused are Inkatha Freedom Party secretary general MZ Khumalo

There are 27 witnesses named so far. Among the less well known are:

- Brigadier Willem van Deventer, still serving in counter intelligence within the Department of Military Intelligence
- Brigadier Hattungh Pretorius, former officer commanding Natal Command
- General Benade, a former secretary of General "Kat" Liebenberg, who is accused of chairing the secret sub-committee which allegedly facilitated the Caprivi 200 project.
- National serviceman at the time, Jakoos Olivier
- Colonel Anton Niewoudt who worked for both South African and Ciskean military intelligence and who retired recently
- Brigadier Henne Blaauw, formerly of military intelligence who left the SADF and now works in Angola for the controversial military company, Executive Outcomes
- General Jan Buchner, former head of the KwaZulu Police and a former senior security policeman who specialised in interrogating suspected ANC members
- Detective Warrant Officer Mbhele who originally investigated the Kwa-Makutha massacre

Several key witnesses with important

# President tames

MGT 24-30/11/95

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Eddie Koch

**M**INUTES after PW Botha this week warned Nelson Mandela against waking the tiger of Afrikaner nationalism, a brown tabby cat wandered into the press conference and began rubbing itself affectionately against the legs of assembled journalists.

The incident served to underscore the president's view that threats of a right-wing backlash over the Magnus Malan murder trial are exaggerated and that it is best to leave the justice system unhindered to deal with a more serious threat — escalating hit-squad violence in KwaZulu-Natal.

There is little doubt Mandela is treating the Malan trial as one of the most delicate issues on his political agenda of late. It has raised the spectre of counter-revolution and the most serious rupture so far in the government of national unity.

A number of measures have been put in place to deal with disgruntled right-wingers. Last week, Mandela told former Defence Minister Joe Modise not to attend a military exhibition in Dubai in case of problems in the army's ranks.

Police Commissioner George Fivaz instructed one of his generals to survey the attitudes of police officers about the trial. And the president has been holding a series of briefings with businessmen, diplomats, police, army generals and church leaders to explain his determination not to interfere in the course of this explosive trial.

But Mandela has also taken a firm stance against the right by refusing to accept PW Botha's demands for a moratorium on all political trials. Apart from the fact that he is loath to interfere in the functioning of the judiciary, the president is convinced there

is no serious threat of mutiny or counter-revolution from the far-right.

Mandela also made it clear to Botha and Freedom Front leader Constand Viljoen, during the visit to the old president's home in the Wilderness this week, that he was deeply concerned by reports that elements of the third-force network allegedly set up in the mid-1980's by some of the accused in the upcoming trial were still actively stoking up violence in KwaZulu-Natal — and that there was little chance of any reprieve while these activities continued.

"All of this talk about awakening wild tigers is from people who are living in a theme park from the past. There is no fear in the president's office that anxiety amongst a range of right-wing people will translate into coherent and organised resistance," says secretary for Safety and Security Azhar Cachalia.

"The president has made it clear he does not have the power to interfere in a criminal case and in that sense he is not using the trial to curb violence in Natal. But we have consistently pointed out there is a culture of impunity amongst the killers in that province and, because of the trial, they will be increasingly aware they will be arrested and prosecuted."

Mandela's tough stance has been bolstered by what he sees as the strength of the documentary evidence and the array of witnesses, including senior defence force officers, who will be presented in court to back the attorney-general's case (see accompanying story).

There are strong indications the accused now know the extent of the evidence lining up against them, and the president has used this to suggest that Viljoen and other right-wing leaders run the risk of embarrassing themselves if they express too much

# CCB man wants his million

(252)

Mg 24-30/11/95

## Justin Pearce

**A**CIVIL Co-operation Bureau (CCB) operative turned mercenary boss and a disabled youth from Alexandra township made unlikely bedfellows as litigants in the Constitutional Court this week.

In separate cases, Lafras Luitingh and Mokela Mohlomi challenged Section 113 of the Defence Act, which places limitations on the right of citizens to bring civil action against the Minister of Defence.

But the supreme court cases which saw Luitingh and Mohlomi become simultaneous Constitutional Court litigants were as different as the backgrounds of the two men. Mohlomi is attempting to sue the Minister of Defence after allegedly being shot by a soldier in 1994 and suffering permanent disablement. Luitingh's case seeks compensation of more than R1-million for costs which, he says, he incurred after allegedly being forced to emigrate to the United Kingdom when the Harms

Commission exposed him as a CCB operative in 1990.

Luitingh, now usually resident in South Africa, is one of the founders of the controversial company Executive Outcomes, which offers soldiers for hire and is currently employed by both the Angolan and Sierra Leonean governments.

Luitingh is one of three directors of the holding company Strategic Resource Corporation, which owns Executive Outcomes.

As personnel officer for the CCB's Region Five (that is, operations inside South Africa), Luitingh was responsible for the employment of operatives such as convicted double murderer Ferdi Barnard, a former Britton Murder and Robbery Squad policeman who told Luitingh he had shot activist David Webster in 1989.

Luitingh's and Mohlomi's cases were both referred to the Constitutional Court after the Minister of Defence, as defendant in both cases, argued both claims were invalid since summons was not issued

within the six-month deadline specified by the Act. Mohlomi's case missed the deadline by a few days thanks to a student at Wits Legal Aid Clinic who mistakenly recorded that Mohlomi claimed to have been shot by a policeman. Luitingh's case, however, was brought to litigation only years after he was allegedly forced into exile.

**T**he cases were brought to the Constitutional Court on the grounds that Section 113 violates the constitutional provisions on equal access to justice, equality before the law, free economic activity and fair labour practices. Central to the applicants' arguments is the contention that Section 113 gives the minister greater protection against litigation than is available to ordinary citizens.

In court on Tuesday, Judge Diddcott raised questions about the appropriateness of referring the Luitingh case to the Constitutional Court when factual issues of evidence had

yet to be established by the supreme court. The case went to the Constitutional Court after applicant and defendant agreed that an early Constitutional Court ruling could potentially save much court time. If the court upholds the validity of Section 113, Luitingh's case can go no further. If, however, Section 113 is overturned, his case will be subject to further deliberation by the supreme court.

Luitingh maintains he was connected to the CCB and the then South African Defence Force by means of a special contract. Luitingh is trying to make the Defence Force compensate him in terms of his contract, saying he was forced to leave South Africa.

Many other members of the CCB were paid out millions of rands in secret settlements in and out of court since the covert operation was disbanded five years ago.

Even if Luitingh is in principle entitled to compensation, the sum involved remains in dispute.

# PW could face prison

(252) MG 24-30/11/95

Rehana Rossouw

**P**W BOTHA could face two years behind bars if he remains opposed to testifying before the Truth and Reconciliation Commission after it begins its work next year. His defiant refusal this week to "repent" before the commission could see him falling foul of the law.

The Promotion of National Unity and Reconciliation Act allows for imprisonment, a fine or both for any person subpoenaed to appear before the commission and failing to do so. The same penalties apply to witnesses who do not answer questions fully or satisfactorily.

The commission would — in all likelihood — be interested in hearing Botha's evidence. As former head of the State Security Council, he not only held political responsibility for the security forces during the total onslaught era, but also had an insider's knowledge of their actions against anti-apartheid activists and organisations.

However, Botha said records of meetings of the cabinet and the State Security Council were in his autobiography, although the latter had been

sanitised by FW de Klerk.

Former South African Police General "Basie" Smit, accused of human rights abuses by Judge Richard Goldstone last year, said this week he also would not be looking for mercy from the truth commission. "Never," he said.

He feels aggrieved that since Judge Goldstone named him as one of three police generals accused of grave offences he has never been asked any questions by the authorities about his alleged crimes. "I still don't really know what I am supposed to have done," he said.

● Human rights organisations this week expressed disquiet and unease that President Nelson Mandela might add new names to the shortlist of Truth and Reconciliation nominees handed to him by a special selection panel this week.

A source said NGOs were aware that Mandela had expressed concern at the lack of coloured people on the list. "The panel gave him a mandate to find a suitable person from KwaZulu-Natal because it is a region in conflict, but no other mandate." NGOs were concerned that new appointees would not be subjected to the same scrutiny undergone by other candidates, he said.

# Attorneys' profession is ailing, businessmen told

## Professional ethics under great pressure and trend will continue in future

Staff Reporter

THE attorneys' profession in South Africa is ailing, chairman of the International Bar Association's professional conduct committee, Ingrid Hoffmann, told delegates at a business ethics seminar in Cape Town.

Professional ethics were under "tremendous pressure" and the trend looked set to continue, the former director of the Cape Law Society said yesterday at the seminar organised by the Rotary Club of Bloubaerg.

Ms Hoffmann traced a perceived demise in attorney's ethics to the late 1970s when, "whether the attorneys liked it or not", they

were forced into becoming increasingly competitive and profit-driven.

"Many restrictive rules which protected attorneys from their colleagues at the time went out of the window," she said, citing advertising and negotiating conveying fees as examples.

But the greatest challenge to the profession's ethics — the "sheer volume" of aspirant attorneys graduating from the country's 19 law faculties — only came to light during the past two or three years.

Just half of all graduating attorneys could reasonably expect to be absorbed into the profession, she said.

At the same time the profession

was under pressure from various non-governmental organisations, among other groupings, to absorb as many graduates from disadvantaged backgrounds as possible.

"Even though many will not survive economically or ethically," Hoffmann said, "there was a growing culture among graduates that the world owed them a living."

"This is a dangerous development. I don't think the legal profession or the courts would do young graduates a favour by softening their attitudes."

The profession could simply not afford to be "further diluted", she said.

"I sincerely hope those in authority will come to grips with the problem and active steps will be

taken to preserve our traditional values."

Ms Hoffmann predicted the "threat to ethics" would continue until the living standards of the majority of people were improved, and there was a greater demand for sophisticated legal work.

South Africans should not fool themselves into believing the rainbow nation could ever become as efficient as uncultural countries such as Germany, Rabbi David Lapin of the South African Institute of Business Ethics said in his address to the seminar.

"It is far easier to be efficient in a uncultural environment than in a multicultural one," he said.

"But where there is diversity

there is far more opportunity for innovation and problem solving.

"Competitive advantage is not gained by efficiency alone, but by innovative thinking."

Rabbi Lapin said cultural and value diversity could be problematic if it translated into ethical diversity.

"We can have different beliefs, agendas and values but we need common ethics. You cannot play a game if the two sides are using different rules," he said.

South Africans needed to build relationships across the former apartheid divide if the country was to develop meaningful business ethics, said Abner Mofokeng, general manager of human resources at Southern Life

# Parliament to pick up the bill

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Art 24/11/95

**CLIVE SAWYER**  
Political Correspondent

PARLIAMENT is poised for a busy 1996, with more than 200 bills scheduled for processing by the national assembly and senate next year.

And some legislation, where a total review is required, may reach parliament only in 1997.

Some bills already tabled are expected to have a rough passage, including the Borrowing Powers of Provincial Governments Bill — which is currently also being considered by provincial legislatures — and the Ministry of Home Affairs' Film and Publications Bill, which provides for sweeping liberalisation of censorship laws.

Also likely to stir up controversy are the National Gambling Bill, and four land reform bills.

Already tabled are the Estate Agents Amendment Bill, Plant Breeders Rights Amendment Bill, Agricultural Research Amendment Bill, Youth Commission Bill, Exchequer Bill and the Transport Advisory Council Abolition Bill.

Private members' bill include the Fund for Victims for Violent Crime Bill, tabled by Democratic Party senator James Sefo, Criminal Proce-

dure Amendment Bill, by DP member of the national assembly Doug Gibson, and Wetlands Conservation Bill, by African National Congress senator Stefanus Grové.

More than 40 bills are to reach the state law advisers by the end of this month, in time for tabling in January.

It is planned that these will be passed before the Easter recess.

These include Agriculture Minister Kraai van Niekerk's Marketing of Agricultural Products Bill. This potentially controversial bill is expected to encounter heavy weather from the parliamentary committee.

Also to be tabled by Dr Van Niekerk is the Plant Improvement Amendment Bill.

Finance Minister Chris Liebenberg will table the Special Pensions Bill, which will provide for payment of pensions to former liberation army veterans, and the Currency and Exchange Amendment Bill and Financial Adjustments Bill.

Home Affairs Minister Man-



Chris Liebenberg



Mangosuthu Buthelezi



Dullah Omar



Pello Jordan

gosuthu Buthelezi will table the Registration of Births and Deaths Amendment Bill and Refugees Bill.

Broadcast, will table a package of bills, to reorganise posts and telecommunications in the former TBVC territories, an Independent Broadcasting Authority Amendment Bill, Public Broadcasting Services Bill, National Public Broadcasting Bill and Sentech Bill.

Trade and Industry Minister Trevor Manuel will table the Harmful Business Practices Amendment Bill and Trade Metrology Amendment Bill,

which assigns functions to provincial governments.

Transport Minister Mac Maharaj will table the National Roads Amendment Bill, International Air Services Bill, Road Accidents Fund Bill and International Convention for Prevention of Pollution from Ships Bill.

Kader Asmal, Minister of Water Affairs and Forestry, will propose a Rationalisation and Amendment of Water

Laws Bill and Forestry Amendment Bill.

Abe Williams, Minister for Welfare and Population Development, will table the Welfare Laws Amendment Bill.

Also be put to parliament will be Open Democracy Bill, the drafting of which has so far been piloted by Deputy President Thabo Mbeki.

Bills in the pipeline for introduction later in the year include:

● Six agriculture bills.

● Several local government amendment bills.

● Amendments to the Correctional Services Act to bring it into line with the Labour Relations Act.

● A Defence Amendment Bill, to be prepared when the Defence white paper has been completed.

● Several education bills, including a National Open Learning Agency Bill.

● Five environment bills, including the Cape Peninsula Protected Natural Environment Bill.

● Seventeen finance bills.

● Eleven health bills, including those on abortion and sterilisation.

● Six home affairs bills.

● Five housing bills.

● Eleven justice bills, on topics ranging from surrogate motherhood to the abolition on restrictions of jurisdiction of courts, and extradition and drug trafficking.

● Bills emanating from Law Commission reports, including those on Jewish divorces, div-

ision of pension benefits following divorce and trapping by police.

● Six labour bills, including those on occupational safety, unemployment insurance, and compensation for occupational injuries.

● Six land affairs bills.

● Several posts and telecommunications bills, including some based on the Independent Broadcasting Authority triple inquiry.

● Public works bills, including legislation amending rules on rating of state property, and on valuers, architects, the engineering profession and quantity surveyors, and

● Safety and security bills, including the Arms and Ammunition Amendment Bill and Teargas Amendment Bill.

Legislation regarded as unlikely to reach parliament before the end of next year includes the Correctional Services Bill, which will require a total review.

Also expected to be tabled only in 1997 are new laws on universities and technicians, national parks, sea fisheries, protection of sea birds and seals, five health bills — including on tobacco products and foods — and the Transport Ministry's Small Vessels Bill and Oil Pollution Bill.



## State lining up secret witnesses for Malan trial

ST 26/11/95

By MARLENE BURGER

(252)

TIM McNALLY, the attorney general of Natal, has confirmed that a number of secret witnesses will testify against former Defence Minister General Magnus Malan and two retired defence force chiefs facing 13 murder charges.

Mr McNally, who will lead the prosecution, said on Friday "several" key witnesses, including former SADF members, were in a witness protection programme.

Commenting on speculation that some of the accused had turned state's evidence, Mr McNally said he was preparing for Friday's court appearance "on the basis that all 20 accused will be charged".

General Malan, General Jannie Geldenhuys and General Kat Liebenberg are accused along with former security policeman Colonel Louis Botha, Inkatha Freedom Party deputy secretary Zakhele Khumalo, six members of the Kwazulu Police and another nine serving or retired military officers with the murder of 13 people at Kwamakhutha in January 1987.

The indictment against the 20 accused will be handed down in the Durban Supreme Court on Friday.

The state has produced a list of nearly 30 potential witnesses, including former National Intelligence Service head Dr Niel Barnard, former Military Intelligence chief Lieutenant-General Witkop Badenhorst and Kwazulu Police commissioner General Jac Buchner.

The trial will start in the Durban Supreme Court on March 4 next year.

By MARLENE BURGER

# Police swoop on senior magistrate

POLICE set a trap for a senior magistrate who allegedly coerced a Johannesburg advocate into sharing her fees with him

Senior Southern Transvaal regional magistrate Henne van der Watt, 54, was relieved of his duties as chairman of an inquiry into alleged irregularities in a government feeding scheme on Monday after he appeared in the Pretoria magistrate's court

President Nelson Mandela appointed Mr van der Watt to conduct an inquiry into the Department of Health's Protein Energy Malnutrition Scheme

Mr van der Watt was taken into custody by an officer from the Commercial Crime Unit. No charges were put to him when he appeared in court on Monday and he was released on warning and told to appear in court again on April 15

However, sources close to Mr van der Watt said he had instructed his lawyers to seek an earlier date for his court appearance "preferably before the end of the year" in order to "clear his name".

Last year, he led the inquiry into corruption and the manipulation of lucrative state contracts for prisons food

This led to the early re-

tirement of a Correctional Services general and senior public servants found to have been involved in fraudulent schemes which saw prisoners being fed substandard food for a number of years

The commission's findings also led to a R9-million claim against the state for breach of contract by soya product manufacturers Rodlion, which lost the prisons contract to Johannesburg-based company ProTol, found by the commission to have given of-

ficials gifts, free holidays and vast sums of money to secure the tender. The case is due to resume in the Transvaal Supreme Court on Tuesday

A spokesman for the Department of Justice, Pieter du Randt, said Mr van der Watt had allegedly claimed "in a corrupt manner" R3 150 of the fees due to Mrs E Kilian, an advocate appointed to assist him during the inquiry

Mrs Kilian had laid a complaint and a police trap had been set, Mr du

Randt said.

The Department of Health said the only claim submitted by Mr van der Watt since the inquiry began sitting in Pretoria on October 1 was for an amount of R467 in respect of the R10 daily allowance for "entertainment and incidental expenses" to which he was entitled as chairman of the commission

Mr van der Watt, a candidate for the post of chief magistrate in Johannesburg, would not discuss the matter this week

The commission will continue to function under the direction of Professor Pauline Khuzwayo, of Medunsa, and advocate N R Rathidili until a replacement for Mr van der Watt is appointed

Mr van der Watt is on leave.

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## MEC facing charges

THE Mpumalanga MEC for Safety and Security, Steven Mabona, is due to appear in the Pretoria magistrate's court tomorrow on various charges, including one of attempted murder.

Mr Mabona has laid a counter-complaint of crimen injuria against Pretoria

traffic officer Petrus Potgieter. Mr Mabona's bodyguard, a Mr Ndlovu, has laid a charge of assault against the officer.

Pretoria police spokesman Captain Dave Harrington said Mr Potgieter pulled a car off the road near the Loftus Versfeld

rugby stadium at 10.30pm on Wednesday to issue the driver with a ticket for reckless driving. The occupant was Mr Mabona.

The two had words, then in the process of issuing a ticket, Mr Potgieter went to the front of the vehicle to write down the registration particulars, whereupon the car allegedly went forward

# Truth panel to please all

ST 26/11/95 (252)

By CYRIL MADLALA

PRESIDENT Nelson Mandela is expected to announce a "politically correct" list of members of the truth and reconciliation commission after consulting his cabinet and other political leaders this week.

Political parties have cautioned that the final list should be acceptable to all sides for the commission's integrity to remain unblemished.

The short list of 25 nominees, which will be trimmed down to between 11 and 17 in terms of the constitution, is heavily loaded with human rights activists and lawyers.

Presidential spokesman Parks Mankahlana said Mr Mandela would announce the final list after discussions which would include Inkatha Freedom Party leader Mangosuthu Buthelezi and Deputy President F W de Klerk.

Mr Mandela intended to discuss the list with as many political leaders as possible, he said.

The National Party spokesman on justice, Dami Schutte, said if a sound balance was achieved in the final selection, national reconciliation would be fostered.

The Democratic Party's Gauteng leader, Peter Leon, said the selection panel had done a "good job of this very sensitive experiment", but both sides of the conflict had to be represented in the final list. Equally important, the IFP had to be satisfied with the line-up.

IFP spokesman Ed Tillet said Kwazulu Natal was not adequately represented on the short list which also excluded candidates seen to be sympathetic to the IFP.

Mr Mankahlana said the president had decided in principle that additional commissioners from Kwazulu Natal would be included on the list.

Topping the list of favourites for the final selection is Archbishop Desmond Tutu, for his international stature and track record for fighting for human rights.

Mr Leon said he fancied the Rev Stanley Mogoba, presiding bishop of the Methodist Church in Southern Africa, for the commission chairmanship. Christiaan de Jager, a

former Conservative Party MP, would probably make the list because of his far right-wing background, Mr Leon said.

The 25 nominees are: The Rev Murray Coetzee, Wendy Orr, Richard Lyster, Archbishop Tutu, Sibongile Kamphephe, Mr de Jager, the Rev Bongani Finca, Peter Monthle, Professor Andre du Toit, Bishop Mogoba, Thomas Mantsata, Father Michael Lapsley, Alex Boraine, Professor Bongani Majola, Mary Burton, Wynand Malan, Dumisa Ntsebeza, Hlengiwe Mkhize, Yasmin Sooka, Fazel Rander, Mapula Ramashala, Tumba Pillay, Professor Daniel Morkel, Imam Rashid Omar and Glenda Wildschut.

The commission will investigate human rights violations, and make recommendations on amnesty for the culprits and compensation for the victims.

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(252)

CP 26/11/95

## REPORTERS

**ANC - which spearheaded the abolition of the death penalty early year - is now reeling under enormous public pressure to help bring it in the face of nightmarish levels of violent crime.**

Millions of angry and terrified South Africans are declaring "Enough is enough" and many will come to a standstill at noon on Tuesday to observe a minute's silence in protest against the government's decision to force the government to take drastic action against crime.

ANC dominated government of national unity could review its position on the abolition of the death penalty.

■ This week two senior ANC members - Justice Minister Dullah Omar and Gauteng Premier Tokyo Sexwale - made statements which some interpret as indicating the ANC could be softening its opposition to the death penalty.

Sexwale has reportedly called for a referendum on the reintroduction of the penalty.

The SABC quoted him as saying "Pain should be applied to those who caused pain to others."

Sexwale has since denied that he supported the death penalty or a referendum on it. He said all he supported was the will of the people.

"I am daily inundated with calls for the death penalty. I am saying if this is the will of the people, I will accept it. I am not afraid of the will of the people - but I must emphasise I stick

by the ANC position on this issue.

"However, people must not think that the death penalty itself is the solution," he said.

■ Responding to Sexwale's statements, Omar yesterday said the Constitutional Assembly should urgently resolve the issue of the death penalty and that "it must not pass the buck".

Omar said if South Africa's people wanted the death penalty restored, "the Constitutional Assembly, which is chaired by ANC secretary general Cyril Ramaphosa, is the body that must decide on the country's future constitution".

A referendum could not achieve this, he said.

■ The anti-crime campaign, kicked off by the Rhema South Africa Ministers, has support from other churches, business organisations, political parties (including the ANC) and celebrities and sports personalities.

■ In a Radio 702 public opinion poll on the death sentence on Friday, 85 percent of those

who phoned in said they wanted it back.

■ There is rising fear that if the government does not take strong action, vigilante groups will take the law into their own hands.

Supreme Court Judge T Grobbelaar this week warned this was a strong possibility because sentences imposed by the courts were not being carried out.

■ The Women's National Coalition this week said one woman was raped every 83 seconds in South Africa - about 300 000 a year.

"Yet offenders are rarely charged - and when they are, they given ridiculously light sentences in most cases," it said.

■ The Women's Lobby has demanded a first action against crime from the Gauteng MEC for safety and security, Jesse Duarte.

"We demand that army vehicles patrol the streets to protect the lives of the people," it said in a statement.

■ Chief Rabbi Harris has also demanded that the defence force be used to help the police support for a referendum on the death penalty.

■ Yesterday Omar, commenting on Sexwale's said Sexwale was a leading figure in the ANC.

"If it is his view that the death sentence be restored, I'm sure the proper thing to do is for him to go to the ANC and get the ANC to take the appropriate decision," said Omar.

Earlier Omar had expressed his outrage at the murder of a 46-year-old father shot dead in his vehicle in front of his 10-year-old daughter. "No mercy should be shown to persons found guilty of such crimes," Omar said.

■ Duarte this week said strong action would be taken in the next few weeks against people with unlicensed and stolen firearms - and police would block bail for such accused.

"The fact remains," she said, "that lethally armed criminals have taken hold of our lives."

# No shift in our opposition to the death penalty, says ANC

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BY PATRICK BULGER

Political Correspondent

Star 27/11/95

The National Party said at the weekend it welcomed Gauteng Premier Tokyo Sexwale's "sudden support for a referendum on the death penalty".

However, the ANC denied that Sexwale had made an official call for a referendum on the issue.

Sexwale was quoted as saying after a visit to the family of a recent victim of a fatal car hijacking in Johannesburg's northern suburbs that he would not stand in the way of calls for a referendum.

"I am not asking for a referendum but I will not stand in the way of one," he said.

NP justice spokesman Danie Schutte said it was "no surprise that individuals in the ANC are now bowing to pressure with serious violent crime that is getting out of hand".

"Pressure from the overwhelming mass support for the reintroduction of the death penalty is in fact dramatically increasing," Schutte said.

Senior ANC figures, including Justice Minister Dullah Omar, have said that they respect the Constitutional Court ruling which earlier this year struck the death penalty off the statute books.

The ANC has accused the NP of pandering to public sentiment on the issue. The NP has called for a referendum on the reintroduction of the death penalty for the most serious of violent crimes.

In reaction to Sexwale's statement the ANC expressed its heartfelt sympathies with all those who have lost their loved ones.

"We are of the view that a comprehensive national crime strategy involving all sectors of communities has to be urgently developed to uproot the real sources of crime in our country," the ANC said.

"Premier Sexwale's remarks do not reflect any shift in the ANC's opposition to the death penalty. On the contrary the premier stands fully behind the ANC's respect for the supremacy of the constitution and the ruling of the CC on the abolition of the death penalty," the ANC said.

# Mandela v F W row over indemnity deepens

Star 27/11/95

(252)

By **MONDLI MAKHANYA**  
Political Reporter

Another row over indemnity has plunged relations between President Mandela and his deputy, F W de Klerk, as well as the parties they lead, to a new low over the weekend when they traded insults after the NP leader repeated his call for the immunity granted to ANC leaders to be reviewed.

At the centre of the row is the NP's demand that the Government should withdraw indemnity granted to 77 senior ANC leaders in 1990 if the prosecution of former defence minister General Magnus Malan and 10 other former military men goes ahead. The ANC has rejected the call.

In the latest bout of insult-trading, NP justice spokesman and KwaZulu Natal leader Danie Schutte yesterday labelled Mandela "a con artist" for confusing the immunity granted to the ANC leaders with indemnity.

"Mandela is attempting to mislead the public by deliberately confusing the immunity of the 77 lead-

ing ANC figures with indemnity," Schutte said in a statement.

Schutte's statement followed Mandela's saying De Klerk was "becoming a joke" by repeatedly raising the subject.

At the NP's Gauteng congress at the weekend, De Klerk made the call for the withdrawal of immunity to ANC leaders, including Defence Minister Joe Modise and his deputy Ronnie Kasrils.

ANC spokesman Ronne Mamoepa charged Schutte with making "a slanderous statement."

"We shall not dignify this slanderous statement, which impairs the dignity of the president, with a response until further consultations."

"Schutte has an exaggerated view of himself. He continues to harbour archaic ideas which have been abandoned by mankind entirely," Mamoepa said.

The ANC also said in a statement that the NP is "stuck" because its inability to differentiate between the situation of Malan and his co-accused and the former MK leaders was an "indication that the party's thinking is still stuck in the past".

# McNally refuses to confirm key witness in Malan murder trial

Star 27/11/95 (252)

Opperman is named as the secret witness believed to be in London on a protection programme because he fears for his life

**K**waZulu Natal attorney-general Tim McNally yesterday refused to confirm that Maj JP Opperman was the secret key witness in the Kwa-Makhuta murder trial of former defence minister Magnus Malan and former defence force officers.

Afrikaans Sunday newspaper Rapport named Opperman (37) as the secret witness believed to be in London on a witness protection programme because he feared for his life.

McNally said Opperman was named in the context of a bail application as one of the people the accused were not to contact.

"He was named in court

some time back in the context of a bail application when Gen Malan was also named as a witness before being made an accused.

"The prosecutor at the time made a mistake in calling them and others witnesses. They in fact were people with whom the other accused were not to make contact.

McNally said witnesses would be revealed when Malan and the other co-accused next appear in court on Friday to hear the indictment.

The trial itself is expected to start in the Durban Supreme Court on March 4 next year.

Rapport said Opperman

was directly involved in the training of 200 alleged Inkatha Freedom Party members at the Hippo military base in Caprivi, who were then deployed in the KwaZulu Natal police force. Several are facing charges with Malan.

At the Hippo base Opperman reportedly worked under Brig John More and Brig Cor van Niekerk, co-accused with Malan, at the base.

Opperman's evidence would probably be as important as that Maj Chappies Klopper gave in former Vlakplaas commander Eugene de Kock's trial in the Pretoria Supreme Court, the newspaper said - Sapa.

The last draft of the Bill of Rights is undergoing final touches, writes **Etienne Mureinik**

## A better Bill of Rights

MG 27/10 - 2/11/95

(252)

**T**HE Bill of Rights for the final Constitution is taking shape. Much of the working draft prepared by the drafting committee will still be revised, but the contours of the final product are clearly visible.

The committee's draft, though it still contains important defects, palpably improves much of the current Bill of Rights in the interim Constitution.

Probably the most conspicuous change to the current Bill is the inclusion of new socio-economic rights — entitlements to the basics of life, such as housing, health care, food and clean water.

These rights are a minefield for constitution-makers. One danger is that if the Bill declares, say, that everyone has a right to housing, that might create the impression that anyone can demand a house.

Since the court cannot possibly entertain such claims without usurping government welfare functions, it has to dismiss them, but that can discredit the Bill by leaving the impression that its rights are empty promises.

For this reason many believe that socio-economic rights should be excluded from the Bill altogether, but this can discredit the Bill by leaving the impression that it takes what many consider less urgent needs (such as the proposed fundamental right to choose a culture, whatever that may mean) more seriously than more urgent needs (such as emergency medical treatment).

The drafting committee has steered skilfully between these two dangers by imposing duties on the state to take "reasonable and appropriate" measures to deliver these essentials of a decent life.

The effect, once these clauses are properly polished, would be to make it the government's responsibility to supply these essentials, and the courts' responsibility to scrutinise government's measures for seriousness of purpose and carefulness of planning.

That is a healthy division of responsibility, and it is one which respects the strengths and weaknesses of governments and courts.

The drafters have done valuable work also on the rights to administrative democracy — the clauses designed to secure gov-



Etienne Mureinik

PHOTOGRAPH RUTH MOTAU

ernmental openness and accountability.

For those purposes two clauses are critical. One is the right to administrative justice, which guarantees administrative action that is reasoned, justifiable and procedurally fair. The other is the right of access to official information.

Those rights are undermined in the interim Constitution by restrictions and qualifications on their scope which weaken their effect and sap their coherence. The drafters of the new Bill have developed formulations that strengthen the current versions.

**T**he features of the draft Bill detailed here, and others, are important improvements on the interim Constitution. But none of these improvements will be of much value unless the constitution-makers produce a sound limitation clause.

The limitation clause is the provision which empowers government to override the Bill's fundamental rights. It allows government to defend laws which violate the rights by showing (to put it loosely) that they are democratically acceptable.

That makes the limitation clause the soft underbelly of the Bill of Rights. Unless it is

narrow and precise, it could make the rights in the Bill easy to trump, no matter how strongly they are worded. If it is too elastic, the limitation clause has the potential to sabotage the Bill altogether.

In the current debate, most parties agree that a law which limits a right must be justifiable in the kind of democracy to which our Constitution aspires (though the parties diverge on how to define this democracy).

A critical question is how justifiable a right-limiting law has to be. The drafting committee, in its written advice to the Constitutional Assembly, urged it to require that a right-limiting law be "necessary" in our democracy.

To remove the requirement of necessity from the clause, the drafters warned, "would be most unfortunate as a generous limitation clause would undermine the Bill of Rights".

Curiously, however, when their draft Bill was presented to the committee of the Constitutional Assembly, the drafters appeared to forget their earlier written advice.

Contradicting it, they advised the committee that it did not matter whether the clause required a right-limiting law to be merely "reasonable" in the democracy to which the Constitution aspires, or both "reasonable and necessary". For the sake of word economy, they advised that necessity be dropped.

In fact the requirement of necessity makes a critical difference. One scarcely needs to be a constitutional lawyer to see that far fewer right-limiting laws are "necessary" in a democracy than are "reasonable" in a democracy.

Properly applied, the necessity requirement would substantially enhance the capacity of the courts to protect the rights in the Bill from encroachment.

It would be a tragedy if much of the thought and effort that the drafters have invested in improving our Bill of Rights were to be lost through a single lapse of concentration. A tight limitation clause is indispensable to an effective Constitution.

Etienne Mureinik is professor of Law at Wits University.



# NP hits Mandela hard over indemnity issue

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27/11/85  
JOHANNESBURG.

The political row over indemnity for apartheid crimes heated up when the National Party accused President Mandela of trying to mislead the country.

"President Mandela is a con artist," the NP said in a statement and consistently tempting to mislead the public by deliberately confusing the immunity (from prosecution) of 77 leading ANC figures who have indemnity.

"These people, including Defence Minister Joe Modise and Deputy Defence Minister Ronnie Kasrils, received temporary immunity in terms of an Act of parliament without having to make any confessions."

The latest round of the long-festering row erupted earlier this month when former defence minister Magnus Malan and other generals were charged with 13 counts of murder in connection with the 1987 killing of ANC supporters.

Deputy President De Klerk on Saturday defended General Malan in a speech. In its latest salvo in the row, the ANC said in a statement yesterday there was a vast difference in terms of moral justification between the actions of Umkhonto weSizwe (the ANC's armed wing) and those in which General Malan is allegedly implicated.

The former leaders of Umkhonto weSizwe have always been open about their role in the armed struggle and it was on that basis that they applied for indemnity. "By contrast, General Malan and his colleagues have always denied involvement in the activities for which they are now to stand trial."

— Reuter

CALLS FOR REFERENDUM REJECTED

# Mandela stands firm against death penalty

CT 27/11/95

(252)

**THE CONSTITUTIONAL COURT** is the final arbiter and has been clear in ruling against the death penalty, President Nelson Mandela says. **ANTHONY JOHNSON** reports.

**P**RESIDENT Nelson Mandela has ruled out bringing back the rope

Gauteng's Premier Mr Tokyo Sexwale has called for a referendum on the death penalty — a move supported by Deputy President F W de Klerk and the Gauteng congress of the National Party at the weekend

Mr Mandela, however, has bluntly dismissed any re-opening of the debate

"The Constitutional Court is the final arbiter on matters of this nature," Mr Mandela said

"It has pronounced itself very clearly and I will defend any decision it takes, whether or not it is against my own interests"

Mr Mandela also said indemnity granted to members of the liberation movements would remain

(Former Defence Minister) General Magnus Malan and others

must follow the procedure followed by our people when they applied for indemnity," he said.

Mr De Klerk told the NP congress that if there was to be balance and fairness in dealing with the past, then Defence Minister Mr Joe Modise — a former chief of staff of uMkhonto weSizwe — would have to be charged on the same basis as Gen Malan

Mr Mandela, however, said that it was his prerogative, as president of the country, to decide who would receive indemnity

Sapa reported that Mr Sexwale had said that pain should be applied to those who had inflicted pain on others. He said the entire country was becoming increasingly concerned about the unacceptably high crime levels

Mr Sexwale said he did not want to impose his views and those of the ANC on the country

A referendum would enable the public to say whether it supported the death penalty

"However, people must not think that the death penalty itself is a solution," Mr Sexwale said

NP spokesman Senator Gerhard Koornhof told the NP congress in Pretoria on Saturday that the party was investigating the possibility of such a referendum. It favoured re-introducing the death penalty for serious offences

In response to Mr Sexwale's statement, Justice Minister Mr Dullah Omar said the Constitutional Assembly should resolve the question urgently. Even if hanging was brought back, the need to develop proper deterrents would remain.

"The Constitutional Assembly must decide whether the right-to-life clause in the constitution should be qualified to permit the death penalty"

In its response, the ANC said crime prevention plans, and not the death penalty, would target the real sources of crime



TENSION:  
President Nelson Mandela

# New row erupts over Truth Commission

ANTHONY JOHNSON  
POLITICAL CORRESPONDENT

JUST days before the long-awaited naming of the members of the Truth Commission, a flaming row has erupted between the leader of the ANC and the National Party over the handling of alleged

human rights abuses by those fighting for and against apartheid. Fueling the controversy is the growing personal enmity between President Nelson Mandela and Deputy President F W de Klerk and the appearance in court later this week of former defence minister Gen Magnus Malan and other top

military brass on murder charges. The growing tension was marked by the trading of insults at the weekend, with the President dismissing his deputy as "a joke" because he had said even-handedness required the prosecution of ANC members — including Defence Minister Mr Joe Modise

and Deputy Defence Minister Mr Ronnie Kasrils — for their role in the armed struggle. NP justice spokesman Mr Danie Schutte last night countered that Mr Mandela was "a con-artist" and had confused the immunity of the 77 leading ANC members with the immunity granted to ANC mem-

bers who had made confessions about their role in the struggle. The growing air of mistrust and suspicion was underlined by the weekend remarks of Western Cape Premier Mr Hermus Kriel, who said he believed the commission would turn into a "witch-hunt".

● See Pages 4 and 5.

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GROWING ENMITY:  
Deputy President F W de Klerk

# Pay for apartheid

(282) *Sowetan*  
28/11/95

South Africans  
should be  
compensated for  
apartheid crimes

By **Motsoko Pheko**

**T**HE TRUTH COMMISSION is established on a historically, politically, morally and legally wrong premise

It puts African freedom fighters against colonialism and apartheid on the same plane as the perpetrators of these twin evils

Apartheid has been an international issue. The 1973 United Nations Convention on the Suppression and Punishment of the Crime of Apartheid declared apartheid a crime against humanity.

This Convention was ratified by an overwhelming number of states throughout the civilised world.

In international law, therefore, apartheid as a crime is on the same footing as war crimes, genocide and "ethnic cleansing".

It is unjust that Richard Goldstone, a South African judge, is now heading a tribunal in Yugoslavia and is prosecuting alleged crimes against humanity there, while there is no such tribunal in South Africa to try the perpetrators of the crime of apartheid against local people.

## Granted amnesty

Recently Judge Goldstone said "I would seriously regret people charged with crimes such as genocide and crimes against humanity being granted amnesty."

"If there has been forgiveness, it must be by the people who have been victimised. I think we are going to have a lot more people standing for trial (in Yugoslavia)."

Why is the same not said about the crime of apartheid? This raises a very



Dr Motsoko Pheko ... 'victims of apartheid should be compensated'.

serious question for the conscience of the civilised world.

Also, the apartheid regime indemnified 3 500 of its own security forces and others, while Apla forces and other African freedom fighters lan-

gush in "new" South African prisons illegally.

This is a manifestation of utter contempt for the lives of the African people. It is also a denial of the Africans' full humanity and that they bear the

crimes

complete image of God by whom they were made

To treat them differently when it comes to crimes committed against them is camouflaged racism and a perversion of the words "truth" and "reconciliation"

The silence of the international community condones this barbaric act. This implies that Africans are not full human beings. A crime against humanity does not apply to them. A crime against humanity is only that which is committed against whites.

The Truth Commission is a naked injustice to the African people against whom a crime has been committed. It is justice denied to the African people.

They have to answer for crimes they have not committed. Others are not able to come home because they fear they might appear before the Truth Commission and be charged for their activities against the crime of apartheid they fought to end.

### Crimes against humanity

There is nowhere in the world where people who fought a crime against humanity appeared before a commission with those who perpetrated the crime. South Africa is the only country in the world where this iniquity is being committed with impunity.

The Allies of World War 2 never appeared before and in the same Commission as the alliance of Hitler, Mussolini and the then militaristic Japan.

The Truth Commission is a pretence of justice. Its very foundation is injustice and capitulation to the forces of racism.

Permanent peace and reconciliation cannot come out of a situation where so much is surrendered to appease the perpetrators of apartheid.

Apartheid is on an equal footing with war crimes and genocide for which, the world over, tribunals have been established to try heinous crimes.

Crimes against humanity, whether committed in times of war or times of peace, are defined in the Charter of the International Military Tribunal, Nuremberg, of August 8 1945. This is confirmed by Resolutions 3 (1) of 13 February 1946 and 95 (1) of 1 December 1946 of the UN General Assembly.

Municipal law or national law is superseded by international law, particularly in matters of crimes against humanity and gross violations of human rights.

The Convention on the Non-Applicability of Statutory Limitations to War Crimes Against Humanity does not have a time limit in which such crimes should be tried. Such crimes do not decay. They do not go stale.

That is why the Jews are still chasing and trying the Nazis for the crimes they committed against them 50 years ago.

The Truth Commission is a falsehood. It is a False Commission. A crime against humanity is a crime against humanity. There should be no

double standards.

Africans in this country are part of humanity. They must be protected from crimes against humanity. The lives of the African people have been treated as too cheap for far too long.

What must be established is a Reparations Commission, to look into how the victims of the crime of apartheid can be compensated for the damage to them and the atrocities perpetrated against them.

### Common law

Reparation is an old, established concept. It is the common law of mankind. It did not begin with the promise of 40 acres of land, \$50 and a mule by the United States government to people of African descent when they were emancipated from slavery.

In the Chorzow Factory Case (Jurisdiction), the Permanent Court of International Justice (under the League of Nations) stated that it was "a principle of international law that the breach of an international engagement involves an obligation to make reparation in an adequate form. Reparation is the indispensable complement of a failure to apply a convention."

A classic modern example of the applied principle of reparation is the payment of a \$1 billion in reparations in the Second World War era by Germany to Israel for the murder of Jews in Europe from 1935 to 1945.

It must be noted that, at the time of the atrocities, the state of Israel was not even in existence - yet when Israel subsequently became a state, it received the reparations.

After World War I, an Allied Reparations Commission, supported by the US, fixed the sum of reparations to be paid by Germany at 132 billion gold marks for its crime against humanity.

On 17 September 1987 the US House of Representatives passed a Bill granting reparations to Japanese survivors who were placed in concentration camps by the US government during World War 2.

### Payment of reparations

A large sum of money was paid in addition to a formal apology.

There are many other examples of payment of reparations. The reality is that there can be no genuine reconciliation without reparation.

A Reparation Commission, not a Truth Commission, is the only strong foundation upon which there can be genuine reconciliation. The reconciliation of slaves and their masters without satisfactory restitution is like asking the lamb to befriend a lion.

The Truth Commission will not achieve any reconciliation without reparation to the victims of the crime of apartheid.

(Dr Motiso Pheko is vice-president of the Pan-Africanist Congress and delivered this paper during a Institute for Multi-Party Democracy debate.)

Nov 28/11/95  
Lawyers face  
public exposé

(252)  
BY HELEN GRANGE

The law profession has seen 27 attorneys struck from the roll this year, with another seven suspended from practice, according to an editorial in the latest issue of the law journal De Rebus.

The journal has also announced its intention to regularly publish the list of names on the "roll of dishonour" - "as part of our contribution to the essential opening up of our disciplinary proceedings to collegial and public scrutiny"

"Such openness will help restore the image of the profession, an image which has been severely tarnished by media onslaughts during the course of this year," the editorial says.

But it pointed out that attorneys who had brought the profession into disrepute this year represented less than 0,4% of 9 600 practising attorneys

Natal law societies, at its annual general meeting recently, proposed that all disciplinary inquiries should be open to the public, including complainants.

Cape law societies have agreed to have laymen as members of their disciplinary committees and to actively publish the findings in serious matters

The Transvaal meeting decided to discuss, at a future special general meeting, proposals to hold all disciplinary hearings in public and to include laymen in the process.

At their annual general meeting, Free State attorneys decided to maintain their council's existing discretion to publish the findings of disciplinary committees

• Nomavenda Mathiane

THE Gauteng legislature's rules committee has recommended a seven-day extension to the period between publication and introduction of bills in the Gauteng legislature and their discussion, increasing the time allowed for public comment on Bills to 21 days

## Gauteng legislature suggests extension for comment on Bills

BD 28/11/95

Revising the procedures of the Gauteng legislature, the committee recommended extending the existing 14-day period, within which committees can start work on a Bill, and the public

deadline for comments.

The increase would help legislatures speed up legislation and reduce red tape while allowing more time for translation of Bills into four languages, said

head of proceedings  
Giles Mulholland

Gauteng DP leader and committee member Peter Leon said he was in favour of the extension because it prevented legislation being railroaded through standing committees.

It also afforded minorities more time to study Bills, Leon said

# Attorneys' body backs training plan for judges

(252) (FBI)  
Susan Russell

BD 28/11/95

THE Association of Law Societies has offered to make its facilities available to a proposed judicial training programme initiated by the Judicial Service Commission

An editorial in the December issue of the attorney's professional journal De Rebus commended the commission's decision to institute a training programme for new judges aimed at overcoming the lack of experience of many candidates from historically disadvantaged communities.

De Rebus said efforts to make the composition of the judiciary more representative in terms of race and gender were being hampered by small numbers of suitably qualified candidates. While the pool of available and qualified judicial candidates had been widened by the inclusion of attorneys, who may now be appointed to the bench, it remained a very small group of suitable candidates and natural growth was likely to be fairly slow, De Rebus said.

The editorial said that in the circumstances the commission could have followed the path of least resistance, thrown up its hands in despair and retreated into recommending appointments which would only serve to entrench the present unrepresentative composition of the bench.

Instead, the commission had decided on a more difficult route by intervening in the situation and instituting a judicial training programme aimed at overcoming the lack of experience of many candidates who had not had the opportunity to obtain the range of experience of their white, male counterparts. De Rebus praised the commission for its realistic and progressive attitude, but said the enthusiastic collaboration of the justice department, the bench and other sections of the legal profession was necessary if the programme was to succeed.



Carl Fritzenkotter, left, and Giulio, Bianca and Bruno Lareggian hold candles during a ca at Zoo Lake, Johannesburg, last night

# Indemnity could halt former officers' trial

Tim Cohen

20 28/11/95

(252)

CAPE TOWN — Former SADF head Magnus Malan and other former senior military officials could yet escape prosecution — but only if they applied for and were granted indemnity by the truth and reconciliation commission

Justice spokesman Sue de Villiers said yesterday legislation stipulated that the commission could ask for a criminal trial to be postponed while it heard an application for indemnity

Since the trial of Malan and others was due to resume in March next year and the commission was due to start sitting at about that time, it was technically possible for the former military officers to apply to the commission and avoid standing trial

But this could happen only if they made an application to the commission themselves, she said

After applying to the commission, Malan and others would have to convince the body's amnesty committee that they had made full disclosure and that the crimes they might have committed were politically motivated

If the committee decided to grant them amnesty their trials would then become superfluous

Reacting to the recent debate on the

issue of indemnity between the ANC and the NP, De Villiers said there was a vast difference between the granting of amnesty to 118 ANC members in 1990 and the case of Malan and his former colleagues

The 118 ANC members, including current Defence Minister Joe Modise and his deputy Ronnie Kasrils, were never granted indemnity, but only immunity from prosecution, and this immunity had been extended every year, De Villiers said

This immunity would expire a year after the truth commission was established. If those covered by this legislation wanted indemnity, they would have to apply to the commission, De Villiers said

Other ANC members, such as foreign affairs deputy director-general Robert McBride, who received formal indemnity but had not submitted to hearings, might have amnesty under "relatively easy terms".

But this amnesty had been granted in order to secure a negotiated settlement for the country in the context of an unstable political situation.

That context ought not to be forgotten, De Villiers said

Comment: Page 14

Land notices upset farmers

# 'Transparency' over truth body queried

ARG 28/11/95

Political Correspondent

INFLUENTIAL human rights figures and non-governmental organisations have questioned the transparency of the process of nominating Truth and Reconciliation Commission members, and have called for corrective steps

They have objected to the selection panel's suggestion that President Mandela possibly appoint additional members who have not submitted themselves to public scrutiny

They have also questioned the nomination of two of the 25 short-listed candidates, Freedom Front member Chris de Jager and law academic Dan Morkel, on the basis of their human rights record.

At a press conference today, Human Rights Commission (HRC) national leader Jeremy Sarkin said the selection panel's suggestion that Mr Mandela possibly appoint additional commissioners to ensure KwaZulu-Natal was more fully represented was not acceptable unless new nominees submitted themselves to an open process of public scrutiny

This view was endorsed by 25 other NGOs which met on Friday to assess the Truth and Reconciliation Commission selection process

Their concerns were conveyed to Mr Mandela in a letter yesterday.

Mr Mandela is to appoint between 11 and 17 commission members, in consultation with the cabinet, next month.

Mr Sarkin said the HRC and the NGOs — which had monitored the selection process and had played an active role in it, in part by submitting their own nominations — were, "broadly", happy with the shortlist of

25 names, with the exception of two

But the group was not happy with the suggestion that the president select at least one additional commissioner from outside the list of 25 to ensure KwaZulu-Natal was better represented

The group felt strongly that appointments to the commission should not be the subject of "party political horse-trading", but that they should follow "scrutiny by civil society"

"It would be highly problematic if someone was appointed without going through this process

"We recognise that there would be a problem if KwaZulu-Natal was not represented, but we call for an additional process to allow public scrutiny of further nominees, if these are required to fill gaps in terms of areas of the country or constituencies"

On the nomination of Mr De Jager, a Freedom Front member of the Human Rights Commission, and Professor Morkel, dean of the law school at the University of the Free State, Mr Sarkin said "In terms of the criteria laid down for membership of the Truth and Reconciliation Commission, we are not sure how these nominees fit in. We question their nomination on the strength of their human rights record"

The HRC and other NGOs had asked selection panel chairman Fink Haysom to respond publicly to criticism of the nomination of Mr De Jager and Professor Morkel.

"We are not here merely to criticise, but we believe civil society has an important role to play and we want to ensure there is an open and transparent process," he said

# 'I know my conscience is clear' declares Malan

PRETORIA. — Former defence minister Magnus Malan declared his innocence today on charges that he ordered the murders of 13 people in 1987 — and said he feared his prosecution could cause economic turmoil.

"I do know that my conscience is clear," he told a meeting of foreign correspondents.

"I have no knowledge of the circumstances and details of this atrocity that took place about nine years ago," he said.

"At no stage did the State Security Council indicate, plan or decide on murder actions.

(252) (334) ARG 28/11/93  
"But should any member of the previous State Security Council be charged with these or similar deeds, such action might cause turmoil in South Africa, politically and economically," said General Malan.

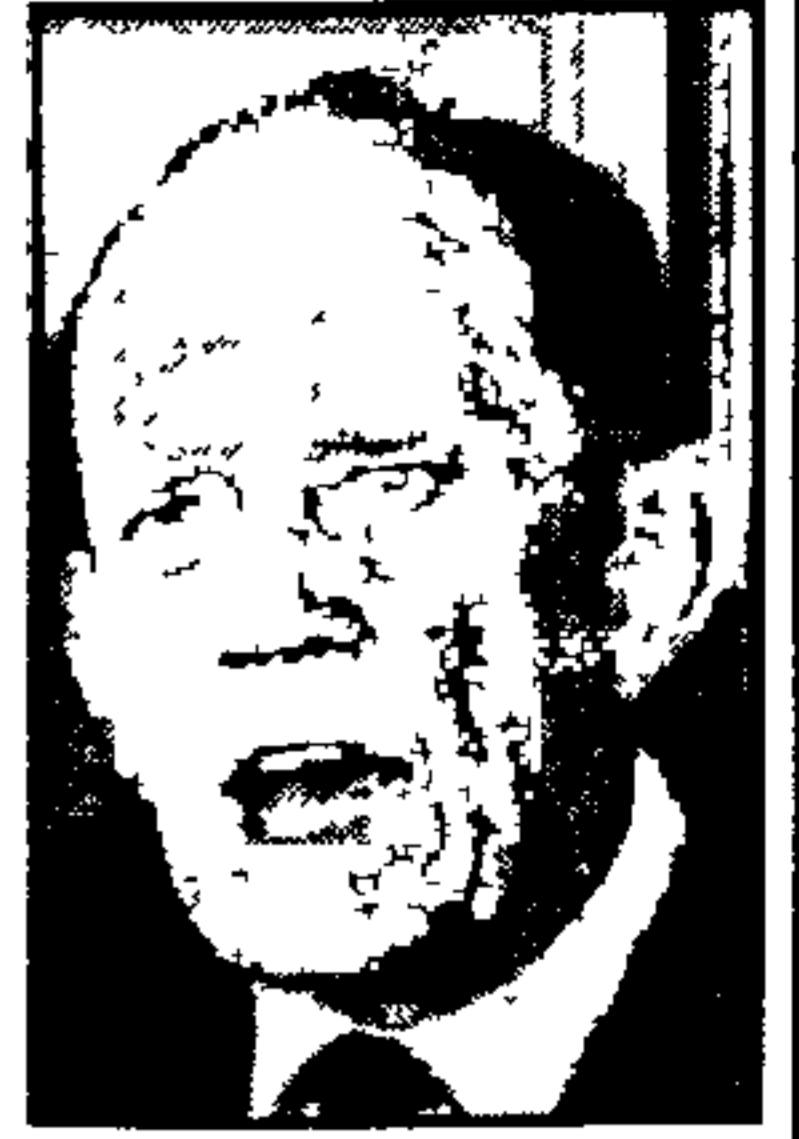
He said he was concerned that there would not be equal treatment of the two sides in the war over apartheid.

He cited the failure so far to prosecute anyone in connection with the Shell House massacre last year, in which at least eight Zulu marchers were killed outside the ANC's Johannesburg

headquarters.  
"We are charged with a deed ... where we plead our innocence.

"Against this, the ANC admitted publicly that last year, when peace prevailed, they issued orders to defend their political headquarters with rifle fire. The result was that demonstrators were killed in cold blood by the ANC. No legal action has been taken in this case."

General Malan and other top former Defence Force officers are to appear in court on Friday. — Reuter.



Magnus Malan

# Truth Commission short-list under fire

CT 28/11/95 (252)

**ANTHONY JOHNSON**  
POLITICAL CORRESPONDENT

THE finalising of the members of the Truth Commission has met with resistance in progressive legal circles

The National Association of Democratic Lawyers (Nadel) is expected to spell out its objections and possible misgivings about the panel of between 11 and 17 members to be announced by President Nelson Mandela after tomorrow's cabinet meeting

Nadel members voiced concerns that some members of the commission might not have been subjected to public scrutiny and expert questioning before taking up their seats

Professor Fink Haysom, convener of the selection committee which handed a short-list of 25 names to Mr Mandela last week, noted that the committee was concerned that the strife-torn province of kwaZulu/Natal was under-represented on the list and urged the President to consider including other candi-

dates from that province

There is only one candidate from kwaZulu/Natal on the list, compared with eight from Cape Town alone

Yesterday the NGO Justice in Transition released a 28-page booklet aimed at familiarising the public with the objectives, functions and procedures of the Truth and Reconciliation Commission

Anyone wanting a copy of the booklet, in any of the 11 official languages, can call the organisation at (021) 686-6150

# Lobby queries commission list

(252) MAY 29/11/95

BY MONDLI MAKHANYA  
and JOVIAL RANTAO

The finalisation of the Truth and Reconciliation Commission will dominate today's fortnightly Cabinet meeting at which a list of 11 to 17 commissioners will be drawn up.

A list of 25 potential Truth commissioners was given to President Mandela last week and the Cabinet will have to choose a credible group from this. This will enable the body to begin its work of investigating apartheid-era human rights violations in January.

Another major issue on the Cabinet agenda will be a crime prevention strategy involving the deployment of armed soldiers in crime hotspots in Johannesburg and Pretoria.

But the long awaited announcement of who will comprise the commission was soured yesterday by the written objection of a human rights grouping of 30 to the inclusion of former Conservative Party MP Chris de Jager and Publications Appeal Board (PAB) member Dan Morkel in the shortlist.

The human rights coalition includes influential non-governmental organisations

such as the Black Sash, the National Association of Democratic Lawyers, the Institute for MultiParty Democracy and the Human Rights Committee.

In a letter written to Mandela, the NGOs say Morkel, as head of the PAB, "played a central role in withholding the type of information that the Truth Commission now needs to disclose".

Morkel was chairman of the board in 1991 and was subsequently involved with the Ministerial Task Group regarding Publication Control Research in 1994.

Assurance is needed about Morkel's ability to reveal the truth about human rights violations, the group said.

According to the group the transferral of De Jager from the Human Rights Commission on which he already serves to the Truth Commission could affect the "equally important" work of the HRC.

Furthermore De Jager's political background, as well as his compromising party political profile, indicated that he did not fulfil the criteria of having a human rights track record, the letter by the group said.

# No one above the law, says Mandela as Malan warns of destabilisation

(252) ~~252~~

Former defence minister claims prosecutions are a political ploy by the ANC

BY PATRICK BULGER  
Political Correspondent

The pending trial of former defence minister Gen Magnus Malan continued to evoke controversy yesterday as President Nelson Mandela warned that nobody, no matter how high his position, would be spared prosecution if there was evidence of his involvement in human rights abuses.

Mandela, talking to reporters at the Union Buildings in Pretoria after a meeting with the country's leading political scientists, did not indicate whether more arrests were imminent.

Earlier, also in Pretoria, Malan told a Foreign Correspondents Association breakfast that turmoil could result if the prosecutions went ahead, AFP reports. The ANC, reacting to Malan's statement, said "South Africans of all persuasions



**Magnus Malan ... denies knowing about hit squads.**

are tired of threats of violence, mayhem and turmoil by General Malan and the National Party."

The prosecution of Malan and 10 senior military figures featured

prominently at Mandela's meeting with the political scientists. The academics included professors Alf Stadler, Tom Lodge and Themba Sono of the University of the Witwatersrand

Mandela said after the meeting that he was "not prepared to defend anybody", no matter what position they held. The discussion focused on fears expressed by some commentators and academics that the prosecutions could destabilise society.

"We are a government that has established a culture of transparency in this country and anybody - no matter what position they hold - who is found to have committed a crime which is not covered by the parameters we set to define what a political offender is, must be brought to the courts and prosecuted.

"He must be accountable for what he did. We are looking at the matter not only from the point of

view of those who committed these offences. We are also looking at it from the point of view of the relatives of the victims of those crimes. It is proper to look at both sides," Mandela said.

Sono, who was asked whether he felt the prosecutions would destabilise society, said Malan was entitled, if found guilty, to approach the president for a pardon.

Malan at the FCA breakfast described the arrests as a "political ploy". He denied knowing about hit squads and said the State Security Council had never planned murders.

"Should any member of the previous State Security Council be charged with these or similar deeds, such action might cause turmoil in South Africa, politically and economically," he said.

Malan and the other accused are to be formally charged on Friday

STAN 29/11/95

# Harsher crime law ready to bite back

Star 29/11/95 (252) (2)

Package of tough deterrents to be in force before Christmas in bid to stem hijacking and other violent crime

By Norman Chandler, Taryn Lamberti and Lorna Zokufa

A package of tough anti-crime laws enacted by Parliament earlier this year are to be implemented before Christmas, Justice Minister Dullah Omar has announced.

He has also briefed magistrates extensively on the harsher bail procedures contained in the laws to ensure the justice system understands what is required of it.

Omar yesterday unwrapped what he called "a package of deterrents" aimed at cutting back on the high levels of crime, in particular vehicle hijacking and murder.

The package being finalised by the Justice Department provides for longer jail sentences for adults and juveniles, refusal of bail, tougher bail conditions, revised sentences for murderers previously on death row, and no parole for murderers and others found guilty of serious crimes unless a judge has thoroughly investigated and reviewed their case.

The relevant new laws will be implemented between now and December 15.

Omar told The Star "All the current debates about crime will come to naught unless we have a package. We need to assure the public that something is being done."

"It has to be an effective deterrent which will undoubtedly carry a message to the potential offender that he will be caught and sentenced, and there must be no doubt in his mind that that will be the case. He will be apprehended, the case investigated, and he will be charged and sentenced. That is the package for him, and it is a very important package."

Omar said that bolstering the deterrent aspect of the law was paramount because "the overwhelming statistics in connection with hijack-

ings, for instance, show that the hijacker is not being apprehended. They escape justice, and that sends a signal to the criminal that he can get away with this crime."

Omar also said he had made it clear in meetings last week with officials of the Regional Courts Association, of which magistrates are members, that the courts should use their new, wider powers to reject bail and that the letter of the law in this regard needed to be applied firmly.

Greater powers were being conferred to magistrates' and regional courts to impose stiffer sentences.

Section 29 of the Correctional Services Act was also being overhauled to provide for longer sentences and prison terms for young offenders.

He was aware there could be a public outcry about the sentencing of juveniles to long jail terms, but said "we are looking at this because the safety of the public must come first."

Police Commissioner George Fivaz has reacted strongly to accusations by Johannesburg Major Isaac Mogase that senior police officers are involved in car hijacking syndicates.

Fivaz's statement follows a press report quoting Mogase as saying top Gauteng police officers would be arrested "in the next couple of days and weeks" for alleged complicity in car hijackings.

Fivaz, in a statement released last night, said he was deeply shocked by Mogase's comments because no cases of this nature had been brought to his attention.

He had immediately arranged for Mogase to be interviewed "so that the people involved be arrested without delay."

Fivaz added if Mogase's comments were true, the actions of a small minority of "corrupt police officials" could not be allowed to contaminate the efforts of the vast majority of honest and dedicated officials.

# Truth commission selection process was not soft

(252) Bd 29/11/95

RICHARD Calland's views on the selection process for the Truth and Reconciliation Commission (Business Day, November 16) cannot go unchallenged. His criticisms of the process do it an injustice and could serve to prematurely discredit what we believe to be a valuable model for the future.

Calland questions the "conceptual underpinnings of the interviews" and argues that unlike the Judicial Services Commission (JSC) the role of the panel which interviewed prospective candidates is not "clear cut". He complains that the "panel has no written document to guide them" and implies the criteria it applied were "plucked from the air".

Calland's comparison with the JSC is not useful. The JSC was interviewing candidates for the Constitutional Court. Although we have not had a previous Constitutional Court to use as a benchmark to evaluate potential candidates, it is relatively easy to agree on the skills and qualities one is looking for in a judge. Given this agreement, it is then straight forward to draw up a fixed set of criteria according to which each candidate is assessed.

Selecting truth commissioners is a profoundly different enterprise. It is difficult to construct the ideal truth commissioner. Should one prioritise impartiality above all else or should one rather place a premium on a person's commitment to human rights? Given that the legislation precludes the appointment of people with a high political profile, how does one define this term?

How does one ensure that the commission as a whole enjoys the

greatest possible trust across the broadest spectrum of people? How does one deal with the historical fact that the vast majority of people who campaigned and suffered for the cause of human rights were associated, or seen to be associated, with only one side of the SA conflict?

These are not easy questions to answer and the panel chose (wisely) not to generate solutions mechanically and then to commit them to a "written document" in the form of narrow and specific criteria. Instead the panel maintained an open mind and invited candidates to offer their views on how best to constitute the commission.

In so doing the panel was given the opportunity to engage in an intelligent and enriching dialogue, not only about the substantive issues, but also about the composition of the body that will spearhead this process. By the end of the 49 interviews, the panel had gained insights which allowed them to discuss the formulation of the shortlist in a subtle and sophisticated manner. This is far preferable to a process of "appointment by checklist".

Calland's second objection is that the questions put to candidates were "rarely anything other than general and/or benign".

In this respect he has mistaken form for content. It is true that the panel did not adopt a style of questioning similar to Judge Mchamed's grilling of the candidates for the SABC board. In fact they consciously chose not to adopt an inquisitorial approach to the hearings. This allowed candidates to en-

## PAUL VAN ZYL and PATRICK KELLY

gage with the substance of questions without having to resort to banter or point-scoring.

However, the fact that the hearings were conducted in a cordial and informal manner did not mean the questions were "soft" or innocuous. Virtually all candidates were asked, "If the Truth and Reconciliation Commission uncovers information which would lead to a rebellion or a collapse of the government of national unity, would you release it?" A state prosecutor was asked, "Do you think a person who you prosecuted and had convicted would feel comfortable testifying before the commission if you were on it?"

The following questions were put to an exile: "There is an argument that exiles enriched themselves and acquired degrees overseas while others who remained in SA engaged in the struggle at great personal cost. How would you respond to that?" A theologian was asked "How do you justify your church's support of apartheid?" The fact that these questions were asked in a general manner in a comfortable setting does not make them any less probing.

Calland's final criticism is in our opinion the most problematic. He contends that the process was "fundamentally flawed" because the selection panel was not compelled to release reasons for their decisions and because the process was not open to greater public scrutiny.

On the first score Calland is off

target. The letter containing the short list which the panel sent to President Mandela sets out the general approach and principles which they followed during the appointment process. It does not set out individual reasons for the selection of each candidate, but it is questionable how useful these would be anyway.

Which brings us to the contention that the process should be open to "greater public scrutiny". It is hard to imagine a more open appointment process. The public was invited to submit names for consideration for appointment to the commission. An initial short list was published giving anyone the opportunity to provide the panel with comment on any of the candidates prior to their public interview.

The interviews were open, which provided organisations, lobby groups and the media with an opportunity to hear candidates views and another chance to comment. A final short list has now been presented to President Mandela which yet again gives various interest groups a chance to submit their views.

If Calland is suggesting that the media or the public should have been able to attend the meeting in which the panel selected the 25 candidates for presentation to President Mandela, we submit that this would have been profoundly counter-productive. This kind of scrutiny politicises a process, making it difficult for panelists to abandon candidates which their party endorses, but which they no longer support after having had the benefit

of discussion with other panelists. It also inhibits frank discussion of the flaws of certain candidates for fear that this criticism may come to their attention. If one is opposed to crude party political horse-trading one should realise that an unequalled commitment to "openness" cannot impede rational decision-making, rather than support it.

In conclusion the truth commission selection process offers an interesting and innovative model which should be considered for the future. It offered the opportunity for full public participation and comment at virtually every point in the process. Most importantly the selection panel was composed of representatives of both political parties and civil society.

The presence of the latter meant that the capacity for politicians to engage in horse-trading was limited, while the presence of the former meant that a short list could be formulated which enjoyed the trust of a broad cross-section of society.

There is one final hurdle that the selection process must pass. President Mandela and the Cabinet must choose between 11 and 17 commissioners from the short list of 25 which was presented to them. There is talk that the president is considering appointing commissioners from outside the list presented to him. Only then, in Calland's words, will the truth commission process have "flattered to deceive".

Paul Van Zyl works at the Centre for the Study of Violence and Reconciliation, and Kelly at the Human Rights Committee.

## REVIEW



THE DOWNS IN TERNATIONAL TELECOMMUNICATIONS ORGANIZATION

## CSIR board: six named

BD 29/11/95 (252)  
Susan Russell

TRADE and Industry Minister Trevor Manuel announced yesterday the names of six new Council for Scientific and Industrial Research (CSIR) board members. They join four members of the previous board.

New members are UCT's Energy for Development Research Centre head Anton Eberhard, Peninsula Technikon's School of Science director Dhiro Gihwala, Nampak manufacturing development manager Khlototso Phihlela, Wits deputy vice-chancellor Friedel Sellschop, IBA councillor Lyndall Shope-Mafole and the University of the North's head of biochemistry, Errol Tyobeka.

Those remaining are Anglo deputy chairman Les Boyd, SABC chairman Ivy Matsepe-Casaburri, Sappi executive chairman Eugene van As and Altron chief Bill Venter.

# Malan warns of turmoil if murder trial proceeds

BD 29/11/95 (252)

PRETORIA — Former defence minister Magnus Malan warned yesterday of "turmoil" in SA if government went ahead with a trial in which he and 10 apartheid era military officers are to be charged with murder.

Malan told foreign correspondents the prosecutions were a "political ploy" by the ANC, and claimed former security force members were being unfairly targeted.

He and the officers will formally be charged on Friday in the Durban Supreme Court with 13 counts of murder relating to a 1987 massacre in the KwaZulu-Natal township of Kwa-Makhutha.

According to government sources, the charges stem from a decision in the mid-1980s by the former state security council, headed by Malan, to train IFP members as a death squad to counter the growing popularity of the then-banned ANC.

Malan denied knowledge of any death squad and said that at no stage did the state security council "indicate, plan or decide on murder actions".

Malan said he was worried the court case would "antagonise moderate mainstream citizens of the country" and urged the ANC "to let bygones be bygones".

He noted that the announcement of the prosecutions came on October 29, several days before South Africans went to the polls in the country's first all-race local government elections, and that the trial proper was due to begin on March 4 next year, only a few weeks ahead of local government elections in KwaZulu-Natal.

Justice Minister Dullah Omar, however, denied there was a political motive behind the prosecutions.

"I very much regret that he (Malan) makes that statement," Omar said. "He is completely wrong. I wish people would refrain from making statements of that kind."

The ANC yesterday brushed aside the warning by Malan.

"The stability of our country hinges not on the whim of the NP and a few individuals. Our democracy is premised on the will of the majority," it said in Johannesburg.

Malan had been charged by the attorney-general on the basis of evidence put at his disposal by law enforcement agencies, and the ANC had no influence over these agencies, it said.

"Instead of resorting to political bluster, Gen Malan should gracefully take his seat in the dock and prove his innocence" — Sapa-AFP

# Deterrent 'package' for Xmas

**SPECIAL CORRESPONDENT**

PRETORIA: Crime-weary South Africans are to be given a cracker of a Christmas present by Justice Minister Mr Dullah Omar, who has unveiled a package of tough anti-crime laws

Mr Omar yesterday unwrapped what he called "a package of deterrents" aimed at cutting down the high levels of crime, in particular vehicle-hijacking and murder

He said the relevant laws, enacted by Parliament earlier this year, would be implemented by December 15

The package, which is being finalised by the Department of Justice, provides for longer jail sentences for adults and

juveniles; the refusal of bail, tougher bail conditions, the re-sentencing of murderers previously on death row, and no parole for murderers and others found guilty of serious crimes unless a judge has investigated the cases

The minister has also briefed magistrates extensively on bail procedures

Mr Omar said: "All the current debates about crime will come to nought unless we have a package. We need to assure the public that something is being done

"It has to be an effective deterrent which will carry a message to the potential offender that he will be caught and sentenced, and there must be no doubt in his mind that that will be the case"

Mr Omar said that bolstering the deterrent aspect of the law was paramount because "the overwhelming statistics in connection with hijackings, for instance, show that the hijacker is not being caught. That sends a signal to the criminal that he can get away with this crime."

The courts are to be given wider powers to refuse bail — "this is something that needs to be jacked up" — and instructions have already gone out to magistrates in this regard

There are also greater powers being conferred to magistrate and regional courts to impose heavier sentences, particularly to people found guilty of serious crimes such as murder

ET 29/11/95



Tutu



Boraine



Burton



Malan



Orr

# Members of Truth Commission have extensive experience

□ Clergy, lawyers and psychologists to hear testimony

(252) ARG 30/11/95

PRETORIA. — The following people have been named to sit on the Truth and Reconciliation Commission

**Archbishop Desmond Tutu** (leader of the commission) One of three Nobel Peace Prize winners from South Africa, Archbishop Tutu is a household name. He is the Archbishop of Cape Town of the Church of the Province of Southern Africa.

**Dr Alex Boraine** (deputy leader) He is serving as executive director of Justice in Transition, formed in August last year to focus on redressing past human rights violations. Ordained as a Methodist minister in 1938, he served as executive director of the Institute for Democracy in South Africa from 1986 to 1994.

**Mrs Mary Burton:** She was president of the Black Sash from 1986 to 1990 and is still a member of the organisation. She has been involved in discussions and workshops relating to the Truth Commission.

**Advocate Chris de Jager:** A lawyer, he is a member of the Volkstaat Council and a member of the Human Rights Commission.

**The Rev Bongani Finca:** He was appointed interim administrator of Ciskei after military ruler Brigadier Oupa Gqozo's administration collapsed. He is president of the Eastern Cape Provincial Council of Churches and a member of the national executive committee of the South African Council of Churches.

**Ms Sisi Kamphephe:** She is a

lawyer and a member of the Black Lawyers' Association.

**Mr Richard Lyster:** He is a lawyer and has been director of the Legal Resources Centre in Durban since 1990. He serves on the arbitration panel of the Independent Mediation Service of South Africa.

**Mr Wynand Malan:** He resigned as a National Party MP under former state president P W Botha. He then formed the National Democratic Movement, which later merged with the Progressive Federal Party to form the Democratic Party. He quit politics in 1989 and practices as an attorney and value systems management consultant.

**Ms Hlengiwe Mkhize.** The national director of Mental Health and Substance Abuse, she is a psychologist who specialises in treating people traumatised by violence. She is a member of the South African Black Social Workers' Association and the International Society of Medicine and Law.

**Mr Sumisa Ntsebeza:** He is an attorney and served as founder president of the National Association of Democratic Lawyers and later as president of the Black Lawyers' Association. He is now the BLA's publicity secretary and serves as chairman of the Prisoners' Welfare Programme.

**Dr Wendy Orr:** She compiled a list of detainees who were tortured in Port Elizabeth in the mid-1980s and successfully filed an interdict against the Minister of Law and Order to prevent po-

lice from assaulting prisoners. She is deputy registrar of student affairs at the University of Cape Town.

**Dr Mapule Ramashala:** She is a clinical psychologist and medical researcher who recently returned to South Africa.

**Dr Faizel Randera:** He was a member of a committee of the National Medical and Dental Association that investigated the poisoning of former South African Council of Churches leader the Rev Frank Chikane in 1989. Dr Randera has worked extensively with human rights lawyers, providing medical-legal reports on people who suffered physical and psychological abuse.

**Dr Yasmin Sooka:** She is a lawyer and national president of the World Conference on Religion and Peace. She served as a member of the legal task force in the National Co-ordinating Committee for the Repatriation of South African exiles.

**Ms Glenda Wildschut.** She is a social worker at the Western Cape Trauma Centre and has worked with underprivileged communities in the Western Cape. She also has worked with victims of violence.

**The Rev K M Mqojo:** He is a Methodist clergyman from Kwa-Zulu-Natal.

**Advocate Denzil Potgieter:** He is a member of the Cape Bar who has appeared in various civil and political rights cases. He acted as secretary for the presidential panel which shortlisted the Truth Commission candidates — Sapa

# Rope favoured by most poll

Staff Reporter

(262) ARC 30/11/96

SEVENTY-SEVEN percent of South Africans favour a return to the death penalty, a national survey released today reveals.

The rope is more popular in the Western Cape than anywhere else in the country, with 87 percent of Western Cape respondents favouring the ultimate punishment, compared to 69 percent in Mpumalanga and Northern Province and 74 percent in Gauteng.

The release of the results comes six days after Gauteng premier Tokyo Sexwale called for a referendum on the issue and three days after President Mandela slapped Mr Sexwale down, saying the Constitutional Court was the final arbiter.

The death penalty was abolished by the Constitutional Court in June.

Everyone, including the most abominable of human beings, has the right to life and capital punishment is therefore unconstitutional, wrote court president Arthur Chaskalson in his judgment.

The survey revealed that 91 percent of Afrikaans speakers favoured bringing back the death sentence, compared to 88 percent of English speakers, 69 percent of Ngunis and 68 percent of Sothos.

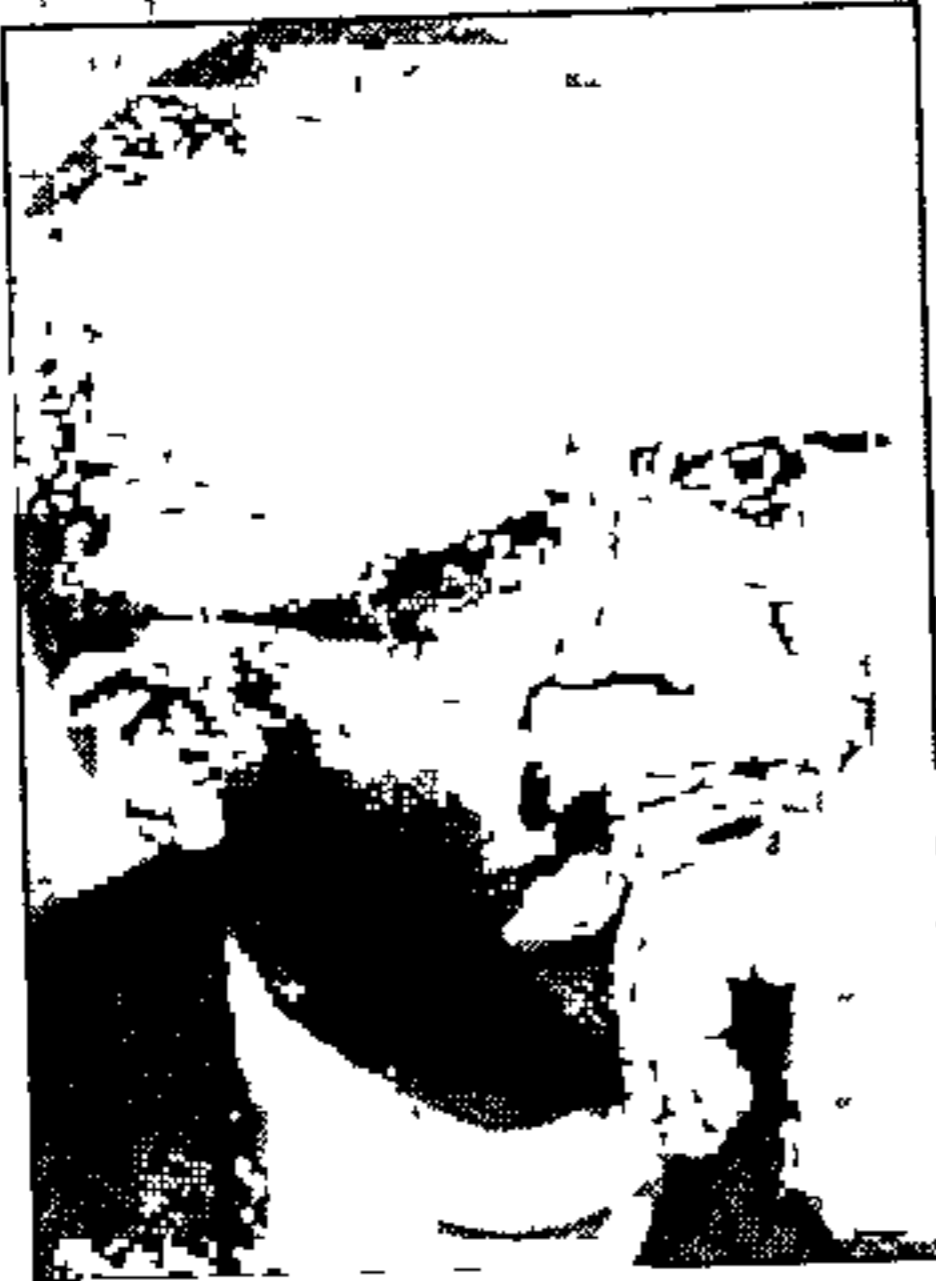
Breaking the results down into age groups, it was found that 90 percent of people aged 50 or older favoured the death penalty, compared to 69 percent of those aged 16 to 24.

ET 30/11/95  
**Resentencing  
for death row (252)**

ALL prisoners still on death row will be resented, the cabinet decided yesterday

Making the announcement, cabinet secretary Dr Jakes Gerwel said all death penalty sentences would be examined and the cases referred back to the trial courts for sentencing in terms of the new Constitution. The death penalty was scrapped earlier this year.

## THE TRUTH-SEEKERS



**DESMOND TUTU:**  
Chairman



**ALEX BORAINÉ**  
Deputy chairman



**WENDY ORR:**  
Commissioner

# Mandela names Tutu to head Truth Commission

ET 30/11/95

(252)

**ANTHONY JOHNSON**  
POLITICAL CORRESPONDENT

ARCHBISHOP Desmond Tutu was yesterday named as head of a 17-member Truth Commission that includes five other Capetonians

The Nobel Peace Prize winner was flying across the Atlantic from Cairo to New York when the announcement was made. A Bishopscourt spokesperson said last night: "He is blissfully ignorant of the honour at the moment"

President Nelson Mandela, after consulting with the cabinet, decided to name another Capetonian, Justice in Transition executive director Dr Alex Boraine as deputy chairman of the commission

Other locals are former Black Sash president Ms Mary Burton, UCT's Dr Wendy Orr, lawyer Mr Denzil Potgieter and head of the Trauma Centre for Victims of Violence and Torture, Ms Glenda Wildschut

The commission will for the

next 18 months hear evidence of human rights abuses by those who fought for and against apartheid from 1960 to December 6, 1993. It will also decide on reparations for victims

### Proclamation

Presidential spokesman Mr Parks Mankahlana said the formal proclamation of the commission would be made soon in the Government Gazette. The commission is expected to start formal sittings early next year.

REUTER reports that Mr Mankahlana said there was no acrimonious debate in the cabinet on the issue.

He also said there had been no argument or horse-trading during the cabinet meeting on the choice of commission members.

A short-list of 25 names was submitted to Mr Mandela, who was required to make the final appointments. The only two

names not on the earlier list were those of the Rev K M Mqojo and Mr Potgieter, who were appointed from outside the list "in order to enhance, in the opinion of the president and the cabinet, the resonance of the commission across the various divides of South African society". Other members of the commission are Advocate Mr Chris de Jager, the Rev Bongani Finca, Ms Sisi Kamphephe, Mr Richard Lyster, Mr Wynand Malan, Mr Hlengiwe Mkhize, Mr Dumisa Ntsebeza, Dr Māpule Ramashala, Dr Faizel Randerā and Dr Yasmin Sooka.

SAPA reports Deputy President F W de Klerk said last night the National Party would have liked to have seen a few names which had been omitted from the list of Truth Commission appointees. He said the inclusion of certain people would have made for a better balanced Truth Commission, but the party had decided "not to be obstructive".

ARG 30/11/95 (292)

# Malan will see case indictments tomorrow

The Argus Correspondent

DURBAN — Former Minister of Defence Magnus Malan will join all of his co-accused in the dock for the first time tomorrow when he and 19 others, including top generals, are handed their indictments

Kwazulu/Natal Attorney-General Tim McNally, who will be heading the prosecution in the trial, confirmed the indictments would be served on the men and the contents could come as a surprise to some of the accused

But he added there would be no other surprises from his side.

He confirmed that several State witnesses were in a witness protection programme

When they appear in the Durban Regional Court, the former defence minister, along with 10 former senior SADF officers and alleged KZP hit squad members, will be served with notices of trial and indictments relating to the deaths of 13 people in KwaMakhutha in 1987

They will also be warned to appear in the Supreme Court, Durban, on March 4 next year, for the start of the trial

Meanwhile, Department of Justice spokeswoman Sue de Villiers has said

that if General Malan or any of his co-accused decided to apply for amnesty they could do so any time after the Truth Commission is set up. If they were granted amnesty charges could be dropped

In an interview this week General Malan said he was prepared to appear before the Truth Commission but did not think he had anything to confess

The upcoming trial has caused a major stir in political circles, with dire warnings of a rightwing backlash

This week Mr Mandela warned that no one would be spared prosecution if there was evidence of involvement in human rights abuses

# Come, tell the truth

## Tutu

(252) AR 4/30/11/95  
TYRONE SEALE and CLIVE SAWYER  
Political Staff

ARCHBISHOP Desmond Tutu says he hopes the Truth and Reconciliation Commission will open wounds so they can be cleansed and prevented from festering.

The newly appointed head of the commission said the probe into atrocities on both sides of the apartheid conflict would be traumatic but cleansing.

The Anglican Archbishop and Nobel Peace Laureate was named yesterday by President Mandela to head the 17-member commission which includes a formidable group of Cape Town-based human rights activists.

Archbishop Tutu, who is in New York to be honoured by the African American Institute, told The Argus today the commission should not be seen as a witch-hunt or a vehicle for reprisal.

"I hope people realise you can actually have the burden of guilt, and the burden of carrying pain on your own, lifted off your shoulders."

The commission is charged with probing atrocities of the apartheid era, granting amnesty to perpetrators, and finding ways to provide restitution or reparations to victims or survivors.

It will be expected to balance justice with reconciliation.

After the approval at yesterday's cabinet meeting in Pretoria of the commission's composition, presidential spokesman Parks Mankahlana said there had been no acrimonious debate on the issue of the composition or the commission beginning its work as soon as possible.

Archbishop Tutu urged churches and non-governmental and other organisations to encourage victims and perpetrators of gross violations of human rights to testify before the commission, and to provide the necessary counselling before and afterwards.

In his own church, this process had started in September when the provincial synod called for measures to ensure that in each parish there would be a group to disseminate information about the commission.

These groups would also assist people who had had traumatic experiences to relieve these for the purpose of testifying.

Archbishop Tutu said the commission

● Turn to page 4

## Probe traumatic, but cleansing — Tutu

perpetrators and victims to come forward and tell the truth about wrongs in South Africa or internationally.

He hoped the commission could begin its work early in the new year, once he had had discussions with Justice Minister Dullah Omar and Mr Boraine.

Archbishop Tutu said he was "deeply humbled" by his appointment.

Archbishop Tutu, who was scheduled to retire next year and to teach in Atlanta for a year, said heading the commission was an opportunity for him to continue the work he had performed in the church.

However, he hoped and expected this approach would be outweighed by the willingness of

perpetrators and victims to come forward and tell the truth about wrongs in South Africa or internationally.

● From page 1

would, in terms of legislation governing it, be entitled to order investigations into incidents or events about which insufficient information was presented and would be able to subpoena witnesses.

However, he hoped and expected this approach would be outweighed by the willingness of



Strong accent on human rights

# Tutu, Boraine to lead truth

## Commission <sup>(252)</sup>

Stephané Bothma and Kevin O'Grady

PRETORIA — South Africans with strong human rights records make up the majority of the 17-member truth commission, which will be chaired by Archbishop Desmond Tutu.

Former Institute for Democracy in SA executive director Alex Boraine has been appointed deputy chairman of the commission, which was appointed by President Nelson Mandela yesterday. Cabinet secretary Jakes Gerwel told a media briefing at the Union Buildings the commission would start its work as soon as possible. It would hear evidence on apartheid-era crimes and recommend amnesty for those who confessed their deeds.

Fifteen members were appointed from a short list of 25 names submitted to Mandela by a selection panel earlier this month. However, KwaZulu-Natal Methodist clergyman K M Mqogo and selection panel secretary and Cape Town civil rights advocate Denzil Potgieter were appointed from outside the list to "enhance, in the opinion of the president and the Cabinet, the resonance of the commission across the divides of SA society", Gerwel said. Mandela consulted the Cabinet about the appointments yesterday. Gerwel said Mandela also had discussions with all the commissioners.

BD 30/11/95

They include Mary Burton of the Black Sash, former CP MP Chris de Jager of the Volksstaat Council and the Human Rights Commission, Bongani Funca of the national executive committee of the SA Council of Churches, Sisi Kamphophe of the Black Lawyers' Association, Richard Lyster, director of the Legal Resources Centre in Durban; and attorney and former NP, DP and independent MP Wynand Malan.

Others are psychologist and health department national director of mental health and substance abuse, Hlangwe Mkhize; National Association of Democratic Lawyers founder president Dumisa Ntsebeza; Wendy Orr of Cape Town University, who in the mid-1980s compiled a list of detainees tortured in Port Elizabeth; Mampule Ramashala, a clinical psychologist, Faizel Randera who was a member of the National Medical and Dental Association that investigated the poisoning of Frank Chikane in 1989, Yasmin Sooka of the World Conference on Religion and Peace; and Glenda Wildschut, a social worker at the Western Cape Trauma Centre.

Gerwel said there had been no "horse trading" or acrimonious debate within the Cabinet about the appointments, which would be proclaimed in the Government Gazette within days.

Continued on Page 2

## Truth <sup>(252)</sup>

Continued from Page 1

BD 30/11/95

Gerwel said the Cabinet acknowledged there would be different preferences in appointments for a task as sensitive as that of the commission, but agreed that in the interest of national reconciliation, the appointments should not be delayed by further negotiations about suitable candidates.

"The appointment of the commissioners marks an important stage in this historic process of coming to an understanding of our past, of reconciliation and of reconstruction of this ... society in pursuit of a future founded on the recognition of human rights, democracy and peaceful co-existence of all its citizens," he said.

The commissioners will serve on any of three committees within the body that will deal with investigations into gross human rights abuses, applications for amnesty and reparations.

Tutu, who was previously reported to have accepted a year-long teaching position at Emory University in the US, could not be reached for comment on the implications of accepting his commission appointment. However, all

commission candidates were asked during interviews if they would be available for at least two years.

Reacting last night, NP justice spokesman Danie Schutte said the party believed several highly competent people on the short list had not been appointed. "We are convinced that some of those left out would have made very good contributions and would have brought a better balance to the commission." But the matter had been delayed long enough and the commission's work should start now.

IFP parliamentary justice committee member Abraham Mzizi said he was concerned at the possible party-political affiliations of some of the commission members. Although the IFP had called earlier for more KwaZulu-Natal representation on the commission, it was not satisfied with Mqogo's appointment as the Methodist church in KwaZulu-Natal had "sided with the ANC against the IFP". The IFP remained opposed to the commission as a tool for reconciliation.

DP leader Tony Leon said it appeared the commission's representativeness had taken preference over its independence and impartiality. He did not believe there had been sufficient consultation with the major parties.

## 77% want death penalty — survey

Susan Russell

BD 20/11/95

(252)

A LARGE majority of South Africans believe the death penalty should be reintroduced for serious crimes, according to a survey conducted by Market Research Africa last month.

The results, released yesterday, show that 77% of the population wants capital punishment reintroduced. Broken down by race, the results showed 69% of blacks were in favour of it, as were 85% of coloureds, 92% of Indians and 91% of whites.

Market Research Africa said respondents were drawn from 2 502 urban households.

More people from higher income groups were in favour, with 89% of those earning R5 000 or more a month supporting the death penalty. In the R2 000-R4 999 bracket 80% said yes, as did 73% in the R500-R1 999 bracket and 69% in the R1-R499 bracket.

A much higher percentage of older respondents wanted the penalty reintroduced, with 90% aged 50 or older, 79% aged 35-49, 72% aged 25-34 and 69% aged 16-24 in favour of it.

Continued on Page 2

## Death penalty

Continued from Page 1

BD 20/11/95

(252)

There was also a slight but significant difference of opinion between English and Afrikaans speakers, with 91% of Afrikaans speakers in favour of the death penalty, against 88% of English speakers, while 69% of Nguni and 68% Sotho or other black language

speakers backed the measure.

Eighty percent of women supported it, against 74% of men.

By province, 87% in Western Cape wanted it, 85% in Northwest and Northern Cape, 80% in KwaZulu-Natal, 75% in Free State, 74% in Gauteng, 73% in Eastern Cape and 69% in Northern Province and Mpumalanga.

The company said its survey represented about 92% of SA's urban adults and about 53% of all its adults.

# Accused's right to consult upheld

(252)

Star 30/11/95

The Constitutional Court ruled yesterday that people accused of any crime had the right to consult state witnesses, unless prosecutors proved this would lead to intimidation, or defeat the ends of justice.

Judge Ismail Mahomed said the situation where accused were denied access to police dossiers was unconstitutional.

"The blanket rule which prohibits an accused person from consulting with a state witness without the permission of the prosecuting authority, in all cases and regardless of the circumstances, is too wide and is not protected by the constitution," Mahomed said in his ruling, with the court's 10 other judges concurring.

"The fair trial requirement is fundamental.

"The blanket docket privilege effectively protects even such statements from disclosure, therefore appears to be unreasonable and unjustifiable in an open and democratic society and is certainly not necessary," he said.

However, Mahomed also ruled that prosecutors could ask courts to deny an

accused's lawyers access to dockets or to witnesses.

The prosecution would have to argue on the grounds that "such access is not justified for an accused to properly exercise his or her rights to a fair trial or on the grounds that it has a reason to believe there is a reasonable risk that such disclosure might lead to the intimidation of witnesses or otherwise prejudice the proper ends of justice," Mahomed said.

"The court still retains a discretion. There may be circumstances when non-disclosure might carry a reasonable risk that the accused may not receive a fair trial and might even wrongly be convicted.

"The court should exercise a proper discretion in such cases by balancing the degree of risk involved..." Mahomed said.

The ruling arose from an application brought by six maximum security prisoners at Barberton prison, charged with the murder of a fellow inmate, John Sehaya, in February 1993 - Reuters

# Humbled' Tutu to lead Truth hearings

Star 30/11/95

(252)

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fulfil the criterion of having a human rights track record

Port Elizabeth medic Dr Wendy Orr, who compiled a dossier of torture on detainees and successfully filed an interdict against the then minister of law and order to prevent police from assaulting prisoners, has also been appointed

So has former National Party and Democratic Party member Wynand Malan.

Also on the list are former Black Sash president Mary Burton, SACC executive member the Rev Bongani Finca, Sisi Kamphophe, Richard Lyster, Hlengiwe Mkhize, Dumisa Ntsebeza, Dr Mapule Ramashala, Dr Faizel Randerera, Dr Yasmin Sooka and Glenda Wildschut.

Gerwel said the Cabinet acknowledged that there would always be different preferences with regard to individuals to be included in or excluded from the commission, but agreed that in the interests of national reconciliation and the healing envisaged with the establishment of the commission, the selection should not be delayed by further negotiations about appointments

The appointment of the commissioners was preceded by the establishment of a selection panel representing various political parties, non-governmental organisations and interested persons

Nominations were invited from the public, 46 candidates were interviewed in public hearings and a shortlist of 25 names was submitted to the president.

Commission will hear evidence of  
1960-1993 human rights abuses by  
those fighting for and against apartheid

By JOVIAL RANTAO  
Political Reporter

**T**ruth and Reconciliation Commission (TRC) chairman Archbishop Desmond Tutu said today he was "deeply humbled" by his new appointment

The Nobel Peace Prize winner expressed the hope that the commission would concentrate on the rehabilitation of victims and restoration of their dignity, emphasising restitution rather than retribution and reprisal

In a statement from New York, Tutu said he hoped the commission would "open wounds" so as to cleanse them and "stop them from festering"

He released the statement on his arrival from Cairo, where he

and former American president Jimmy Carter facilitated talks between the heads of state of Rwanda and Burundi and neighbouring countries. He is in New York to receive a human rights award from the African American Institute

"We cannot be facile and say by-gones will be by-gones, because they will not be by-gones and will return to haunt us. True reconciliation is never cheap, for it is based on forgiveness which is costly. For-

giveness in turn depends on repentance, which has to be based on an acknowledgement of what was done wrong," Tutu said.

He said he would be in touch with the Minister of Justice, Dullah Omar, and Dr Alex Boraine, who was appointed his deputy, about arranging the first meeting of the commission.

The ANC said it was satisfied that the commissioners represented a broad cross-section of South African society, and were people of integrity and distinction.

The appointment of the TRC, which is dominated by veteran human rights activists and members of the clergy, was approved by the multiparty Cabinet which met in Pretoria yesterday

The commission will for the next 18 months hear evidence of human rights abuses by those fighting for and against apartheid from 1960 to December 6 1993. It

will also decide on reparations for victims

Cabinet secretary Dr Jakes Gerwel told a media briefing after the Cabinet meeting "The appointment of the commissioners marks an important stage in this historic process of coming to an understanding of our past, of reconciliation and of the reconstruction of this once so deeply divided and conflict-ridden society now in pursuit of a future founded on the recognition of human rights, democracy and peaceful coexistence of all its citizens"

He said the formal proclamation of the commission would be made soon in the Government Gazette

The 17-member commission is expected to start formal sittings early in the new year.

According to the Promotion of National Unity and Reconciliation Bill in terms of which the commission was appointed, the body has an 18-month period to inquire into human rights violations

Justice in Transition executive director and veteran liberal human rights campaigner Dr Alex Boraine was appointed deputy chairman. He is an ordained Methodist Church minister.

The Cabinet also approved the appointment of

KwaZulu Natal cleric and SA

Council of Churches executive member, the Rev K M Mgojo and Cape Town human rights law advocate Denzil Potgieter, were not on the shortlist and not interviewed by the panel headed by Professor Fink Haysom

Gerwel said the appointments of Mgojo and Potgieter were made to "enhance the resonance of the commission across the various divides of South Africa"

Former Conservative Party MP, Chris de Jager, whose nomination elicited resistance from 30 human rights groupings and non-governmental organisations, was also approved by President Nelson Mandela and the Cabinet

The organisations had objected to De Jager's "compromising" political background and they argued that De Jager did not



Tutu .. hopes wounds will be cleansed.

► Pen portraits

► To Page 2

## ruling on state witnesses

JOHANNESBURG: The Constitutional Court ruled yesterday that people accused of any crime had the right to consult state witnesses, unless prosecutors proved this would lead to intimidation or defeat the ends of justice.

Judge Ismail Mahomed ruled the situation where the accused were denied access to police dossiers was unconstitutional.

"The blanket rule which prohibits an accused person from consulting a state witness without the permission of the prosecuting authority, in all cases and regardless of the circumstances, is too wide and is not protected by the constitution," he ruled. But he also ruled that prosecutors could ask courts to deny an accused's lawyers access to dockets or witnesses.

The ruling arose from an application brought by six maximum security prisoners at Barbeton Prison, charged with the murder of a fellow inmate, John Sehaya, in February 1993. — Reuter

● See Page 5 (252)

CT 30/11/95

# Dagga law 'unconstitutional'

By Mzimasi Ngudle

THE CONSTITUTIONAL COURT yesterday ruled that Section 21 of the Drugs and Drug Trafficking Act is unconstitutional. The section says that a person found in possession of more than 115gms of dagga should be presumed and convicted of dealing instead of possessing.

The presumption places the onus on the accused to disprove that he or she was dealing in dagga. In her judgment, Ms Justice Catherine O'Reagan ruled that the presumption was unconstitutional, and that the use of the presumption was wrong in terms of the interim Constitution.

In another case, the court yesterday overruled the common law blanket privilege to deny an accused access to police dockets.

Mr Justice Ismail Mahomed said in a judgment that rules which prohibited or denied an accused access to police dockets were inconsistent with the right of an accused to a fair trial.

Before the interim constitution, common law rules denied an accused person from having access to the contents of a police docket. The accused was also not allowed to consult State witnesses.

Yesterday's judgement outlawed this blanket privilege and granted an accused the right of access to dockets which could, however, be denied in specific cases. The court also overruled law which prohibited an accused from consulting with state witnesses.

An accused person should ordinarily be entitled to have access to contents of the police docket as are relevant for him or her to exercise the right to a fair trial, the court said.

However, the court held that the State was still entitled to withhold information where there was a risk of identifying police informers and revealing state secrets.

Mahomed added that an accused might be denied access to state witnesses where such access might lead to the intimidation or would otherwise impede the administration of justice.

Mahomed made it clear that the right of access would depend on the specific circumstances of individual cases and it was up to the courts to balance the degree of risk involved.

Constitutional Court places the onus on the prosecution not accused

252

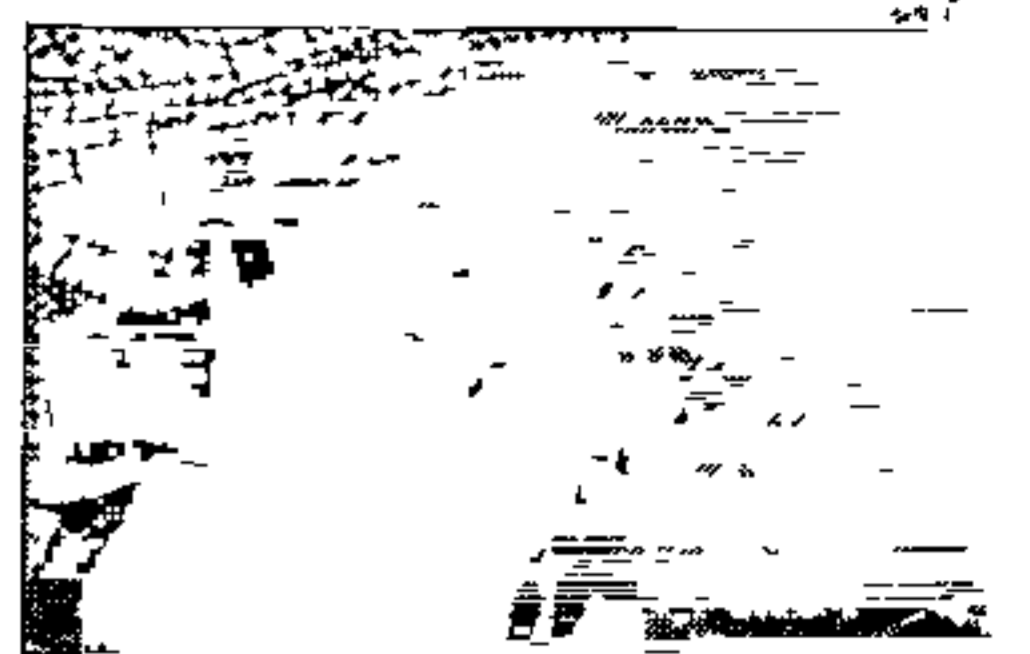
30/11/95

Lawyer

# Why the Malan case is different

SPW 30/11/95 (252) ~~SPW~~

Confession and revelation of the truth is fundamental to reconciliation, argues Allister Sparks



**W**uch confusion has been sown about the forthcoming trial of Gen Magnus Malan and 10 former colleagues on charges of murder.

The essential issues need to be clarified if they are not to generate the kind of racial bitterness P W Botha predicts.

The confusion relates to allegations of one-sided justice. If Malan is to be prosecuted for acts committed by government forces during South Africa's revolutionary war, says Deputy President F W de Klerk, then so should Joe Modise who was commander of the ANC's revolutionary army.

And if Robert McBride and Barend Strydom can be pardoned and released, ask other less partisan voices, why are the generals not given amnesty?

Isn't it all running counter to President Mandela's policy of national reconciliation? These are understandable questions, but they miss the essential points that make the Malan case different.

Taking the last first, revealing the truth of what happened in our long and dirty conflict is fundamental to reconciliation.

Mandela has been consistent about this.

All the great religions teach that there must be confession and atonement before there can be forgiveness and reconciliation. Nor do you have to be a religious person to understand the commonsense of it. You cannot forgive someone if you don't know whom to forgive, and resentments will be spun into the kind of deep-rooted national myths that future wars are made of if the truth of evil deeds remains buried and confession denied.

As for McBride and Strydom, both stood trial and were convicted. They were pardoned only after that. The facts of what they did are known to the public.

So it must be with all others who committed crimes against humanity during the time of conflict.

**W**hat of Malan and Modise? Some analysts have suggested that the difference between them is that the ANC obtained amnesty for its leaders before they re-entered the country in 1991-92, while the NP government in its arrogance failed to do likewise.

While this is true, it is a technicality that

does not go to the heart of the matter. The real difference is that the allegations against Malan and the 10 others relate to the birth of the so-called Third Force, which has been behind the KwaZulu Natal violence that has so ravaged this country and continues to be the most serious factor threatening our future.

It is therefore a case of the most profound contemporary relevance, quite apart from the light it may throw on deeds done in the past.

The specific charges against Malan and his colleagues is that they were responsible for the massacre of 13 people - mostly women and children, six of them under the age of 10 - at KwaMakhuta on the night of June 21 1987.

It remains for the prosecution to produce evidence to support its charges and for this to be tested in court, but the essence of its allegation is that the massacre was carried out by a hit-squad formed as a result of a decision taken by a special sub-committee of the State Security Council - then under the overall control of PW.

Evidence gathered by the Goldstone Commission and other hearings presents a picture, albeit incomplete, of what was

going on around that time.

With the formation of the United Democratic Front in 1983, Inkatha's long dominance of black politics in Natal began to be challenged for the first time. This led to growing conflict, which peaked in 1987 when the UDF made spectacular gains in the Natal Midlands particularly.

**T**he Inkatha leadership turned to the government for help, and the appeal allegedly went to the secret sub-committee. A number of actions followed: heavy police reinforcements were moved into the Natal Midlands, a top security policeman, Brig Jac Buchner, was appointed head of the Security Branch, then made commissioner of the KwaZulu Police Force, and a decision was allegedly made to launch a campaign of destabilisation against the UDF, modelled on South Africa's association with Renamo.

Two hundred Inkatha men were taken to a secret military base in the Caprivi Strip. There they were given guerrilla training by the former SADF's top commando specialist, Col Jan Breytenbach, and a former ANC guerrilla leader, Daluxolo Luthuli (a nephew of former ANC leader Chief Albert

Luthuli), who had detected to Inkatha on their return the 200 were split up and deployed in a number of KwaZulu Police Force stations, where each formed and trained a hit squad.

According to three members of these hit squads, interviewed during their own murder trial for the BBC television series *Death of Apartheid*, the units received orders from Uthuli to assassinate political opponents. It is one of these hit squads that allegedly carried out the attack at KwaMakhuta - apparently with the aim of assassinating a UDF leader named Victor Ntuli who, it turned out, was away at the time. The attack wiped out everyone else in the house.

There were hundreds of such attacks over the years, leading to counter-attacks that escalated into Natal's bloody civil war in which thousands died - and continue to die - and which for a time spread into the townships and even the commuter towns of the Witwatersrand.

The media called it "black-on-black violence", a baffling phenomenon that blurred the picture of a struggle for freedom and gave the impression of an innate savagery on the part of black people which boded ill for the country's future.

# Holomisa in R100 000 claim for defamation

ET 30/11/95

(252)

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## SPECIAL CORRESPONDENT

JOHANNESBURG: Independent Newspapers is seeking, in a R100 000 defamation suit brought against it, to overturn a decades-old presumption of the common law on the grounds that it is unconstitutional.

Mr Bantu Holomisa, Deputy Minister of Environmental Affairs, is suing Independent Newspapers Ltd for an article that appeared in the Star on May 27, 1993 which alleged "military intelligence sources believed him to be directly involved in the infiltration into South Africa of Apla and Transkei Defence Force troops".

It was further alleged that the operation was "aimed at killing whites in the northern Natal

region" and that the operation was also aimed at "assassinating a top South African official in Transkei".

Mr Gilbert Marcus, appearing for Independent Newspapers Ltd, said the company was applying for an exception to the particulars of Mr Holomisa's claim, because he was a public official or figure at the time the article was written and he was still a public official.

The common law requires Independent Newspapers to prove that what it wrote about Mr Holomisa was true, but Mr Marcus has claimed this is an unfair burden and, constitutionally, Mr Holomisa should have to prove it was false.

He said that with the introduction of the Constitution on April 27, 1994, it became clear that a pub-

lic figure was obliged to yield to it, and, in the case of public figures newspapers had the inherent right to free speech and expression under section 15 of the Constitution.

"When (the article) was written he was the military ruler of the Transkei and he is now the Deputy Minister of the Department of Environmental Affairs," he said.

Mr Marcus said Mr Holomisa's action was instituted in August 1994, "well after the coming into operation of the constitution".

Mr Dali Mpofu, for Mr Holomisa, said the constitution could not be applied to this case because it was litigation between two private persons. Mr Holomisa was suing in his personal capacity.

Judge Edwin Cameron reserved judgment.



CONSTITUTIONAL AMENDMENT STANDS

# Govt may by-pass chiefs

CT 30/11/95



**JOHANNESBURG:** If traditional leaders don't establish an advisory council by February 28, 1996, the government will be able to pass laws affecting them without consulting them.

**T**HE Constitutional Court ruled yesterday that the government could pass laws affecting chiefs without consulting their advisory council, if the chiefs fail to meet the February 28 deadline for establishing the council.

But the court also ruled that kwaZulu/Natal Premier Dr Frank Mdlalose could question the validity of a bill dealing with the payment of chiefs once President Nelson Mandela signs it into law.

Dr Mdlalose lost his argument against Parliament's amendment to the constitution scrapping the requirement to consult the council of traditional leaders if the council was not set up by February 28 next year.

Any legislation affecting chiefs and issues of traditional law may then become effective in the absence of the council, and stand as law until the council is established.

Constitutional Court Judge Ismail Mahomed, in a ruling agreed to by the court's 10 other judges, found there was no legal reason to bar the amendment.

But the judge said Dr Mdlalose could pursue his argument that the purpose of the amendment was to validate a bill giving the central government authority to pay chiefs.

"The suggestion might conceivably justify an attack on the Remuneration of Traditional Leaders Bill if, and when, it is ever assented to by the President."

Inkatha halted the bill's signing into law when it argued the payment of chiefs could not be taken from the provinces and given to the government without referral to the traditional leaders' council.

The 20-member council has however not been established because two of the six provincial legislatures with chiefs have failed

## Court relaxes dagga law

CT 30/11/95

(252)

**JOHANNESBURG:** The Constitutional Court eased the drug laws yesterday, overturning legislation that said people guilty of possessing dagga could be convicted of dealing in the herb simply because they had more than 115 grams of it.

Judge Kate O'Regan found that under the old laws, suspects could be convicted of dealing because they had more than a certain amount — even if there was reasonable doubt.

If there is indeed doubt that

the accused is a dealer, he or she is entitled to the benefit of that doubt, she said.

It does not appear logical to presume that a person found in possession of 115 grams of dagga is more likely than not to have been dealing in dagga. The 10 other judges agreed.

She ordered the scrapping of a section of the Drugs and Drug Trafficking Act, saying it infringed the rights of an individual to be presumed innocent. — Router

first to set up their houses of traditional leaders, which need to be consulted on regional laws.

Dr Mdlalose, attending a kwaZulu/Natal legislature sitting in Ulundi yesterday, said he would study the judgment before making any further decisions.

kwaZulu/Natal Local Govern-

ment Minister Mr Peter Miller, who had supported Dr Mdlalose's action, said the court had rewarded the province by not ordering them to pay the costs of the hearing.

"It means ... the judges were satisfied we had a prima facie case and that it was a case well worth hearing," he said. — Sapa

W11,

# Accused may now ask to see police dockets

BD 30/11/95 (252)

Susan Russell

THE Constitutional Court has confirmed the right of accused people in criminal trials to have access to the police docket in their case as well as access to prosecution witnesses to the extent that this is necessary for compliance with the fair-trial provisions in the constitution.

Yesterday's judgment has important implications for SA's criminal justice system because to date the common law rules of privilege have denied accused persons access to police dockets or state witnesses (without the consent of the prosecution) under any circumstances.

Judge I Mahomed, with the unanimous concurrence of the other 10 Constitutional Court judges, ruled that this blanket denial of access amounted to an infringement of the fair-trial provisions contained in the interim constitution.

The court ruled that an accused person was entitled to access to the police docket to the extent that it was required to exercise their right to a fair trial.

Mahomed held that the prosecution could still successfully oppose access to the docket on the grounds that there was a reasonable risk that it would disclose the iden-

tity of an informer, reveal state secrets or lead to the intimidation of state witnesses and interfere with the ends of justice.

He said that ultimately it would be up to the trial court to weigh up the opposing interests of the state and the accused.

The Constitutional Court said access to certain aspects of the state's case was not a new concept. An accused person used to be given a similar opportunity under the rules for preparatory examinations, but this procedure had fallen into disuse in SA.

Mahomed also ruled that an accused person had a constitutional right to consult state witnesses if they would not have a fair trial without doing so.

The court said that the relevant attorney-general or a member of his office should first be approached for permission and would be entitled to be present. If the attorney-general's office refused a request for consultation the accused person could approach the court for permission.

The court also ruled, however, no witness could be compelled to consult with an accused. The prosecution might also oppose access to a witness if there were reasonable grounds to believe this might lead to intimidation, reveal state secrets or otherwise impede the proper ends of justice.



# On trail of mother of dirty tricks

ALLISTER SPARKS

**M**UCH confusion has been sown about the forthcoming trial of General Magnus Malan and 10 former colleagues on charges of murder. The essential issues need to be clarified if they are not to generate the kind of racial bitterness P W Botha predicts.

The confusion relates to allegations of one-sided justice. If Gen Malan is to be prosecuted for acts committed by government forces during South Africa's revolutionary war, says Deputy President F W de Klerk, then so should Joe Modise, who was commander of the ANC's revolutionary army.

And if Robert McBride and Barend Strydom can be pardoned, why are the lesser less partisan voices, why are the generals not given amnesty?

Isn't it all running counter to President Mandela's policy of national reconciliation? These are understandable questions, but they miss the essential points that make the Malan case different.

## Confession

Taking the last first, revealing the truth of what happened in our long and dirty conflict is fundamental to reconciliation. Mandela has been consistent about this.

All the great religions teach that there must be confession and atonement before there can be forgiveness and reconciliation. Nor do you have to be a religious person to understand the commonsense of it. You cannot forgive someone if you don't know whom to forgive, and resentments will be

spun into the kind of deep-rooted national myths that future wars are made of if the truth of evil deeds remains buried and confession denied.

As for McBride and Strydom, both stood trial and were convicted. They were pardoned only after that. The facts of what they did are known to the public. So it must be with all others who committed crimes against humanity during our time of conflict.

What of Malan and Modise? Some analysts have suggested that the difference between them is that the ANC-obtained amnesty for its leaders before they re-entered the country in 1991-92, while the National Party government in its arrogance failed to do likewise.

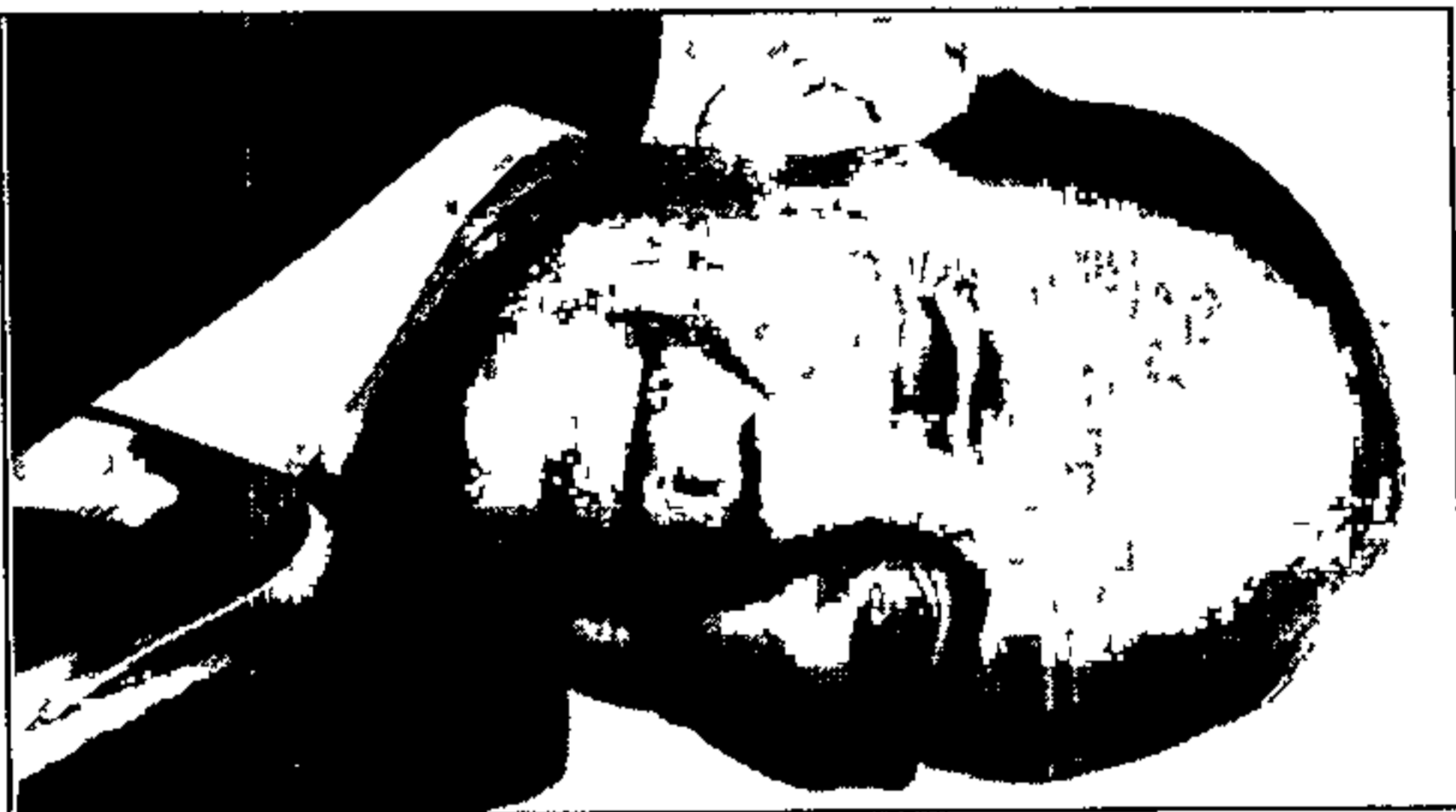
While this is true, it is a technicality that does not go to the heart of the matter. The real difference is that the allegations against Gen Malan and the 10 others relate to the birth of the so-called Third Force which has been behind the KwaZulu-Natal violence that has so ravaged this country and continues to be the most serious factor threatening our future.

It is therefore a case of the most profound contemporary relevance, quite apart from the light it may throw on deeds done in the past.

The specific charges against Malan and his colleagues is that they were responsible for the massacre of 13 people - mostly women and children, six of them under the age of 10 - at KwaMakhutu on the night of June 21, 1987.

It remains for the prosecution to produce evidence to support its charges and for this

ET 30/11/95



**MAGNUS MALAN:** Allegations against the general relate to the birth of the Third Force

to be tested in court, but the essence of its allegation is that the massacre was carried out by a hit-squad formed as a result of a decision taken by a special sub-committee of the State Security Council - then under the

Overall control of President Botha.

Evidence gathered by the Goldstone Commission and other hearings presents a picture, albeit incomplete, of what was going on around that time.

With the formation of the United Democratic Front in 1983, Inkatha's long dominance of black politics in Natal began to be challenged for the first time. This led to growing conflict, which peaked in 1987 when the UDF made spectacular gains in the Natal Midlands in particular.

## Guerilla

The Inkatha leadership turned to the government for help and the appeal allegedly went to the secret sub-committee. A number of actions followed - heavy police reinforcements were moved into the Natal Midlands, a top security policeman, Brigadier Jac Buchner, was appointed head of the Security Branch, then made Commissioner of the KwaZulu Police Force, and a decision was allegedly made to launch a campaign of destabilisation against the UDF modelled on South Africa's covert support for Renamo in Mozambique.

Two hundred Inkatha men were taken to a secret military base in the Caprivi Strip. There they were given guerrilla training by the SADF's top commando specialist, Colonel Jan Breytenbach, and a former ANC guerrilla leader, Daluxolo Lutshuli (a nephew of former ANC leader Chief Albert Lutshuli), who had defected to Inkatha.

On their return, the 200 were split up and deployed in a number of KwaZulu Police Force stations, where each formed and

trained a hit squad.

According to three members of these hit squads, interviewed during their own murder trial for the BBC television series, *Death of Apartheid*, with which I was involved, the units received orders from Umond to assassinate specified political opponents.

It is one of these hit squads that allegedly carried out the attack at KwaMakhutu - apparently with the aim of assassinating a UDF leader named Victor Ntuli, who, it turned out, was away at the time. The attack wiped out everyone else in the house.

There were hundreds of such attacks over the years, leading to counter-attacks that escalated into Natal's bloody civil war in which thousands of people died - and continue to die - and which for a time also spread into the townships and even the commuter trains of the Witwatersrand.

The media here and abroad called it black-on-black violence, a baffling phenomenon that blurred the picture of a struggle for freedom and gave the impression of an innate savagery on the part of black people which boded ill for the country's future.

## Legitimate

Now it appears it may not have been black-on-black violence at all, but white instigated, State promoted - the mother of all dirty tricks.

We have to know the truth about this, what really happened and who was responsible. It is far too big a thing, with results that are still too current, to sweep under the carpet, or try to dismiss as a legitimate part of a fight for one's country.

# Departments tell of problems, progress

ARG 30/11/95 (252) (176)

**CLIVE SAWYER**  
Political Correspondent

MANY attempts to make affirmative-action appointments in the Department of Justice have failed because salaries are too poor to attract "competent" jurists.

This was disclosed in a report by the department tabled yesterday at a meeting of the national assembly and senate committees on the public service.

The committees are conducting two days of hearings during which they will hear evidence from central government departments on the progress and problems in amalgamating and rationalising former apartheid-era departments.

The cabinet yesterday approved terms of reference for a presidential review commission to audit the public service and set guidelines for its further transformation.

The commission's terms of reference will include the design of the service, its composition, efficiency, effectiveness, representativeness, managerial proficiency and financing, as well as its routines and procedures.

In its report to parliament yesterday, the Department of Justice said that in spite of the problem of uncompetitive salaries, signifi-

cant progress in affirmative action had been made between January and September. Just less than 80 percent of appointments in this period were black people.

While administrative transformation of the department was difficult, costly and time-consuming, progress had been made.

The amalgamation of 11 former departments of justice had put a huge burden on the departmental head office. The restructuring of the department was largely dependent on restructuring the organisation of the courts.

Only when there was finality on new divisions of the Supreme Court for each of the new provinces, could the establishment of regional offices for the department, state attorneys, Masters of the Supreme Court, attorneys-general, registrars of the Supreme Court and family advocates be finalised.

There had been 17 early retirements at the department's head office. Most of these posts would be filled by black officials from former homelands and self-governing territories, the report said.

In its report to the committees, the Department of Correctional Services said problems encountered in the rationalisation process included surplus staff and discrepancies in salaries and benefits.

# Lack of funds

# derail plans

By Rafiq Rohan  
Political Correspondent

ATTEMPTS at applying affirmative action policies within the Department of Justice are being "derailed" because there are not sufficient funds to pay the people needed.

This was said in a submission to the Committees on Public Service and Administration sitting in Parliament to hear what problems Government ministries and departments face in their rationalisation processes.

In highlighting one of its problems, the Justice submission explains "Many attempts at affirmative action are derailed because competent jurists are generally not interested in taking up senior positions in the department due to the non-market related salaries we pay."

Despite this shortcoming, there have been significant changes made to transform the former, predominantly white face of the department. Of the 630 new appointments made by the department between January and September this year, 507 are black.

"In total," the submission states, "79,2 percent non-white appointments were thus made in this period."

To a large extent, the selection committee looks at race, gender and disability when making appointments. "As part of the department's contribution to the RDP, disparities, inequalities and imbalances of the past should be addressed."

The administration transformation and its restructuring is difficult, costly, time-consuming and complex, the submission states. The department had to take over 11 apartheid based administrations of justice, each with its own organisational structures, procedures, laws, management plans, among others and transform this into one united system of justice.

The main aim, thus, of the Justice ministry and department is "to establish in the spirit of the Constitution, through a democratic process of transformation and rationalisation, a single legitimate and accountable administration which is just, transparent, accessible and representative of the whole South African community."

Restructuring the department and the justice system is, in fact, "an ongoing process which may still continue for a considerable time," we are warned.

As expected, there are many who served the former regime who are not sitting comfortably with the changes taking place around them.

The report says "Problems regarding fears and apprehension in all the former administrations of justice are continually addressed through visits to all areas by the minister, the director-general and the management committee."

The Department of Agriculture, in its submission, said that it has, in addition to a new director-general, appointed 26 new people in management posts.

"At this stage the department is in the process of redefining the organisational structures under the level of director. About 3 500 posts are involved. As soon as this process has been finalised, serving officials will be absorbed in posts on the rationalised organisation."

# Truth panel <sup>(252)</sup> named

PRESIDENT Nelson Mandela yesterday named Nobel peace prize winner Archbishop Desmond Tutu chairman of the Truth and Reconciliation Commission

The 17-member panel was announced by Cabinet secretary Dr Jakes Gerwel in Pretoria after yesterday's Cabinet meeting

Dr Alex Boraine was named deputy chairman

"The appointment of the commissioners marks an important stage in this historic process of coming to an understanding of our past," Gerwel told the news conference after a Cabinet meeting that approved Mandela's choices.

One of the other members was Chris de Jager, a lawyer associated with the white right wing, in a gesture to make the panel as broad-based as possible

*Sowetan*  
*30/11/95*  
Commissioners

Other commissioners include the Reverend Bongani Finca, Ms Sisi Kaphephe, Ms Hlengiwe Mkhize, Reverend KM Mgojo, Mr Dumisa Ntsebeza, Dr Mapule Ramashala, Dr Yamin Sooka, Dr Faizel Rander, Dr Wendy Orr, Mrs Mary Burton, Mr Richard Lyster, Mr Wynand Malan, Advocate Denzyl Potgieter and Ms Glenda Wildschut

Notable omissions included Bishop Stanley Mokgoba, Mr Tom Manthata and the Reverend Frank Chikane. Former Publications Appeal Board operative Professor Dan Morkel, has also been left out. Commissioners Mgojo and Potgieter were not on the short list submitted to Mandela by the panel

"The Cabinet acknowledged that in the appointment of people to a body with a task as sensitive as that of the Truth and Reconciliation Commission, there would always be different preferences with regard to individuals to be included or excluded," said the statement

The appointments will be formalised by way of a proclamation in the *Government Gazette* within the next few days

# Case against hanging

252

**T**HE SPECTRE OF THE HANGMAN'S noose once again hovers over South Africa. This time, however, it is shrouded in hot air and hysteria. Five months after the death penalty was abolished, a debate fuelled by politicians has resumed with a vengeance.

It reached a crescendo last weekend with President Nelson Mandela and Gauteng premier Tokyo Sexwale publicly disagreeing on the issue.

Not unexpectedly, the National Party capitalised on Sexwale's public support for a referendum on the death penalty and joined the fray.

The return of the death penalty has been equated with a drop in crime – people fed up with living under siege believe only the hangman's noose would be a strong enough deterrent for criminals.

However, this reasoning is unrealistic, warn human rights groups and other abolitionists. They emphasise that in countries where the death penalty was reintroduced or maintained, there has been no significant drop in crime levels.

After businessman Mr Lee Bennett was shot dead outside his Sandton home last week, his 10-year-old daughter who witnessed the killing was quoted on Radio 702 saying that the death penalty should come back.

Little Samantha's words no doubt touched a chord in everyone who heard her. But, stirring as her words were, it is important not to let emotionalism cloud the real issues.

The big question is: will the reintroduction of the death penalty help reduce crime? Legal and human rights activists say no.

Better policing, more stringent prosecutions and greater public involvement in fighting crime are the answers, they say.

Also, calls for a referendum go against the grain of the Constitution, and is mere politicking, they say.

Mr Jody Kollapen, Lawyers for Human Rights national director, says he understands the public's frustration and the perception that the police are inadequate and inefficient.

"A lot of emotionalism goes into this, but we have to question if we should respond in this fashion or not," he says.

"The argument being used is that the death penalty will equal a drop in crime. That has not been the case in countries like Saudi Arabia where the number of murders actually increased after the introduction of the penalty."

A more effective deterrent for criminals would be a fear of arrest and prosecution, he says. More visible policing and resources need to be looked at, he added.

"There are many deficiencies in the system. For a start, most criminals are not arrested

Many South Africans are angry at the high levels of crime and are calling for the return of the hangman's noose – but is it the answer? **Sharon Chetty** reports...

*Sowetan 30/11/95*



**Lawyer Dumisa Ntsebeza ... "the arrest and sentencing of criminals must be looked at urgently".**

Then there's the way police resources are allocated. Besides the historical differences between suburbs and townships, we have to look at whether maximum use is made of the people available.

"For example, filing and other paperwork could be done by civilians, which would free the policemen to go on the beat."

Fighting crime and a return of the death penalty should not be equated in any way, says Black Lawyers Association publicity secretary, Mr Dumisa Ntsebeza.

He also says it should be borne in mind that the judiciary has always been unrepresentative. White male judges have mostly been responsible for sentencing mostly black people to death.

"All these things have to be looked at first, before we even think about bringing back the death penalty," he said.

"Anyway, even with the best of intentions, it is possible for judges to make mistakes, and a death sentence can't be retracted."

Ntsebeza says the arrest and sentencing of criminals have to be looked at urgently.

There also has to be an integrated approach – criminals cannot simply have sentences reduced and be released without the Justice Department being consulted, he says.

"The high crime levels show the need for better policing," he adds. "Police will have to earn the confidence of the public and, once they

are accepted as legitimate, people will help them fight crime."

When the Constitutional Court decided in June that the death penalty should be abolished, it was yet another blocking block of the morals of a new society.

It was also an earlier move towards a civil society and reintroducing the death penalty would be a step backwards, says the chairman of Amnesty International's local branch, Mr Noel van Breda.

"We have to first look at why we have violent crime and address those problems," he says.

Van Breda says having blanket rulings like the death penalty meted out for murder seldom takes into account crimes of passion.

It also means that only those who are rich and can afford good lawyers may be able to defend themselves effectively.

Mr Graeme Simpson of the Centre for the Study of Violence and Reconciliation says the recent debate brings up the issue of how politicians view the Constitution and the ethics of hanging.

"Calling for a referendum flies in the face of the Constitutional Court ruling which found that the death penalty was unconstitutional."

"We have to question how politicians view our Constitution if they're so quick to make these statements."

There is also no empirical evidence to show the death penalty will cause a reduction in crime, Simpson emphasises. The threat of death will not stop a criminal.

"I challenge anyone to show me a criminal who commits a deed, expecting to be caught. They work on the assumption that they won't be found out."

Wits University law school's Professor Etienne Murenik says last year's election was an effective referendum on the issue.

He says the African National Congress and Inkatha Freedom Party went to the polls after committing themselves to constitutional proposals that abolished the death penalty.

"They achieved well over a two-third majority of the votes. That gives the Government a clear mandate to dismantle the gallows," says Murenik.

South Africans are feeling impotent and angry at the rising crime levels and it is easy to see why the call for a return of the noose has support. It is clearly not the answer, though.

# Members of commission bring a wealth of experience in many fields

**Archbishop Desmond Tutu** (chairman) One of four Nobel Peace Prize winners from South Africa, Tutu is a household name. He is the archbishop of Cape Town and of the Church of the Province of Southern Africa.

**Dr Alex Boraine** (deputy chairman) Now serves as executive director of Justice in Transition, formed in August last year to focus on redressing past human rights violations. Boraine, ordained as a Methodist Church minister in 1938, served as executive director of the Institute for Democracy in South Africa from 1986 to 1994.

**Mary Burton:** Black Sash national president from 1986 to 1990 and is still a member of the organisation. She has been involved in discussions and workshops relating to the Truth Commission.

**Advocate Chris de Jager:** A lawyer by profession, Chris de Jager is a former Conservative

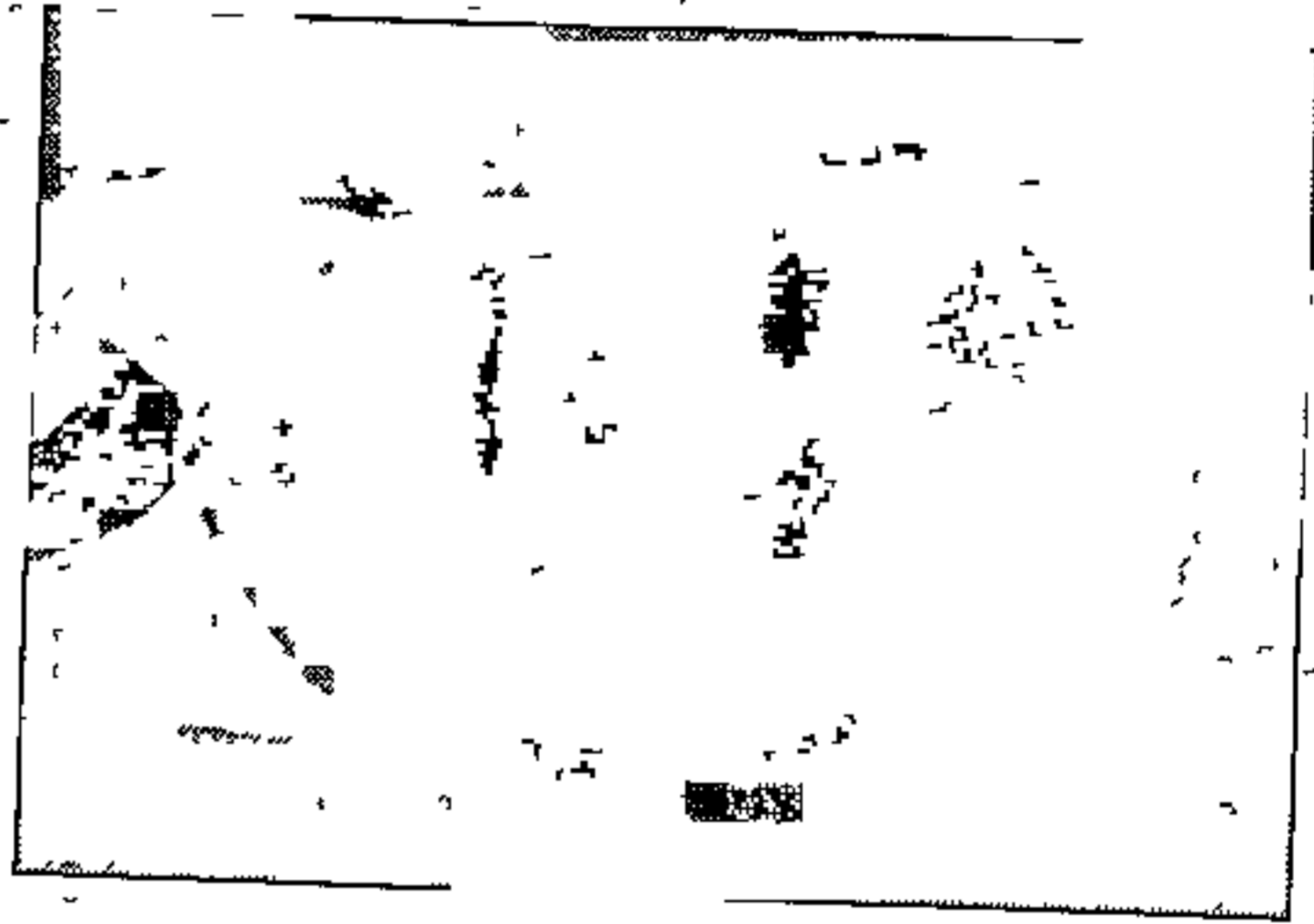
Party MP. He is a member of the Volksstaat Council and the Human Rights Commission.

**The Rev B Finca:** He was appointed as Ciskei interim administrator by the Transitional Executive Council after military ruler Brigadier Oupa Gqozo's administration collapsed. He is now president of the Eastern Cape Provincial Council of Churches and a member of the national executive committee of the South African Council of Churches.

**Sisi Kamphophe:** She is a lawyer and a member of the Black Lawyers Association.

**Richard Lyster:** Also a lawyer, he has been director of the Legal Resources Centre in Durban since 1990. He has served on the arbitration panel of the Independent Mediation Service of SA and is a member of its mediation panel.

**Wyand Malan:** He resigned as a National Party MP under former state president P W Botha



**Alex Boraine ... deputy chairman of commission.**

Malan then formed the National Democratic Movement, which later merged with the Progressive Federal Party to form the Democ-

cratic Party. He quit politics in 1989 and practises as an attorney and as a value systems management consultant.

**Hlangiwe Mkhize:** The national director of Mental Health and Substance Abuse, Mkhize is a psychologist who specialises in treating people traumatised by violence. Nominated by the Women's Development Foundation, she is also a member of the SA Black Social Workers' Association as well as the International Society of Medicine and Law.

**Dumisa Ntsebeza:** Attorney. Ntsebeza served as founder president of the National Association of Democratic Lawyers and later as president of the Black Lawyers Association (1989 to 1991). He is now the BLA's publicity secretary and also serves as chairman of the Prisoners Welfare Programme.

**Dr Wendy Orr:** She compiled a list of detainees who were tortured in Port Elizabeth in the mid-

1980s and successfully filed an interdict against the minister of law and order to prevent police from assaulting prisoners. Orr is currently deputy registrar of student affairs at the University of Cape Town.

**Dr Mapule Ramashala:** She is an outstanding clinical psychologist and medical researcher who, despite a long absence from South Africa, remained involved in and possesses acute understanding of problems to be faced in addressing the legacy of human rights abuses and challenges.

**Dr Faizel Randera:** He was a member of a committee of the National Medical and Dental Association that investigated the poisoning of former SA Council of Churches leader the Rev Frank Chikane in 1989.

Since 1986 Randera has worked extensively with human rights lawyers, providing medical-legal reports on people who

suffered physical and psychological abuse.

**Dr Yasmin Sooka:** A lawyer, she is the national president of the World Conference on Religion and Peace. She served as a member of the legal task force in the National Co-ordinating Committee for the Repatriation of South African Exiles.

**Glenda Wildschut:** A social worker at the Western Cape Trauma Centre who has worked in the underprivileged communities in the Western Cape. She has also worked with victims of violence.

**The Rev K M Mqogo:** He is a prominent Methodist Church clergyman who comes originally from KwaZulu Natal.

**Advocate Denzil Potgieter:** He is a member of the Cape Bar who has appeared in various civil and political rights matters. He acted as secretary for the presidential panel that shortlisted the candidates.

*(Handwritten notes: 252) Star 30/11/95*



## FOCUS

Cosmas Desmond

THE question of whether the atrocities committed by the liberation movement and those of the apartheid regime should be put on a par seems to me to be being debated on a very superficial and emotional level. The fundamental question of what constitutes a crime, in an ethical rather than a legal, sense, is being ignored. And both truth and reconciliation are ethical, not legal and certainly not political, concepts.

No matter how gruesome the actions carried out either by members of the liberation movement or by the upholders of apartheid, they were only means to an end. "Means", by definition do not have any morality in themselves, their morality can only be determined in the light of the end for which they were performed. (Is chopping off a person's leg, for example, a good or bad thing to do? If it is done as a life-saving operation it is good; if it is done to inflict pain on the person it is bad.) It is not possible therefore to judge the morality of the actions of the two groups simply by looking at what they did. One must look first at why they did it.

In other words, the saying that "The end justifies the means" is not an invention of Jesuits or Machiavellians; it is a sound ethical principle. If the end does not justify the means, what does?

This means that any action performed in pursuance of an evil end is itself necessarily evil. It does not mean that every action carried out in pursuance of a good end is thereby automatically justified; an action is justified by the end only if it is necessary for the achievement of that end. Even killing someone is not evil in itself, but it cannot be done willy-nilly to protect life; it must be the only way of saving an innocent life.

Any action which was done to further apartheid was, therefore, wrong, regardless of whether it was done humanely or brutally because apartheid was almost universally condemned as inherently evil. Even if, for example, the victims of forced removals had been resettled in five-star hotels, the policy would still have been morally wrong because it was a means towards the immoral end of the geographic separation, political domination, and economic exploitation of people.

# Truth body must see that the end justifies the means

(252) BD 1/12/95

Even the principle that the ultimate criterion of morality is a person's own conscience cannot justify people implementing apartheid in good faith, except perhaps in the case of a few pathologically perverted individuals. Generally speaking, such was the evidence and so widespread the condemnation that there was no excuse for not knowing that it was wrong. There is also evidence that people deluded themselves about its morality because it was in their interest to do so. The fact that everybody, from De Klerk downwards, now claims they never supported apartheid confirms they knew it was wrong in the first place.

Even on a legalistic level, the International Convention on the Suppression and Punishment of the Crime of Apartheid states "International criminal responsibilities shall apply, irrespective of the motive involved, to individuals, members of organisations and institutions and representatives of the state whenever they directly abet, encourage or co-operate in the crime of apartheid". So, whether they acknowledge or not, they were guilty both morally and legally. The "state parties" to the convention also undertook to punish persons guilty of that crime. Those who acted in furtherance of apartheid, therefore, have no right to amnesty or absolution, and the state has no right to grant either.

While nothing can justify any action which was a means to achieving the aims of apartheid, not every action of the liberation movement is automatically justified because its cause was just. The actions can be justified only if they did indeed further the aim of overthrowing apartheid. The point is whether they were necessary to end apartheid. If they were, they were justified. Certainly not all of them were necessary and so were not justified. Even if it was necessary to kill people, there can be no justification for necklacing them or for killing

other members of their family as "punishment". It could not possibly have been necessary deliberately to punish innocent people to combat apartheid. Likewise, torturing people, even suspected informers, was no way of bringing about a humane society. Such means bear no relationship to the end and so cannot be justified by it.

It is the excesses of the liberation movement that need to be exposed and condemned by the truth commission, as opposed to even the everyday activities of the upholders of the apartheid regime. That is the essential difference. The principle of proportionality applies only to the liberation movement, not to the forces of apartheid. Everything the apartheid regime did was immoral, but only some of the things the liberation movement did were, even though the physical actions might have been the same, killing somebody in defence of apartheid and killing in order to oppose it are, morally speaking, totally different actions. Killing people can never be good, but it can sometimes be the lesser of two evils.

I believe apartheid could have been overthrown more quickly and more comprehensively without resorting to violence, so high was the moral ground occupied by its opponents and such was the international support. Though that might be due simply to my squeamishness about blood or to the fact that I did not have to endure the inherent violence of the apartheid system.

One trusts that the truth commission will bear such fundamental distinctions in mind and will not even consider putting the crimes of the apartheid regime and the actions of the liberation movement — some of which might have been crimes — in the same category.

□ Desmond is the author of *The Dumping Ground* and *The Discarded People*.

# What rights govt grants, it can also take away

ARE we, the "rainbow nation", in reality just a bunch of misogynists who feed religious minorities to the lions in the Kruger National Park and crucify women along the M1?

One might be forgiven for supposing so after studying the Bill of Rights in the working draft of the new constitution published last weekend.

"Advocacy of hatred based on gender or religion" is thus one of the four aspects of the speech — along with "hatred based on race or ethnicity" — that will not be constitutionally protected by the clauses guaranteeing freedom of expression. The attempt to empower the state to outlaw so-called "hate speech" based on these four things alone is strangely selective.

"Advocacy of hatred" based on political conviction has always been a greater problem in SA than "gender" or religious hatred. Why not outlaw that too while we are about it? Or will the Bill of Rights protect some forms of "hate speech", just as the truth commission is likely to condone killings carried out for the right political reasons?

The draft says "speech that incites discrimination may not be al-

lowed". Does this mean everyone will be forbidden to demand racial quotas? Will people no longer be permitted to go around calling each other racists? That would put a muzzle on just about everyone attacking Prof Makgoba's critics at Wits.

It will be interesting to see what happens to the right to academic freedom in the light of the controversy over Makgoba. The right is recognised in the draft, but the accompanying text notes "concern that guaranteeing institutions academic freedom would allow them to resist undergoing a transformation from institutions that largely serve a white, privileged minority into places of learning serving the broad South African population".

The implication that institutions such as Wits serve only whites overlooks the growing proportion of blacks in the privileged minority getting higher education in SA, not to mention Wits's long involvement with Baragwanath Hospital.

Apart from the free speech, among the rights undermined by the draft is the right to be presumed innocent until the contrary is proved. This right is included in a section setting out the rights of ac-

## JOHN KANE-BERMAN

cused persons. Earlier, however, an article explaining the implications of certain other clauses says: "People who say they are victims of discrimination do not have to prove that the discrimination is unfair. The person or organisation accused of unfair discrimination can be taken to court and they have to prove that the discrimination is fair."

Discrimination which is outlawed includes discrimination on the grounds of "race, gender, sex, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth". Neither the state nor "any person" may discriminate on these grounds. These provisions open a barrel of worms. One implication is that anyone who is not successful in a job application or who is aggrieved when a rival receives a promotion may haul the employer before a court which will presume that employer to be guilty of unfair discrimination unless he can prove the opposite. Anyone who is told that a hotel, for example, is fully booked will

be able to take the manager to court, where he would also have to prove his innocence on the accusation of discrimination.

However, the state is licensed to discriminate by proposed clauses authorising "measures to advance groups or categories of persons disadvantaged by discrimination". These clauses also dilute the provision that "everyone is equal before the law and has the right to equal protection and benefit of the law".

The weekend document contains as an "opinion" a right on the part of everyone "to pursue a livelihood and engage in economic activity". However, we are told there is no agreement that the new constitution should include this right. Some parties "argue that this is not a fundamental human right and (should) be left out of the new constitution". It is perverse to agree (in section 10) that everyone has the right to life but then to argue that one should not also have the right to the main means of sustaining it.

What is one to make of this argument when the rights to "health care services, sufficient food and clean water, a social security system" and "basic and further education"

are included in the draft of the new constitution? Are people to be entitled to all sorts of things but not the right to engage freely in economic activity to provide these things for themselves? The state, on the other hand, is enjoined to take "reasonable and progressive" measures to secure these rights.

Like the interim constitution, the new document contains a clause limiting the rights in the Bill of Rights in the pursuit of "an open and democratic society based on freedom and equality". Limitations may be brought about only by laws of general application not incompatible with the right being limited.

The drafters have not yet decided whether rights may be limited only when reasonable, or reasonable and necessary, or just necessary, or simply justifiable. The powers of limitation raise the question whether this document is really a Bill of Rights at all. Perhaps it is better described as a "bill of gifts", which the state in certain circumstances has the power to take away.

Kane-Berman is SA Institute of Race Relations CE.

## LETTERS

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# Tutu praised as the 'conscience' of his country

252 ARG 1/12/95  
□ *'Fearless' archbishop picks up another award*

## The Argus Foreign Service

NEW YORK. — Anglican Archbishop Desmond Tutu, newly appointed chairman of the Truth and Reconciliation Commission, was described as the "conscience of South Africa" when he received the African-American Institute's Star Chrystal Award for excellence here

Tony O'Reilly, major shareholder of Independent Newspapers and chairman of the Heinz Food Corporation, presented Archbishop Tutu with the award last night at a gala banquet attended by several celebrities, including the former chairman of the US joint chiefs of staff Colin Powell and former Zambian president Kenneth Kaunda

Dr O'Reilly said Archbishop Tutu was "fearless in his observations about his country. Only he can say the things he says and all will listen. It was true in the past and it is true today.

He is indeed the conscience of South Africa"

"And, if one looks at his concerns — Nigeria, Rwanda, Burundi, the Middle East, Eastern Europe — you know that this is truly the universal man who never hesitates to assist anyone in need"

Dr O'Reilly read a message from President Mandela, who said that "when other voices of protest were silenced, Tutu courageously continued to speak boldly against the tyranny of oppression and injustice. He became the voice of the voiceless and in doing so maintained the moral high ground of our struggle"

The African-American Institute said Archbishop Tutu was being recognised for his many accomplishments as the spiritual leader of the Diocese of Cape Town, a prominent leader in the creation of a new South Africa and an international human rights activist

In keeping with this legacy, it said, Archbishop Tutu had

just been appointed chairman of the Truth and Reconciliation Commission and it noted that he had just arrived in New York after taking part as mediator in the African Great Lakes summit in Cairo. Also he led a protest march to the Nigerian consulate-general in Johannesburg last week in response to the execution of nine Nigerian activists

Archbishop Tutu said he was accepting the award — as he had others such as the Nobel Peace Prize — on behalf of the many South Africans who contributed to the struggle for justice and peace

He said the end of apartheid was just "part one" of the struggle. Part two, to make the miracle endure, would in many ways be more difficult

He thanked the world for heeding his plea to disinvest from apartheid South Africa and urged it now to reverse that policy. "Please don't turn your backs on us," he said

# The state's case against generals

DURBAN — Former defence minister Magnus Malan and other officers were linked to secret plans for operations against backers of the African National Congress and its allies in the 1980s, prosecutors said today.

The allegations were detailed in an indictment put to General Malan and 19 others, among them former key officers, in the heavily guarded regional court here.

They are to be tried for an attack on the home of ANC supporters at Kwa-Makhutha in KwaZulu-Natal on January 21 1987, in which 13 people were killed, most of them women and children.

General Malan warned the government on Tuesday that it risked political and financial turmoil by putting him on trial for murder.

The 20, who have not been charged and have not been asked to plead, are due to stand trial in the Supreme Court here on March 4 next year. They are all out on bail.

Political leaders are largely split on racial lines over the trial, which will begin soon after the first formal sittings of the Truth and Reconciliation Commission.

General Malan, who has proclaimed his innocence, has said he will be prepared to give evidence to the commission but wants the case to proceed through the courts and does not plan to apply for amnesty.

The State alleges in the indictment that six of the accused, KwaZulu homeland police trained in offensive opera-

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PROTEST: PAC demonstrators stand outside the magistrate's court in Durban today during the appearance of Magnus Malan and 19 others.

**RETURN OF THE LEGEND**

key officers, in the heavily guarded regional court here.

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### **MORE REPORTS ON PAGE 3**

tions in Caprivi by the then South African Defence Force, carried out the attack using AK 47 assault rifles provided by two other accused.

Among the 20 charged with the murders is Inkatha's deputy secretary-General Zakhele "MZ" Khumalo, then personal assistant to party leader and longtime rival of President Mandela, Mangosuthu Buthelezi.

Mr Khumalo is alleged to have provided the party's link to the defence force.

The indictment said General Malan, four other ex-military generals, a vice-admiral, six senior army officers, a police colonel and Mr Khumalo were not at the scene of the attack but were involved in a covert operation which led to the massacre.

The State alleges that all were responsible in one way or another for "Operation Marion" — the name of the military's programme of support for Inkatha in the 1980s — and were responsible for "planning, training, authorising, provisioning of weaponry and transport, funding or avoidance of detection".

Prosecutors allege the operation originated after a series of discussions between Chief Buthelezi and the then chief director of Military Intelligence General Tieme Groenewald and Chief of Staff Intelligence, Vice-Admiral Dries Putter, in 1985.

Both officers are among the accused. Government officials have said Chief Buthelezi may be called to give evidence.

The indictment alleges the meetings addressed protection for Chief Buthelezi and Inkatha against a threat from



**IN COURT:** Former head of the SADF Magnus Malan will face trial in March.

the ANC, which was banned at the time, and the United Democratic Front (UDF), an allied organisation working inside the country.

More than 10 000 people were killed in a bitter turf war between the ANC and Inkatha in KwaZulu-Natal in the decade leading up to the elections in April last year.

The indictment alleges that General Groenewald presented Chief Buthelezi's requirements to General Malan and recommended the defence force should initially train a defensive unit of 50 to 100 men and an offensive unit of 10 to 20 men for Chief Buthelezi and Inkatha.

It lists subsequent meetings outlining plans to establish security structures for Inkatha and to use the IFP as a "more effective organisation against the ANC/UDF".

Prosecutors allege that Mr Khumalo asked military instructors to arrange an "operation" after the Caprivi recruits became restless.

Former Durban security branch policeman Colonel Lous Botha is alleged to have ensured police patrols were diverted from the planned murder scene and evidence was subsequently removed — Reuter.

## **Guilty: World's biggest cheat**

**SINGAPORE.** — The sentence of former futures trader Nick Leeson will be handed down early tomorrow, Judge Richard Magnus said here today.

Judge Magnus, a senior district judge, said: "I would like time to consider all this and accordingly adjourn until 9.30 tomorrow morning."

Earlier today, former Barings trader Leeson was convicted of two fraud charges linked to \$1.4 billion (R5 billion) in losses that broke British merchant bank Barings.

Leeson pleaded guilty to the two charges.

Leeson could be sentenced to up to eight years in a Singapore jail on the charges, according to legal sources.

But defence lawyer John Koh said in court today: "I understand the prosecution is not seeking any deterrent sentence."

Prosecutor Lawrence Ang said: "I confirm I am leaving the question of sentence to the court. — Reuter."

# Malan murder trial date is set for March

DURBAN — Former Defence Minister Magnus Malan and 19 others will go on trial next March for the alleged murder of 13 people in KwaMakhutha eight years ago, a magistrate ruled today

The 20 accused, including five generals and an admiral, were presented with the indictments but were not asked to plead to any charges and were ordered to appear in the Durban Supreme Court in March for trial

"The case is now transferred to the Supreme Court of Durban for trial on March 4, 1996," said Magistrate Jan Augustyn

The 20 are all out on bail of between R2 000 and R10 000, but Mr Augustyn ordered that bail conditions be amended to satisfy a Constitutional Court ruling handed down earlier this week

The accused had been ordered not to contact any State witnesses in the trial, but in terms of the Constitutional

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 Court decision all accused must be allowed access to court documents and witnesses, unless the State can prove this would lead to intimidation or defeat the ends of justice

"The accused are free to contact people," Mr Augustyn said. Prosecutors did not argue the matter and State advocate Carl Koenig later said the ruling would not harm the State's case

"We didn't argue against the request that the bail condition fall away because we had no legal argument. The general rule has been altered and we couldn't legally argue because the law is against us," he said

"This doesn't really hamper us because the witnesses can refuse to speak to the accused. Also, a proviso is that if an accused wants to see a witness they have to contact a member of the Attorney-General's staff, who is required to be present," he said

Mr Augustyn also granted a request from the four sets of lawyers representing the ac-

cused that a bail condition ordering them to report to police stations each week be eased

"There is a new ruling. All accused will now appear on December 4 at their various police stations, and then on January 15 and the 15th of every month after that until the trial has started," he said

All the accused have had to surrender their passports to investigating officer Lieutenant-Colonel Frank Dutton

The 20 arrived at the 12th floor Z Court via the holding cells, having slipped past dozens of reporters who were waiting outside the building

The court was crowded with journalists and members of the public, but there was no sign of former security force leaders who had been at the court to show their support when General Malan and the others first appeared on November 2

The 20 all wore suits or jackets and were crowded into the dock and on to a bench in front of it. Armed police searched everyone entering the courtroom for weapons — Reuter



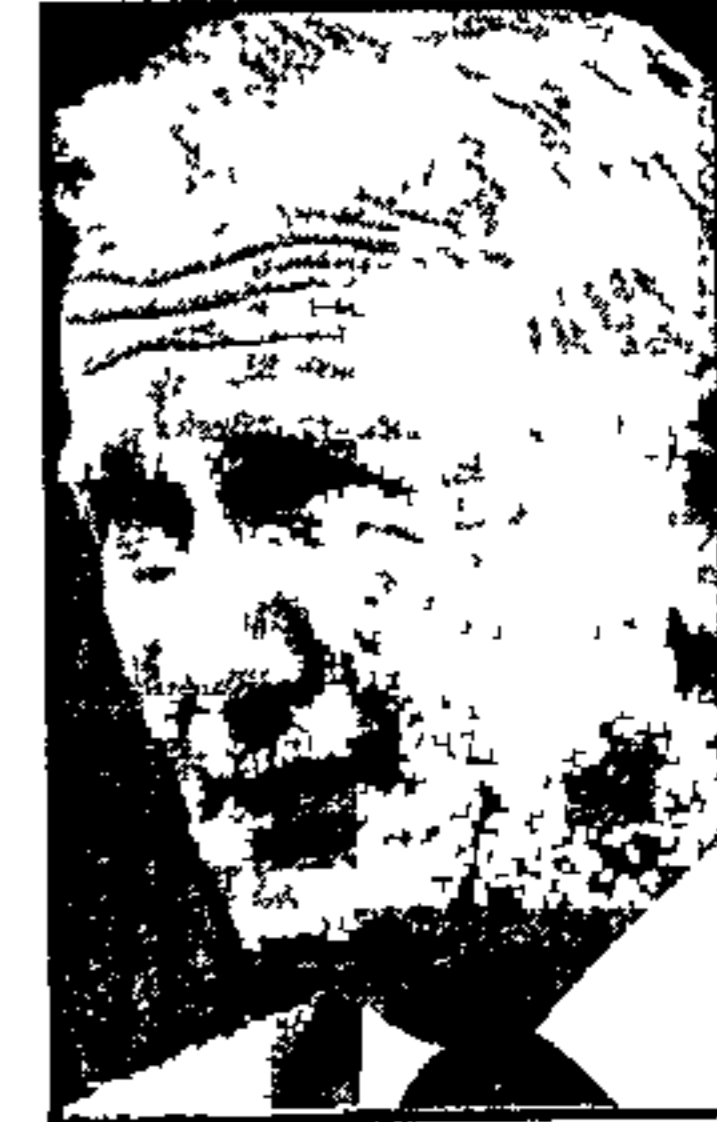
General Janne Geldenhuys



General Tienie Groenewald



Mr Zakhele Khumalo, Inkatha Freedom Party deputy secretary-general.



Vice-Admiral Dries Putter

## Names of the accused in KwaMakhutha massacre

DURBAN — These are those indicted today for the KwaMakhutha massacre in which 13 people were killed on January 21, 1987

Military ranks and titles do not appear in the court papers, but were listed in documents supplied earlier by Safety and Security Minister Sydney Mufamadi

The names follow in the order listed in the court papers

Six former KwaZulu police constables who were trained in the Caprivi Strip: Peter Msane, 32, Celukwanda Nicholas Ndlovu, 32, Martin Thulani Khanyile, 31, Prince Phezukwendoda Mkhize, 33, Hloni An-

dreas Mbuyazi, 32 and Alex Vundlela Biyela, 31

Melchizedec Zakhele "M Z" Khumalo, 52, Inkatha Freedom Party deputy secretary-general

Colonel Gerrit Cornelis Griesel, 33, former Military Intelligence (MI) operative

Major Gerhardus Mario Jacobs, 39, former Special Operations instructor

Lieutenant-Colonel Jacobus Adriaan Victor, 50, former Intelligence officer at Natal Command

Commandant Jan Hendrik van der Merwe, 45, former MI security officer

Brigadier John Reeves More,

51, former MI officer

Brigadier Cornelius Johannes van Niekerk, 52, former director of Special Tasks

General Pieter Hendrik Groenewald, 59, former chief director of MI

General Cornelius Jacobus van Tonder, 54, former chief director Intelligence Operations

Vice-Admiral Andries Petrus Putter, 59, former chief of staff, Intelligence

General Andreas Jacobus Liebenberg, 57, former Chief of the Army

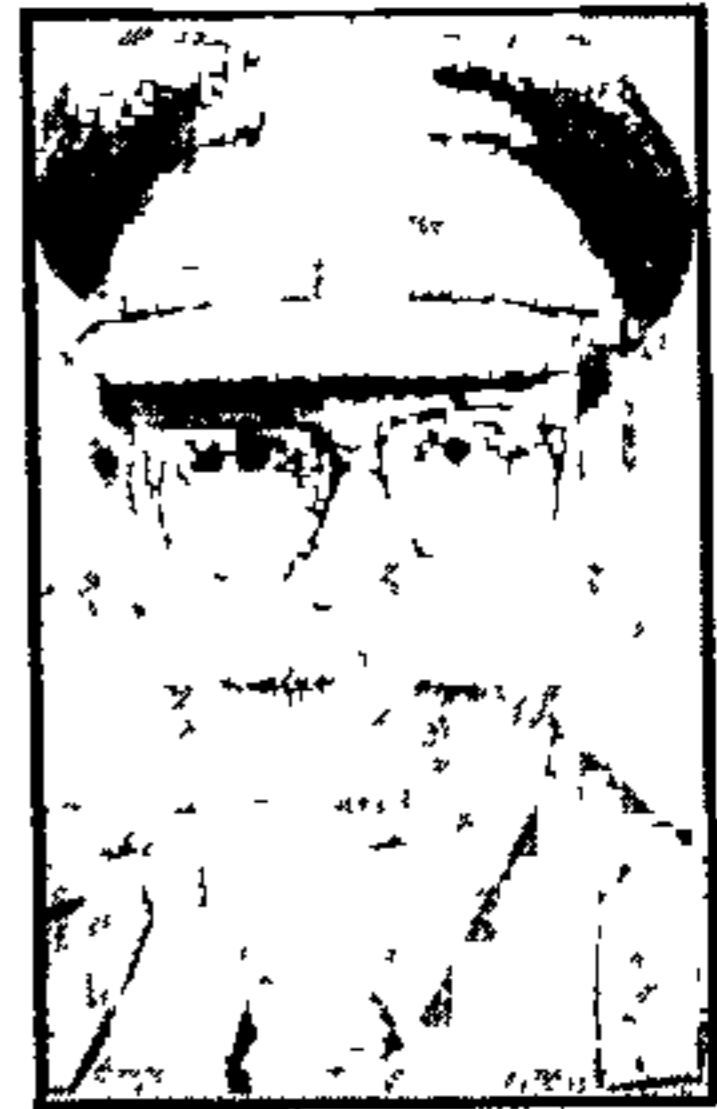
General Johannes Jacobus Geldenhuys, 60, former Chief of the SADF

General Magnus Andre De Merindol Malan, 65, former Defence Minister

Colonel Louis Botha, 49, former security branch policeman

The following are the names of the victims in the KwaMakhutha massacre as set out in the indictment

Isabel Kubheka, 45, William Ntuli, 58, Linda Edward Ndwalane, 36, Nomusa Ndwalane, 34, Phumele Ndlovu, 22, Jabu Ndlovu, 17, Jabu (surname, age unknown), Nomfundo Prudence Thusini, 10, Phumzile Thusini, 8, Vikile Thusini, 7, Nunu Sithembile Ntuli, 7, Mbusa Thusini, 6, Sanele Thusini, 4 — Reuter



General 'Kat' Liebenberg, former chief of the army

## 77% in SA want executions back

CT 11/12/95 (252)

JOHANNESBURG: Altogether 77% of South Africans want the death penalty re-introduced for serious crimes, the results of a Market Research Africa survey show.

The national survey from October 7 to 31 covered 2 502 homes in urban areas and was split equally between men and women.

Altogether 69% of black respondents, 85% of coloureds, 92% of Indians and 91% of whites are in favour of the death penalty.

The more people earn, the more they want the death penalty re-introduced — 89% earning over R5 000 said they wanted it re-introduced, compared with 69% earning R1 500 or less.

More older people supported the death penalty — 90% of those older than 50 said they wanted it reintroduced, compared with 69% between 16 to 24.

More people in the Western Cape (87%) wanted the death penalty brought back than in any other province.

# Tutu wants inquiry to cleanse wounds

By Mzimasi Ngudle and  
Sowetan Correspondent

ARCHBISHOP Desmond Tutu says he hopes the Truth and Reconciliation Commission will open wounds so they can be cleansed and prevented from festering

The newly appointed head of the commission said the probe into atrocities on both sides of the apartheid conflict would be traumatic but cleansing

The Anglican Archbishop and Nobel Peace Laureate was named on Wednesday by President Nelson Mandela to head the 17-member commission which includes a formidable number of human rights activists

Tutu, who is in New York to be honoured by the African American

*Sowetan 1/12/95*  
Institute, said yesterday the commission should not be seen as a witch-hunt or a vehicle for reprisal "I hope people realise you can actually have the burden of guilt, and the burden of carrying pain on your own, lifted off your shoulders"

## Atrocities probed

The commission is charged with probing atrocities of the apartheid era, granting amnesty to perpetrators and finding ways to provide restitution or reparations to victims or survivors

It will be expected to balance justice with reconciliation

Meanwhile, the composition of the commission has sparked divergent reactions from parties across the political spectrum

*(252)*  
The Inkatha Freedom Party has rejected the commission while the National Party is complaining that some nominees, who could have made contributions, were left out

The Pan Africanist Congress, which challenged the moral and legal basis upon which the commission was based, said some of the commissioners were "aligned politically"

The Azanian People's Organisation, which is still challenging the constitutionality of the commission, said the involvement of the church in a commission appointed by the Government was unfortunate

It said the church would become part of the Government making it impossible for it to criticise the Government



## 77% of South Africans want death penalty reintroduced

(252) Star 1/12/95

According to a study carried out last month by Market Research Africa, 77% of South Africans want the death penalty reintroduced for serious crimes

The survey shows that 69% of blacks, 85% of coloureds, 91% of whites and 92% of Indians wish to see the return of capital punishment.

Afrikaans speakers are most in favour with 91% for it, while Sotho and Nguni speakers were second at 68% and 69%

Women are more hard-line when it comes to bringing back the death penalty with 80% in favour compared with 74% of males.

Regional breakdowns show that 87% of people in the Western Cape are in favour, compared with 69% in Mpumalanga. Gauteng is third from the bottom of the list with 74% in favour. Overall, the less the monthly household income the less the demand for the penalty's return - Staff Reporter.

# Malan to be indicted today

(252)  
M+G 1-7/12/95

Mail & Guardian reporter

**A** TEAM of prosecutors worked around the clock this week putting the final touches to the 40-odd-page indictment against former defence minister Magnus Malan and nine others.

Malan, former Military Intelligence chief General Tienie Groenewald and eight other former and serving officers are charged with murder, attempted murder and conspiracy to murder and will be indicted today in Durban's Supreme Court.

They will, for the first time, appear in court with six former KwaZulu policemen accused of carrying out

the KwaMakhuta massacre in 1987

Also in the dock will be Inkatha Freedom Party secretary general MZ Khumalo, a former security policeman Major Louis Botha, and former Military Intelligence operative Brigadier John More

The indictment makes it clear the challenge for the state is to prove the State Security Council's secret sub-committee gave orders in 1986 for about 200 men loyal to Inkatha to be trained in the Caprivi Strip by the then South African Defence Force.

And then the state will have to prove a link between those trainees and the massacre of 13 civilians at

KwaMakhuta a year later.

The indictment spells out that the state's strategy will be to prove the link with a series of witnesses who were allegedly involved in the training programme. Some of them were from the SADF. Other witnesses include men who allegedly took part in the training and subsequent violence.

The state will seek to bolster its line-up of witnesses with a series of top-secret documents from the State Security Council.

The indictment names Home Affairs Minister Mangosuthu Buthelezi, although he is not, at this stage, set down to be called to testify about the origins of the Caprivi 200.

The investigation which has led to this epoch-making trial was headed up by legendary KwaZulu-Natal detective Colonel Frank Dutton and state advocate Carl Koenig.

The men worked together on the Goldstone Commission prior to the establishment of the elite Investigative Task Unit in KwaZulu-Natal.

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## Foreign nations to compete to develop Soweto

# Generals in court: State spells out killing plan for trainees

**GREG KNOWLER**

Own Correspondent

DURBAN. — Thirteen people were massacred in KwaMakutha near here in 1987 after a group of highly-trained Inkatha supporters became "restless" and "wanted to practise their training".

This was alleged by the State when a 65-page indictment was served on former Defence Force Minister Magnus Malan and 19 others linked to the KwaMakutha killings before a packed magistrate's court yesterday.

With General Malan in the dock were two other former defence force generals, Jannie Geldenhuys and "Kat" Liebenberg, former Vice-Admiral Dries Putter, and several other security chiefs. They all allegedly are linked to a top-secret plan involving a senior Inkatha official, Zakhele Khumalo, to eliminate opponents of the former government.

ARG 2/12/95  
All 20 accused have been charged with 13 counts of murder. Magistrate J J Augustyn set down the trial date for March 4 at the Supreme Court.

The State alleged that 10 years ago IFP leader and Minister of Home Affairs Mangosuthu Buthelezi, then chief minister of the KwaZulu government, had requested security force assistance, believing his life and those of his supporters were being threatened by the African National Congress and the now disbanded United Democratic Front.

In April 1986, the indictment stated, defence force support for Inkatha had been agreed and code-named "Operation Marion". General Malan had wanted to implement the secret plan for the para-military force "without delay".

After several meetings with top apartheid securocrats, 200 Inkatha supporters allegedly had received four

months of specialist training at a camp in the Caprivi Strip before being flown back to KwaZulu-Natal.

The State alleged that IFP deputy secretary-general Zakhele Khumalo had told military intelligence instructor Johan Opperman the trainees had been getting restless and "wanted to practise".

Victor Ntuli of KwaMakutha was chosen after a dossier on him proved the most comprehensive.

Opperman had made arrangements with security officer Colonel Lous Botha to have police patrols diverted from the area where the target lived, and to act as a "sweeper" to make sure no evidence was left behind for the police, the State claimed.

The attack was carried out, but Ntuli was not home at the time. However, the operation had been deemed a success.

■ See page 6

# Malan indictment tells chilling tale

Star 2/12/95

(252)

BY ADRIAN HADLAND

Durban - The murder of 13 people at KwaMakhutha in 1987, for which former minister of defence Gen Magnus Malan and 19 co-accused have been charged, had been conceived because a group of state-trained assassins had become restless and bored, Kwa-Zulu Natal Attorney-General Tim McNally alleged in papers before the Durban Regional Court yesterday.

The allegation is part of a dramatic 32-page indictment, which was presented by the State to the defendants yesterday outlining the "substantial facts" and charges ranged against them.

The charges include murder, attempted murder and conspiracy to commit murder following the 1987 armed attack on ANC activist Victor Ntuli's KwaMakhutha home.

Five children under the age of 10

were among the 13 killed during the incident.

Squashed on to two long wooden benches in the packed courtroom yesterday, Malan and his co-accused - including many of the top echelon of South Africa's security and intelligence forces in the 1980s - were called on one by one to accept copies of the indictment.

It was the first time they had seen the extent and details of the State's allegations.

In the indictment, McNally states that it is acknowledged that 14 of the accused were not present at the scene of the crime - including Malan and former SADF chiefs Gen Kat Liebenberg and Gen Janne Geldenhuys. However, "it is alleged that such crimes fall four-square within the scope and mandate of Operation Marlon which those accused facilitated by planning, training, authorising, prov-

sioning of weaponry and transport, funding or avoidance of detection".

Operation Marlon, it was explained, was the codename given to co-operation between the SA Defence Force and the Inkatha Freedom Party from the inception of Operation Marlon. The indictment says, "offensive actions (against Inkatha's enemies) were an integral part of the project".

Those of the accused who were associated with the SA Defence Force appreciated at all material times that such offensive actions included actions amounting to murder".

The indictment goes back to November 25 1985 when the then chief minister of KwaZulu, Mangosuthu Buthelezi, requested a meeting with accused No 14 (former chief director of Military Intelligence and current Freedom Front senator Gen Themie Groenewald).

At the meeting, Buthelezi - who

had been told of threats to his life - allegedly called for protection, information and a KwaZulu defence force.

It was later decided that a "deterrence" unit of between 50 and 100 people should be trained and an "offensive" unit of between 10 and 20

An "offensive capability" was described as a means by which the United Democratic Front-ANC-SA Communist Party alliance could be prevented from disrupting Inkatha meetings, destroying property and terrorising, injuring or murdering Inkatha members.

The proposal was accepted at an extraordinary meeting of the State Security Council, and former cabinet ministers Chris Heunis and Louis le Grange were "mandated to assist in the creation" of the force.

The force was trained at a secret base in the Capri Strip, later known as Hippo Camp, with the offensive



OPEN ANGER - Protesters outside the court yesterday. PHOTOGRAPH NATAL NEWSPAPERS



Gen Magnus Malan - PHOTOGRAPH AP group being trained in skills such as house penetration, weaponry, explosives and attacks on identified targets.

The docket that clinched the arrest

# The secret



ACCUSED . . . Magnus Malan

By MARLENE BURGER

the secret Hippo training base in the Caprivi in April 1986 where Inkatha assassins were allegedly trained, has turned state witness in return for indemnity from prosecution for his pivotal role in the 1987 Kwamakutha massacre.

For more than six months, he has been working closely with the task unit as it painstakingly built the case against some of the most illustrious military officers who served the SADF during the total onslaught era.

The crucial MI file was finally retrieved by the task unit only after Mr Modise ordered MI to locate it and hand it over.

This was done on June 5, four days after a Pretoria magistrate issued a search warrant to the Investigation Task Unit and a team of 40 detectives, led by Brigadier Ivor Human, searched MI headquarters in the Liberty Life Building in Vermeulen Street, Pretoria, from 4pm to midnight without success.

The file contained details of Operation Marion, the code name for the covert project to provide Chief Mangosuthu Buthelezi with his own paramilitary unit.

The most crucial document has come to be known as the Liebenberg Report, a top-secret, detailed proposal from then army chief Lieutenant-General Kat Liebenberg to SADF chief General Janne Geldenhuys, which was

To Page 2

## Malan dossier

From Page 1  
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forwarded to General Malan for approval on February 27 1988

It includes details of the R3,5-million MI budget for the plan to neutralise the United Democratic Front in Natal and a proposal that the SADF's first "black" unit, 121 Battalion based in Lenasia, should form the core of the future Kwazulu military force by recruiting only IFP loyalists as members in future.

General Liebenberg was at pains to record that the Kwazulu paramilitary unit should not be linked to the SADF or the government.

That officers involved in Operation Marion were acutely aware of the perils of the project is clear from documents admitted to court this week.

One records the concern of then Chief Director, Intelligence, Major-General Pieter Groenewald that the paramilitary action envisaged might be unconstitutional, and that SADF members could expose themselves to criminal prosecution through their involvement.

The MI file also provided the task unit with a wad of supporting documentation, including correspondence between some of those now facing murder charges, such as letters from Major-General Groenewald to Vice-Admiral Putter, and evidence that the Operation Marion chain of command reached General Malan.

After it received the secret file, the task unit spent five months checking every fact, tracking down and interviewing potential witnesses.

As the dossier grew, some of those directly involved in the Kwamakutha massacre chose to co-operate with the investigators rather than face prosecution.

Full story Page 4

A TOP-SECRET file hidden from investigators during an eight-hour raid on Military Intelligence headquarters six months ago holds the key to the murder charges against former defence minister Magnus Malan.

The dossier, which is not registered in MI's records, contains documents so sensitive that only two copies of some were ever made. It was only recovered after direct intervention by Defence Minister Joe Modise.

One document, which forms part of the indictment, warns General Malan that officers involved in the covert projects in Kwazulu ran the risk of being charged with a capital offence.

The memorandum, which was verbally presented to General Malan in October 1988 by Vice-Admiral Andries Putter, Chief-of-Staff, Intelligence,

at the time, warned him that, although cut-off points were being built in to protect those involved, "this does not eliminate the possibility that the Chief-of-Staff, Intelligence, and officers involved by virtue of their planning responsibility in Operation Marion may be charged with a capital crime".

The Investigation Task Unit probing Natal hit squads was directed to the file by a former MI agent, Major J P Opperman, who will be a key witness against General Malan and his 19 co-accused on 18 murder charges. The charges relate to the killing of 13 people, including women and six children under the age of 10, at Kwamakutha, near Durban, on January 21 1987.

Major Opperman, one of four MI instructors sent to

# Malan dossier

of Magnus and his top generals

# WHO KNEW WHAT . . . AND WHEN

CHRIS BARRON examines the roles allegedly played by the key figures mentioned in the court indictment

● MALAN, Magnus (minister of defence and member of State Security Council during the period) On December 19 1985 is told of Chief Buthelezi's security requirements. Is mandated to assist Chief Buthelezi in the creation of a security force for Kwazulu Province a summary of recommendations for Mr Heunis, but omits those dealing with the establishment of an offensive unit

● GROENEWALD, Pieter Hendrik (chief director of Military Intelligence until August 1986, answerable to Chief-of-Staff, Intelligence, Vice-Admiral Putter) Meets Chief Buthelezi on November 25 1985 and hears his security requirements to ward off ANC/UDF threat to him and Inkatha. Reports outcome of meeting to Vice-Admiral Putter and on December 19 1985 presents Chief Buthelezi's requirements to

General Malan with a recommendation that the SADF should train a defensive unit of 50-100 men and, in secret, an offensive unit of 10-20. Is told to investigate the creation of a paramilitary unit. Given 200 candidates for training and told to set up a task group for the paramilitary project.

● PUTTER, Andries Petrus (Vice-Admiral and Chief-of-Staff, Intelligence, for the SADF). On November 27 1985 he recommends to SADF chief General Johann Geldenhuys that he or the minister of defence should meet Chief Buthelezi as soon as possible to capitalise on the latter's conciliatory mood towards the SADF. A task group is formed which recommends on February 12 that paramilitary aid for Chief Buthelezi be kept secret and be his responsibility as Chief-of-Staff, Intelligence. He is told by General

Malan to "sell" this covert plan to Chief Buthelezi. He tells General Geldenhuys that, owing to the urgency of implementing Operation Marion, they are proceeding on verbal authority, and tells him training of recruits will start on April 16 1986 in the Caprivi Strip.

● GELDENHUYS, Johannes Jacobus (Chief of the SADF) Attends meeting of the State Security Council on December 20 1985 when the issue of how best to capitalise on Chief Buthelezi's attitude is discussed. On February 3 1986 attends meeting of State Security Council at which authority is given to provide Chief Buthelezi with assistance. On February 17 he appoints a task group to work out the details of paramilitary aid. On April 8, after receiving the task group's report, he instructs Vice-Admiral Putter to sell the covert leg of the plan to Chief Buthelezi

● VAN TONDER, Cornelius Jacobus (Chief director of special tasks under the command of Vice-Admiral Putter. In August 1986 took over from General Groenewald as chief director of military intelligence) On April 16 is put in charge of managing Operation Marion. He is told to use part of the guerrilla warfare school in the Caprivi for training Inkatha members. Offers congratulations after the hit squad operation.

● VAN NIEKERK, Cornelius Johannes (attached to the directorate of Military Intelligence. As the director of special tasks, Operation Marion was his specific responsibility at relevant times). Sits on a committee appointed by the State Security Council to investigate the creation of a paramilitary unit for Inkatha. On February 12 1986 he accompanies General Groenewald to a meeting

proached by Mr Opperman with the names of possible targets and indicates he has no objection as none is an informer of the security branch. The night before the operation he is briefed fully by Mr Opperman and Mr Cloete. Arrangements are made with him to have police patrols diverted from the operational area, and for him to act as sweeper.

● JACOBS, Gerhardus Mario (officer commanding at Camp Hippo in the Caprivi). Oversees training of the Inkatha members and their division into groups.

● KHUMALO, Melchizedec Zakehe (personal assistant to Chief Buthelezi and liaison person between Inkatha and Operation Marion). Attends passing out parade of trainees and pays them. Meets with Mr Opperman and Mr Cloete and they decide to plan a hit. He meets with the two and the

hit squad outside Umtund when the squad is instructed how to attack the house and given AK-47s.

● VICTOR, Jacobus Adriaan (senior staff officer in charge of intelligence at Natal Command). Given the names of four possible targets and checks to ensure they are not military targets. Receives the AK-47s and ammunition and holds for collection.

● GRIESEL, (commander of 1 Ferntree in Natal). Provides weaponry for the hit.

● MSANE, Peter (as member of the operative group and is assigned to drive the hit vehicle).

● KHANYILE, Martin Tshepo; NDLOVU, Celukwanda; MKHIZE, Prince Phezukwendoda; MIBUYAZI, Hloni Andrews; BIXELA, Alex Vutindlela. All part of the hit squad

meets Chief Buthelezi in Umtund with Brigadier van Niekerk. Reports to General van Tonder that the first 200 trainees are back in Natal and ready for deployment, and that money for their salaries has been deposited into an Inkatha account. Grants permission to instructors Andre Cloete and J.P. Opperman to plan their first operation. Conveys approval of selected target.

He arranges for the AK-47s and ammunition to be obtained from the Ferntree Military Base in Natal and says he will arrange for their collection and destruction after the operation.

● VANDER MERWE, Jan Hendrik. Is instrumental in paying the trainees in the Caprivi. He is handed the AK-47s after the hit.

● BOTHA, Louis (in security branch of the SAP and Operation Marion's liaison officer). Is ap-

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**C**HIEF Mangosuthu Buthezi, president of the Inkatha Freedom Party, was a worried man. It was October 1985, the worst year yet in the undeclared civil war between Inkatha and the United Democratic Front, and he had learnt that there was a plot to kill him and neutralise his organisation.

He asked the chief director of military intelligence in the defence force, General Pieter Hendrik Groenewald, for a meeting. During their discussions, his visitor impressed on Chief Buthezi the reality of the threat from the ANC and the UDF against him and his organisation.

Chief Buthezi indicated that he was fully aware of the dangers and needed help.

After the visit, General Groenewald briefed the chief-of-staff, Intelligence, Vice-Admiral Dries Putter, on what had happened. The admiral in turn told the head of the defence force, General Jan Geldenhuys, and suggested an urgent meeting be arranged between Chief Buthezi and the general or the Defence Minister, Magnus Malan, to "capitalise on the goodwill" shown by Chief Buthezi.

So, exactly 10 years ago, Chief Buthezi's "wish list" was formally put to General Malan. He wanted protection, information, a Kwazulu defence force, a Kwazulu state security council and a Zululand battalion at Jozini.

General Groenewald recommended that the defence force secretly train a defensive unit of 50 to 100 men and an offensive unit of 10 to 20 men for Chief Buthezi's needs.

The top brass moved quickly. The next day Chief Buthezi's request was discussed at an extraordinary meeting in Teyateyan, Cape Town, of the State Security Council General Malan, the Minister of Constitutional Development and Planning, Chris Heunis, and the Law and Order Minister, Louis le Grange, were mandated to help Chief Buthezi create a security force for Kwazulu.

The council appointed a special interdepartmental committee to implement its decision to help Chief Buthezi. This committee, in turn, set up a sub-committee to investigate his specific needs, including a paramilitary unit and the possibility of granting him the power to issue firearm licences.

Early in January 1986, the sub-committee met in Ulundi and compiled a report listing those of Chief Buthezi's needs which should be met, among them an offensive paramilitary unit and the power to issue firearm licences.



Indictments handed to the 20 accused in the Kwamakutha killings this week tell the tale of a highly secretive joint government and defence force plan. It capitalised on the political and military insecurities of Inkatha president Mangosuthu Buthezi. CARMEL RICKARD reports on the prosecution case as set out in the charge sheet... from the first allegations of secret meetings in Ulundi, through 18 months shaping a covert operation, and ending with 13 bullet-riddled bodies at House 1866, Kwamakutha

# THE CASE AGAINST THE GENERAL'S

ST 3/12/95 252

## 'Clash of giants' as former colleagues take legal sides

By CARMEL RICKARD

BATTLE lines were drawn in court on Friday between staff of the Kwazulu Natal attorney general and Klaus von Lieres SC, the

whom the accused were not allowed to communicate, he said the Criminal Procedure Act provided that an accused could only be prevented from contacting witnesses, not other people. Yet Mr McNally's

unit. He explained that this information was not included as it was "of a departmental nature and due to (its) sensitivity". The plan, now code-named Operation Marlon, was to be "sold" to Chief Buthezi by Vice-Admiral Putter. In the meantime, recruitment of the first 200 Inkatha trainees had begun. These men were told they could join the Kwazulu Police if they succeeded in their training. After preliminary screening, they were transported in closed trucks to Durban airport, where the trucks



Law and Order Minister, Louis le Grange, were mandated to help Chief Buthelezi create a security force for KwaZulu.

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Early in January 1986, the sub-committee met in Umtund and compiled a report listing those of Chief Buthelezi's needs which should be met, among them an offensive paramilitary unit and the power to issue firearm licences. It recommended that the unit be established by KwaZulu and functions legally.

The sub-committee reported back to the head committee, which accepted its decisions, but decided that the question of the paramilitary unit should be investigated at the highest political level and cleared with Buthelezi.

The head committee also wanted Mr Heunis and General Malan to discuss the unit with Chief Buthelezi. The general was informed of this recommendation the next day.

The idea of discussions between Chief Buthelezi, Mr Heunis and General Malan was also given the go-ahead by the State Security Council, which wanted the two ministers to evaluate the chief minister's needs and aims in relation to the paramilitary unit.

In a preparatory meeting, Chief Buthelezi asked General Groenewald whether the defence force would give him a "contra-mobilisation capability", an intelligence capability which could be used to prevent the UDF from disrupting Inkatha meetings, destroying property and terrorising, injuring or murdering Inkatha members.

They agreed that Chief Buthelezi would select 200 candidates for special training. Further meetings followed in Cape Town, and General Malan asked for more details about the paramilitary unit and how it would be financed. He also stipulated that he "must be able to sell the proposals to Mr Heunis".

A special task group was set up to provide General Malan with the information he required. Its top-secret report said a

## 'Clash of giants' as former colleagues take legal sides

By CARMEL RICKARD

BATTLE lines were drawn in court on Friday between staff of the KwaZulu Natal attorney general and Klaus von Lieres SC, the former Attorney General of the Witwatersrand, who is representing some of the accused in the Kwa-Makatha case.

Legal sources say there is no love lost between Mr von Lieres, who recently took early retirement on the grounds of ill health, and his former colleague Tim McNally, the attorney general of KwaZulu Natal. Shortly before the case started, Mr McNally characterised the legal clash looming between them as a "battle of the giants".

Although he will be prosecuting the case when it begins in the Supreme Court on March 4 next year, Mr McNally was not in court on Friday. Instead his deputy, Ben-ny Schonfeldt, dealt with the brief appearance of the 20 accused.

During the hearing Mr von Lieres made detailed submissions on changes to the bail conditions of his clients. In addition to changes in the arrangements for reporting to the police, he asked that one of the bail conditions be scrapped or at least suspended.

Referring to a list of people with whom the accused were not allowed to communicate, he said the Criminal Procedure Act provided that an accused could only be prevented from contacting witnesses, not other people. Yet Mr McNally's officials were quoted in a newspaper as saying that those in the list were not necessarily witnesses.

Mr von Lieres said that if the officials had been correctly quoted, the bail condition banning contact with the people on the list was effectively undermining the intention of the legislature which was meant to protect witnesses, and not for reasons of prosecutorial convenience.

Mr Schonfeldt replied that he had listened carefully to Mr von Lieres's argument, "and very erudite it was". However, the state had already agreed to scrap the requirement that the accused not contact the people on the list.

Black and white accused were treated differently. The alleged hit-men, all black, had to use the public entrance. The white generals and other military officers, however, entered court through the cells, thus avoiding reporters.

unit. He explained that this information was not included as it was "of a departmental nature and due to (its) sensitivity".

The plan, now code-named Operation Maroon, was to be "sold" to Chief Buthelezi by Vice-Admiral Putter. In the meantime, recruitment of the first 200 Inkatha trainees had begun.

These men were told they could join the KwaZulu Police if they succeeded in their training. After preliminary screening, they were transported in closed trucks to Durban airport, where the trucks were parked in such a way that the recruits could board the waiting aircraft directly.

The recruits did not know where they were going. Some believed they were en route to Israel. They were secretly flown to the Caprii guerrilla warfare school base, then driven to Camp Hippo, where they were to be trained.

They were kept as isolated as possible and contact with trainees and trainees outside the immediate group was not allowed.

Four separate units were formed, each specialising in a different aspect of paramilitary work: offensive and defensive work, contra-mobilisation and protection of VIPs.

During their two-month training, they were paid with cash brought by military intelligence officers and M Z Khumalo, Chief Buthelezi's personal assistant, who was also Inkatha's liaison man on Operation Maroon.

After they had been fully trained, the recruits were secretly transported back to Durban.



FEARING FOR HIS LIFE... Chief Mangosuthu Buthelezi asked for a KwaZulu defence force

by Military Intelligence. Some time after the trainees' return, Mr Khumalo contacted Major Opperman and told him they were restless, they wanted to "practise their training".

Major Opperman and Mr Cloete then asked Brigadier More for permission to launch an operation, which he gave.

Major Opperman asked the political commissar of the trainees, Daluxolo Luthuli, to select four people "whose death would have a positive impact on Inkatha" and four members of the defensive group were instructed to compile a dossier each.

Major Opperman first checked with military and police sources that none of the intended targets was a police or military informer, then returned to Pretoria for the final go-ahead from Brigadier More. The dossier on Victor Ntuli was the most comprehensive and he was selected as the group's target.

Brigadier More arranged for AK-47s and ammunition from Fernhooft military base in Natal. He also organised for the weapons to be collected after the operation and taken to Iscor to be destroyed.

Major Opperman, Mr Cloete and Mr Khumalo then met Mr Luthuli and 11 members of the hit group at a deserted spot in Umtund to give them instructions on how to attack the Ntuli house and for last-minute practice with their weapons.

They were told to use their white combi for the operation, and to stick specially prepared posters advertising a disco on the sides of the vehicle.

Mr Cloete and Major Opperman went back to the Mabhu hotel, where they were staying and, just before the deadline for the attack, met security policeman Major Louis Botha, the police liaison officer for Operation Maroon.

Major Botha's task was to divert police patrols from the area and to check the site after the hit to ensure no incriminating evidence had been overlooked.

on the floor that escape was impossible. Instead, she hid with her baby in a wardrobe, listening to the bullets and the screams. Hours later she crept out to find a charnel house — 13 bodies, six of them children under 10.

Neighbours, alerted by the gunfire, had come outside but pistol shots from the combi scared them back into their homes.

While Major Botha "swept" the scene for evidence before the arrival of the police at about 7am, the triumphant members of the paramilitary unit met up with their handlers under a freeway bridge to report on their success.

Everything had gone well, apart from one small detail — Mr Msane had forgotten to drop his "Chapter 1 verse 1" text at the scene.

They removed the stolen registration plates and posters from the vehicle, then drove to Umlanga Rocks, where they dumped the registration plates and burnt the posters.

To celebrate, they drove to Mr Khumalo's shop in Umtund, where he arranged a ceremony during which a goat was slaughtered.

Major Opperman and Mr Cloete handed the AK-47s over to Lieutenant Colonel Jacobus Victor, as they had previously arranged. He was to keep them until Brigadier More could have them fetched and smelted by Iscor.

Major Opperman then visited Mr Khumalo and reimbursed him for the cost of the goat.



# 'Secret squad to kill ANC'

CP 3/12/95

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*Malan's 'deadly boys from the bundu'*

## CP CORRESPONDENT

THE MOST dramatic evidence in the murder trial of former minister of defence, General Magnus Malan, and other senior officers of the security forces will be given in the Durban Supreme Court by Major Johan Pieter Opperman (with the code name JP), a former member of the SA Defence Force

Opperman was allegedly closely involved in the KwaMakutha massacre in KwaZulu/Natal in 1987

On Friday, the State released particulars about 75 witnesses who will disclose details of the alleged involvement of Malan and his 19 co-accused in the creation of an "IFP attack unit" when the trial starts officially on March 4 next year

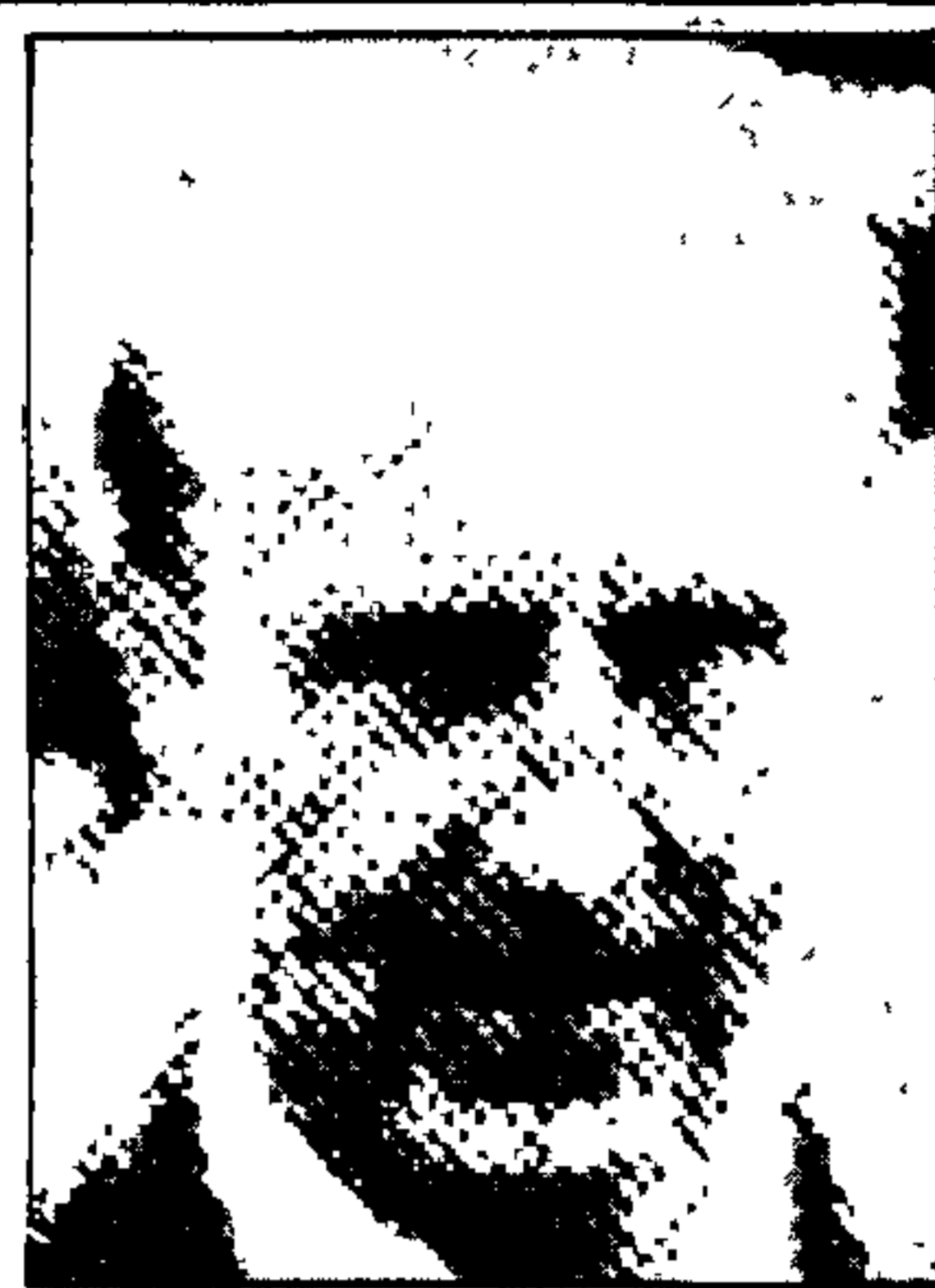
The deputy attorney general of KwaZulu/Natal, Bernard Schonfeldt, submitted a formal charge sheet

The accused will be tried on 13 charges of murder and five of attempted murder. When the trial starts, the attorney general of Natal, Tim McNally, will personally lead the evidence

According to the charge sheet, Opperman



General Jannie Geldenhuys.



Colonel Louis Botha.

## 20 now in dock over 'secret unit'

By CP Correspondent

TWENTY people are being charged in the case concerning the establishing of a secret attack unit for KwaZulu

In June this year, the following seven people were arrested

- Zakhele Khumalo, deputy secretary general of Inkatha,
- Colonel Louis Botha, a former member of the Security Police,
- Brigadier John More, a former member of Military Intelligence (MI),
- Peter Msane,
- Nicholas Ndlovu,
- Martin Khanyile, and
- Prins Mkhize (the last four are all former KwaZulu policemen)

On November 2, the following eleven people were arrested

- General Magnus Malan;
- General Jannie Geldenhuys, former Chief of the SA Defence Force,

■ General Kat Liebenberg, also a former Chief of the SA Defence Force,

■ General Tienie Groenewald, former chief director of MI,

■ General Neels van Tonder, former chief director of intelligence operations,

■ Vice-Admiral Dries Putter, former chief of staff for information,

■ Lieut-Col Johannes Victor, former information officer in Natal;

■ Colonel Dan Griesel, former MI member,

■ Col Jakes Jacobs, former instructor of special forces,

■ Commandant Jan van der Merwe, former MI member, and

■ Brig Cor van Niekerk, former director of special duties

On November 15 two former members of the SA Police who served in the KwaZulu Police were arrested - Alex Biyela and Hloni Mbuyazi.

and his colleague, André Cloete (code-named Kevin), were instructors at the Hippo Camp in the Caprivi where about 200 Inkatha members received para-military training in 1985 and 1986

Thirty men were alleg-

edly trained as a secret "attack unit" to murder ANC/UDF members.

According to the charge sheet, Malan and other senior officers planned and controlled the project, code-named Operation Marion - for

which R3,5 million was budgeted

When the Inkatha fighters returned to Natal in 1986, JP and Kevin were selected to execute the operations with them

They were allegedly given a car and had to

pose as tourists in Durban

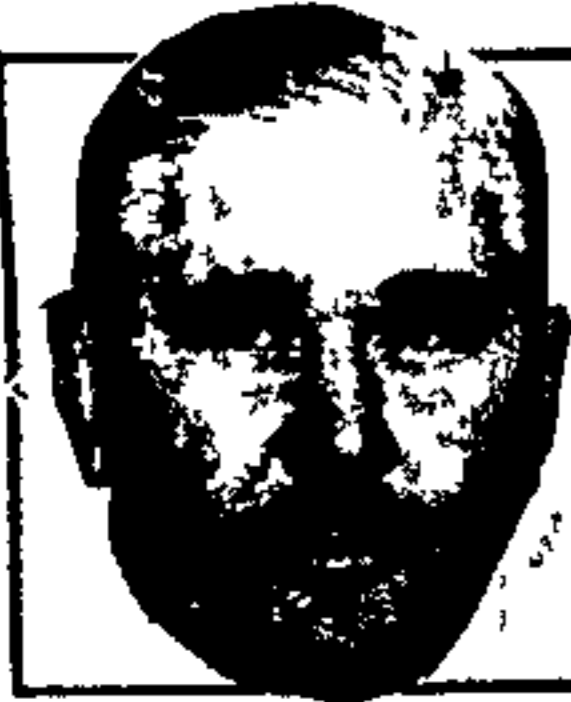
Meanwhile, two of the accused, Brigadier John More and Brigadier Cor van Niekerk, both of Military Intelligence (MI), allegedly told Inkatha leader Mangosuthu Buthelezi in Ulundi that the Caprivi recruits were back in Natal. Their salaries were paid into an Inkatha bank account via Armscor

On the night of the murders, Opperman allegedly handed AK-47 guns to the hit squad near the Durban airport. He and Kevin allegedly helped to camouflage the hit squad's minibus

Other important evidence is that Colonel Jan Breytenbach, founder of 32 Battalion, Brigadier Andries Laas, former commissioner of the KwaZulu Police, Lieutenant-General Witkop Badenhorst, former chief of staff, Intelligence, and Colonel Anton Niewoudt, former member of the Civil Cooperation Bureau (CCB), were involved in a failed coup in the Ciskei and that Major-General Joep Joubert, also formerly of the CCB, and Colonel Daan Benade, former secretary of General Kat Liebenberg, allegedly served on a secret committee which planned the training of Inkatha fighters in the Caprivi

According to a top-secret document attached to the charge sheet, the aim of the secret Inkatha attack unit was to murder ANC/UDF activists

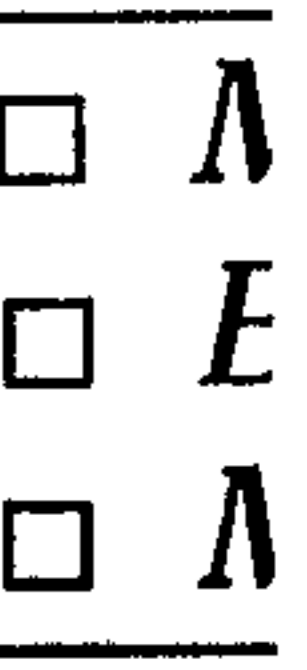
The impression was allegedly to be created that the unit had been established by the KwaZulu government, keeping the SADF's role secret



At a security council meeting in Tuynhuys on December 20 1985, Louis le Grange (left) and Chris Heunis (right) were among those allegedly ordered to help Inkatha leader Mangosuthu Buthelezi set up a security force to 'protect' Inkatha in KwaZulu. It allegedly included an anti-ANC hit squad.



In 1985 Mangosuthu Buthelezi allegedly asked the apartheid regime for an 'attack unit' to 'protect' Inkatha.



# THE HEAT IS NOW ON

**DOCUMENTS before the Natal Supreme Court this week unveiled startling allegations linking former defence minister Magnus Malan to killer squads used to destabilise Inkatha's political opponents - including murdering them.**

As the sensational claims against General Malan and 18 other former top ranking security officers unfold, the forthcoming trial could open worms implicating senior Inkatha members and high ranking members of the former government.

According to the indictment against Malan, he was part of the security apparatus that formed an armed and powerful unit in KwaZulu in the 1980s - a force which was allegedly also used by the apartheid regime in its armed struggle against the ANC and the UDF.

Advocate Tim McNally, the attorney general of KwaZulu/Natal, on Friday submitted the charge sheet in the murder trial of Malan and 19 other accused in the Natal Supreme Court.

They briefly appeared on thirteen charges of murder and five charges of attempted murder.

The State will try to prove that the creation, financing and arming of a para-military force for KwaZulu eventually led to the massacre of 13 people in KwaMakhutha in 1987.

■ Operation Marion - as this secret project was later dubbed - allegedly began after the former chief minister of KwaZulu, Mangosuthu Buthelezi, started fearing that ANC/UDF activists wanted to kill him.

According to the State, Buthelezi in a meeting on November 25 1985 with General Tienie Groenewald, then chief director of Military Intelligence, asked that the South African government help him with the training of personal bodyguards, an army for KwaZulu, an "attack unit" to protect Inkatha against the ANC/UDF and the setting up of an intelligence network and a security council.

According to the 32-page charge sheet, Buthelezi's request was passed on in turn to Vice-Admiral Dries Putter,

then chief of staff for intelligence, General Jannie Geldenhuys, then chief of the defence force, and eventually General Malan.

On December 19 1985 General Groenewald allegedly recommended to General Malan that a "defence force" of 50 to 100 men be trained - as well as a "attack force" of 10 to 20 men. The attack force was to be trained in secret.

■ At an extraordinary meeting of the Security Council in Tuynhuys on December 20 1985, General Malan, Chris Heunis, then minister of constitutional development, and Louis le Grange, then minister of law and order, were allegedly ordered to help Buthelezi set up a security force.

■ The charge sheet further alleges that the generals were all closely involved in the planning of the KwaZulu security force. The aim of Operation Marion - to use Inkatha fighters against the ANC/UDF - is spelled out in a top-secret document which was found during a swoop on the defence force headquarters in Pretoria and which is attached to the charge sheet.

Among others the document recommended that Buthelezi be empowered to issue weapons without licences. According to the document - signed among others by General Groenewald - the impression had to be created that KwaZulu itself had created the defence force. Buthelezi would personally select two hundred recruits for training.

■ The State alleges that General Malan closely monitored the planning phase of Operation Marion and further meetings between top officers and Buthelezi, and that he provided guidance.

Malan also allegedly said the inclusion of an attack unit had to be kept secret when the final plan was submitted to Heunis for his approval.

About R3,5 million was initially allocated to finance the project. All the money was allegedly paid into a KwaZulu account by Military Intelligence, who made it seem as if the money came overseas investors.

■ The training of 200 Inkatha fighters



**ON THE RUN ... Asec Abidjan fans run for cover after Orlando Pirates fan them in reaction to the red card shown to Bucs captain and midfielder Inn 36th minute. Pirates and Asec drew 2-2 in the first round of the African Ch FNB Stadium. Pic: ANDRIES MCINRKA**

P.T.O.

# Truth traumas

of 3/12/95 (252)

By SIPHO KHUMALO

## TRC witnesses will need help to deal with painful memories

THE would-be testifiers to the Truth and Reconciliation Commission (TRC) should be adequately prepared for this as re-telling traumatic events of the past is likely to produce further psychological distress.

This is the view of Durban-based KwaZulu-Natal Programme for Survivors of Violence which this week urged the Justice Ministry to set up a special programme to prepare those who will be testifying for the task.

A Coalition of KwaZulu-Natal Mental Health and Human Rights Organisations this week submitted a detailed memorandum to the Justice Ministry advocating the establishment of a psychological counselling unit.

A spokesperson for the KwaZulu-Natal Programme for Survivors of Violence, Apollo Goplang, said a detailed sub-

mission by the coalition was made to Justice Minister, Dullah Omar on Friday.

"The nature of psychological problems that result from extraordinarily stressful events are such that people are likely to be further traumatized as a result of legal proceedings and are unlikely to be able to contribute meaningfully to those proceedings," said Goplang.

"Thus," says Goplang, "in order to contribute to the success of the Commission in achieving its aims, we believe it is important that a programme be set with a sole brief to prepare those who will be testifying at the Commission."

The memorandum of the coalition expresses concern that the work of the TRC seems to be entirely driven from Gauteng, with very little effort to establish regional structures.

The coalition then suggests that the TRC pay careful consideration to the social and political realities of KwaZulu-Natal.

### Ambivalence

"The ambivalence towards the TRC of the region's political leadership as well as communities affected by violence is a particularly worrying factor

"In some communities the TRC is being viewed as a mechanism for cir-

cumventing justice," says the memo

With regard to mental health aspects, the coalition says special care should be taken regarding the emotional and social well-being of all people who have been involved in violent crimes and human rights abuses

"Those who wish to participate in the TRC are likely to start preparing themselves and this will involve accessing painful memories of traumatic incidents, and in many cases will result in a deterioration of their emotional wellbeing," observes the coalition

The coalition says that those involved in testifying will very often have been people who had been involved in one or more traumatic events. If forc-

ed to testify about these events without preparation and in non-supportive environment, they may become extremely distressed

To address this problem the coalition's suggestions include:

- that people who are to be involved with the commission should be given the opportunity to prepare themselves with mental health personnel;
- witness protection programmes and other aspects of the commission ought to have mental health components built into them;
- staff of the commission should be trained in trauma management;
- many victims and offenders may need voluntary victim-offender mediation, and
- the staff of the commission may themselves need training in stress management and coping with trauma for themselves.

**H**UMANKIND, TS Eliot warned us, cannot bear too much reality. But how much truth can SA politics bear? The question is raised by the impending Truth and Reconciliation Commission.

Its title and the pre-publicity of its supporters give it a sort of religious power: it will reveal truth, heal wounds and set us on the road to salvation.

Its opponents, aware of what this sort of fervour can do to those of another faith, warn of witch hunts.

It is important to debate the morality of the truth commission. But this risks hiding an equally important issue — how its work will be managed as a political exercise. Even to claim that it will have to be politically managed is an affront to some because it implies the commission is not purely an attempt to restore the moral fibre of the nation.

**B**ut government commissions are rarely exercises in salvation. They are political initiatives and this needs to be recognised, if it is not, the result could be more damaging than the dangers of compromising moral purity. Whether the commission will cause political damage is as important as its ability to uncover the truth.

To take one example. Some want the commission to conduct all business in public. This sounds fair, but may not be possible or desirable. The commission will not be a court in which people give evidence only if they are asked to do so — in principle, anyone can approach it to say anything. It is worth pondering some possible consequences.

If someone wishes to make damaging allegations against a senior politician or military officer, will the commission simply allow these to be aired without checking them first and, perhaps, weighing their political effect? And what if a former military intelligence officer arrives to claim that six ANC cabinet mem-

# The truth commission may open a Pandora's box with a broken lid

STEVEN FRIEDMAN

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bers spied for him or her? In both cases, the fact that someone felt they had a story to tell would not necessarily mean the tale was true.

In the second, the nature of our past conflicts is such that it is hardly outrageous to claim that someone in the ANC might have spied for the then government. But how does someone accused of spying prove he did not? An entirely open commission could offer irresistible opportunities for wild allegations about public figures. It is unlikely that the commission will not, therefore, try to filter information before it gets to the public. And in the spying case example, it would be irresponsible not to do this.

Once we accept that there will be some filtering, we are acknowledging that judgements, good or bad, will be made away from the public eye about what we should hear. All we can do is to hope they are sound. It is also widely agreed the commission is itself a compromise, since many believe justice requires culprits be punished, not granted amnesty. International specialists note that the motto which has been truth commissions is "justice,

to the extent possible." Since the balance of power which made this compromise necessary — in which one group holds political power, but another controls the military — will not go away soon, the extent to which justice is possible may not be as great as some hope. There will be more compromises — or there may have to be if the commission is not to threaten stability.

**O**ne of the trickiest will come when it reports — it may open a Pandora's box which will be difficult to close. We are told both that the commission is needed to heal society's sense of hurt and that its work will build respect for the law.

The first claim is not entirely accurate. Research shows that most voters do not see unearthing the sins of the past as a pressing issue. Those who do want the truth are the families of the victims who, understandably, feel deep hurt. Precisely because those most affected by the commission are those most emotionally involved, the commissioners and those to whom they report may

face some difficult choices.

It is likely some people in sensitive public positions will be named as accomplices in human rights violations. The society was locked in a bloody conflict during the 1980s and it is unlikely everyone's hands were clean. But what then?

Commission advocates never tire of telling us that they favour "amnesty, not amnesia," that the purpose of the exercise is to discover the truth, not to punish offenders.

Families of the victims and human rights groups may not share that sentiment once they hear the truth. Even if there is a reluctant acceptance that amnesty is necessary, will culprits who still hold public office be allowed to retain it?

The dilemma is obvious. To allow them to do so will prompt outrage, and not only among those closest to victims. It might also achieve the opposite of the exercise's aim: if named violators remain in office, public ethics might be discredited — as would the rule of law. The effect could be more damaging than sweeping the past under the carpet.

But dismissing those named might hold grave risks. They could,

for example, be senior military officers whose removal would undermine morale and heighten divisions in the armed forces.

In some societies, it might be possible to reply that few will support high-ranking persons who have blood on their hands. But our past ensures that sections of society have very different ideas about what the "truth" is, regardless of the evidence. For some, the excesses of counter insurgency or guerrilla warfare are crimes, for others they were necessary and patriotic. Much depends on who was doing what to whom and on whose side one happens to be.

While dismissing high-ranking persons might strengthen the faith of some in democracy, it may weaken that of others, and they may be in a position to express displeasure in damaging ways.

Whatever goals the ensuing debate achieves, reconciliation is not guaranteed to be one of them.

**S**o the choices commissioners and politicians face are not as clear as some human rights groups claim. Their task will not simply be to tell the truth without fear in the hope that this will unite society. It will also be to balance this against the dangers of unleashing tensions which may undermine the gains of the past five years.

This second priority is at least as important to democracy's survival as the first — and preserving democracy is as much a moral task as uncovering the truth. Given our politicians' ability to fudge their way out of tricky choices and to find messy compromises, it is probable the commission will not be quite the high-minded exercise in building national morality which some want. But the dangers of allowing the process to spin out of control may make it unreasonable — and damaging — to expect anything else.

□ Friedman is Centre for Policy Studies director.

# Law scares abused kids

Sowetan 4/12/95 (252) (298)

By Ruth Bhengu

SOUTH African children's courts are insensitive in their handling of children who have been sexually abused

Many professionals in the field believe that while the legal system has been greatly improved by the introduction of Child Protection Units - made up of police trained in interviewing and calming traumatised victims of child abuse - the courts are still locked in a mindset that further victimises the victim

Inside the courtroom, adults who have lawyers still wield power. Apart from the fact that children testify via closed-circuit television, they are subjected to the same kind of cross-examination as adults

Former chairman of the Child Abuse Action Group Ms Shelley Bainbridge says the courts dealing

with child abuse are "backward" and believes they should become "child-friendly"

"Very few magistrates and prosecutors have the training to handle child abuse cases because these need special courts. Legal professionals should be made aware of the psychological effect on children of sexual abuse," she says

## Ridiculous questions

"Also, the law takes too long to bring cases to court. By the time the child testifies in court, he or she has forgotten some of the events and they lose credibility"

Bainbridge also criticises the way children are questioned by lawyers, prosecutors and magistrates, who have not been trained to deal with sexually abused children

"Some of the questions they ask

are ridiculous. Can you imagine someone asking an eight-year-old child, 'Did you get an orgasm? How many minutes did it take?'

"Anyone knows a child's concept of time is far different from a grown-up's"

SA Stop Child Abuse Organisation president Mr Tutu Mgulwa has criticised the lack of sensitivity shown by courts. "Child rapists are allowed to go free daily because the law is soft on them," he says

"Children also get asked questions like, 'Did he put a finger or a penis in you?' How is a three-year-old supposed to know that?" There are many cases where a suspect is acquitted because of technicalities

"A child rapist is arrested and in an hour he is walking the streets menacing the victim again," says Mgulwa. "One wonders if the law is serious about protecting kids"



Stop child abuse ... there is a need for courts to be more friendly to victims of child abuse.

# Child-friendly courts needed

By Charity Bhengu

**A** FIVE-YEAR-OLD Soweto girl stands outside a crowded courtroom waiting for her name to be called.

She fidgets with her hands, looking for familiar faces. She catches sight of a tall man (her alleged rapist) walking towards her. She runs to her mother and buries her head in her skirt and starts crying.

The girl was raped and assaulted by the man, who lives in the same street as she does. She has been subjected to endless court proceedings and has been interrogated by the suspect's lawyer.

Often she cries when asked questions during cross-examination like "Show us how he moved when he raped you?". When she was asked "If I told you it was night and that you should go to sleep, would you?"

She wept and said "I don't want to sleep with him!" She then refused to

Raped children are traumatised again by their court experience

answer any more questions. The mother said it was then suggested in court that the girl could not talk and the case was dismissed.

The child has gone through all kinds of pain. She has been raped and threatened with death, then she is tried like an adult in court.

## Abusive experience

Clinical psychologist Ms. Thandeka Mgoduso said the child's experience in court can cause further psychological damage.

She said "No one came to her rescue in court. Instead she was dragged through another abusive experience by a male lawyer to the extent that she breaks down and can no longer talk."

Mgoduso said the child could be feeling very guilty about the experi-

ence or think there was nothing wrong with a man sleeping with her or end up being promiscuous when older.

"Her whole identity and confidence as a child and trust in adults is crushed. Her security is threatened," Mgoduso said.

SA Stop Child Abuse president Mr. Tutu Mgulwa, who was present during the child's cross-examination, described it as secondary abuse. "Some cases end up being dismissed because the child is either giving inconsistent testimony or is afraid to talk in court."

Stop Child Abuse, Child Abuse Action Group and Soweto's Child Protection Unit police have called for the establishment of more child-friendly courts and social workers.

The Protea Magistrate Court's public prosecutor, Mr. Gerry du Bryn, said his

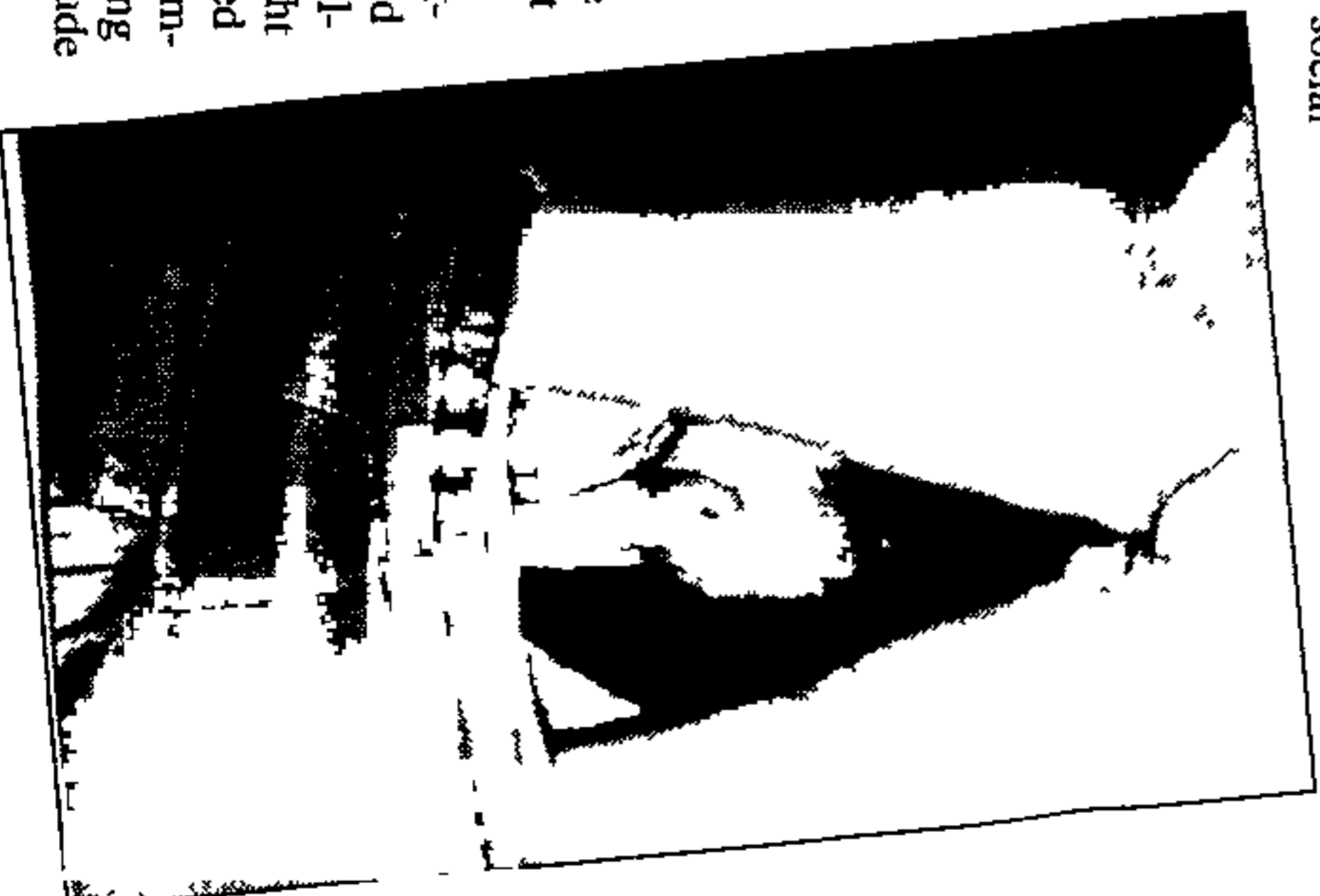
court has increased its number of social workers to eight and has added a second room where children can give evidence.

The Concerned Citizens Committee, which is campaigning for the reinstatement of the death penalty, criticised South Africa's legal system.

"The Government and its courts are duty-bound to protect innocent children," said its national coordinator Mr. Milton Impey. "If the armed struggle was justified in the fight against apartheid, the death penalty is justified in the fight against the rape of children."

CPU spokesman Lieutenant-Colonel Anneke Pienaar disclosed that a shocking total of 20 356 children were abused during eight months, of whom 11 102 were raped.

The Soweto police said the number of child rape cases was increasing despite the 409 arrests the CPU made recently.



**FEATURE NEWS**

**By Bob Drogin**

**ARCHBISHOP** Desmond Tutu, who won the 1984 Nobel Peace Prize for his impassioned leadership of the anti-apartheid struggle, was appointed last week as chairman of the Truth and Reconciliation Commission investigating past political crimes and human rights abuses.

President Nelson Mandela named Tutu, the Anglican archbishop of Cape Town, and 16 others to the panel empowered to look into the apartheid-era actions of both the white minority regime's security forces and the black-led forces that battled them

**Full confessions**

Those who come forward and fully confess their crimes to the commission may apply for amnesty from prosecution Those who refuse to appear or to answer the panel's questions may be sentenced to two years in jail.

In some cases, the panel can award compensation to victims

The commission will be guided "by the need for understanding but not for vengeance, the need for reparation but not for retaliation," said Mandela's chief of staff, Professor Jakes Gerwel, citing the country's interim Constitution

Gerwel said the aim was to reach "an understanding of our past" and thus promote reconciliation "of this once deeply divided and conflict-ridden society" The commission will sit for only 18 months

# The truth or two years' jail

(252)

*Sovietian 4/12/95*

It has authority to consider crimes from March 1960, when the African National Congress and Pan-Africanist Congress were banned by the government, to December 1993

Among the infamous cases expected to be examined are the death in police custody of Black Consciousness activist Steve Biko in 1977, the torture and killing of political opponents in ANC military camps in Angola in the 1980s and the suspected police

involvement in a massacre of more than 40 people in Boropatong in 1992.

The panel may also be asked to examine a case involving the arrest of former defence minister General Magnus Malan and 19 other top military and intelligence officials from the apartheid era.

They have each been charged with 13 counts of murder for their alleged role in a 1987 hit squad massacre.

But officials have cautioned that the panel

will not try to solve the tens of thousands of murders, disappearances, cases of torture and other abuses that occurred as the white-led government fought to retain power. Nor do officials expect to resolve the thousands of deaths from township battles and atrocities involving rival black political groups

Lawyers and human rights activists dominate the commission, but it also includes doctors, academics and a psychologist - *Los Angeles Times*



**DISCOUNT STORES**

Christmas Promotion Starts from 25th November Till 4th December 1995  
**White Stocks Last**

## Constitutional Court 'a farce'

FINANCIAL constraints had delayed the Azanian People's Organisation's (Azapo's) bid to get the indemnity clause in the Truth and Reconciliation Act nullified by the Constitutional Court, Azapo president Mosibudi Mangena told reporters yesterday.

Azapo had established that for the case to be heard in the Constitutional Court it would cost between R150 000 and R500 000, "depending on how long it will take", Mangena said (252)

It was difficult for ordinary citizens to find recourse because approaching the court was "an expensive exercise", he said. 30 5/12/95

The court was "a farce" which served only wealthy people

However, the cost would not deter Azapo from challenging the indemnity clause

Azapo was also concerned about the fact that clerics would be taking part in the truth commission

"The church should remain the conscience of society in all its manifestations, including the state, and not become part of government machinery," Mangena said

— Sapa



## Mohamed made law body's chief

(252)  
Susan Russell

BD 5/12/95

CONSTITUTIONAL Court deputy president Judge Ismail Mohamed had been appointed chairman of the SA Law Commission, the Justice Ministry announced yesterday. Judge Pierre Olivier is vice-chairman.

The appointments were among seven to the commission approved by the Cabinet.

Others appointed were Constitutional Court judge Yvonne Mokgoro, Cape Town advocate Jeremy Gauntlett SC, attorneys Phineas Mojapelo and Zubeida Seedat, and Cape Town University law professor Thandanbantu Nhlapo.

Justice Ministry spokesman Susan de Vilhiers said additional members might be appointed.

De Vilhiers said that Justice Minister Dullah Omar was very appreciative of the valuable contributions made by past members of the Law Commission, particularly in the area of legal reform.

# Families of slain don't want truth commission

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OWN CORRESPONDENT

CT 5/12/95

DURBAN The families of slain Durban human rights lawyers Mr and Mrs Griffiths and Victoria Mxenge, and Eastern Cape black consciousness leader Mr Steve Biko, are to lodge an application in the Constitutional Court to overrule the establishment of the truth commission.

They believe their killers should not be given the opportunity to confess their crimes to the commission, which could mean their indemnification against prosecution.

The action was confirmed by the late Mr Mxenge's brother, Dr Fumbatha Mxenge of Port Elizabeth, and Azanian People's Organisation secretary-general Mr Mpoteng Kgogong of Johannesburg.

Dr Mxenge said argument would be based on international legal precedents.

## Throat slit

Mr Biko died in police custody on the way from the Eastern Cape to Pretoria in 1977, and Mr Griffith Mxenge had his throat slit near a cycling stadium in Umlazi in 1981. His wife was assassinated four years later outside their family home.

The couple were prominent in the anti-apartheid United Democratic Front.

Dr Mxenge said the setting up of the truth commission "goes against the grain of reconciliation". The only way to achieve justice was to prosecute his brother's alleged killers in court.

Former security branch captain Mr Dirk Coetzee had acknowledged his involvement in the killing of his brother "yet the justice system has done nothing".

The Mxenge family have argued that the killings were carried out by hit squads, and this had been borne out by Mr Coetzee's public statements.

Mr Kgogong said it appeared that the former policeman did not suffer any remorse, arguing that he had carried out orders.

The application would be lodged by the Mxenge family, the Biko family and Azapo "very soon".

# Truth body not all compromise

CT 6/12/95

(252)

**ANDRE DU TOIT** discusses the Truth Commission, whose members were named last week, and the role it can play in advancing national reconciliation. This is the first of two edited extracts from an article in the journal *South African Outlook*.

MANY people see the Truth and Reconciliation Commission as a compromise, and in more ways than one. Certainly the commission is part of a political compromise.

That is what the political settlement amounts to, and it is what national reconciliation requires.

It may also seem to involve a moral compromise, settling for less than justice in dealing with the past. But this could be a major misunderstanding in this context: the priority of truth and reconciliation represents a distinctive choice, but it does not necessarily mean a compromise.

First, the political compromise. It is indeed vital to understand that the Commission is very much part and parcel of the negotiated settlement which marks SA's transition. The Truth and Reconciliation Commission is intended to bring this process of political compromise to a conclusion, *inter alia* by granting amnesty to those who had committed gross violations of human rights for political objectives in the context of the conflicts of the past.

## Moral

Second, the apparent moral compromise. In addressing the political atrocities and gross violations of the past, the main objective of the commission will not be justice, but truth and reconciliation.

The objective will *not* be to prosecute and punish the perpetrators of those atrocities so that justice can be done. Instead the perpetrators will be granted amnesty, provided they disclose the particulars of what they have done. To the victims are offered the opportunity to tell their stories and have these acknowledged, as well as the prospect of some form of reparation. But not vengeance or justice.

At the end of the day we will know who the killers and torturers are, but they will go free, in fact, they will receive indemnity for the atrocities which they have disclosed.

This apparent moral compromise is much harder to take. Must we not insist that justice be done? It is not difficult to understand why the family of Griffith and Victoria Mxenge demand that their killers be brought to justice. That Captain Dirk Coetzee had publicly acknowledged his part in these brutal killings is little consolation to them, in fact, that Coetzee, in spite of his disclosures, can go free and has even become a public figure must be all the more hurtful to them.

## Rule out

It is important to note that the Truth Commission does not categorically rule out the prospect of doing justice through prosecution and punishment of perpetrators of gross violations of human rights.

Unlike some other countries, such as Chile or Uruguay, there is to be no general amnesty for the killings and torturers. Indemnities are to be granted

on individual application only, and are conditional on full disclosure.

Those who are not prepared to submit to this process will remain open to prosecution. Indeed, if the commission is at all successful in establishing the truth about the political atrocities of the past, prosecutors will – at least in a general sense – be much better armed to seek punishment for all those who are not indemnified by the Amnesty Committee of the commission.

In terms of the commission, the amnesty process will not be automatic and unqualified. The Act specifies a set of criteria, including the Norgaard principles, for acts with political objectives that may qualify for amnesty.

## Disclose

Perpetrators will only be indemnified for those actions they actually disclose, and only if these satisfy the criteria contained in the Act.

It remains to be seen how the commission interprets and applies these criteria in cases of gross violations of human rights where these involve, for example, indiscriminate acts of terror or of brutal torture. But if the commission finds that they do not qualify for amnesty, then the perpetrators cannot be indemnified – and they could be prosecuted at a later stage.

More concretely, it is possible that someone such as Colonel Eugene de Kock, who is being prosecuted for a whole series of murders and other crimes, may apply to the commission for amnesty. It is also possible that he will be indemnified – but only for such actions as satisfy the criteria for political objectives contained in the Act. For the rest he, and others like him, will remain open to prosecution once the commission has completed its work.

It is not true that perpetrators who are indemnified will go entirely "unpunished". In a sense the requirement of disclosure and the public recording of the acts for which indemnities are to be granted, in itself amount to a significant form of punishment. Certainly the element of public disclosure will affect the impunity which perpetrators enjoyed. It is precisely for these reasons that some have vigorously opposed the very idea of the Truth Commission as a "political witch hunt", well knowing that it will not involve actual prosecutions on the model of Nuremberg trials.

## Price

It also remains to be seen how many perpetrators will consider even this too high a price to pay and therefore refuse to apply for amnesty.

Still, in so far as the commission may succeed in establishing the truth in this way, some measure of justice may also be achieved. This will, of course, largely depend on how the disclosures are regarded by the public.

If "exposed" perpetrators continue to be regarded as heroes or even as martyrs in their own communities, or if they are allowed to continue in public positions without significant censures, then this can hardly be considered as serious punishment.

But these are not matters within the competence of the commission, what justice requires in cases like these will be up to society at large once the truth about these political atrocities have been publicly disclosed.

□ Professor Du Toit teaches in the Department of Political Studies at UCT.

—zapo tut-tuts

# Archbishop Tutu

Sowetan 5/12/93 (252)

By Joe Mdelela  
Political Reporter

THE appointment of Archbishop Desmond Tutu and other clerics to the Truth Commission was yesterday dismissed as mischievous by the president of the Azanian Peoples Organisation, Mr Mosibudi Mangena.

Speaking at a media briefing in Johannesburg, Mangena said the church would do better to serve as society's conscience.

He said in that role the church can be seen to be neutral, not having any interest in secular matters.

## Part of society

This did not mean that the church had no role to play in politics as it was also part of society.

"While Azapo is proceeding with legal steps to nullify the indemnity clause in the Truth and Reconciliation

Act, the organisation is concerned about the participation of clerics in a state commission.

## Conscience of society

"The church should remain the conscience of society in all its manifestations, including the government, and not become part of government machinery," Mangena said.

Azapo also expressed its deep concern at the way violent crime is making life unbearable, "especially in black areas."

## Holding meetings

Mangena said his organisation is currently holding meetings with various taxi associations throughout the country "so that we can both find a solution to the problems affecting our people."

The involvement of Azapo has been prompted by the realisation that the police are ineffectual.

# Browde quits but inquiry unlikely to be disbanded

David Greybe

BD7/12/95 (252) (252)

CAPE TOWN — Government acted yesterday to dispel fears that the Browde commission probing public service irregularities would be forced to stop work at the end of the month because of administrative snags.

The commission lost its chairman, acting Judge Jules Browde, at the end of last month. Parliament has not yet dealt with a request to extend the commission's life span beyond the year-end to complete its work.

The commission has uncovered a high rate of malpractice in Transkei and Ciskei. About 8 000 public servants have been or are under investigation, mainly in former homelands. The inquiry covers the period between April 27 1993 and September 30 1994.

Government sources said yesterday there was little doubt that the commission would be granted an extension, albeit retrospectively.

The office of public service director-

general Paseka Ncholo said "steps have been taken to request Parliament to extend the lifespan of the commission". In the meantime the commission would "involve itself in preparatory work". Once Parliament — which would reconvene in February — had amended the interim constitution, commission hearings would resume.

Ncholo's office said assignment of a judge to take over from Browde — who had returned to private practice — was awaited from the justice department. Justice spokesman Sue de Villiers was unable to shed light on the matter.

Established in February, the commission was originally expected to complete its work by end-April, but this was later extended by Parliament to the end of this month because of the large number of cases submitted to the commission, the time-consuming nature of its work and a staff shortage. The departure of three of the six original commissioners has left the commission with eight full-time staffers

# Court maintains testimony clause

Susan Russell

THE Constitutional Court yesterday upheld a section of the Companies Act compelling people to testify at insolvency inquiries even if they incriminate themselves, but struck down a proviso allowing self-incriminating answers to be used against them in subsequent criminal proceedings.

Section 417(2)(b) of the Act compels anyone with knowledge of an insolvent company's affairs summoned to an inquiry by the liquidators to answer all questions put to them.

Those who refuse to do so may be prosecuted and fined or imprisoned.

Until now self-incriminatory evidence obtained in this way could be used in any criminal proceedings brought against them later.

Yesterday's judgment does not limit the liquidator's right to summon and question anyone whose evidence they deem necessary to unravel an insolvent company's affairs, nor does it limit the scope of the questions put to witnesses.

The court also did not make

any order regarding the use of evidence derived from compelled testimony against a person in subsequent criminal proceedings, but decided that the admissibility of derivative evidence was a matter for the trial court's decision in ensuring that an accused received a fair trial.

In the main judgment written by Judge L. Ackermann the court held that the use of self-incriminatory evidence in subsequent criminal proceedings was unconstitutional except where the person was charged with perjury after testifying.

The majority of the court, with the exception of Judge J. Krieger, who delivered a dissenting judgment, agreed that the offending proviso infringed a constitutional right, but there was disagreement among the judges as to which right was invoked.

Judges Ackermann and A. Sachs rejected submissions that people compelled to testify at 417 inquiries could rely on the right against self-incrimination contained in the fair trial provisions in section 25 of the constitution which apply to people already accused of criminal

offences.

They found, however, that the proviso was inconsistent with a proper interpretation of the right to freedom in section 11 of the constitution.

A majority of eight judges disagreed with the proviso, finding that it violated the section 25 right against self-incrimination.

Krieger held that the proviso did not violate section 11, nor was section 25 applicable in this instance.

He went further, however, and held that the entire matter, even on the narrow issue argued before the 11 judges in May, had been improperly referred from the Supreme Court.

## Urgent

The majority of the court also found that the challenge to section 417 was not properly referred, but dealt with it anyway. The court granted direct access after accepting the matter was urgent and of public importance because doubts about constitutionality were hampering liquidators' efforts to wind up companies properly.

Ackermann said in his judgment that a liquidator's statutory duties in winding up companies and the serious difficulties they faced in finding out why a company had failed made it clearly reasonable to interrogate knowledgeable parties about its affairs.

It was also necessary to ensure that assets, including claims, were recovered for the benefit of creditors, especially from directors and officers of the company who may have been responsible, even criminally so, for the company's failure.

"It is also necessary, in this sense, to compel persons to answer all relevant questions put to them even when the answers might incriminate them," he said, "for without this compulsion there would be a great reluctance to make a full and frank disclosure of their knowledge of the affairs of the company and their dealings with it."

The judge found, however, that this could be achieved without the inclusion of the unconstitutional proviso, which could not be justified as being necessary.

## Double pay fraud probe

Farouk Chothia

DURBAN — Police are investigating fraud charges against former ANC member Vusi Mhlongo for being employed by the SA Police Service (SAPS) and the KwaZulu-Natal peace committee at the same time

ANC KwaZulu-Natal lower south coast chairman Ravi Pillay said yesterday that he moved a motion in the local peace committee for police to investigate possible fraud charges against Mhlongo after it emerged that he was receiving two salaries, both paid by the taxpayer

IFP spokesman Ed Tillet said that Mhlongo — whom he identified as a former ANC intelligence and security department official — had received a double salary from May to October

Tillet said Mhlongo had been integrated into the SAPS in May but resigned from the peace committee only in October, after it emerged that he was a policeman.

Port Shepstone police senior superintendent Douglas DuRandt confirmed that fraud charges were being investigated. Mhlongo was employed by the criminal investigation service

# Charlton will not reverse suspension

BD 7/12/95

Ingrid Salgado

WITS University vice-chancellor Robert Charlton has no intention of reversing deputy vice-chancellor William Makgoba's suspension this week despite concern expressed by Education Minister Sibusiso Bengu and other politicians

Charlton insisted yesterday his action had been a precautionary measure intended to prevent Makgoba revealing further staff members' personal files. The suspension was not intended to be "punitive"

He said the tribunal set up to probe 13 senior academics' allegations against Makgoba would proceed as planned. Charlton is set to meet Bengu about the matter this morning

Bengu's spokesman Lincoln Mah said yesterday the minister would discuss the effect of the crisis on Wits' reputation and the transformation process at the university, which continually seemed "to be characterised by conflict and suspicions"

They would address allegations against Makgoba by the 13 academics, Makgoba's own allegations against the academics, the polarisation at Wits that the crisis was causing and transparency and inclusivity that was required in all processes

Makgoba's suspension would also be raised

Charlton said he rejected ministerial intervention in Wits' problems. However, he welcomed Bengu's interest and concern

The DP criticised Bengu's involvement in the crisis, saying it was "one-sided" and tampered with the principle of university autonomy. Bengu had "again bowed to pressure" from ANC activists, DP education spokesman Michael Ellis alleged

University autonomy was essential if institutions were to retain their standards of excellence. "They deserve the minister's support, not criticism"

Mah said the meeting was requested by Charlton and was not a "unilateral initiative" on the ministry's part. He accused the DP of playing party politics without checking its facts.

Sapa reports the IFP rejected Bengu's intervention as a gross infringement on university autonomy.

The SA Students' Congress and the Wits Students' Representative Council yesterday warned that Makgoba's suspension could wreck the 1996 academic year. They called for Bengu's decisive intervention and the immediate suspension of Makgoba's 13 accusers.

Mass action to demand Charlton's resignation would begin next year if their demands were not met.

Meanwhile, Charlton denied in a statement Makgoba's allegations of widespread tax evasion and corruption at Wits.

Makgoba confirmed he was instituting a court case against the university and threatened to release more "juicy information" contained in the personal files of his colleagues.

Comment: Page 16

## Justice system 'must guard against corruption'

BD 7/12/95 (252)

Stephané Bothma

PRETORIA — All government departments in the criminal justice system — as well as intelligence agencies — should be subjected to an intensive anti-corruption process, SA Police Service national commissioner George Fivaz said yesterday

"Anti-corruption fighters within the SAPS are increasingly discovering that corruption in the police is frequently interconnected with corruption in the broader judicial system," Fivaz said

The theft of dockets to be used

in court cases was a case in point.

He earlier announced a progressive anti-corruption drive within the SAPS which included lie detector and psychiatric testing for all special unit commanders and key personnel to test their loyalty and trustworthiness

Fivaz himself underwent a polygraph test on Tuesday and according to the results released by the Polygraph Institute of SA late yesterday afternoon, the police commissioner was "a man of truth and integrity"

Fivaz had been consistently truthful in his test which revealed

no major or pronounced responses to any of the questions asked. Crime Investigation Services chief commissioner Wouter Grove's test revealed similar results

Meanwhile, Fivaz said to maintain community confidence in the judicial process would require stringent anti-corruption measures throughout the broader criminal justice system and not only in the SAPS

"But long-term success against corruption will require that the broader community, especially the business sector, take stringent measures to curb corruption"

S: V: K: A: C: N: a: o: w: ti: N: s: v: i: a: ti: v: e: t: a: s:

# Truth Commission oriented more towards plight of victims

**ANDRE DU TOIT** discusses the drawbacks and practical difficulties of prosecuting all perpetrators of crimes against human rights in the apartheid era and offers reasons why recourse to the Truth Commission could be a better option for all concerned. This is the second of two articles extracted from the current issue of the journal *South African Outlook*.

IT IS by no means clear that it would be possible, or advisable, to proceed with prosecutions against all perpetrators who might otherwise be granted indemnity in terms of the Truth Commission process

Actual prosecutions are complicated and costly proceedings; they require rigorous proof beyond any reasonable doubt and in accordance with strict legal procedures. So far from the accused being required to disclose relevant information, they are protected by the right against self-incrimination and can call on legal counsel for representation in terms of our adversarial criminal justice system

It is well known that vital documentation has been destroyed or tampered with, while other cases may concern events of many years ago. In these circumstances conclusive proof, such as required for criminal prosecutions, often becomes difficult if not impossible to obtain

In many cases, the Attorney Generals may thus decline to prosecute possible perpetrators. Even where prosecutions are instigated it may not be possible, as the Goniwe inquest has shown, to bring these to a successful outcome in the sense of identifying and punishing the specific perpetrators concerned

This poses a number of dilemmas to the quest for justice as a practical option. First, the number of prosecutions. From the point of view

(252)  
of justice and fairness it will be highly problematic if only a few selected prosecutions take place, whether these concern the high profile figures or those who performed the atrocities

Either way, there would be a genuine question whether they are not made into scapegoats while many other similar cases escape prosecution. But alternatively, any systematic attempt to investigate and prosecute many hundreds and thousands of cases on an individual basis will require massive resources and will bog down the courts for many years to come. Secondly, if the quest for justice by prosecution is indeed to be such a priority, there is still the question of what this would actually achieve

Some perpetrators, it is to be hoped, would be convicted and punished. But it is also likely that in many other cases prosecutions would not be feasible, while in some cases where prosecutions are instigated they might fail to achieve actual convictions

## Personal trauma

No doubt, these would then be claimed as having exonerated the alleged perpetrators. The net result may thus well be a number of convictions, but also a costly and confusing series of individual investigations and prosecutions going on for many years to come. If this is what justice demands, it will also have substantial personal and social costs

Thirdly, there are the implications for the victims and others concerned. In an important sense the quest for justice by prosecution and punishment is primarily focused on the alleged perpetrators. If victims or others come into the process at all, for example as witnesses at the trial, they must be prepared to be cross-examined and otherwise have their testimony questioned and critically scrutinised in all sorts of ways. As in the case of victims of rape, bringing the matter to trial may well turn into a second and public ordeal on top of the original personal trauma. All this is to be expected in the interest of justice the state must be impartial, the

ET 7/12/95

accused must be assumed innocent until proven guilty while professed victims cannot on that account expect special or sympathetic treatment. No doubt some will be prepared to pay this price in order to obtain justice, but it can be a high price nevertheless

By comparison, the Truth Commission will be more orientated towards the perspective and the plight of the victims. Only one of its three main committees, the Amnesty Committee, will be focused on the perpetrators, the other two committees will function to provide the victims and others with a forum in which they can tell their own stories and to consider appropriate ways and forms of reparation. In both cases, the aim will be to restore human and civic dignity of victims by acknowledging the injustices that was done to them and accepting responsibility for their plight

It follows that the investigations and procedures of these committees can and should be structured in supportive and sympathetic ways, though the Commission will of course have to scrutinise and check closely. The basic structure of the investigation process will not be an adversarial one and it will be important for the Commission to develop appropriate ways in which prospective witnesses may be assisted and counselled before and after public hearings so that this could be a healing rather than a traumatic experience

If this is what the aim of truth will involve, then it is not correct to see it as something less than justice, in the sense of prosecution and punishment. On the contrary, it rather involves a different value, one oriented more to restoring the dignity of the victims than seeking punishment for perpetrators. This is not so much to compromise the quest for justice. Rather, it embodies a distinctive value, that of truth and reconciliation. It is to be hoped that the Commission will in practice also realise something of this conception

□ Professor du Toit teaches in the Department of Political Studies at UCT



# Court protects witnesses

CT 7/12/95 (252)

JOHANNESBURG: The Constitutional Court ruled yesterday that witnesses giving evidence in an inquiry to assist company liquidators can no longer incriminate themselves.

The court ruled section 417(2)(b) of the Companies Act was inconsistent with the constitutional right to freedom and was therefore invalid.

Mr Justice Laurie Ackermann, in a written judgment, declared invalid the words "and any answer given to such question may thereafter be used in evidence against him" in section 417(2)(b) of the act.

The effect of the judgment is that "no incriminating answer given pur-

suant to the provisions of (the act) on or after April 27, 1994 shall be used against the person who gave such an answer, in criminal proceedings against such person".

Previously, the law compelled a person to appear before an inquiry into the affairs of a company under liquidation, even though the person's answers might be incriminating and used in evidence in subsequent criminal proceedings.

The court ruled by a majority that a judge should be allowed to decide during a criminal trial if evidence heard in a pre-trial inquiry be allowed or excluded during the trial — Reuter

# Truth Commission oriented more towards plight of victims

(252)

ET 7/12/95

**ANDRE DU TOIT** discusses the drawbacks and practical difficulties of prosecuting all perpetrators of crimes against human rights in the apartheid era and offers reasons why recourse to the Truth Commission could be a better option for all concerned. This is the second of two articles extracted from the current issue of the journal *South African Outlook*.

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It is well known that vital documentation has been destroyed or tampered with, while other cases may concern events of many years ago. In these circumstances conclusive proof, such as required for criminal prosecutions, often becomes difficult if not impossible to obtain.

In many cases, the Attorney Generals may thus decline to prosecute possible perpetrators. Even where prosecutions are instigated it may not be possible, as the Goniwe inquest has shown, to bring these to a successful outcome in the sense of identifying and punishing the specific perpetrators concerned.

This poses a number of dilemmas to the quest for justice as a practical option. First, the number of prosecutions. From the point of view

of justice and fairness it will be highly problematic if only a few selected prosecutions take place, whether these concern the high profile figures or those who performed the atrocities.

Either way, there would be a genuine question whether they are not made into scapegoats while many other similar cases escape prosecution. But alternatively, any systematic attempt to investigate and prosecute many hundreds and thousands of cases on an individual basis will require massive resources and will bog down the courts for many years to come. Secondly, if the quest for justice by prosecution is indeed to be such a priority, there is still the question of what this would actually achieve.

Some perpetrators, it is to be hoped, would be convicted and punished. But it is also likely that in many other cases prosecutions would not be feasible, while in some cases where prosecutions are instigated they might fail to achieve actual convictions.

### Personal trauma

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If this is what the aim of truth will involve, then it is not correct to see it as something less than justice, in the sense of prosecution and punishment. On the contrary, it rather involves a different value, one oriented more to restoring the dignity of the victims than seeking punishment for perpetrators. This is not so much to compromise the quest for justice. Rather, it embodies a distinctive value, that of truth and reconciliation. It is to be hoped that the Commission will in practice also realise something of this conception.

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and be appointed to find buyers

later in the afternoon, Sasol's gener-

was difficult to say what the effects of the reduction would be on profit

when they buy petrol, diesel and paraffin," it said

# Malan calls for bygoners to be bygoners

**BOB DROGIN**

AFTER almost four decades as a soldier, retired General Magnus Malan's military mementos fill his spacious home. Medals and ribbons fill a glass-topped chest. Ancient cannonballs sit on a plaque. And a huge brass artillery shell has been turned into a strange standing lamp.

But nowhere to be seen is the latest, most dramatic reminder of his years as one of white-ruled South Africa's most feared, powerful leaders: his arrest warrant on 13 charges of murder.

Prosecutors will accuse Malan and his former colleagues in the Durban regional court today of deliberately deciding to train, arm and deploy rural death squads, urban assassins and other paramilitary forces to ruthlessly eliminate anti-

aparthoid forces and suspected political enemies in the late 1980s. In essence, they are being accused of running the former regime's "dirty war" against its domestic foes.

In his first extensive interview since his arrest earlier this month, Malan denied any responsibility or role in what he called "this despicable deed", the massacre by men with assault rifles of unarmed blacks in mud-walled huts in tiny kwaMakhutha township in the pre-dawn hours of January 21, 1987.

## Clear

"I honestly believe my conscience is clear," he said at his home in Lynnwood. Malan also said he did "nothing wrong" in his 11 years as minister of defence for the apartheid regime, from

1980 to 1991, or in his previous seven years as head of the army and then chief of the defence force.

Malan said he has no regrets about the brutal tactics he used to combat what he called "international communism" at home and in the neighbouring Soviet-backed nations of Angola, Mozambique and other "front-line states" in the 1970s and 1980s. "We were in a war," he said. "We were defending the legal government and our Constitution."

Malan, considered the most hawkish member of former President P.W. Botha's cabinet, was demoted to water and forestry minister in 1991 by the reformist administration of then-president F.W. de Klerk. Malan resigned in 1993.

Now 65, he uses his high-level contacts at home and abroad by working as a

political and business consultant. Mandela has angrily refused pleas by De Klerk, now his deputy president, as well as other white leaders, to offer immunity to the accused - or to cancel the immunity granted to 77 ANC members, including four Cabinet ministers, who were given protection from prosecution for apartheid-related crimes under a pre-election amnesty programme.

## Amnesty

Although the Malan trial is scheduled to start March 4, the verdict may come elsewhere. Under the law, the 11 former officials, as well as nine lower-ranking police and local officials also facing charges, could apply to the proposed Truth and Reconciliation Commission for amnesty.

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To do so, however, they must confess their crimes.

Malan says he has nothing to confess. "I don't want amnesty," he said. "I didn't ask for it." He added that he fears the panel's attempts to unravel the crimes of apartheid may sunder the country's fragile peace. "I say let bygones be bygones."

That isn't easy for Ernest Thusini, one of the few survivors of the 1987 massacre. "It's something I always want to forget," he said at his home in Lamontville, a hillside slum outside Durban. "But I can never forget." Thusini recalled how he, his

wife and six children had spent the day at a prayer meeting. They were sound asleep at 2.15am when they were suddenly awakened by a fusillade of gunfire. "You didn't know where to run, what to do," he said. Somehow, Thusini and his wife and one daughter hid behind a bed until the shooting stopped and the killers drove away. Four of his children - aged 3 to 10 - were already dead. A fifth died at the hospital. No arrests were made, although Thusini said he identified one of the attackers.

A priest, the Reverend Willie Ntuli, owned the home. Investigators said the ostensible target was his son, Victor, a local anti-apartheid activist. The youth wasn't home that night but was gunned down three years later.

## Spread

By all accounts, the kwaMakhutha massacre was the start of a devastating spiral of violence.

The bloodletting spread to townships around Johannesburg in 1990 and escalated to near civil war in the run-up to last year's elections.

Previous judicial inquiries have traced the early violence to 200 men loyal to the IFP Military commandos gave Inkatha men covert military training at secret bases in the Caprivi Strip in the north of what is now Namibia.

"This is the crux of the case," said a source familiar with the evidence. "A force was created that was a death squad, really. And it killed a lot of people."

Thusini doesn't plan to attend the hearing. He says he still smells the foul stench of the guns, still sees his children's bodies, still suffers the awful nightmares. He said he only hopes that the law prevails and the truth comes out.

"If things go wrong, then South Africa will never heal," he said. "But if the truth comes out, then the healing can grow. And maybe I can forgive. But I will never forget the silence of my children." - Los Angeles Times

er, they must confess their crimes. Malan says he has nothing to confess. "I don't want amnesty," he said. "I didn't ask for it." He added that he fears the panel's attempts to unravel the crimes of apartheid may sunder the country's fragile peace. "I say let bygones be bygones."

# Court *Sowetan* 8/12/95 serves (252) all the people

By Mzimasi Ngudle

CONSTITUTIONAL Court president Mr Justice Arthur Chaskalson has dismissed claims that the court only serves wealthy people

Speaking to the *Sowetan* this week, Chaskalson said the criticism was unfounded, pointing out that half the cases that had been set down for hearing were argued by pro deo counsel

"Sixteen of the 31 cases set down for hearing have been argued by the pro-deo counsel or heard at the request of the court,"

Chaskalson said. Chaskalson ascribed the "wrong perceptions" partly to lack of information about access to the court and the way the court functions

Chaskalson also refuted claims that the court was too formal and technical, saying that although it had some discretion in matters of procedure, the court had to abide by the constitution and its own rules to be able to function properly

"We cannot ignore the Constitution," he said, adding that people should learn and adapt to the new constitutional order

He pointed out that people could effectively utilise the services of institutions like the newly formed Human Rights Commission, the Legal Aid Board and the Legal Resources Centre

On the death penalty, Chaskalson remains firm that as long as the Constitution exists, the death penalty will be in context

The court heard its last case for the year on November 21 and will sit again in February next year

## **Costs of reconciliation**

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The announcement of the 17 members of the Truth & Reconciliation Commission sets the stage for renewed conflict between the main partners in the Government of National Unity, specifically over responsibility for the political crimes of the past

As anticipated, Archbishop Desmond Tutu has been appointed chairman, his deputy will be Alex Boraine, now executive director of Justice in Transition, a group that has held two international conferences on issues relevant to the Truth Commission

Models from other countries that have gone through similar exercises — like Chile — have been examined, but it remains to be seen whether the commission can achieve its aim of amnesty in exchange for confession while senior military figures of the former government are on trial for murder (*Current Affairs* December 1)

This week, Boraine will consult the Department of Justice — which has responsibility for the administration of the Promotion of National Unity & Reconciliation Act — on practical matters affecting the commission Boraine will be discussing, with Tutu, the question of where the commission will be located While the commission (which has three subcommittees dealing with human rights abuses, amnesty, and reparations) is likely to travel around the country gathering evidence, its headquarters will probably be in Cape Town

At this stage, the costs of the commission are unknowable — particularly since the scale of reparations to victims is not laid down by statute That would be to place a monetary value on political crime

In an analysis of the difficulties facing the commission, Yasmin Sooker — president of the SA Chapter of the World Conference on Religion & Peace, a nongovern-

Malan trial: Before the KwaMakhutha massacre, there was

# Chapter one of

Hazel Friedman

**T**HE murder of three union shop stewards on a lonely road near Mpophomeni on the night of December 5 1986 will be remembered as the beginning of the most violent period in this country's history

These deaths, along with the KwaMakhutha massacre — for which General Magnus Malan and 19 co-accused will face trial early next year — were pivotal in transforming the Natal Midlands into South Africa's killing fields

They also marked the beginning of "third force" operations in South Africa.

A chilling excerpt from the indictment against the Malan 20 confirms that these early massacres by the "Caprivi 200" hit squad were designed to stoke "black-on-black violence and undermine organisations aligned to the African National Congress in KwaZulu-Natal. The Caprivi 200 plan is alleged to have been set up by Malan.

Describing preparations for the KwaMakhutha massacre, the indictment says "The 10 AK47 rifles were handed to the [Caprivi] group and (SADF officer Johan) Opperman gave accused no 1 [Peter Msane] a Tokarev pistol, together with a piece of paper on which was written 'Chapter 1 verse 1', which was to be left on the scene for effect."

The attackers made two mistakes. They killed 13 civilians but failed to murder Victor Ntuli, the intended victim — and forgot to leave the paper behind. Its prophecy was, however, to be fulfilled: more than 10 000 people have died in the civil war that began with these events.

The Mpophomeni massacre, which according to eyewitnesses was carried out by Caprivi fighter Vela Mchunu and a group of accomplices, is engraved in the collective memory of its residents.

In a poignant piece for the 1986 funeral of the union leaders, worker poet Ml Hlatshwayo wrote:

*We shall remember your smiling and simple faces that drove other men to rape our unity to raid our camps and kill our pride*

Yet, nine years later — despite the key role that Mpophomeni has played in South Africa's recent history — the township near Howick appears to have been forgotten by the outside world.

Organised by the Metal and Allied Workers Union of South Africa (Mawu) in a two-year struggle for union recognition, the 1985 strike at the Sarmcol factory in Howick, mostly staffed by Mpophomeni residents, became a pioneering campaign for the labour movement in South Africa.

It led to the massive Edendale march in support of the United Democratic Front, the 1985 stayaway in the Natal Midlands and nationwide sympathy strikes by Mawu members. These events helped trigger Inkatha leader Mangosuthu Buthelezi's appeal to military intelligence documented in the indictment for his setting up his paramilitary unit (see accompanying story).

It was inevitable that Mawu activists and the people of Mpophomeni — where 40 percent of the strikers lived — became a target of the



The family of a Sarmcol striker in June 1985 in Mpophomeni, where the alleged Caprivi-trained fighters first struck. PHOTOGRAPH BY BILLY PADDOCK

Caprivi unit. In December 1986, soon after the paramilitary troops arrived back in the country, Inkatha organised a "fair" in Mpophomeni.

On December 5, the night before the event was due to take place, busloads of Inkatha supporters arrived at the Mpophomeni community hall.

Alerted by rumours of an impending Inkatha attack, shop stewards council chair Phineas Sibilya and fellow activist Simon Ngubane began keeping watch on the community hall. They were joined by Mike Sibilya, Phineas' stepbrother and Florence Mnikathi, a member of the health committee.

### **'Their story is one of bitterness, abandonment and betrayal'**

Their car was surrounded by armed men — including Caprivi hit man Mchunu — wearing the uniform of the KwaZulu Police. The union leaders were forced out of the car and dragged to the community hall where they were tortured and repeatedly ordered to denounce Mawu.

They were then driven to a remote area where they were forced from the car at gunpoint. Mike Sibilya managed to escape by blocking the barrel of the gun with his hand and diving into a river bed. He heard the gunshots and saw the sky light up in flames. Nine years later Sibilya is still too afraid to return to Mpophomeni. And although

three men were subsequently arrested in connection with the massacre, they were never prosecuted.

Today the settlement that was once an emblem of solidarity has become little more than a haven for refugees fleeing their homes from the KwaZulu-Natal civil war.

The Sarmcol Workers Co-operative — an agricultural project initiated by the union and the community — has all but closed down. Of the original four projects, only one remains and of the 20 workers who started the co-operative, only seven have stayed on.

Money is short and food is scarce. Compounding the problem of increasing debt and ongoing crop failure is the threat of land repossession. The funders who assisted Mawu with purchasing the co-operative, are now demanding their money back. Says Moses Nelele, chairperson of the agricultural project: "You can cry if see what has happened to us here."

The community's anger is directed not only at Sarmcol, hit squads or the civil war which has reduced a pastoral landscape to a war zone. It is also aimed at former colleagues, some of whom are now in government.

Sociologist Debby Bonnin, who has worked closely with Sarmcol strikers and residents from Mpophomeni says: "The contribution of the strikers to the union movement and the sacrifices made for struggle as a whole should not be ignored. Their story is one of bitterness, abandonment and betrayal."

the Mpophomeni massacre. Both v

# the third

## Buthelezi 'near

**H**OME Affairs Minister Mangosuthu Buthelezi came close to being arrested and charged with the KwaMakhutha murders, according to sources involved in the investigation.

Buthelezi's name appears several times in the documents that describe events leading to the formation of the Caprivi 200, the hit-squad unit whose members allegedly massacred 13 civilians in 1987.

Most important is a meeting that took place on November 25 1985 between General Tienie Groenewald, then chief director of military intelligence, and the Inkatha leader. The indictment says Buthelezi, fearing plans by African National Congress supporters to "eliminate him and neutralise Inkatha", asked Groenewald to provide him with protection, information and a military capacity.

The indictment contains an excerpt from a 1984 speech made by Buthelezi in the KwaZulu Legislative Assembly which says: "We must prepare ourselves to hit back with devastating force at those who destroy our property and kill us."

It adds that Groenewald presented Buthelezi's requests to Malan and recommended the South African Defence Force should train "a defensive unit of 50-100 men and an offensive unit of 10-20 men (on a covert basis) for Buthelezi and Inkatha".

An extraordinary State Security Council meeting was called the next day where "Ministers [Chris] Heunis and [Louis] Le Grange were mandated to assist Buthelezi in creating a security force for KwaZulu".

The indictment says the State Security Council had initial reservations about the paramilitary offensive unit "and it was then resolved that that aspect be investigated at

the highest political level cleared with Buthelezi".

During a further round of discussions with Groenewald, on February 12 1986, Buthelezi requested SADF to provide him with a "mobilisation capability", an "intelligence capability" and an "intelligence capability".

The state's indictment alleges in April 1986 Malan asked him of staff intelligence, Vice-Army Andries Putter, to "sell" the aspect of the plan to Buthelezi. This was successful, implementation of the scheme would proceed in collaboration with Buthelezi's at Khumalo. Putter's job was to "explain to Buthelezi that the matter of defence [Malan] had seen because it was [Malan's] to implement the plan for a paramilitary force without delay."

A top-secret document attached to the indictment says: "Officer element: the task of this group set up a small group of well-trained troops for Inkatha that can be used offensively against the ANC [United Democratic Front] related organisations. Further the group can be used as a personal bodyguard unit for the Chief Minister [Buthelezi] in his capacity as President of Inkatha when this is not able to protect him."

The Mail & Guardian has obtained information — supplied by a defector from the Caprivi 200 group who is on the witness list — that describes in detail how the group was trained by SADF special forces officers in various warfare techniques.

The informant, who cannot be named because he fears for his life, explains the group received its training at a farm near Pretoria returning to South Africa from

## Did IFP man work

Melchizedec Zakhele

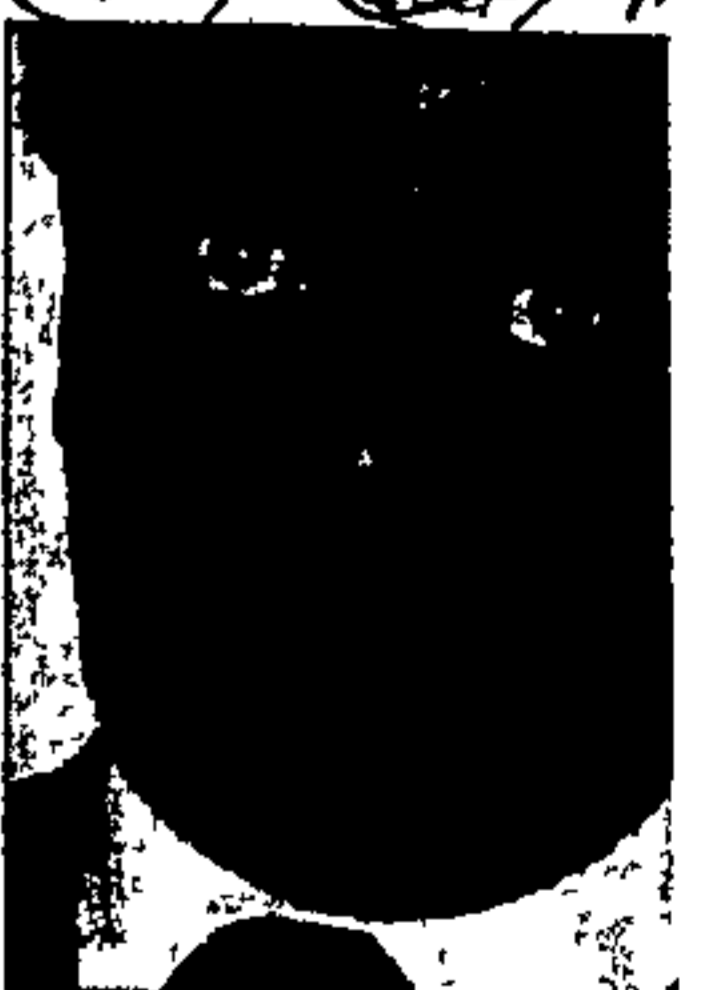
**M**ELCHIZEDEC ZAKHELE "MZ" KHUMALO — the alleged link man between Inkatha and the paramilitary unit at the centre of the Malan murder trial — has a long history of doing propaganda work for Pretoria.

The Mail & Guardian has established that Khumalo — the Malan trial's "accused number 7" and the alleged middleman between IFP leader Mangosuthu Buthelezi and Operation Marion — began his career as an apologist for Pretoria's intelligence agencies as far back as 1963.

Khumalo was officially employed by Eschel Roodie's infamous Department of Information, which spent millions of rand on furtive propaganda campaigns in the rest of Africa and in some European countries to promote apartheid and the homeland policy.

But the Information Department had close links with the Republican Intelligence Agency and its beefed-up successor, the Bureau of State Security — a police and intelligence agency that was designed as a power base for the then-Prime Minister BJ Vorster.

The relationship between the Information Department and Boss was so



Man in the middle: MZ Khumalo

close that Boss chief Hendrik van Bergh was obliged to resign just months before Vorster was forced out of office by the famous Infogate case. Sure of Boss and Information Department activities.

Khumalo is described as "one of the first black recruits" to the Information Department. His work involved travelling through rural South Africa showing films promoting the government's "separate development" and writing for the government press.

eni massacre. Both were connected to the SADF's military support of Inkatha

# third force

## Buthelezi 'nearly arrested'

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(252) (253)

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During a further round of discussions with Groenewald, on February 12 1986, Buthelezi requested the SADF to provide him with a "contra-mobilisation capability", an "offensive capability (or defensive element)" and an "intelligence capability".

The state's indictment alleges that in April 1986 Malan asked his chief of staff intelligence, Vice-Admiral Andries Putter, to "sell" the covert aspect of the plan to Buthelezi. If this was successful, implementation of the scheme would proceed in collaboration with Buthelezi's aide, MZ Khumalo. Putter's job was to "explain to Buthelezi that the minister of defence [Malan] had sent him because it was [Malan's] wish to implement the plan for a paramilitary force without delay".

A top-secret document attached to the indictment says "Offensive element, the task of this group is to set up a small group of well-trained troops for Inkatha that can be used offensively against the ANC, UDF [United Democratic Front] and related organisations. Further this group can be used as a personal bodyguard unit for the Chief Minister [Buthelezi] in his capacity as President of Inkatha when the SAP is not able to protect him".

The Mail & Guardian has additional information — supplied in an affidavit made by a defector from the Caprivi 200 group who is not on the witness list — that describes in detail how the group was trained by SADF special forces officers in offensive warfare techniques.

The informant, who cannot be named because he fears for his life, explains the group received further training at a farm near Pretoria after returning to South Africa from the

Caprivi Strip.

"The day for us to leave Pretoria came. We left in a removals truck. We were escorted by a small car with four whites [in it]. It was doing surveillance. We were taken back to Nhlungwane (a camp in KwaZulu-Natal). Dr Buthelezi came to meet us. He was accompanied by Brigadier Mathe and Zakhelo Khumalo, his assistant in Inkatha. He received us. An ox was slaughtered."

This affidavit adds that Caprivi fighter Vela Mchunu was involved in the murder of union shop stewards at Mpopomeni near Howick (see accompanying story). After this killing "he [Mchunu] went to hide at Ulundi and was received by Zakhelo Khumalo, Chief Buthelezi's assistant who is in charge of Inkatha offices".

Sources close to the investigation say there was a real possibility that Buthelezi would be charged because of the information contained in the secret document. However, because the investigative team wanted to build a watertight case — and because technical details were missing — it was decided to leave him off the charge sheet.

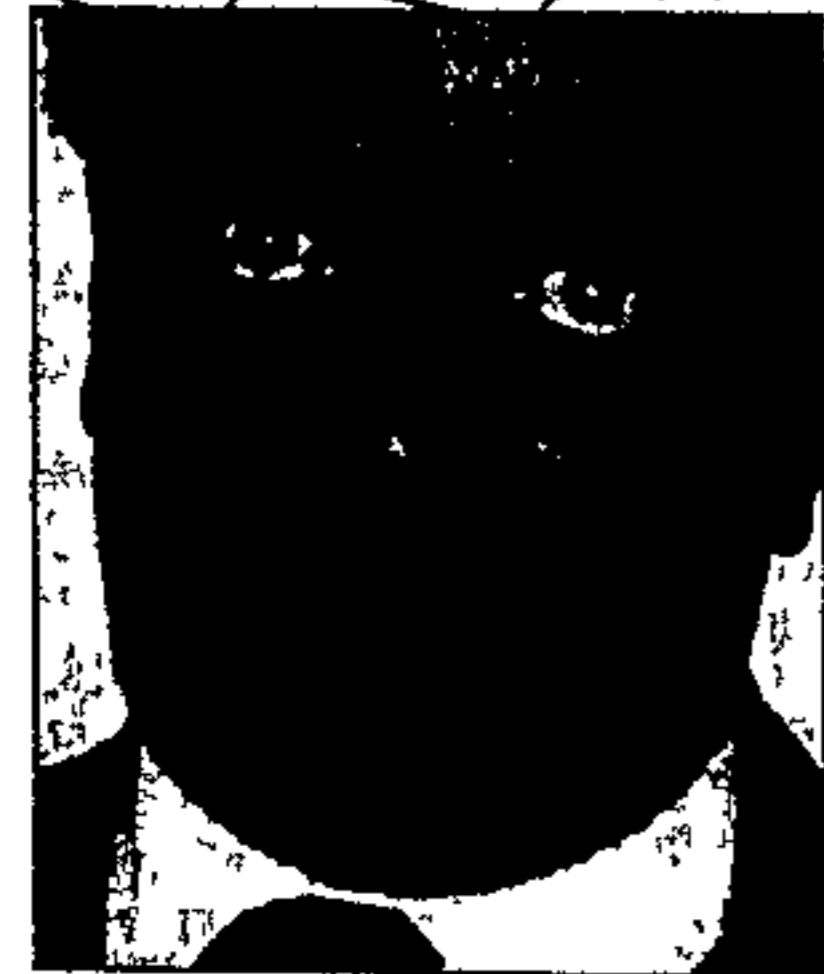
**“We must prepare ourselves to hit back with devastating force at those who destroy our property and kill us”**

— Mangosuthu Buthelezi in the KwaZulu Legislative Assembly, 1984



## Man work for Boss?

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Man in the middle MZ Khumalo

close that Boss chief Hendrik van den Bergh was obliged to resign just a few months before Vorster was forced out of office by the famous Infogate exposure of Boss and Information Department activities.

Khumalo is described as "one of the first black recruits" to the Information Department. His work involved travelling through rural South Africa showing films promoting the government's "separate development" plan and writing for the government publi-

cation *Inuthuko Yabansunthu (Black Development)*

Sources close to Khumalo's family say he worked for Boss while the Information Department was his official employer. Although Boss used journalists working for trade magazines in South Africa and abroad as agents for propaganda work, there is no evidence that Khumalo collected hard intelligence against opponents of apartheid.

It was during his travels for the department that Khumalo met his future patron, IFP leader Mangosuthu Buthelezi — beginning an enigmatic 20-year relationship.

The department apparently fired Khumalo in the early 1970s for being a "double agent", after allegedly catching him smuggling information from the agency to Buthelezi.

At the time, Buthelezi was under investigation by Boss for his African National Congress sympathies. Khumalo had come to respect the Inkatha leader and began offering him copies of Boss reports. Buthelezi is reported to have been initially sceptical, but offered him a job in KwaZulu's agriculture department after his dismissal.

In his new job Khumalo continued

his extensive rural travels — this time journeying throughout KwaZulu in a homeland government Landrover. As Buthelezi's relationship with the ANC soured in the late 1970s and ANC youths began their exodus out of the country for military training, Khumalo began collecting political information for the IFP leader.

In the early 1980s, Buthelezi appointed Khumalo as his deputy personal secretary. Khumalo became his personal secretary by the mid-1980s. His rising status made him a valuable asset both to Military Intelligence and to the South African Police's security branch when they began to form ties with the Zulu nationalist movement.

Khumalo began to play an active role in KwaZulu homeland security matters during his stint in the chief minister's office, where he built a network of intelligence agents within government departments to ensure staff loyalty.

Khumalo played a major role in the creation of the KwaZulu Police, which he pitched to Buthelezi as a bulwark against the ANC. The formation of the IFP-aligned union federation, Uwusa, was also Khumalo's brainchild.

The Malan indictment says Khumalo became the link man between the SADF and the IFP in 1986 when he took over contacts with the government following initial discussions with Buthelezi.

The indictment alleges Khumalo assisted with the recruitment of the 200 Caprivi trainees, paid their salaries, visited the camp, told the SADF the trainees "were getting restless and wanted to practise their skills", and oversaw the planning of the 1987 attack on the home of Victor Ntuli.

Khumalo also managed — with political commissar Daluxolo Luthuli — the training of further IFP supporters at Mkuze in northern KwaZulu-Natal. When the Inkathagate scandal broke in 1991, sources said Khumalo sat quietly through a marathon session of IFP central committee in Ulundi before announcing, shortly after midnight, that he would take the rap.

Buthelezi apparently stood up to hug Khumalo afterwards. The next day Khumalo was instructed to go on holiday to avoid the media while the IFP issued a statement blaming him for Inkathagate.

Shortly afterward, when Khumalo's son died in a car accident, Buthelezi restored Khumalo's faith in the IFP by bringing a cow to the funeral.

Khumalo then began to work covertly for the IFP, continuing his involvement with the party's paramilitary organisation alongside Luthuli.

Asked to comment, Khumalo told the M&G he was not able to give interviews to the media at this stage.

# Concerns over truth commission in KwaZulu-Natal

(252)



MG 8-14/12/95

**Ann Eveleth**

**A** COALITION of KwaZulu-Natal mental health and human rights organisations has warned that the start of the Truth and Reconciliation Commission next year could escalate rather than ease tension in the volatile province, unless the commission is adequately equipped to deal with the social aspects of the process.

In a submission to Justice Minister Dullah Omar, Lawyers for Human Rights, the Independent Medico-Legal Unit, Human Rights Committee, the Community Dispute Resolution Trust and the Human Rights Documentation Project warned that the commission could take place against a backdrop of escalating violence if financial, legal, social, psychological and security needs of the commission were not met.

The coalition warned that a single massacre similar to those in Ndwedwe and Ulundi on the eve of last year's election could "jeopardise the whole process and prevent people from coming forward to tell their stories". Political violence in KwaZulu-Natal had claimed more than 13 000 lives in the past decade and displaced more than 500 000 people, and "the potential exists for the commission to create

more harm than healing if not implemented with real consideration of the mental health aspects of the process", the submission said.

Warning that the local government elections due in the province next year, a general breakdown of the rule of law and the administration of justice, and a history of security force complicity in violence stood to aggravate tension in the province in the run-up to the commission, the coalition said proper structures needed to be set up now to ensure the commission functioned effectively.

**THE DYNAMIC TINA TURNER**



# Security of Malan witnesses in doubt

(252) (254) ARG 9/12/95  
**BRONWYN WILKINSON**

Own Correspondent

JOHANNESBURG — Police fear the security of witnesses in the Magnus Malan trial may have been compromised by the Inkatha Freedom Party's access to the cellular telephone accounts of investigators in the case.

Speaking on behalf of the Ministry of Safety and Security, Maxwell Mulaudzi said yesterday the national police commissioner, George Fivaz, had been asked to investigate how the accounts had ended up in the hands of the IFP.

The IFP issued a statement this week saying it was alarmed at the spending on telephone accounts by members of the investigations task unit (ITU) which had been appointed to investigate alleged hit-squad activities in KwaZulu-Natal.

The ITU has been responsible for the arrest of General Malan and 19 others on charges of murdering 13 people at Kwamakhutha in 1987. The accused are all former members of the security forces and the IFP.

Mr Mulaudzi said part of the investigation would be to establish whether the IFP had access to final balances on the account or whether they had seen the detailed bills and phone numbers dialled on those cellular phones.

He was concerned that if IFP members had seen the detailed dialling histories on the cellular phones, the witnesses — some of whom are in a witness-protection programme — may be contacted and interfered with.

IFP spokesman Ed Tillet said the party had had access to an internal police memorandum detailing the spending on the cellular phones.

Mr Tillet faxed a list to a Johannesburg newspaper of all the cellular numbers of the ITU and the amounts spent on those accounts for each month since April. The amount came to R121 000 in five months for the unit. One account on a single telephone in one month was over R4 000. However, Mr Tillet said he did not personally know which numbers had been dialled.

■ To page 2

## IFP cellphone disclosure row

(252)  
From page 1

In a statement yesterday, Mr Mulaudzi said the ITU was running several large inquiries and had numerous witnesses in protection programmes. He said later that the investigators spent much of their time in contact with witnesses by telephone.

He said the Minister of Safety and Security, Sydney Mufamadi, would ask Commissioner Fivaz to inquire into how a political party was permitted access to police records.

Mr Tillet responded yesterday, saying the IFP was appalled by the response of the ministry to the abuse of state resources by ITU members. All police expenditure accounts were widely circulated among the top brass of the SAPS.

# Timely Words of Wisdom

(252) ARC 9/12/95

■ Whether you come from Constantia or Khayelitsha the Citizens' Advice Bureau is on hand to advise people of their rights.

## ADELE BALETA

Staff Reporter

FREE advice to hundreds of callers and visitors at the Citizens' Advice Bureau in Plain Street ranges from where to buy a car battery to how to deal with Aids.

"We had a call from a woman who was invited to a party by a man who is infected with the HIV virus. She wanted to know if it was safe for her to accompany him," says co-ordinator of the bureau Pat Lindgren.

"The level of people's Aids awareness and how the disease can be contracted is very low judging by some of the calls we get," she adds.

"We have seen several people who have Aids and who have been laid off from work, driven from their homes and left destitute."

The bureau, which deals with up to 30 cases a day, was set up in 1963 and has four fulltime staff and 17 voluntary workers who give free information and advice.

Problems are treated with the strictest confidence.

The idea of setting up the service came from Britain, where bureaux were set up at the beginning of World War 2 to assist women.

"The idea was to advise people experiencing transition. Our service has become particularly important at this time in South Africa's history," says Mrs Lindgren.

The bureau staff deal with a broad spectrum of problems but the main one — and the cause of many others — is the rising rate of unemployment.

"In this year we had 268 cases directly related to unemployment, including unfair dismissals."

There has been a sharp rise in social problems related to family matters. Divorce is a major issue with more and more women having to take legal action against ex-husbands refusing to pay maintenance.

"At the same time more men are coming to get advice on their visitation rights.

Callers who phone can enlist the help and advice of the bureau staff without having to reveal their identity.

"Some people just want to tell their life stories. They need someone to listen to them."

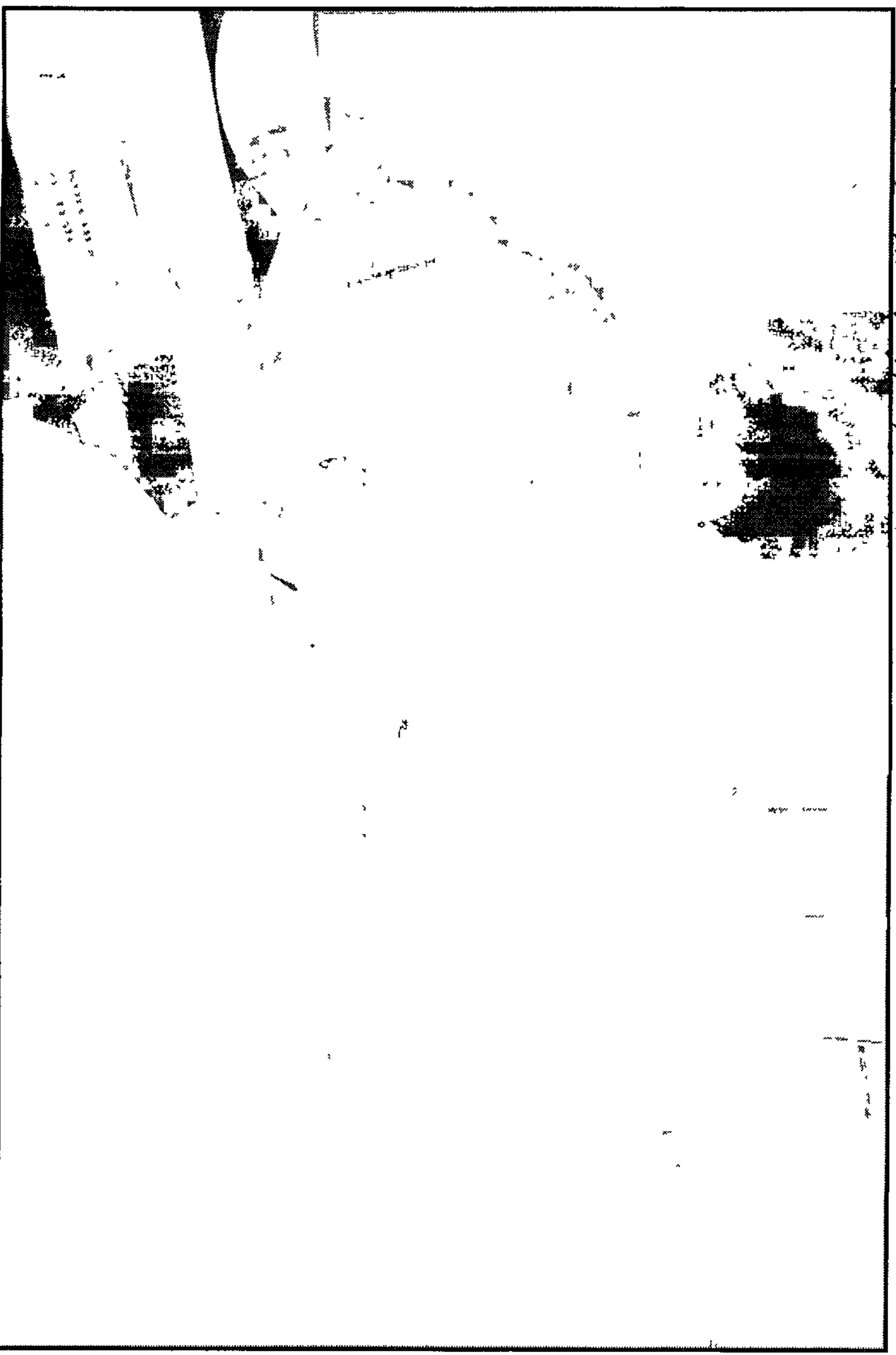
Mrs Lindgren predicts an upswing in consumer-related problems in January.

"So many clothing and food chainstores issue people with accounts without establishing their creditworthiness. It's a real problem because many people do not understand how accounts work."

Other problems area are door-to-door sales and mail-order goods.

Kay Uysker has been advising people for the past 15 years.

"We helped a 13-year-old girl who had been sexually abused by putting her in touch with an organisation who could counsel her. We were also



Picture: HANNES THIAFI, Staff Photographer

able to advise someone from Constantia about a problem involving selling his house.

"We do get feedback and in many cases people who have been to us come back again."

Helping people to understand legislation and apply for their identity documents was useful during the elections.

The advice given by the bureau falls roughly into three categories.

■ Practical queries involving information on any subject.

■ People who do not understand legal documentation and legislation and need it interpreted for them.

■ Those people with deeper personal problems. Here the advisers can help people sort out their own problems or they are referred directly to the correct source for help.

Mrs Lindgren says resources are updated on a regular basis. ■ Got a problem and in need of free advice? Contact the Citizens' Advice Bureau at 516 CTC Building, Plain Street, Cape Town, 8001 or 61 7218.

Picture: HANNES THIAFI, Staff Photographer

## Court orders end to appeal restriction

JOHANNESBURG — The Constitutional Court has ruled as invalid a section of the Criminal Procedure Act which restricts the automatic right of appeal and has ordered parliament to rectify it. ARG 9/12/95

"Section 309(4)(a) of the Criminal Procedure Act is declared invalid on the score of its inconsistency with the constitution

"Parliament is required to remedy the defect by April 30 1997, with the result that our declaration of invalidity is suspended until this happens or that date arrives," Mr Justice John Didcott said in a unanimous judgment. 252

Judge Didcott said the section violated an accused's right to a fair trial

Until now people convicted in a magistrate's

court who had no legal representation could appeal only if a judge granted a certificate saying there were reasonable grounds. But those who had lawyers did not require this certificate.

Judge Didcott found that the need for a judge's certificate violated a section of the constitution which entitled everyone to equal treatment in court

"The scheme is unsystematic and works in a haphazard way. It exposes the process to the real danger that appeals which deserve to be heard are stifled because their merits never attract judicial attention," Judge Didcott said

The judgment followed an application to the court by Nicko Ntuli, convicted in a regional magistrate's court for rape, attempted murder and serious assault — Sapa



**BENCH MARK:** Cape Town's first black woman magistrate, Linda Newman, wants more affirmative action in the judicial system  
Photo LEON MULLER, Staff Photographer

# Willing to fight for justice

(252) ARG 9/12/95

**MXOLISI MGXASHE**  
Staff Reporter

THE first black woman to become magistrate and prosecutor in Cape Town has called for a rapid transformation of the judicial system to give equal opportunity of employment to blacks aspiring to sit on the bench

Linda Newman, who will certainly become a role model for many young black women who aspire to taking their rightful places on the bench, says there were still some discrimination in the procedures currently followed, which empower a 10-member magistrates' commission to recommend names of applicants to Minister Dullah Omar

She said in a recent case a 63-year-old black man who had applied to fill a slot of a chief magistrate was disadvantaged by the commission's remarks in their recommendation that the applicant would soon reach compulsory retiring age before he could master the tasks of a chief magistrate

"Their recommendation is still subject to ratification by the Justice minister and one hopes justice will prevail in this case"

The magistrates' commission, appointed in 1993 by former President F W de Klerk, consists of a judge of the supreme court, an officer from the Justice ministry appointed by the minister, two regional court presidents, three chief magistrates, the chief director of the Justice College, Pretoria, one advocate and one attorney

Ms Newman said one other factor that limited the chances of aspiring blacks of getting jobs of the rank of regional magistrates was the requirement that appointments should be internal and did not have to be advertised

"This obviously calls for the amendment of the Magistrates' Act to redress these anomalies so that the system could be more democratic and more representative of the demographics," she said

She said the fact that the commission was an "all-white male" body created ample opportunity for the discrimination of women and black candidates as demonstrated by the "negative" recommendation she cited

Other things that ought to be redressed, she said, were the low salaries magistrates were given when they had such a big responsibility in society. But she was happy that the ministry of justice was now looking seriously into the problem to make the job more attractive

Ms Newman's career in the judicial system began in 1990 when she was appointed prosecutor after she had at-

■ Linda Newman is a role model for many young black women aspiring to a career on the bench. But it has not been easy getting where she is.

tained her LLB at the University of the Western Cape

"It was not easy at all. They do not train prosecutors and one is simply thrown into the job to learn as one hops along. Things get tougher when you have an insensitive magistrate who is ready to embarrass you in front of the gallery in court for any slip made in cross-examination and leading evidence in general

"This happened to me and the magistrate screamed and said I should re-prepare the case, without telling me what was wrong, and I had to ask for an adjournment," she said

Ms Newman also criticised this "bullying" attitude, which is sometimes extended to the accused who go away with the impression that magistrates are wicked people ready to punish offenders before they have even been found guilty

To her credit, Ms Newman has in the year she has served as magistrate tried to introduce a kinder, gentler and more humane elements into the bench to make it truly representative of the concept of justice

She, like many young ambitious professionals, hopes she will be able to rise to the position of a judge if all the obstacles that used to discriminate against women and black professionals were removed

She narrates experiences of racial and sexual prejudices she has suffered from both black and white defendants in court who are not used to the humility and grassroots culture she has brought into the system

Ms Newman comes from a background of a working class family in Mitchells Plain which did not have much means to educate her. Her father owned a small grocery shop and her mother occasionally helped in the shop, and when things became harder she would find piece work to help pay her school fees at the UWC

She passed matric in 1983 at the Portland Senior Secondary School and enrolled for a diploma in Law at the University of the Western Cape, UWC

After finishing this in 1986 Ms Newman was determined to continue, and in 1987 she enrolled for a B Proc degree. Two years later she was already wearing her LLB gown

She says all that has convinced her there is nothing that cannot be achieved with determination, hard work, courage, the will to fight all obstacles and never give in

# Truth credibility crisis!

(252) ARG 9/12/95

**COLIN DOUGLAS**  
Staff Reporter

THE newly appointed Truth Commission could be plunged into a crisis of credibility even before it starts its work, after claims surfaced that President Mandela had unfairly vetoed the appointment of a top nominee

Sources close to the commission's selection panel said panelists were "shocked" that Stanley Mogoba, presiding-bishop of the Methodist Church, had not been appointed to the commission.

The sources said Bishop Mogoba's name was one of a handful to have been agreed by the panelists as a "certainty" from early in the selection process for inclusion in their shortlist.

"There was never any debate about him," a source said of the cleric, who has also served as vice-chairman of the National Peace Accord

The Democratic Party, one of several groups to have nominated Bishop Mogoba to the commission, has accused

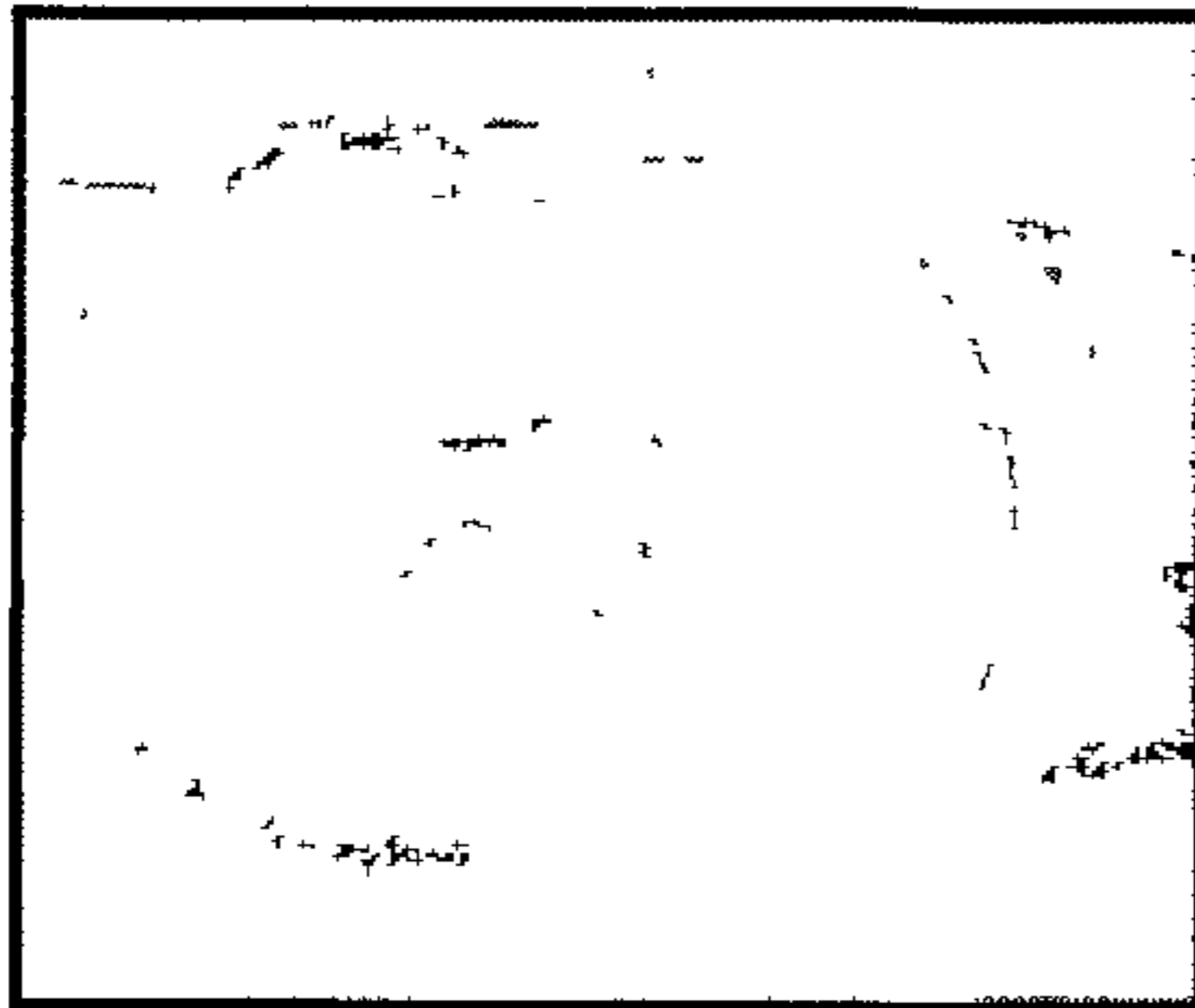
■ Stanley Mogoba, presiding bishop of the Methodist Church, has not been appointed to the newly-formed Truth Commission and sources claim that President Mandela unfairly vetoed the bishop's appointment.

President Mandela of political bias in leaving him off the commission

DP leader Tony Leon said "It's a startling omission I suspect that there were political considerations, including the fact that he was nominated by the DP

"If it is correct (that Bishop Mogoba was one of the panel's top nominees) then this moves from being something startling to something more sinister," Mr Leon said

"Bishop Mogoba stands head and shoulders above some of the other com-



**Stanley Mogoba.**

missioners, and as a representative from KwaZulu-Natal he was an obvious choice"

The row has been fuelled by the fact that President Mandela's appointments

to the commission included Khoza Mqojo, a Natal-based Methodist minister who was not on the panel's shortlist and had not even been nominated

Said one source close to the panel "My guess is that Mandela's mind went straight to Mqojo, and then they (the cabinet) thought that, as both Mqojo and Mogoba are Methodists, someone had to go

Very unwisely, it was Mogoba, which is a great tragedy. There were others on the list who could have gone"

There are suggestions that Bishop Mogoba's omission is the result of political animosity towards him by the African National Congress

His early political involvement was with the Pan Africanist Congress — an involvement which led to his imprisonment on Robben Island in the 1960s

Since his election in 1987 as head of the Methodist Church, Bishop Mogoba has taken public stands in opposition to those of the ANC and its allies

He contradicted trade unionists earlier this year by calling for labour and business leaders to agree on a moratori-

um on strikes, and in the 1980s he criticised the ANC's sanctions policy

Bishop Mogoba also questioned the morality of the armed struggle, saying most political violence was fostered by people who sat in executive offices and hotels speaking in "lofty terms" as they sent out youths to do the fighting for them

He served as president of the liberal South African Institute of Race Relations, a consistent critic of both the ANC and the National Party.

It is understood that United Democratic Front activists blocked Bishop Mogoba's appointment to high office in the South African Council of Churches during the 1980s

Bishop Mogoba said this week he was sorry he had not been appointed to the Truth Commission, and added that he had made adjustments to the Methodist Church's administration in anticipation of being appointed

But he said "I'd be quite surprised if there was a political motive I can only hope that, given the integrity of the President, there wasn't one"

# Bid for retrial by Sharppeville Six member

(252)

Star 9/12/95

By TEFO MOTHIBELL

Duma Khumalo, one of the Sharppeville Six sentenced to death in December 1985 for the murder of Jacob Dlamini, a councillor from the Vyal Triangle township, is demanding a retrial. Khumalo, who ended a hunger strike last week, this week vowed to continue with a sit-in at the Sharppeville police station "until something is done about my plight".

Khumalo, together with Reginald Seifatsa, Theresa Ramashamole, Oupa Dimiso, Reid Mokoena and Francis Mkgesi, were collectively convicted in terms of the controversial legal doctrine of common purpose in the murder of Dlamini at the beginning of the rent boycott in the area, which was later to spill over to other townships.

The 37-year-old father of two says he is not prepared to abandon his protest action despite persistent requests from his sympathetic visitors.

Khumalo decided on his sit-in because he believes he was wrongly convicted and forfeited an opportunity to build his life.

Before his arrest and conviction, Khumalo was a second-year teaching diploma student at the Sebokeng Teachers' College. Sitting on his temporary bed - a wooden chair covered with a

blanket, with a cloth for a pillow, the bitter ex-convict told the *Saturday Star* he felt cheated.

"I was part of the mob, but I was not there when they killed Dlamini."

Khumalo says he was wrongly charged with manufacturing and distributing petrol bombs used for setting the councillor, his car and his house alight. He says he was not involved in politics at the time and learnt about them only while on death row.

"When you are about to die, you need something to cling to - and politics was the best route for me after I was educated on the subject by ANC member Lucky Pai, who was hanged in 1987," Khumalo says.

In 1991 the Sharppeville Six had their sentences commuted, with some getting 20 years' jail and others 25. They were paroled in 1992 in terms of the former government's agreement with the ANC to release remaining political prisoners.

Khumalo has written for assistance to President Mandela, who referred his correspondence to the Ministry of Labour. He has also sought help from Gauteng Premier Tokyo Sexwale, Jey Naidoo's RDP Department and the Ministry of Justice. The Pan Africanist Congress of Azania has pledged its full support for Khumalo's action.



ONE-MAN PROTEST: Duma Khumalo believes he was wrongly convicted

PHOTOGRAPH ANTON HAMMERTL

FORMER TBVC STATE CITIZENS TO BENEFIT

# Bill for legal aid likely to soar

**AN AMENDMENT TO the Legal Aid Act next year will extend aid to all who can't afford representation in civil as well as criminal cases.**

**T**HE Legal Aid Board is likely to be landed with an enormous financial responsibility next year when the Legal Aid Act is amended to allow anyone who cannot afford legal representation in civil or criminal cases to gain access to state funds. The amendment, made in terms of

the new constitution, will include residents of former TBVC states who previously did not qualify for state aid. As an interim measure in terms of section 23 the new constitution allows anyone, including residents of former homelands, to apply for legal aid — but only in criminal matters.

Until the act is amended, R116 million received by the board for legal aid funding in terms of the new constitution will remain unavailable. Ms Petra Lubbe of the Legal Aid Board said that from April to October this year legal aid funding had been granted in more than 56 000 cases. The present budget was R66,5m and legal aid had been granted during the year in 42 897 criminal cases and

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13 554 civil cases

Since the board's inception in 1969, recipients of legal aid had had increased almost 20 times from 4 534 in the 1971/72 financial year to 85 231 in the 1994/95 financial year.

"We are working with public money so we look carefully at the merits of the case. We will only grant legal aid funding if it is a deserving case," Ms Lubbe said — Staff Reporter

# Hot debate on death penalty

(252)

source  
11/12/95

Senior researcher says the law must reflect the will of the people

By Mokgadl'Pela

**S**OUTH AFRICANS should first ask themselves if they were civilised before invoking arguments of civilisation against the death penalty, a meeting heard in Pretoria at the weekend.

Addressing a debate on the death penalty, senior researcher at the Human Sciences Research Council's Centre for Constitutional Analysis Mr Mandla Seleone, said those speaking of civilisation "deflect us from the real issue"

"To bring up arguments of civilisation is to abuse the person you are discussing the matter with. It amounts to bullying that person as you imply he or she is not humane," Seleone said.

He said it was not uncommon anywhere in the country to find

- Drivers showing a frightening disregard for the rules of the road. The same holds true for taxi drivers who are also known not to care whether commuters get hurt or killed in their daily fights,

- Teenagers putting chairs in the

middle of streets, thereby forcing other road users to find alternative routes,

- A farmer killing a black person simply because the latter's dog has mated with his, and

- An adult raping a three-year-old

Seleone said the law should reflect the will of the people. He said research must be done to see how capital punishment served as a deterrent. "Deterrence is not the only reason why we punish people. Society must feel that it fulfils purposes of retribution and punishment"

During question and answer time, Pan Africanist Congress deputy president Dr Motsoko Phoko said "Even civilised countries realise the death penalty may be imposed in certain circumstances"

Azanian People's Organisation leader and author Dr Gomolemo Mokoae said "I find transformation in the government baffling, considering it teems with people who a few years ago saw nothing wrong with necklace killings, yet they want us to believe they are opposed to the death penalty"



## Truth probe: Special case for women

252 12/12/95

TWO women appointed to the Truth and Reconciliation Commission said yesterday the body would have to take special measures for women.

Ms. Glenda Wildschut said the commission's procedures and policies still had to be finalised and one consideration she would work for would be a safe environment for women to testify.

"How do you create a safe space for people to tell their stories, understanding the multiple layers of traumatisation women experienced?"

"I think the policy will reflect that understanding," she told a meeting called to discuss the commission and role of women.

Another commissioner, Dr Wendy Orr, said "I think we are going to have to be careful to let women know they too will be heard." — Reuter

# City judge headed for Appeal Court position

ET 12/12/95

(252)

STAFF REPORTER

CAPE TOWN judge Mr Justice D G Scott is likely to be appointed to the Appellate Division, after the Judicial Service Commission (JSC) included his name on a list of recommended candidates for various positions to be forwarded to President Nelson Mandela.

Judge Scott said he hoped to justify the confidence shown in him.

In addition to Judge Scott, the JSC has recommended that city advocate Mr Willem Louw, 52, be appointed judge in the Cape Provincial Division to fill the vacancy caused by the death of Mr Justice Harold Berman, that Mr C Nicholson be appointed to the bench in the Natal Provincial Division

and Mr S M Miller be appointed to the Transkei Division.

A legal observer said yesterday that the president had invariably followed the recommendations of the JSC and that the appointments were imminent.

Judge Scott said he was aware of the great responsibility of sitting in a final court and it was going to be a big change in his life. "It will be very different to serving as a puny judge,

"I have had very fine colleagues in the Cape and am very sad to have to say farewell to them. I look forward to working with my new colleagues in the Appellate Division and hope to live up to the confidence the Judicial Service Commission has shown in me," he said.

# This court protects all

**W**HEN CONSTITUTIONAL COURT president Mr Justice Arthur Chaskalson reflects on the court's work since its first sitting in February, one is left in no doubt that South Africans still face a daunting task

That task is to adapt to the new constitutional order that was ushered in when the interim Constitution came into effect in April 1994

In an interview with *Sowetan*, Chaskalson pointed out that the new constitutional order was still a closed book to many South Africans, as the values and norms underlying it were still unclear

But he believes the court has played a significant role in upholding these values and norms

For instance, in outlawing the death penalty and thus upholding the right to life, Chaskalson said, the court was not only interpreting the skeletal provisions of the Constitution but also promoting the new order's values

Delivering that judgment, Chaskalson said "The constitutionality of capital punishment cannot be referred to a referendum, in which a majority view would prevail over the wishes of any minority

"The very reason for establishing a new legal order and for vesting the power of judicial review in courts was to protect the rights of minorities and others who cannot protect their rights adequately through the democratic process

"It is only if there is a willingness to protect the worst and the weakest among us, that all of us can be secure that our own rights will be protected

"And the court's task is to lay down norms and standards which other courts must conform to. The other courts can deal with the application of those norms and standards"

## Referendum on death penalty

Asked about increasing calls for a referendum on the death penalty, Chaskalson said that was a political question. However, he repeated his view that the question could not simply be left to public opinion

"The effect of our constitutional order is to take certain rights outside the power of popular decisions," he said

"So Parliament and referenda are all subject to the Constitution as long as the Constitution stands. That's one of the consequences of the constitutional order. As long as our Constitution stands, the death sentence is incompetent"

Addressing criticisms often levelled at the court, Chaskalson said some of them were largely unfounded

However, he readily conceded that the court was unrepresentative in terms of race and gen-

*Sowetan 12/12/93 (252)*  
South Africans do not yet understand the Constitution and why a referendum on the death penalty would be unconstitutional. **Mzimasi Ngudle** explains why...

der seven whites, four blacks, nine men, two women

"You cannot say it is truly representative. You have to look at the court in the context of the history of our country," said Chaskalson

"When the Constitution came into force, there must have been about 180 judges. Of those, all but three were white and all but two were men. That reflected the profile of the legal profession

"This court is the most representative we ever had, although not fully representative. But I am sure my colleagues have the capacity to cope with diversity in our society"

The court has also been criticised for serving wealthy people only. "This is based on a misunderstanding of the true position and lack of information," he said

Of the 31 cases set down for hearing, *pro deo* counsel were appointed for 16 of the applicants. "Thus, for half of the cases which came before the court, the litigants did not have to pay," Chaskalson said

On criticism that the court was too formal and technical, he said "I don't think this is so. There are rules and procedures laid down in the Constitution and the Rules of the Court. We cannot ignore the Constitution, even though there are areas where the court has discretion"

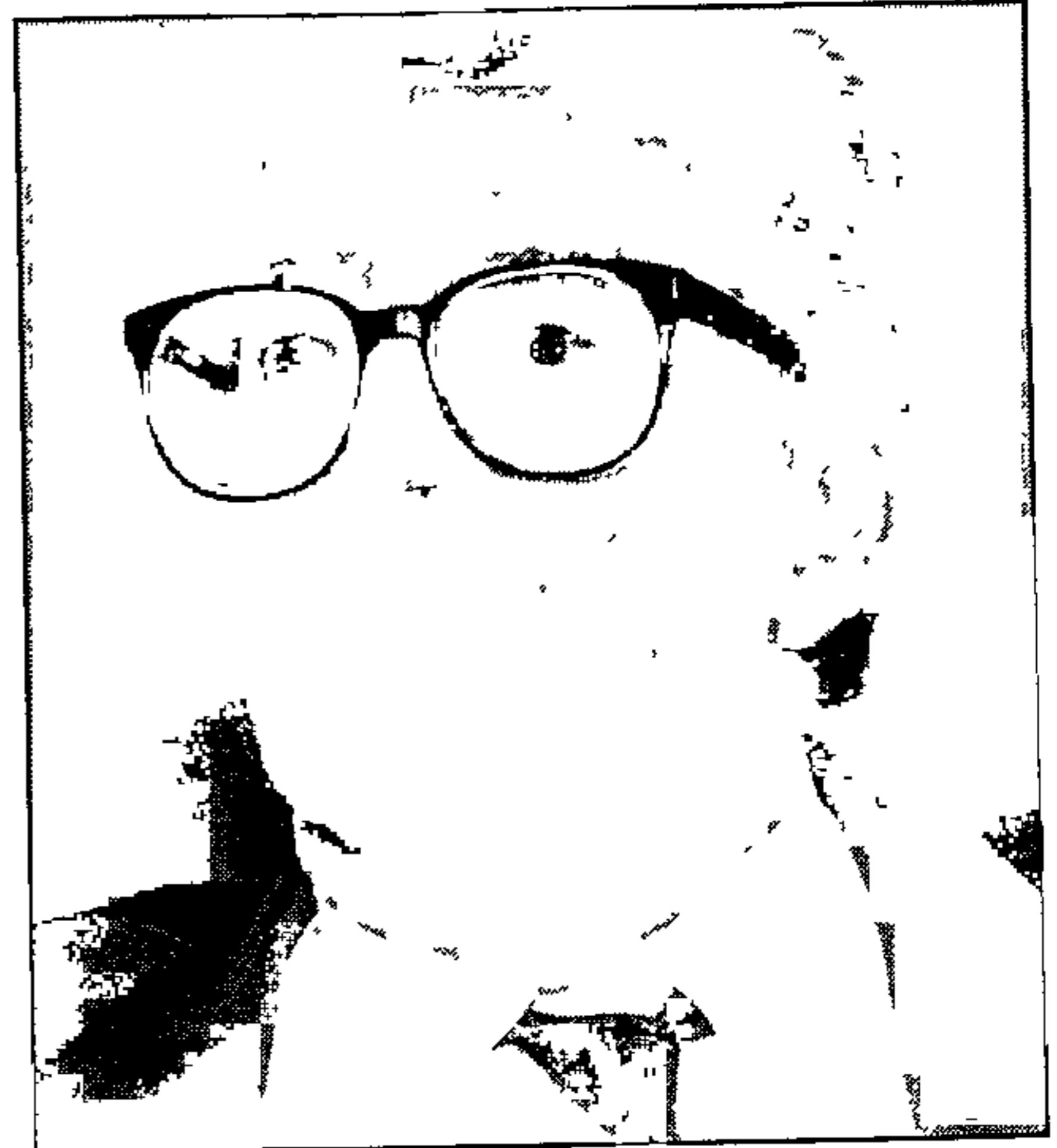
Chaskalson said the court has impacted directly on people's lives. "People were saved from the gallows, juveniles from whipping, and so on"

## Human Rights Commission

He added that the newly established Human Rights Commission would go a long way to helping people, especially the poor, to exercise their constitutional rights

"People with really substantial claims were able and would now even be more able, to get the matter to the court," he said

He is happy that the court was established. "I think the institution is up and established and



**Mr Justice Arthur Chaskalson ... the Constitutional Court has made a difference to people's lives.**

PIC POGGY SEGALE

that's the most important aspect. The way it functions will have to be seen as time goes on"

Chaskalson acknowledged that there were always problems when a country moves into a new constitutional order

"People have to get used to the new order and understand exactly what the court can do and what it can't do," he said. "Until now, the court was adjudicating on old laws drawn up without reference to the Constitution"

"So I think the situation will change as new laws are made. These laws will be made within the framework of the new Constitution"

Chaskalson pointed out that a lot could be done by Parliament to change old laws

"I am sure Government departments will have no problem in going through its own body of laws and seeing which parts of the laws that it administers are inconsistent with the Constitution," he said. His term expires in seven years. One reason for the non-renewability of the terms was to avoid judges currying favour with politicians in the hope that they would be reappointed

# Land Court still needs a woman

*Remetari 12/12/95*

~~(251)~~ (252)

**By Mzimasi Ngudle**

THE Land Claims Court, which was supposed to be up and running by now will probably start functioning in March next year, court president Mr Justice Fikile Bam said yesterday.

By that time the period within which people can lodge their claims will be just over two years. The three-year prescription period for land claims extends from May this year to May 1998.

One hiccup which Bam said has still to be overcome is the appointment of a female judge – an affirmative action appointee reportedly insisted upon by President Nelson Mandela.

Other judges are former chairman of the National Peace Secretariat Dr Antone Gildenhuys and human rights lawyers Mr Bakone Moloto and Mr Alan Dodson.

Bam said identifying the seat of the court was delayed by the failure to follow procedural requirements like tenders. "They just wanted a shortcut and the whole process had to start afresh," he said.

Meanwhile, the director of the National Land Claims Commission, Mr Dan van

der Westhuizen, said about 5 300 claims have been lodged so far. Of these 60 per cent were in respect of land in urban areas and the rest in rural areas.

Van der Westhuizen said that while the number of claims pouring into the national office had slowed, regional offices reported an increase in claims, especially after this year's conference on land policy.

Western Cape regional commissioner Mr Wallace Mgoqi said claims have increased since the conference.

Eastern Cape regional commissioner Dr Peter Mayende said more claims were received as people become more and more aware of the process.

Ms Emma Mashinini, a regional commissioner for land claims from Gauteng, Mpumalanga, Northern Province and Northwest, said her office had received well over 2 000 claims.

She said urban claims have outnumbered rural claims as more people became aware of land restitution.

KwaZulu-Natal regional land claims officer said awareness programmes on Radio Zulu and the press have led to an increase in the number of claims.

# Local government laws to be revamped

ARC 13/12/95

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(52)

**CLIVE SAWYER**  
Political Correspondent

A THOROUGH revamp of local government laws is in the pipeline but is not expected to reach the cabinet before March

Lawyers and officials of the Department of Constitutional Development are drafting a Local Government Bill which will replace the controversial Local Government Transition Act

The new bill will cover a range of topics from traditional leaders to financing local government

Informal talks will be held with parliamentary committees on constitutional affairs before the bill is put to the cabinet for approval

The provisional time-frame means that the new laws are unlikely to be formally debated in parliament before the Easter recess.

Constitutional Development official Anton Meyer said the new law would be "hopefully something better than the present act"

That central government was drafting a new bill did not preclude provinces from passing their own local government laws

In terms of the interim constitution, provincial governments are entitled to make laws on local government

Mr Meyer said the new bill would be framework legislation, allowing provinces to continue making laws on the day-to-day running of local government

Also in the pipeline is an "omnibus" Local Government Laws Amendment Bill

This will amend or repeal 20 laws, governing activities from the payment of town clerks to pension benefits for councillors to disaster man-

agement and fire brigade services

The terms of reference of the Browde Commission, which is investigating allegedly irregular promotions and payments to public servants in the former homelands, will have to be changed

The commission was due to report by the end of this month but is still busy with its probe. In addition, Mr Justice Browde has resigned

A second constitutional amendment will provide for the staggering of local government elections, to allow polls in the Western Cape and Kwa-zulu-Natal to go ahead as planned on May 29

The council has been unable to get underway because not all the provincial Houses of Traditional Leaders have been set up. The amendment will allow it to be constituted without all the provincial bodies having been established

# First sitting of truth body (252) expected soon

LEADERS of the Truth and Reconciliation Commission hopes to hold the first commission meeting before the end of the month, says Archbishop Desmond Tutu's office

Archbishop Tutu, the commission chairman, and vice-chairman Alex Boraine are to meet with Justice Minister Dullah Omar today

After meeting Dr. Boraine yesterday, Archbishop Tutu said they envisaged a preliminary meeting of the full commission would make recommendations to President Mandela on the permanent seat of the commission

Archbishop Tutu said that while legislation provided that Mr Mandela would determine where the commission would sit, they envisaged the full commission would make recommendations to the president

Appointments to the various committees of the commission, as well as staffing, were discussed

"We held a very preliminary discussion on the spread of membership of the committees, but I'm anxious that the commission should operate by consensus, so we would like the full commission to convene as quickly as possible to discuss these and other matters" — Sapa

# Truth Commission meets on Saturday

THE 17-member Truth and Reconciliation Commission will meet for the first time in Cape Town on Saturday, its chairman, Archbishop Desmond Tutu, announced yesterday.

Archbishop Tutu was speaking to reporters after meeting his deputy, Dr Alex Boraine, and Justice Minister Mr Dullah Omar.

Mr Omar said an initial amount of R55 million had been allocated by his ministry to cover the commission's running costs for 1996.

Archbishop Tutu said the site of the commission's headquarters and staffing requirements would be among the issues discussed at Saturday's meeting. — Sapa

CT 14/12/95

# Magistrates'

## powers increased

(262)

ET 14/12/95

PRETORIA Justice Minister Mr Dullah Omâr increased the sentencing power of magistrates yesterday, saying it was imperative that criminals knew their deeds would not be tolerated.

"It is important that courts are given the necessary clout to ensure effective sentencing," Mr Omar told a news briefing.

District courts, previously limited to one-year sentences, may now impose sentences up to three years. Regional courts' powers have increased from 10 to 15 years.

"This will not only ensure sentences are more effective but also that the higher courts will be freed to devote more time and specialised attention to more serious cases," Mr Omar said.

It had been agreed at talks with all chief magistrates and presidents of regional courts that trial delays, the disappearance of dockets and the withdrawal of cases would be investigated. — Reuter



FRIDAY  
DECEMBER 15, 1995 ★

## Urgency over amnesty appointments

CHRIS BATEMAN

(252)  
CT 15/12/95  
PRESIDENT Nelson Mandela would be asked to appoint the Truth Commission's amnesty committee as soon as possible, so that work could begin on more than 2,000 amnesty applications already received, commission deputy chairman Dr Alex Boraine said yesterday.

In terms of the Promotion of National Unity and Reconciliation Act, Mr Mandela must nominate the chairman, his deputy and one other person to serve on the five-member amnesty committee.

Mr Justice Edwm King, short-listed for the Truth Commission, told the commission selection panel he would be interested in chairing the amnesty committee.

Dr Boraine said that new urgency was added to the process by reports that 2,000 amnesty applications, including 1,200 from people serving jail terms, had already been sent to the Department of Justice.

# Truth Commission

## pay row brews

(252)

*Sowetan 15/12/95*

### Cape Town tipped to be seat of commission at meeting tomorrow

**C**APE TOWN was likely to be chosen as the seat of the Truth and Reconciliation Commission by its 17 members at their first meeting tomorrow, sources close to the commission said yesterday.

The city was a strong contender because it was home to Parliament, the Justice Ministry and many of the commissioners, the sources said.

It is understood the commission's amnesty committee could also be located in Cape Town.

It was also possible that either the reparation and rehabilitation committee or the human rights violations committee would be based in KwaZulu-Natal.

With only two of the 17 commissioners coming from strife-torn

KwaZulu-Natal, a special effort is expected to be made to ensure the province has better representation on the three committees.

Meanwhile, differing views are expected at tomorrow's meeting on the potentially controversial issue of remuneration of the commissioners.

"Some will feel the salaries are too low and others that they are too high," a commissioner said.

"It is clearly a sensitive issue."

Eastern Cape attorney Dumisa Ntsebeza this week said he would accept his appointment only if the Justice Ministry offered him suitable

remuneration.

According to the Promotion of National Unity and Reconciliation Act, the commissioners will not earn less than a supreme court judge.

A Justice Department spokesman yesterday said judges received a basic salary of R285 000 a year and an annual allowance of R3 500.

Staffing requirements will also be on the agenda for tomorrow's meeting, which is scheduled to last six hours.

Key posts, such as the commission's chief executive officer, are expected to be filled by the end of January - Sapa

# Truth Act challenged *South African* by Azapo

(252) 15/12/95

By Mzimasi Ngudle

THE Azanian People's Organisations yesterday called on Justice Minister Dullah Omar to suspend the functions of the Truth Commission pending the outcome of a Constitutional Court challenge to the Promotion of National Unity and Reconciliation Act.

The commission will hold its first meeting in Cape Town tomorrow.

Azapo spokesman Mr Pandelani Nfolovhodwe said it would be a waste of taxpayers' money if the Truth Commission went ahead with its work before the ruling of the court.

The organisation was asked to challenge the Act by the families of the late Black Consciousness Movement leader Mr Steve Bantu Biko and Mr Griffiths Mxenge and his wife, who were killed at the height of apartheid repression.

Advocate Justice Phoswa said he had received instructions to take the matter to the Constitutional Court.

Azapo and the families argue that the Act is unconstitutional on the grounds that it precludes people from seeking redress through normal courts, violates international law and conventions on human rights and abrogates the independence of the judiciary.

Justice Ministry spokesman Ms Sue de Villiers said the Ministry was confident that the Act and the Truth Commission were constitutional.

# Apartheid victims flock to truth body for payment

(252) Star 15/12/95

By LARA SMITH

The Truth and Reconciliation Commission will not have a shortage of victims ready to testify about the ordeals they suffered from political enemies when it begins hearing evidence next year.

Organisations working with victims say they are inundated with inquiries from people seeking compensation.

The Gauteng-based Khulumani (speak out) support group has, through its work with the Wits Centre for the Study of Violence, made contact with about 600 victims, spokesman Brandon Hamber said yesterday.

Most of these were relatives of people who were tortured, murdered or had disappeared. Others were survivors of torture at the hands of state officials, he said.

"At this stage it was not clear

whether all these people would testify before the commission, or what procedures the commission would follow.

The workings of the commission are expected to be finalised at a pilot meeting to be held at Bishopscourt in Cape Town tomorrow.

Commission spokesman Hildegard Fast said the agenda for tomorrow's meeting had not been finalised but it was expected that it would be decided where the hearings would be held and how they would be conducted, and what cases would be heard.

Justice Minister Dullah Omar earlier allocated a budget of R55-million to cover the commission's running expenses next year.

Wits Centre for the Study of Violence and Lawyers for Human Rights are two organisations that will assist individuals through the

hearings and advise others. Each case would be assessed independently, LHR national director Jody Kollapen said.

Perpetrators wanting to come forward to confess their crimes need not worry that the evidence

## 17-member commission to meet in Cape Town tomorrow

would later be used against them.

Kollapen added they would be completely indemnified from further prosecution.

It is understood that if a confession meets with the criteria for a political crime, the perpetrator

will, at the commission's discretion, receive full amnesty from further civil or criminal liability for that act, unless it can be proved that the information could have been obtained from a source other than the Truth Commission.

It has been reported that the Justice Department has received 2 000 applications for amnesty, of which 1 200 are from prisoners at present serving sentences. This could, however, not be confirmed by The Star.

Among the infamous cases expected to be examined by the Truth Commission are the death in police custody of Black Consciousness activist Steve Biko in 1977, the torture and killing of political opponents in ANC military camps in Angola in the 1980s, and suspected police involvement in the 1992 Boipatong massacre, in which more than 40 people died.

# AWB: 42 'do not qualify to address Truth Commission'

ARG 16/12/95  
PRETORIA — The Afrikaner Weerstandsbeweging has rejected a newspaper report that 42 former members are to confess before the Truth Commission, saying their crimes fall outside the amnesty cut-off date.

Among those named yesterday as willing to confess to the commission's amnesty committee were Clifford Barnard, Etienne le Roux, Jan Bastian de Wet and Abram Luebrecht Myburgh.

They were jailed for a bomb blast at Johannesburg airport before last year's parliamentary elections.

AWB spokesman Fred Rundle said in a statement those named in the report could not testify before the commission as they were charged with crimes committed after the cut-off date of December 5, 1993.

The report said the 42 wanted am-

(252)  
nesty and answers to questions about 43 special fund accounts they said had been opened by the AWB in the past 22 years.

Beeld newspaper quoted Frikkie Botha, a former AWB "hoofkommandant" (chief commander) in the Western Cape, as saying the group's testimony would have serious implications for the AWB leadership and other rightwing leaders.

"We want to know where the money is," he was quoted as saying.

Mr Rundle said the AWB believed Mr Botha worked for "some or other intelligence service".

He had been suspended from the AWB because of "irregularities and his malpractices with regard to AWB finances".

The AWB had only six bank accounts, he said. — Sapa

# E Cape 'focus for truth commission'

THE Truth and Reconciliation Commission should brace itself for a flood of cases brought by thousands of apartheid human rights-abuse victims in the Eastern Cape, said commissioner Bongani Finca.

These were people who had suffered the wrath of successive Pretoria and homeland govern-

ments, he said

Mr Finca expected the Eastern Cape, long the centre of the African National Congress's struggle against apartheid, to be a major focus of the commission's activities, adding that the families of 28 ANC marchers shot dead in Bisho in September 1992 wanted the incident investi-

(252) ARG 16/12/95  
gated  
"In Ciskei, Transkei and the Border people resisted and faced the vicious wrath of the Bantustan regimes and the South African government"

He said he hoped the commission would open an office in the province to conduct preliminary interviews with victims



**ROUGH JUSTICE:** Many people accused of criminal behaviour in the townships receive a good whipping from members of the community. This picture is posed. PHOTOGRAPH MORAPEDI NKALI

## Case against 'people's court' drags on

(252) Star 16/12/95

By TEFO MOTHIBELI

Idah Dikontsane, an alleged victim of a Sebokeng "people's court" in November last year, left the magistrate's court dejected this week after the postponement of judgment in the case.

Dikontsane, an unemployed mother of five, made her way out of the courtyard flanked by friends and relatives. The trial will have been running for a year by the time it resumes on January 29.

In the course of the trial, Dikontsane claimed she did not know nor understand why she was beaten by the "people's court", which also acts as the South African National Civic Organisation-aligned block committee in the area.

She said she saw a group of "rude women" shouting for her at

the top of their voices crowding into her house. They ordered her to follow them to the place where the "lekgotla" (Sesotho for "people's court") was held.

No one spoke to her but messages were passed in hushed tones among the members of the court. Sjamboks were then passed out to seven strapping young men.

She told the *Saturday Star* this week "I could not believe my eyes and ears as one of those women at the court told the men that they should deal with their victim in most harshest manner after I had allegedly acted contemptuously against the 'people's court'."

She said she was ordered to lie down on a bench.

"I thought these people were not serious. How could a woman of my age be punished with sjamboks as

though I was a bandit? All my pleas to be spared the punishment fell on deaf ears as those men started whipping my body indiscriminately, even as I kept rolling over."

Dikontsane said she could not remember what happened to her after that as she collapsed at the scene. "I was beaten so severely all over my body that I had to be taken to hospital twice."

She claimed she suffered a mental breakdown twice as a result of the "severe manner in which I was thrashed."

The beating shocked Vaal Triangle residents. At the time, terrified victims and residents, who felt that those involved in the "people's courts" were manipulating the system to settle scores with those over whom they reigned, called for the disbandment of the system.

# Omar's not talking straight — Azapo

BY JEFFERSON LENGANE

MINISTER of Justice Dullah Omar's promise to look into granting amnesty to exiled Azanian People's Organisation (Azapo) leader George Wauchope if given details of the matter has been dismissed as "mealy mouthed double talk" by the organisation.

Wauchope was one of the Black Consciousness adherents who were instrumental in the formation of SASO in the late Sixties and the BPC in the early Seventies. After the banning of the BPC he was the first general secretary of Azapo, formed in 1979. Up to the time of his skipping the country he had been appointed into successive Azapo central committees.

Omar made the undertaking to City Press following an interview in which he was asked if his Ministry was not embarrassed that a South African freedom fighter (Wauchope) is to be ordained in Zimbabwe because he is still trapped in that

country and unable to return for fear of arrest.

"Exiles are entitled to return. If obstacles are put in their way, they must be removed. If they fear arrest because of their activities in the liberation struggle then we must certainly look into it and facilitate their return."

"If I can be given the details I'll be happy to deal with the matter. If it is a matter I can address — I'll do so immediately. Somebody must make representations on his behalf and I'll look into it."

"I have met all the groups and I am looking into the issue of political prisoners and exiles," pledged Omar.

Attorney Cyril Morolo, acting on behalf of Wauchope, confirmed to City Press that he had led a delegation to the Minister at the beginning of the year to present the case.

"The Minister promised to give the matter his personal attention. The meeting was a sequel to police arriving in search of Wauchope at the funeral of his brother-in-

law, Letsatsi Mosala, in 1994. The opening of the Steve Biko inquest was also discussed at the meeting.

"If he is making another undertaking, hopefully there will be no problems when Wauchope comes back into the country," Morolo said.

Irrked by Omar's call for details and for somebody to make representations on behalf of Wauchope, Azapo secretary for publicity and information Vuyisa Qunta said: "This is mealy mouthed double talk. Information about Wauchope has been submitted directly to the Minister in his office. We have since been getting this vague promise."

Black Consciousness proponent, journalist and poet Don Mattera has attacked the amnesty process, in particular when it comes to Azapo.

"The sham of the South African amnesty process is particularly revealing when it comes to the Black Consciousness Movement and Azapo cadres and leadership.

"It has effectively marginalised men and women like Reverend George Wauchope, who, after standing trial over a period of two years (1987-1989) without the case being resolved, had to flee for his life. Now he wants to return but cannot do so because there appears to be reluctance on the side of the new government to grant him unqualified amnesty.

"This is absurd, especially given the fact that butchers like Dirk Coetzee and many such people walk freely in our country."

Wauchope will today be ordained an Anglican priest in Harare.

Meanwhile, Azapo has instructed its lawyers to litigate that the National Truth and Reconciliation Act be declared null and void through the Constitutional Court.

"We are particularly targeting the indemnity clauses which, in the way they are to be implemented, are a travesty of justice," Qunta said.

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CP 17/12/95 (252)





**NO WITCH-HUNT . . . Archbishop Desmond Tutu.**

# Amnesty spelt out

(252) CP 17/12/95

By CP CORRESPONDENT

THE SEVENTEEN members of the Truth and Reconciliation Commission gathered in Cape Town yesterday for its first meeting to discuss the "nuts and bolts" of the commission's organisational plans for next year

Among the issues which were discussed was the venue for the commission, the chairmen to be appointed to the three committees under reparation, amnesty and human rights, the truth body's relationship with the justice department and a witness protector

Chairman Archbishop Desmond Tutu said that the law, the promotion of the National Unity and Reconciliation Act of 1995, which was passed on December 15, spelt out clearly the criteria for amnesty

"We must stress that the act under which we operate makes

no moral distinction. Those who apply for amnesty are judged to qualify for the granting of that amnesty or not only by whether they satisfy the criteria laid down. Did the offence happen in the appropriate time frame, that is March 1960 to December 1993, was it politically motivated and consonant with the policies of either the then State or a liberation movement and has a full disclosure been made? If these criteria are met, then amnesty must be granted."

Among the front runners for the committees are lawyer and human rights activist Yasmin Sooka for the human rights group, Dr Fazer Randera, Dr Wendy Orr, or Cape Town Trauma centre head Glenda Wildschut to head the reparation body. A Supreme Court judge would be appointed to head the amnesty committee. Judge Edwin King may be given this position

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Archbishop Desmond Tutu speaks at the truth commission's first session in Cape Town

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# Call to focus truth hearings on victims

BD 18/12/95 (252)

Stephen Laufer

AS Truth and Reconciliation commissioners gathered for their first formal meeting in Cape Town at the weekend, victims and survivors of human rights violations said the commission must centre its work around them and not simply benefit the perpetrators by granting them amnesty.

Speaking in Johannesburg's Central Methodist Hall, Father Smangaliso Mkhathwa said it was easy to confess in order to escape punishment. Perpetrators should meet their victims, or the families, so that there could be "a coming together of hearts, a true change of heart".

Encounters of this kind were made more likely by the commissioners' decision to hold hearings across the country like a circuit court. The truth body's headquarters would be in Cape Town, with its committees centred in other provinces and commissioners travelling regularly, chairman Archbishop Desmond Tutu announced.

The location of the committees will be discussed at the commission's next meeting, a retreat from January 22 to 26 KwaZulu-Natal, Gauteng, and the Eastern Cape — each centres of many human rights violations — appear likely seats for the committees.

Tutu will chair the human rights violations committee, with lawyer Yasmine Sooka and former MP Wynand Malan as his deputies. Other members are Alex Borame, Mary Burton, Fazel Rander, Reverend Bongani Finca,

and Richard Lyster

Hlengiwe Mkhize will head the reparations and rehabilitation committee, with Wendy Orr as her deputy and Glenda Wildschut, Mapule Ramashala, and Reverend KEM Ngojo as committee members. The committees can co-opt additional members from outside the commission.

Saturday's truth body meeting recommended Sisi Kamphephe and advocates Denzil Potgieter and Chris de Jager for the amnesty committee, which must be appointed by President Nelson Mandela.

Umtata lawyer Dumisa Ntsebeza will head the commission's investigative unit.

Meanwhile in Johannesburg about 120 survivors of physical and psychological torture and the relatives of missing and killed activists who belong to the Khulumani support group — the vast majority women — spoke of their expectations of the truth and reconciliation process.

Their statements ranged from the political to the personal, their experiences spanning most two decades from the Soweto uprisings of 1976 to the East Rand violence of 1995.

"Baba" Sithole, the ageing father of a murdered political activist, talked of the comfort he has gained from speaking publicly about his loss while Nhlanhla Miya, leaning on a walking stick and wiping away tears, sought help in dealing with the aftermath of a shooting last year which left her disabled and unable to earn a living.

Theo Rawana

A RELUCTANCE by white collar workers to be seen "taking money out" to buy from Johannesburg city centre's Bank City flea market had caused the market to "bite the financial dust", Flea Market Enterprises' MD Marc Israelsohn said yesterday.

This was after Flea Market Enterprises — which ran the flea market — had targeted white collar workers as a lucrative market.

But this experience had only spurred the company to greater effort, and a wiser organisation now expected a 50% increase from their present R14m turnover through aggressive expansion and development, Israelsohn said.

The group, which comprises Flea Market World in Bruma, Hatfield Plaza in Pretoria, Benoni Plaza and Kopanong Traders in Hammanskraal, specialises in structuring and managing the mostly outdoor informal retail sector.

Israelsohn said the mistake the company made when it took up space at Bank City late last year was going up-market and targeting the white collar workers.

"We spent R300 000 setting the place up, not realising that these people were not buying in

# POLITICS



**SEARCH FOR TRUTH:** Archbishop Desmond Tutu, chairman of the Truth and Reconciliation Commission, speaks at a news conference after members of the commission were sworn in. Some of the members are advocate Mr Chris de Jager (left), Mrs Mary Burton, and commission deputy chairman Dr Alex Boraine

PICTURE: BENNY GOOL

## Amnesty request flood expected

**ANTHONY JOHNSON**  
POLITICAL CORRESPONDENT

THE Truth and Reconciliation Commission (TRC) is expecting a flood of amnesty applications when it holds its first hearings in February.

The Justice Department has informed the TRC, which held its first meeting at the weekend, that there are more than 1 200 individuals in custody who have indicated they would like to apply for amnesty.

TRC chairman Archbishop Desmond Tutu said the commission, which meets again on Janu-

ary 22, faced an awesome task over the next two years but he emphasised that the body would do all in its power to help the country come to terms with its dark past.

TRC deputy chairman Dr Alex Boraine said yesterday the amnesty committee would give priority to those in custody who were seeking amnesty for human rights violations. Application forms would be available early next year.

The TRC has unanimously recommended to President Nelson Mandela that its headquarters be in Cape Town, but Archbishop Tutu stressed that the commission and its three committees would

work in a decentralised way to ensure maximum accessibility to those — both victims and perpetrators — who wished to tell their stories.

The commission has been allocated an interim postal address and telephone number. Its address is Private Bag X256, Cape Town, 8 000, and its telephone number is (021) 461 1544 and fax 45 2783.

Dr Boraine said yesterday that the R55 million originally earmarked for the TRC was peanuts compared with its needs over the next two years. A completely new budget would be submitted in the next few weeks so that budget

planners could take the actual costs of running the commission into account.

A separate President's Fund to deal with reparations of human rights abuses will be set up soon.

Commissioners will be paid the same salaries as judges at R285 000 a year or R23 750 a month. As chairman, Archbishop Tutu will receive an annual salary of R292 000 or R24 333 a month.

In view of his earlier criticism of the gravy train among members of the new government, Archbishop Tutu has decided to donate half his salary to scholarships at UWC and for children of clergy.

ET 18/12/95

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# Truth body begins to take shape (252)

**POLITICAL CORRESPONDENT**

**CT 18/12/95**

THE Truth and Reconciliation Commission (TRC) began to take shape at the weekend when members were elected to specialised committees.

After the first meeting of the TRC at Bishopscourt on Saturday, it was announced that commission chairman Archbishop Desmond Tutu would also head the Human Rights Violations Committee (HRVC).

The deputy chairpersons for the HRVC will be Ms Yasmin Sooka and Mr Wynand Malan. The other members of the committee include Dr Alex Boraine, Ms Mary Burton, Dr Fazel Randera, the Rev Bongani Finca and Mr Richard Lyster. People who are not members of the TRC can be co-opted on to this or other committees.

The TRC will recommend to President Nelson Mandela that three commissioners — instead of the two proposed in the act — serve on the Amnesty Committee (AC). The proposed members are Ms Sisi Khamphepe, advocate Mr Denzil Potgieter and advocate Mr Chris de Jager. The AC will be chaired by a judge nominated by Mr Mandela.

The Reparations and Rehabilitation Committee will be headed by Ms Hlengiwe Mkhize, with Dr Wendy Orr as deputy chairwoman. Other members will be Dr Mapule Ramashala, Ms Glenda Wildschut and Dr Khoza Mgojo.

The TRC also proposed that its investigation unit be chaired by Mr Dumisa Ntsebeza. Members of the unit must still be named.

# 'Witch-hunts' ruled out

(252)  
*See van*  
 18/12/95

Commissioners will travel far and wide and will need counselling as well

**By Rafiq Rohan**  
 Political Correspondent

**W**ITH THE PREDOMINANCE of Western Cape commissioners appointed to the Truth and Reconciliation Commission, it comes as no surprise that its headquarters are to be Cape Town

However, this does not mean all the hearings will take place only in the Cape, the chairman of the commission Archbishop Desmond Tutu announced at the inaugural meeting at Bishopscourt at the weekend

Commissioners will be travelling around the country to take evidence, he explained

Another thing for certain is that the commissioners will not go hungry over the period in office. They will be taking home a healthy pay-cheque of about R24 000 a month – the same salaries that Supreme Court judges earn

Tutu's salary is the same as a Judge-President – R292 000 a year

However, Tutu announced that he will donate half his salary to the ailing University of Western Cape and for scholarships for children of the clergy

At the commission's first meeting coincidentally on the Day of Reconciliation – a serious Tutu described work on the TRC as "an awesome responsibility"

He said the task ahead was to ensure that the commission's work achieved "genuine, real and not cheap and spurious reconciliation"

Tutu took pains to reassure, particularly those from the previous white apartheid regime, that the commission would not "degenerate" into a witch-hunt

The three separate committees established within the TRC will examine human rights violations, amnesty and reparation, and rehabilitation. Dealing with the unpleasant task ahead commissioners themselves are bound to be affected by what they see and hear

"We will need counselling periodically to recoup," Tutu said

The 17 members of the TRC are Tutu, Alex Boraine, Mapule Ramashala, Mary Burton, Sisi Khampepe, Denzil Potgieter, Richard Lyster, Dumisa Ntsebeza, Glenda Wildschut, Yasmin Sooka, Wynand Malan, Faizel Rander, Bongani Finca, Chris de Jager, Wendy Orr, Hlengiwe Mkhize and Khoza Mgojo

# Local authorities to discuss legislation

Mduduzi ka Harvey and Robyn Chalmers

ED 19/12/95 (252)

CONSTITUTIONAL Affairs Minister Roelf Meyer and his provincial counterparts have agreed on a four phase approach to review the Local Government Transition Act in a bid to empower local authorities in the new year. Gauteng local government and housing deputy director-general Enos Ngutshane said yesterday.

Ngutshane said legislation which disempowered local authorities would come under scrutiny and be discussed by the province's portfolio committee.

Outlining some of the department's plans for 1996, Ngutshane said it would extend the Masakhane campaign in the province until the middle of next year to ensure the campaign affected local communities. At the same time, plans were under way to ensure that the delivery of services was done in a professional manner.

The move towards a professional delivery of services would entail reviewing the resourcing, budgetary and capital needs of the different local authorities, ensuring individuals adhered to a culture of payment for municipal services, increasing the number of payment points and the introduction of an effective billing system.

He said problems encountered during the November 1 local government elections had created the need to re-

visit the voters' rolls by upgrading them and allowing for the continued registration of public members who did not appear on these.

The department would identify financial institutions in the province which were prepared to deal with local authorities and provide them with capital for the development of their communities. Local authorities should also be put in a position where they could access municipal bonds, he said.

Ngutshane said the province's infrastructure investment programme was moving ahead, with 37 business plans approved which would see infrastructure such as roads and sewerage systems installed at local level.

"The business plans will amount to a total of R359m and they will signify an important move forward for the provincial government on its infrastructure programme," he said.

Ngutshane conceded that continuing land invasions were causing severe problems for Gauteng's low cost housing programme, particularly the rapid land development programme, and the problem was being addressed in conjunction with local authorities.

However, he said a policy of hiring guards to keep invaders off land earmarked for the rapid land development programme was not being considered by the provincial government.

Comment: Page 8



Gauteng local government and housing deputy director-general Enos Ngutshane outlines plans to review the Local Government Transition Act at a news conference in Johannesburg yesterday. Picture ROBERT BOTHA

## Water restrictions stay despite heavy rainfall

Theo Rawana

The Weather Bureau said heavy rains expected over KwaZulu-Natal

**Towns want to switch provinces**  
PIET RETIEF — Piet Retief and surrounding communities in Mpumalanga were warned

# NEWS

SINN FEIN WELCOMES GOVT SUPPORT

## SA-Irish arms link: Probe

CT 19/12/95

(252)

**SINN FEIN** has welcomed confirmation that the Truth Commission will also deal with arms sales in Northern Ireland. **ANTHONY JOHNSON** reports.

**T**HE South African government will submit to the Truth and Reconciliation Commission (TRC) a report by Sinn Fein on alleged collaboration between British military intelligence, Armscor and the military wing of Protestant loyalists in Northern Ireland.

Sinn Fein president Mr Gerry Adams said yesterday that he had received confirmation in a letter from Justice Minister Mr Dullah Omar that the report

compiled by the political wing of the Irish Republican Army "will be handled by the Truth and Reconciliation Commission for its investigation".

Mr Adams also welcomed the support by Mr Omar and Deputy Defence Minister Mr Ronnie Kasrils for the Cameron Commission conducting an investigation into the issue of arms links between South Africa and the loyalists

Mr Omar confirmed in his

letter to Mr Adams that this probe would "take the form of an investigator being appointed to look into the matter"

"This is a welcome breakthrough which has the potential of placing the spotlight on one of the most controversial issues to have occurred in 25 years of conflict," Mr Adams said

He said the developments followed a period of intense engagement by Sinn Fein and by the relatives of those killed by loyalists allegedly using South African weapons.

Mr Adams claimed that in the six years prior to the importation of South African weapons into

Northern Ireland, loyalists killed 71 people, whereas in the six years after the importation of such weapons, with the alleged assistance of British military intelligence, 229 people were killed.

Mr Adams, who met Judge Edwin Cameron during a visit to South Africa in June, said both Sinn Fein and the relatives organisation Relatives for Justice had made written submissions to the Cameron Commission which was set up to investigate illegal arms transactions by Armscor. Mr Omar, who is on an official visit to India, could not be reached for comment.

TUESDAY  
DECEMBER 19, 1995

## Fund-raising for reparation

(252) 19/12/95

**POLITICAL CORRESPONDENT**

THE Truth and Reconciliation Commission is to embark on a fund-raising drive with foreign governments to help pay for reparations to the victims of gross violations of human rights in SA.

Head of the commission Archbishop Desmond Tutu and his deputy Dr Alex Boraine will meet dozens of ambassadors from the European Union, the United States and other countries to invite them to contribute financially towards the President's Fund which will be used to assist victims.

Dr Boraine said Denmark had already pledged over R1 million towards the fund. The Netherlands had also made a firm commitment to contribute to the fund but the details were still being worked out.



# SA rated among the world's 'most free' countries

PETER FABRICIUS  
The Argus Foreign Service

WASHINGTON. — South Africa has been rated among the world's most free countries politically this year — rising one rung on the ladder since last year — in Freedom House's annual survey of international human rights.

As last year, the United States human rights group rated South Africa a "free" country, but lifted it from 2,5 to 1,5 on a scale where one is most free and seven is least free.

The survey — *Freedom in the World*, published here yesterday — said two more nations, Moldova and the Kyrgyz

Republic, had joined the ranks of the world's democracies in 1995.

The survey ranks all the world's nations according to two basic criteria, political rights and civil liberties.

International affairs analyst Thomas Lansner said South Africa's ranking had improved mostly because of the continuing consolidation of democratic rights.

He cited as an example President Mandela's acceptance of the constitutional court's decision to uphold a National Party objection to the delimitation of Western Cape local government boundaries.

The constitutional assembly's publication of a draft final constitution was also taken as evidence that democratic con-

solidation was continuing, Mr Lansner said at a Press conference announcing the survey.

In an interview, he said the continuing political violence in KwaZulu-Natal was one of the reasons South Africa had not been given a top score of 1 — along with countries such as Australia, Canada, New Zealand and the United States.

Another reason South Africa did not attain the top rank was the economic restriction caused by a small group of interlocking companies controlling so much of the market

Concentration of media ownership also potentially limited freedom of expression, he said.

ARL 20/12/95 (252)

## Foreign countries offer to send detectives to help Truth probes

DENMARK and the Netherlands are among a number of countries that have offered to send police detectives to the Truth and Reconciliation Commission's investigation team, which will be responsible for probing cases of human rights abuses.

This was confirmed yesterday by commission vice-chairman Dr Alex Boraine, who said in an inter-

view that he had told his fellow commissioners of the offers at the commission's first meeting on Saturday *CT 20/12/95*

Dr Boraine said most of the commission's investigators would be carefully selected from the SA Police Service, but highly trained detectives from outside South Africa would probably be brought in too — Sapa

# Cosatu strike attracts Potwa members only

By Abdul Milazi and Mpikeleni  
Dumã and Sapa

THE Congress of South African Trade Unions' call for a two-hour strike yesterday seemed to have been heeded by post and telecommunications workers only as other businesses operated as normal

Cosatu called for the strike to protest against the Government's planned privatisation of some public assets including Telkom, Transnet and South African Airways

(252) (S) (S)  
Sowetan 20/12/95  
About 40 Potwa members staged a sit-in at Telkom offices in Pretoria while more than 200 others marched on Telkom offices in Bloemfontein, Free State

Potwa regional secretary Mr Makgoba Mothlake said members demonstrated nationwide against the proposed privatisation

Telkom spokesperson Ms Ronelle Myburgh said services were not disrupted during the stoppage. Post Office workers throughout the country stopped work early in the morning in

sympathy with Telkom workers, but most were back at work by 11 am

Post Office spokeswoman Ms Juliana Nel said centres affected by temporary strikes were the main sorting centre in Church Square, Pretoria, the Kromdraai parcel depot, the Verwoerdburg depot and post office, and all Pietersburg post offices

In the West Rand, about 600 workers downed tools to picket Telkom's Factoria offices. Other demonstrations were at Lewisham, Horizon Yard and Telkom Terrace.

# Foreign help for truth body

(252) *ATW 20/12/95*

Cape Town - A number of countries, including Denmark and the Netherlands, have offered to second police detectives to the Truth and Reconciliation Commission's investigation team, which will probe cases of human rights abuses referred to the commission.

This was confirmed yesterday by commission vice-chairman Dr Alex Boraine

"Several countries have expressed a willingness to help us in

any way they can," he said

Boraine said that while most of the commission's investigators would be drawn from the ranks of the SA Police Service, it was likely that highly trained detectives from outside South Africa would be brought in.

He envisaged the unit would be headed by prominent Eastern Cape attorney Dumisa Ntsebeza, and would operate out of four regional offices - Sapa

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# Help for the victims

*Sowetan*  
21/12/95 (252)

Now the numerous unknown victims of the apartheid regime will get a chance to tell their stories to the Truth Commission. **Sharon Chetty** explains...

**B**ABA ANDREAS SITHOLE approached the microphone cautiously. In a slow, dignified voice he told those assembled in Johannesburg's Methodist Church hall on Reconciliation Day "I never knew there's someone who's a victim like myself"

He was talking about being a victim of human rights abuses of the past government. Like thousands of others, Babā Sithole and his family lost a loved one.

For years he did not know what to do or where to go. Then he met the Khulumani Support Group and found that there were other people who, like him, were trying to deal with the brutality they had suffered in the past.

"All were telling the same story as mine. To me that's a comfort. It makes me see and feel that I'm not alone," he says.

Baba Sithole, like thousands of other South Africans, would like his case to be heard by the Truth and Reconciliation Commission when it begins its work next year.

## Victims of atrocities

Like most people, he had no idea what to do, where to go or who to speak to. But now that he has joined Khulumani, he hopes that through this organisation, he will get his story heard.

"We don't know the destination but we know Khulumani will take us to the light," he says.

The Khulumani Support Group was started in February by a small group of people who had been victims of atrocities in the name of apartheid.

Ms Maggie Friedman, the partner of Wits University academic Dr David Webster, who in 1989 was gunned down outside their Troyeville home, was one of the founding members.

They had become frustrated, she said, because there was more and more talk about the Truth Commission being in the interest of victims.

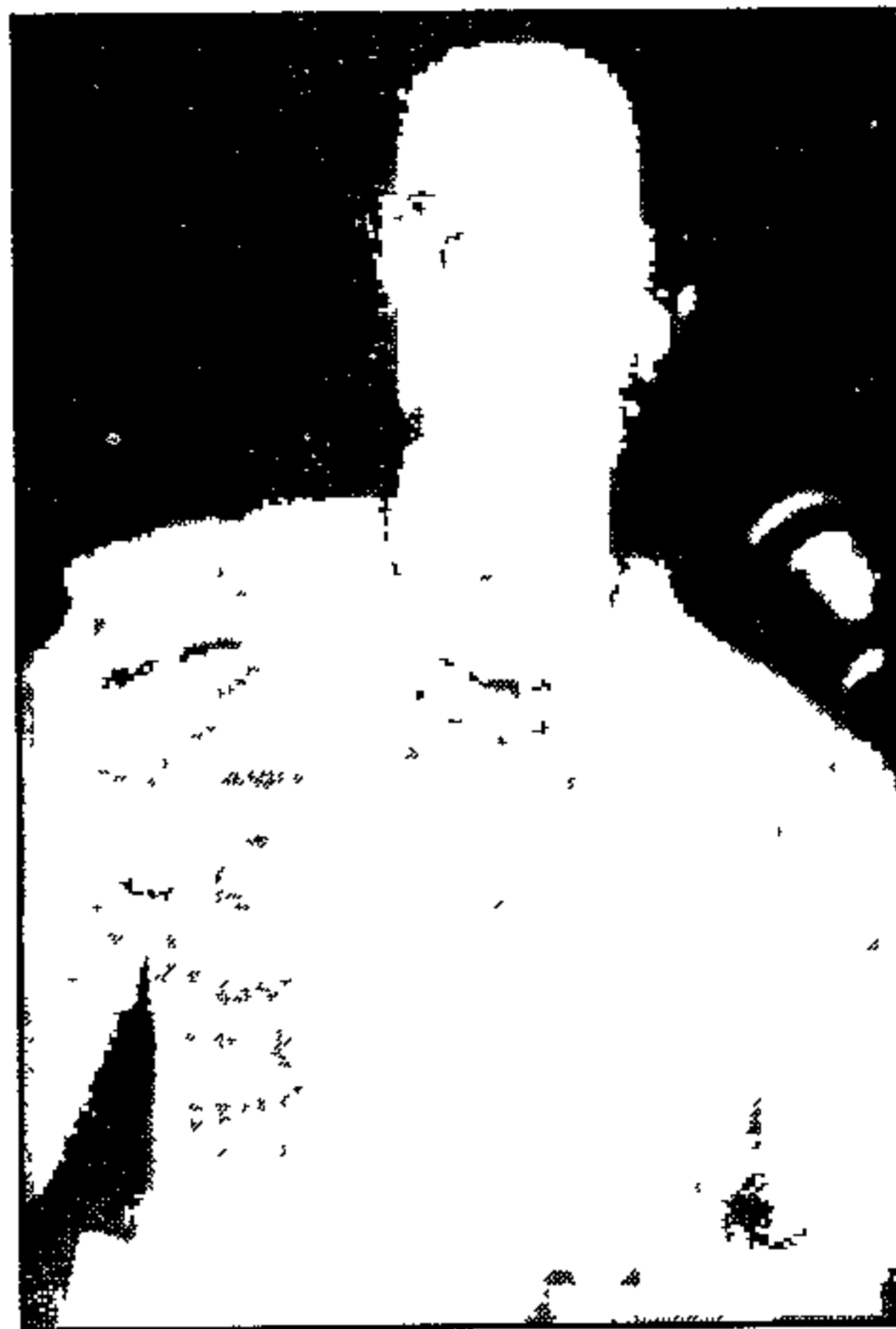
"But no one had approached us or explained how this would work for us," she says.

## Amnesty in secret

Slowly the group grew as they found more people who wanted to speak out about what they had suffered in the past. Around June they met with Justice Minister Dullah Omar and later made a submission to Parliament opposing a secrecy clause that would have allowed perpetrators of human rights abuses to apply for amnesty in secret.

"We started finding that people did want to listen to us and that we could give a voice to victims," says Friedman.

Initial meetings were confined to Johannesburg. Now they hold meetings on the East Rand,



**In memoriam ... Maggie Friedman at the Methodist Church on Reconciliation Day.**

in the Vaal, Soweto and Pretoria. "We are finding this is the tip of the iceberg," says Friedman.

They found in the Vaal that victims of the 1992 Boipatong massacre had received little or no assistance. "We as victims must not let this happen to us," she cautions.

Besides providing a platform for the "unknown" victims of apartheid abuses, Khulumani acts as a support group. It can put people in touch with counselling and legal services and will act as a pressure group on behalf of victims.

It also helps people get information on the Truth Commission and will help people prepare themselves to work with the commission.

"We don't know how we will make our submissions. Are we going to write letters or do we go there and talk? This is a very important period for us, we need to consolidate ourselves soon," Friedman says.

The Truth Commission will sit for at least 18 months, starting early next year. Friedman says they are looking at opening an advice office where people can visit or phone in if they need any help with the commission.

Another organisation that is working at getting the lesser-known cases made public is the

Southern African Catholic Bishops Conference. They have started a campaign urging people who have suffered abuses under apartheid to come forward with their cases.

Father Sean O'Leary, the priest in charge of the church's Justice and Peace Department, says they are working closely with other churches and non-governmental organisations to collate information and help people to get a hearing before the Truth Commission.

For years, the churches assisted victims of apartheid and they still have a record of many of those cases. O'Leary says they have tried investigating these cases. They have divided them into categories: missing people, murder and those who were detained and tortured.

"We're not simply going to gather all this information and present it to the commission. We are first trying to get into contact with the families and relatives of people," he says.

A two-month poster awareness campaign has led to many people contacting the church.

Trainers - with the use of flip charts, comic books and a video featuring victims - help people with their cases. They are, in turn, assisted by their local churches and advice offices. In this way they hope to reach people even in rural areas.

Victims are also referred to groups like Khulumani, where they are helped to write out their stories so that these can be submitted to the commission.

## Healing wounds

O'Leary uses the Vietnam War Memorial in Washington, United States, as an example of a simple gesture that can make a huge difference. On that memorial are engraved 58 100 names of those who perished in the war. Even today, people still go there as a pilgrimage.

It is an acknowledgment, he says, of that country's dead which is a very important step towards helping people heal their wounds.

Last Saturday, towards the end of the Khulumani meeting, people lit candles and wrote down on a huge white sheet the names of their loved ones who were dead or missing.

Chris Hani, David Webster, Rick Turner, Fabian and Florence Ribiero, Sicele Jele and the other prominent cases we are familiar with. It is the numerous unknown cases that strike a chord.

For these people, the Truth Commission is going to be a last resort. Hopefully this white sheet won't be their only memorial.

**T**HE Constitutional Court went quietly into recess this month after handing down its 10th decision since convening for the historic first sitting in February when the judges considered the constitutionality of the death penalty.

During the past 10 months the 11 judges — custodians of the interim constitution and guardians of the rule of law — heard about two dozen applications. The court has ruled in fewer than half of the cases it has heard this year, with decisions still pending in the rest.

While none of the issues adjudicated so far has received as much public scrutiny as the death penalty, the court's decisions — particularly those reinforcing the now constitutionally protected guarantees of a fair trial — already represent a significant break with the old days of parliamentary sovereignty.

Headed by court president Judge Arthur Chaskalson, the Constitutional Court has unprecedented power. The judges, all appointees, have the sole authority to supervise the implementation of the interim constitution and strike down any Act passed by the elected parliamentary majority they hold to violate provisions of the Constitution.

**T**he inherent tension between the court and various arms of government has yet to be tested.

There have been complaints from within the legal profession, some members of which have been baptised into the new jurisprudence in front of this highly individual bench, that the egos and interventionist style of some of the judges has interfered with the proper presentation of their cases, to the detriment of their clients.

One advocate said this was partly due to Chaskalson's failure to rein in the more vigorously interventionist of the judges. Another senior counsel said, however, that it was important to realise that the Constitutional Court was different from any other — a lot less formal than the rarefied atmosphere of the Appeal Court in Bloemfontein and the largely non-interventionist tradition in the Supreme Court.

# So far so good as Constitutional Court enters the new year

SUSAN RUSSELL

PA 27/12/95

There were occasions, he agreed, when certain Constitutional Court judges had been personally insulting to counsel in the heat of the debate, and when judicial intervention had been excessive. Such an aggressive style was irritating sometimes, but he also found it invigorating.

The advocate pointed out, however, that the court was a different forum from the one most advocates were used to, involving a new sphere of law where much was open to debate. Many highly skilled advocates were accustomed to relying on the preparations and written argument, but became flustered if any unexpected deviation occurred.

In the Constitutional Court, written argument had already been submitted before the court convened, so when counsel stood up to put his case, the debate was just beginning.

"I think people who are not yet at home in this court — with the new style and jurisprudence — are more easily intimidated than some who have appeared there more often," one counsel said.

Despite this, the signs are that in less than a year the fledgling court does enjoy legitimacy in the public eye. Evidence of this is the number of private litigants and accused people in the lower courts who have been quick to leap on sometimes highly creative constitutional points

in a bid to assert their rights — with varying degrees of success.

Last year's appointment of the 11 Constitutional Court judges — nine men and two women — was not without controversy. There was widespread criticism of the method of appointment. Six judges were appointed by President Mandela himself and the rest were chosen from 10 candidates recommended by the newly established Judicial Services

Commission after the candidates had been subjected to public interviews. The interviews were themselves a concession after public calls for transparency.

Questions were raised about whether the court could exercise the necessary independence, since a number of appointees — including Judge Chaskalson — were known as ANC supporters. Other critics were outraged that the bench was still heavily represented by former Supreme Court judges, who also happened to be white and male.

There is still dissatisfaction, too, that the Appeal Court has been excluded from the constitutional adjudication process, and there have been recommendations that a separate Constitutional Court be scrapped when the final constitution comes into operation.

Despite these criticisms there does seem to be consensus that the judges have proved themselves up to their task as watchdogs of the Constitution.

"A pleasant surprise is how good some of the non-advocates have been," one senior counsel said, singling out Justice Catherine O'Regan, the youngest member of the bench, who had no prior judicial experience. "Everybody, even the most conservative advocates, come away from the court and say how impressive she is — well read and well pre-

pared on the topic."

Notable, too, is how a substantial number of the judges, known in the past as "progressive, liberal" lawyers, have shown themselves to be fairly conservative judges, while perhaps still being progressive in their political views. "Not wholly creative and activist," as one lawyer put it.

"I wouldn't say they would know to a government," one advocate said. "They are certainly sensitive to the tension between the judiciary and other branches of government and are quite determined not to act inappropriately."

The same advocate said he believed the success of the bench had given the Judicial Services Commission's method of choosing people for judicial appointment increased credibility. He cited the Truth Commission as an example.

"Although some of the Constitutional Court appointments were controversial, there is no-one there who should not be there, and no-one who should be there," he said.

Looking at the court's decisions so far, it is clear that the judges have been very careful not to say too much at once in applying the constitution and have left open as much as possible for future development.

**A**s one constitutional law expert noted, this was a good judicial principle.

"We are in a new sphere of law where there is no developed jurisprudence at all," he said. "Obviously the court should allow for some natural development and should not decide more than it has to." It is also clear that the judges are eager to develop a South African constitutional jurisprudence.

To date, the cases have all been human rights hearings with points taken in criminal and commercial cases. As yet there have been no non-criminal human rights cases.

There have also been no constitutional challenges to Bills which have not yet become law, although this will change in the new year when the court hears a Democratic Party challenge to controversial proposed new education legislation.



CHASKALSON



CONSTITUTIONAL COURT WRAP-UP

# Proving that it's independent

(252) Star 27/12/95

By **HELEN GRANGE**  
Constitutional Court Correspondent

The Constitutional Court's entry this year into South Africa's legislative arena was more significant in the event than in the impact of its decisions on the man in the street.

This said, the difficulties this institution had to overcome in its first months have substantially cleared a path for more fluid delivery in future, as was evident in the rash of rulings handed down in the latter half of 1995.

Arguably the most important accomplishment of the court this year though – aside from its reconstruction of some key criminal laws – was in providing its credibility as an independent protector of the interim constitution in the face of political pressure.

The ruling which starkly characterised this was the September judgment forcing national Government to rectify its unconstitutional proclamations affecting electoral plans in the Western Cape.

On the back of this case, the relatively speedy dismissal of an application by the IFP government and KwaZulu Natal Premier Dr Frank Mdlalose – which claimed that central government amendments to the constitution pertaining to regional powers were unconstitutional – bolstered the perception of the court's unwillingness to entertain politically driven agendas.

In fact, the court has proved to be an unerring stickler for the "letter of the law", difficult as this is given the vagueness of the interim constitution. In scrapping the death penalty, it steadfastly steered through the controversy arising

from its decision to disallow public opinion to outweigh what it considered legally correct.

One of the court's more arduous tasks this year has been to give some definition to the preconditions determining the validity of referrals of cases to it.

This task will be an ongoing one, but already some important rules were spelt out in the case of fraud accused Albert Vermaas, whose application to have free *pro deo* counsel entrenched as a right was referred back to the Pretoria Supreme Court on the grounds that it was improperly referred.

But what of the rulings which have changed the face of criminal and civil law? Although there have been few judgments (13 in all), some have dramatically impacted on civil rights as we knew them before the general election in 1994.

The abolition of the death penalty is the most obvious of these, but other rulings have had more meaning in terms of the number of people immediately affected. These include:

■ The decision that the constitution should be retrospective to the date of the birth of the constitution (April 27 1994) – meaning that cases which were still pending at that time have recourse to constitutional rights.

■ The overturning of a provision in the Criminal Procedure Act prohibiting unrepresented prisoners sentenced in the lower courts from appealing in person to the Supreme Court unless granted permission. Such prisoners will be able to appeal without permission once Parliament has changed the law.

■ The overturning of provisions in the Companies Act which compelled em-

ployees to give evidence in an internal inquiry, even if this was self-incriminating.

■ The overturning of a section of the Drugs and Drug Trafficking Act which presumed that a person found with more than 115g of dagga was dealing in the drug.

■ The overturning of a section of the Criminal Procedure Act which made it the responsibility of the accused to prove he or she made a confession under duress. The State now has the onus of proving there wasn't a forced confession.

■ The overturning of a section of the Criminal Procedure Act allowing for the whipping of juveniles.

■ The overturning of provisions of the Magistrates' Court Act allowing courts to jail people for non-payments of debts.

The court also had the opportunity this year to affirm the constitution as the supreme law of the land after hearing a matter referred to it by the Ciskei Supreme Court.

Rulings have yet to be made in the new year on five cases heard this year. These were challenges to the constitutionality of:

■ A section of the Arms and Ammunition Act, which says anyone found on the premises where illegal firearms are discovered is presumed to be "in possession" of the weapons, unless they can prove otherwise.

■ A section of the Defence Act which places limitations on the right of citizens to bring civil action against the Minister of Defence.

■ Current defamation laws compelling newspapers to prove that allegedly defamatory material they publish is

both true and in the public interest.

■ Provisions in the Indecent or Obscene Photographic Materials Act.

■ The use of documents seized under the search and seizure provisions of the Serious Economic Offences Act.

Among some notable cases which have been set down or are likely to be set down for hearing by the court in 1996 are challenges to the constitutionality of:

■ Abortion, an issue still being debated in Parliament.

■ A section of the Import and Export Control Act, which a Pietermaritzburg tea merchant claims prohibits free economic activity.

■ Provisions in the Aliens Control Act, which states that migrant workers are entitled to permanent residence only after five years of working in the country.

■ Section 205 of the Criminal Procedure Act which states that a person who refuses to give information about a crime to the police or a court can be summoned to appear before a magistrate.

■ The National Education Policy Bill, which gives Sibusiso Bengu the power to decide education and education funding policy at national level even though school education is a provincial matter.

■ A section of the Defence Act which strips soldiers of certain rights granted to ordinary citizens.

■ The R25 000 limit on compensation to injured passengers in accidents in which the driver is to blame – contained in the Motor Accident Fund Act.

■ The Publications Act and the extent of its powers to ban publications.

■ Provisions in the Attorneys Act which allow only lawyers to charge fees for legal services.

# Appeals procedures 'fair and not unconstitutional'

(252) ARG 29/12/95  
JOHANNESBURG — The appeals procedures for South Africa's courts are fair and not unconstitutional, the country's highest court has ruled

Constitutional Court Judge Thola-kele-Madala said that although the appeal procedures for magistrates' courts and supreme courts differed, this did not mean they were unfair or violated the right to equality before the law

As long as all people appealing from or to one particular court were subject to the same procedures, the requirement of equality was met, he said

"The principle that there be equality before the law and equal protection of the law does not require identical procedures to be followed in respect of appeals from or to different tiers of

courts," Judge Madala said in his judgment

"As long as all persons appealing from or to a particular court are subject to the same procedures the requirement of equality is met," he said

The court's 10 other judges agreed Judge Madala was ruling on an application arising from the Cape Supreme Court trial of Peet Rens, who was challenging the appeals procedure to be followed after his conviction on charges of abduction and attempted murder

Judge Madala also rejected the argument by Rens's lawyers that only a full and 'substantial' reassessment of the trial issues, based on full oral argument, would satisfy the constitution's guarantee of the right "to have recourse by way of appeal or review to a higher court" — Reuter.



FRIDAY  
DECEMBER 29, 1995

'SYSTEM UPHOLDS EQUALITY BEFORE LAW'

# Procedures for court appeals ruled 'fair'

ET 29/12/95  
(252)

**JOHANNESBURG:** The Constitutional Court has ruled that although the appeals procedures differ for the Magistrate's and Supreme Courts, they are constitutional and afford individuals equal protection under the law.

**T**HE appeals procedures for the courts are fair and not unconstitutional, the Constitutional Court has ruled

Mr Justice Tholakele Madala of the Constitutional Court found that although the appeal procedures for Magistrate's and Supreme Courts differed, this did not mean they were unfair or violated the right to equality before the law

"The principle that there be equality before the law and equal protection of the law does not require identical procedures to be followed in respect of appeals from or to different tiers of courts," Judge Madala said in his judgment

"As long as all persons appealing from or to a particular court are subject to the same procedures, the

requirement of equality is met (It) is quite rational that different procedures be followed in the different courts, given the different circumstances"

The court's 10 other judges agreed

Judge Madala was ruling on an application arising from the Cape Supreme Court trial of Peet Rens. It challenged the appeals procedure to be followed after Rens' conviction on charges of abduction and attempted murder

The Constitutional Court rejected the argument by Rens' lawyers that only a full and substantial re-assessment of the trial issues, based on full oral argument, would satisfy the constitution's guarantee of the right "to have

recourse by way of appeal or review to a higher court"

Judge Madala ruled that as long as provision was made for an appeal or a re-assessment of the issues by a higher court, if the proper procedures were followed, then the constitution was satisfied

The Criminal Procedure Act provides that anyone convicted in the Supreme Court may apply for leave to appeal against conviction or sentence. The judge who has presided over the trial, or a substitute if the trial judge is not available, must then decide if, on the balance of probabilities, another court might have reached a different verdict

If that judge refuses to grant leave to appeal, then the accused may petition the Chief Justice for a decision

In the case of Magistrate's Courts, the Criminal Procedure Act allows for appeals to be considered by the Supreme Court — Reuter

# Prosecutors quit over court leniency

(252)

APR 30/12/95

**GLYNNIS UNDERHILL**  
Staff Reporter

AS crime levels soar, morale among state prosecutors at the Cape Town Magistrate's Court has reached an all-time low.

The leniency of the courts has left many of the prosecutors fed up with the criminal justice system, according to a prosecutor who asked not to be named.

As many as 10 of the 30 prosecutors at the Cape Town Magistrate's Court have left or are in the process of leaving, he said.

"They are leaving because they are disillusioned with the system and they are treated very unprofessionally. They are continually loaded up with more and more work," said the prosecutor.

Many of the prosecutors were leaving to become attorneys in the private sector, he said.

The criminal justice system for offending juveniles, many of whom were "hardened criminals", had reached breaking point, he said.

One prosecutor has had his house in Cape Town's southern suburbs broken into twice by

children, who were then arrested.

"In both cases the children were released the next day into the care of alleged mothers — never to be seen again," he said.

There are moves to amend the law to enable awaiting-trial children to be detained in police cells — but only for the most serious offences.

Another problem was that the new constitution favoured the accused and allowed the defence access to the state witnesses, said the prosecutor.

"It protects the accused's rights and neglects to do anything about the rights of the individual, victim or complainant," he said.

In the past, the defence was not in a position to know what the state case was about before it came to court.

"They can now prepare their cases better. They know exactly what the state witnesses will say and if they see a gap, they will take it," he said.

Once sentences are handed down in the magistrate's court, appeals are frequently made to the Supreme Court.

"Sentences are often cut or halved, or suspended," he said.

ern times has made a success of transition starting from a position such as South Africa's 15 years of economic stagnation and right decline in per capita income, inequalities of income and opportunity, ethnic rivalries and significant and escalating violence. Yet the miracle has happened! Nevertheless, there is "unfinished business" and the magnitude of the challenge is compounded by the fact that apartheid was an intensified, sophisticated, cruel and a far-reaching development of a policy of repression and racism which spans the centuries.

There is, therefore, a legacy which presents a daunting challenge for South Africa as it moves into 1996. On the one hand there is the social and economic legacy with ever-growing expectations of a majority of people who have been disadvantaged for generations. The shrill demand for housing and shelter, for decent educational opportunities, for health services, clean water and so much more will not go away and will demand all the public and private sectors' imagination, sensitivity and resourcefulness.

The problem is compounded by the threat of political and social instability flowing from the inequalities generated over decades. If the skewing of the economy is part of the baggage of the past, it is equally true that the abdication of the rule of law and serious violations of fundamental human rights is another.

South Africa's security legislation was a violation of the rule of law, subordinating individual rights to those of the state. Therefore, an equally important challenge facing South Africa is the restoration of the moral order.

His too is "unfinished business." What is required as part of the restoration of the moral order is to encourage faith in the system of justice as a whole and the radical transformation of the Ministry of Justice.

Many improvements have already been set in motion, but there is much to be done before we have a system of justice which will enjoy the confidence of all South Africans.

One of the greatest concerns in South Africa today is the high level of crime. There are many factors contributing towards this.

Unemployed people are desperate and often resort to desperate means. Socio-economic reasons are a major factor in the spiralling crime rate.

Our unfinished business facing South Africans. But first we must confront our history, writes DR ALEX BORRINE

# Our unfinished business: To face the truth

(252) STA 31/12/95

also in a society fastened by a system which paid lip service to the rule of law and where human rights were violated with impunity. In many communities the law has been equated with health services, clean water and so much more will not go away and will demand all the public and private sectors' imagination, sensitivity and resourcefulness.

The problem is compounded by the threat of political and social instability flowing from the inequalities generated over decades. If the skewing of the economy is part of the baggage of the past, it is equally true that the abdication of the rule of law and serious violations of fundamental human rights is another.

South Africa's security legislation was a violation of the rule of law, subordinating individual rights to those of the state. Therefore, an equally important challenge facing South Africa is the restoration of the moral order.

While the underlying causes of a high crime rate are legion, there can be no doubt that the lack of respect for the law and law enforcement agencies was a natural consequence of the past laws and other legislation which criminalised normal family life and the right to seek employment.

The law in general terms had no moral force for those affected by such policies. The responsibility for such laws was also viewed as illegitimate.

Other factors contributing to the current high crime rate are large-scale migration, which puts enormous pressure on the already scarce resources of land, water, housing, health services, and schools, and the danger of an "underclass" following the pattern in the US, where many blacks joined mainstream America but a large "underclass" has fallen further behind.

This is aggravated by the fact that the liberation struggle was seen in group terms where "an injury to one is an injury to all" and success or prosperity was not the right of the individual but had to be shared by the community.

Further, self-esteem and

respect for human dignity was compromised. Men who were treated like "boys" frequently behaved as such.

The attempts to resist apartheid brought about their own conflict and social disintegration. Mass mobilisation, consumer boycotts, and school boycotts, were in many instances accompanied by coercion and intimidation, in the main by young people.

As a result, family cohesion and structures were eroded and the same is true of respect for other structures in society.

As has been indicated, there are no quick-fix solutions to combat crime in South Africa. We are caught up in the vortex of violence and many innocent people have become victims.

All of us have a responsibility to combat crime and one of the ways to achieve this is to transform the administration of justice and improve the quality of life and life chances of those people who live in squalor and despair.

But above all, the rule of law must be restored.

For South Africa to survive as a stable society there must be rules. These must be known, equal, consistent and must have consequences. No one should ever be above the law.

In a word, we must work swiftly towards a culture of human rights.

One of the ways to start the healing process in South Africa is with an honest assessment and diagnosis of the sickness within our society in an attempt to give people, both perpetrators and victims, an opportunity to face the past and its consequences and to start afresh.

The Truth and Reconciliation Commission is an opportunity to deal finally with the past — without dwelling on it

— and to help create the conditions for a truly new South Africa.

Essentially, the Truth and Reconciliation Commission is committed to the development of a culture of human rights and respect for the rule of law in South Africa.

In attempting to do this, I believe there is an irreducible minimum and that is a commitment to truth.

As Roberto Canas of El Salvador puts it "Unless a society exposes itself to the truth, it can harbour no possibility of reconciliation, remunication and trust. For a peace settlement to be solid and durable it must be based on truth."

In a word, it is important that knowledge is shared, but it is equally important that this knowledge, this truth, is acknowledged by the South African community.

ESPIE the controversial nature of the Truth and Reconciliation Commission, despite the enormity of the task, despite the suspicion and distrust from many quarters, the healing of the South African nation can be advanced through its work.

However, for the commission to succeed, it will need commitment and determination, on the one hand, and sensitivity and prudence, on the other. It will go about its work with political restraint, as well as a clear and genuine response to the moral imperative.

Ariel Dorfman, in his play *The Death of a Maiden*, asks "How do we keep the past alive without becoming its prisoner? How do we forget it without risking its repetition in the future?"

Dr Borrine is the vice-chairman of the Truth and Reconciliation Commission. Archbishop Desmond Tutu is the chairman.

