

PUBLIC SECTOR-COUT.-JUSTICE

1996

JAN. - MARCH.

away on news

Govt gives truth body R55-m

(252)

Sowetan
2/1/96

By Rafiq Rohan
Political Correspondent

THE Government has allocated R55 million to the Truth Commission to allow the historic body to start its work

The Truth Commission, which will be based in Cape Town, has three immediate tasks before it to seek out a building, to set up its headquarters and appoint a chief executive officer (CEO)

This week advertisements have been placed in national newspapers for the CEO position

The CEO's position will include accounting for state money and maintain proper accounting records, manage and administer the commission's personnel; ensure the efficient operation of the commission and perform duties assigned by the commission

The CEO will receive a salary of R160 000 a year plus fringe benefits

It is not clear how big the staff component of the commission will be but vice-chairman Dr Alex Boraine said that other posts would be advertised soon once salary scales had been worked out.

Advertising the CEO position the Commission spelt out its role.

The Commission will provide for the investigation and establishment of the nature, causes and extent of gross violations of human rights which occurred during the conflicts of the past

It will attempt to restore the civil and human dignity of victims and will grant amnesty to those who have committed certain political crimes. In this way, it hopes to promote national unity and reconciliation.

TRUTH COMMISSION

Trauma – apartheid

As the Truth Commission gets into gear, mental health workers are looking at its potential as a healing ritual – a mechanism for the psychological rehabilitation of the victims of apartheid

By ADAM COOKE

What to do with the victims of apartheid – the family of those killed, those maimed and tortured, and those who witnessed brutality – is a growing concern among mental health workers in South Africa

They are looking at a "survivor-centred approach" to the Truth and Reconciliation Commission (TRC) which could operate as a mechanism for the psychological rehabilitation of a traumatised nation

Brandon Hamber, from the Centre for the Study of Violence and Reconciliation, says the impact of the TRC on a psychological level could be profound if it attempts to heal the wounds imprinted on the minds of thousands of ordinary South Africans

The core of his argument, and one that is being taken up and extended by organisations such as the Trauma Centre in Cape Town and the KwaZulu Natal Programme for Survivors of Violence, is that the TRC is not a sufficient process in itself to promote individual and collective psychological rehabilitation, and that a range of psychological structures and strategies will be needed to run parallel to the TRC

"Victims", or those who have suffered physical or mental injury, will need certain structures to deal with a range of emotional consequences to such injuries. One of the central injuries may be post traumatic stress syndrome

This syndrome includes a range of immediate or delayed emotional responses which are experienced by direct victims at differing times. Responses include self blame, fear, flashbacks, depression, anxiety and substance abuse

Marius Schoon lost his wife Jeanette and six-year-old daughter Katryn in a parcel bomb attack while living in exile in Lubango, Angola, in 1984

Nearly 11 years later, in Febru-

ary last year, former spy Craig Williamson admitted he was part of a team which was involved in the attack, an attack meant for Marius, and not his wife

Schoon is suing the Ministry of Safety and Security for R900 000 in compensation for the psychological pain he suffered as a result of the assassination.

Psychologically, Hamber says, such sleeping dogs do not lie past traumas do not simply pass or disappear with the passage of time. The past can never just be ignored

To restore and heal potentially repressed traumas, which often result in blocks in emotional life, can only occur through providing the space for survivors to feel heard and for every detail of the traumatic event to be re-experienced in a safe environment

Trauma and violence have been found to shatter individual cognitive assumptions about the self and the world – many survivors would be left feeling vulnerable, helpless, without explanation of events and with a distorted cognitive picture of society and humanity

In a paper delivered to a recent conference in Johannesburg, "Dealing with the Past", Graeme Simpson and Paul van Zyl from the Centre for the Study of Violence and Reconciliation argued that the possible consequence of such feelings is widespread resentment. This, they say, could in turn lead to informal retribution at both an individual and collective level, resulting in an escalation of violence under the new democratic dispensation.

The TRC, Hamber says, could serve a psychological rehabilitative function by creating an accurate picture of the past which could liberate individuals and broader society from this skewed view of humanity. But only if it goes further than simply dealing with recounting the tales of past atrocities

Through correcting this skewed version of the past, vic-



Grieving victim... Marius Schoon with a picture of his young wife, Africa. The Truth and Reconciliation Commission will have to deal

tims would be allowed to accept what happened to them and deal with their resultant emotional responses

But this form of reparation will clearly not be agreeable to all. To many victims the idea of receiving money may be favoured over long-term measures like developing trauma centres

Many will also be left feeling that justice has not been served which could lead to anger, resentment and even revenge in ex-

treme cases

Dealing with the feelings of traumatised survivors should be taken up by services running parallel to the TRC, and NGOs should carry out the powerful mental health contribution from civil society

Hamber points to five key areas of attack. Firstly, all available resources in the field of mental health care should be audited. These resources are severely under-developed, and sustainable

's cruellest legacy

DEBBIE YAZBEK



... killed with his daughter by an unknown assassin. The picture of Schoon was taken four years ago when he returned to South Africa where meaningful reparation can be made.

... need to be developed. Secondly, some victims may benefit from counselling which is best provided by the network of mental health care providers at local level.

Thirdly, fieldworkers, investigators and commissioners need skills to identify signs of trauma in order to refer people to appropriate support services. Fourthly, Hamber and other

NGOs are looking into what they call "victim-offender mediation" where, if the need arose or if the two parties so wished, perpetrators and victims could meet. This would rely on the perpetrators truly taking responsibility for their past actions and on the availability of trained mediators and psychologists.

Lastly, there is a need to develop informal structures such as "survivor groups" which act as a forum for survivors to express

themselves and share experiences. These, Hamber has found, are growing rapidly countrywide. One such group, the Khulumani Support Group (or Speak Out Group), has grown to nearly 600 victims over the past few months.

For this country to really deal with the past it is essential that offenders are not seen simply to be paying back a debt with a day of testimony to the TRC. Hamber says the ideas being generated by mental health workers are catch-

ing the attention of government, and once the TRC is fully operational and need for structures arise, the TRC will be forced to pay full attention.

It is, after all, the responsibility of government to ensure that the commission is more than a lame body trying too hard to reconcile. If it does try too hard, it will be sacrificing the truth for a comfortable compromise that serves little else than to further traumatise the Marius Schoons of this country.

... PO L CA J UN ES, 11, 1997
rents who were involved in the con-
flict of the past will take the same
position.

"We will not allow the process to be
exploited against us for party political
purposes. I have nothing to hide."

De Klerk would not state what sta-
tus his submission would take, nor
how it would be addressed, nor how
he expected it to be dealt with when
the commission gets going.

Former foreign affairs minister Pk
Botha is adamant that he has nothing to confess
to the truth commission and that there is no rea-
son for him to seek amnesty.

Thus is despite the fact that he served
apartheid governments for decades, held a key
portfolio and was a decision-maker in the State
Security Council.

"The members of the State Security Council —
people like myself, Barend du Plessis and Neil
van Heerden — would not sit together and plan
the cold-blooded murder of any other party and
hope that nobody in this country believes that
we did," he said this
week.

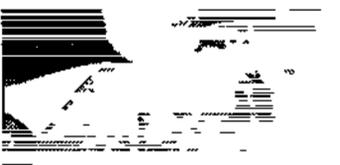
Botha said he would
be happy to testify as a
witness at the commis-
sion, if subpoenaed. "If I
could throw light on
any matter I would wel-
come it," he said, "but I
have nothing to tell
them — I was not party
to any decision that can
be considered as a crim-
inal offence in terms of
South African law."

**Viljoen: will consider
applying for amnesty**
Pik Botha said that cross-border raids in retal-
iation for ANC attacks on South African civilians
had been justified in terms of international law
and he claimed these acts had been supported
by the vast majority of South Africans at the
time.

When asked who were the dirty players under
apartheid rule, if not the cabinet and the security
council, he replied:

"I read of cases subsequently that came as a
shock to me and my colleagues about things that
took place. Let that evidence come out in the
truth commission."

When told that he had not answered the ques-
tion, Botha responded "I am not in the dock and
you are not a judge. How must I know who



Grenewald: won't apply for amnesty

in "third force" activ-
ities and in violence
in KwaZulu-Natal,
had no comment
when asked whether
he would be apply-
ing.

The IFP's spokesperson
on the truth commission,
Senator Ruth Rabimowitz,
says "The likelihood that
members of the IFP will
come forward willingly
and tell their tales to the
commission is slight.

They may well fear
reprisals particularly
in the light of the ongo-
ing assassinations of
IFP members in
KwaZulu-Natal.

General Theme Groe-
newald, Freedom Front
senator and one of
those accused in the
1987 KwaMakutha
massacre, said he
would not apply for
amnesty "in his per-
sonal capacity", and had
not even considered
doing so. But he was at pains to
point out he was not attempting to
defy the commission.

General Constand Viljoen told the *Mail &
Guardian* in an earlier interview he would con-
sider applying for amnesty regarding "actions by
myself and the farming community for the period
prior to the elections when it was our aim to exert
pressure on the political process and when we
planned a war."

National Intelligence Agency employee and for-
mer ANC intelligence operative Ricky Nkondo

indefinitely in 1991 for Operation
Vula and I am not sure whether
I will have to reapply. I shall
be guided by MK and its polit-
ical leadership as to what I
should do."

Philip Powell, an
Inkatha Freedom
Party senator
alleged to
have been
involved



said "I am not going to appear before the com-
mission. I see no reason why I should."

The premier of Northern Province, Ngoako
Ramatlhodi, who worked in the late ANC presi-
dent Oliver Tambo's office in Lusaka, has also
not made any firm plans over seeking amnesty,
and his spokesman Jack Mokobi is not sure
whether his chief will need to go to the truth com-
mission.

Nava from the Transvaal Provincial
Division Supreme Court in Pretoria,
although he is relatively inexperi-
enced, having only been appointed
within the last year.

It may be that the president
appoints two judges as both chair
and deputy; two members can then
be appointed from among the 17
commissioners, including them-
selves, and three others.

The second committee, which is
already in place, deals with human
rights violations. It is here the com-
mission will get much of its informa-
tion — which can be given, if
requested, in secret. Information
given can not be used against the in-
formants, but inevitably lawyers will
advise their clients not to come forward
unless there is about a 90 percent chance
of the information leading to amnesty.

And there are some informants who can
come forward simply to help investigators.
Among them will be the victims of human
rights abuses and their families.

The truth commission will have probably
cost taxpayers about R100-million by the time
it closes up shop, if its budget is passed in March.
Its operational headquarters are in Cape Town,
but it will hold regional hearings. It will have a
staff of between 150 — 200 which will be
recruited as the need arises.

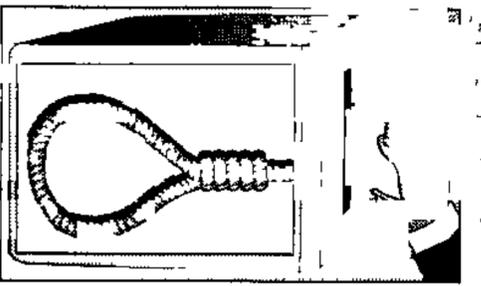
The amnesties to be considered will include
applications from those in jail, for example for-
mer policeman Brian Mitchell, sentenced to
death for his part in the Trust Feeds massacre in
which 11 people, including women and children,
were killed.

His application for amnesty under the previous
dispensation was turned down.

There are five Zimbabwean citizens in prison in
Harare for treason and murder — the last of the
National Party's agents still in jail. They are look-
ing for freedom via the truth commission, but
this is a difficult diplomatic problem and Harare
wants to know even more than was led as evi-
dence in their trials.

There are about 2 000 applications for amnesty
held over from the previous dispensation, but
sources in the Department of Justice believe
about 90 percent of them are from chancers.

It's a mammoth task, the clock is ticking and
former police minister Adriaan Vlok said this
week: "It's hanging over us. I wish it was over."



Death – let the people

If the public can elect a government, argues Mandla Seleane, it can decide on

Stav 5/1/96 (252)

decide

capital punishment

The Constitutional Court's judgment in *State v Makwanyane and Mchunu* has led to a heightening of the debate on the death penalty in South Africa, with articles in various newspapers indicating that the public has rather diverse views on the matter. Because of the emotive nature of the debate, it is often not easy to inquire into the issues involved on a consistently rational basis.

There are various schools of thought about how society evolved. Initially, there was little need for rules or laws; conventions were enough to maintain the social equilibrium. In the event that a member of society infringed acceptable societal norms, ostracism was the sanction.

As society developed, it became necessary to have rules. The overriding consideration at all times was, in the words of George Whitecross Paton, "to enforce that minimum standard of conduct without which social life would be impossible". In the pursuit of social order, punish-

ment had to be carried out based on a number of penal theories. The four theories known to students of law and crime are retribution, prevention, deterrence and reform. These theories are used to justify punishment: they set out what we want to achieve when we punish criminal behaviour.

Legal systems do not adopt one penal theory, but rather allow a fair amount of interplay between all of them. At different historical moments, courts emphasise different penal theories depending on the incidence of particular crimes and the social climate generally.

The right to life as we know it today did not always exist. Rights, including the right to life, are a product of our social condition of existence, and are as such therefore not "a given". In real-life situations, nobody really treats the right to life as absolute or unconditional. Therefore it is unfortunate that the only time the right to life is made absolute is when it is done in favour of convicted criminals.

The traditional argument against capital punishment, that it is uncivilised, deserves a critical analysis. To the extent that it might be argued that a people's level of civilisation makes certain forms of punishment intolerable, we should inquire whether we are, in fact, a civilised society. In my view we should not invoke the dictates of civilisation in our dealings with convicted criminals when in all other facets of our social life we neglect them.

Could civilisation ever require the execution of criminals? How long will it be before civilisation dictates that life imprisonment, like the death penalty, is barbaric?

Other arguments against capital punishment are that many Western countries have abolished it; that it has tended to victimise blacks, that people charged with capital offences cannot afford experienced legal counsel; the possibility of error, and that capital punishment does not deter.

We can accept that capital punishment has at times been used to victimise blacks. We can equally accept that with the emerging new dispensation, the complexion of the bench in South Africa is changing. It is now

discard other forms of punishment if we find them not to be a deterrent? We need to return to the fundamental premise that punishment is for keeping the minimum social order attainable.

Put differently, the main aim of punishment is to ensure that the same crime is not committed again.

The Constitutional Court finds that the question of whether we should have a death penalty in South Africa or not cannot be referred to a referendum. I would argue, however, that a referendum is relevant and,

possible to recommend that all capital crimes be tried before a racially mixed bench and that sentencing should not depend on a single judge.

The argument that capital offenders cannot afford the services of experienced counsel can be countered with a suggestion that the State pay for their defence.

We have to accept the possibility of error, but there are circumstances which have no possibility of error, for example the cases of Barend Strydom and Janus Walusz. Why should the guilty benefit from the fear that we might punish innocent people? Why should we order our legal system in such a way that it benefits the guilty?

Regarding the deterrence argument, I submit that deterrence is not the only aim of punishment. The other three penal theories – retribution, prevention and reform – should also be invoked.

There is also no empirical evidence to suggest that capital punishment does not succeed as a deterrent. If we assume that it is not successful, does that mean we should

necessary if we wish to validate the proposition that capital punishment is uncivilised?

It is an act of double standards to accept that the people on the ground can decide on who is going to govern the country, for the following five years but then deny them the opportunity to decide on the death penalty. The laws of a country must reflect the will of the people, and their intelligence to decide on the death penalty should not be undetermined.

Mandla Seleane is a senior researcher at the Human Sciences Research Council.

Truth commission to get database

CAPE TOWN — As the truth and reconciliation commission prepares to hold its first hearings, tentatively earmarked for next month, it is set to take delivery of a computer database containing more than 11 000 records of apartheid human rights abuses, including incidents of torture and political assassination.

A coalition of non-governmental organisations worked for six months in a nationwide effort, co-ordinated by Dr Alex Boraine's Justice in Transition, to compile the database. It includes dossiers on alleged perpetrators, victims and nature of the crimes.

"We have taken the records of non-governmental organisations based in Johannesburg, Cape Town, Durban and Port Elizabeth which monitor human rights and brought them all together," Human Rights Committee national director Patrick Kelly said.

Among the non-governmental organisations which took part in compiling the database were the HRC, the In-

stitute for Democracy in SA, Peace Action, the Centre for the Study of Violence and Reconciliation (CSV), the Independent Board of Inquiry and the Independent Medical Legal Unit.

Brandon Hamber of the CSV said the database could provide an important first step for the commission in its investigations. However, he conceded it merely "scratched the surface" and probably accounted for only 1% of the total records available.

Not yet included in the database are the seven-and-a-half tons of legal records dating back to the 1960s which the London-based International Defence and Aid Fund sent to the centre late last year.

Boraine, now deputy chairman of the truth commission, said he did not know how much weight the commission would give the database.

"It will be up to the commission to decide what happens to it. My personal view is that it should be a great help. It's a short cut" — Sapa

Four families join the ranks of the super-rich (252)

CT (BR) 5/1/96

STAFF WRITER

Johannesburg — Four new paper millionaires have been admitted to the exclusive club of South Africa's 25 richest families, according to a Financial Mail survey based on research by McGregors Online Information.

The recent listing of Bell Equipment has pushed the Bell family of KwaZulu Natal into the 21st position, with shares in their company worth R151 million.

Another KwaZulu Natal family, the McCarthys, have taken 23rd place on the list by virtue of their shares — worth R128 million — in the McCarthy Group.

For the first time the Kirsh family has made it on to the list, at 24th position, with its shares in media group Primedia valued at R124 million.

In 25th position is the Gutkin family, whose Melvyn Gutkin heads direct-selling company Housewares.

He owns 19 million shares worth R112 million.

The Argus Correspondent

PRETORIA. — Harried state prosecutors, bearing the brunt of back-breaking workloads in vastly over-scheduled courts, are leaving the service in droves as public service officials fail to address remuneration and career advancement problems.

Several prosecutors, speaking on condition of anonymity, have finally lifted the veil on the state's willingness to pay vast legal fees for criminal defence attorneys while over-worked state-employed prosecutors "earn a pittance" compared with their professional colleagues.

A seasoned junior prosecutor with more than nine years' experience in the lower and higher courts and who has gained experience in large syndicate-related cases is earning a gross salary of just over R7 000 a month.

This figure includes a legal allowance of about R1 000 and a housing allowance of about R750. His deductions include R2 600 for his housing loan, R240 for medical aid, R560 for pension and a tax deduction of almost R3 000.

"When you look across the courtroom and you know the criminal's defence counsel is earning more in one day's court appearance than you do in a month, you have to wonder whether the state is really serious about fighting crime," a prosecutor said.

A senior prosecutor with a gross salary of R9 300 and a tax deduction of nearly R4 000 clears about R3 500 a month.

"It's criminal what they are doing to us. It's one thing to go on television and announce that this year the criminals are going to be made to pay, but how are they going to pay when the very fibre of the justice system is being whittled away," another said.

Although exact salary scales for both public and private practices could not be obtained, senior state prosecutors and their private practice colleagues agree in broad terms with the divergent remuneration packages.

Other examples submitted to the Justice Portfolio Committee by Pretoria Attorney-General Jan d'Oliveira late last year include

- A senior state advocate being called to lead evidence at a commission of inquiry. The annual salary for the rank is R107 019 while junior and senior defence counsel appointed by the state earned R45 000 and R90 000 a month respectively.

- In another instance, a state-appointed attorney was calculated to have earned about R1,3 million for handling a prominent case.

It is estimated that were the R1,3 million to be divided among every deputy attorney-general in the country, each would receive a 25 percent increase in salary.

Facts of the case

ESTIMATED salaries for state prosecutors

Starting salary for junior prosecutor — R37 000 a year

Junior state advocate with more than nine years' experience — R84 000 a year

Senior state advocate — R107 000 a year

Deputy attorney-general — R136 000 a year

Angry state prosecutors leaving courts in droves

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ARG 8/1/96

State prosecutors quit in droves as they see counsel raking in fortune

OWN CORRESPONDENT

Harred State prosecutors bearing the brunt of back-breaking workloads in vastly overscheduled courts are leaving the service in droves as public service officials fail to address remuneration and career advancement problems.

Several Pretoria-based prosecutors, speaking on condition of anonymity, have finally lifted the veil about the State's willingness to pay vast legal fees for criminal defence attorneys while overworked State-employed prosecutors earn a pittance compared

with their professional colleagues.

A seasoned junior prosecutor with more than nine years' experience in the lower and higher courts who has gained experience in large syndicate-related cases is earning a gross salary of just more than R7 000 a month.

This figure includes a legal allowance of about R1 000 and a housing allowance of about R750. Deductions include R2 600 for a housing loan, R240 for medical and R560 for a pension fund and a tax cut of almost R3 000.

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criminal's defence counsel is earning more in one day's court appearance than you do in a month, you have to wonder whether the State is really serious about fighting crime, one prosecutor said.

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Other examples submitted to Parliament's justice portfolio committee by Pretoria Attorney-General Dr Jan D'Oliviera late last year include a senior State advocate being called to lead evidence at a commission of inquiry. The annual salary for the rank is R107 019, while junior and senior defence counsel appointed by the State earned R45 000 and R90 000 a month respectively.

In another instance, a State-appointed attorney was calculated to have earned in the region of R1,3-million for handling a prominent case.

It is estimated that if the R1,3-million were divided among all the deputy attorney-general in the country, each would receive a 25% increase in salary.

The justice system needed to be urgently overhauled if South Africa's fledgling democracy was to succeed, D'Oliviera added.

He called for drastically improved remuneration packages of between 25 and 30%, in the interim, to stem the tide of resignations which are weakening already stretched personnel to breaking point.

In studies conducted for and

by the Public Service Association it was found that the difference between salaried professionals working for the State and those working in the commercial field showed a disparity of up to 70% in the State officials' salaries.

According to D'Oliviera, the existing attorney-general establishment had also become too small to accommodate the growing case load delegated to prosecutors.

There were too few posts to do the job and this was aggravated by the constant flow of resignations, he said.

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Inferior salary packages 'weakening the justice system'

Argus Correspondent
DEREK RODNEY reports from
Pretoria.

The justice system needs to be urgently overhauled if South Africa's fledgling democracy is to succeed

Pretoria Attorney-General Dr Jan d'Oliveira has called for drastically improved remuneration packages of between 25 and 30 percent, in the interim, to stem the tide of resignations which are weakening the already stretched personnel to breaking point

In studies for and by the Public Service Association it was found that the difference between salaried professionals working for the State and those working in the commercial field showed a disparity of up to 70 percent in the State officials' salaries

Immediate pay increases of between 25 and 30 percent might go a long way towards stemming the outflow of personnel in the interim but salary adjustments of between 50 and 70 percent might be required in the long term, Dr D'Oliveira said

According to Dr D'Oliveira the existing AG establishment had also become too small to accommodate the growing case load delegated to prosecutors

There were too few posts to cope and the situation was aggravated by the constant flow of resignations, Dr D'Oliveira said

He added that the human cost in stress being placed on already buckling shoulders and the financial cost of contracting the former AG personnel to complete trials were astronomical

Dr D'Oliveira, in a presentation to the parliamentary Justice Portfolio Committee (JPC) late last year, gave the committee some insight into the department's problems in a last-ditch effort, fearing the department would lose key staff if drastic action was not taken soon

In his report to the JPC, Dr D'Oliveira said personnel had become increasingly despondent about the Legal Aid Board and/or the Department of Justice being prepared to remunerate defence practitioners on a scale which bore no resemblance to the virtually stagnant salaries of professionals on whom the State depended

(252) ARG 9/1/96
In many cases former AG personnel who resigned in the middle of prosecutions were contracted by the State to complete their cases - at substantially higher rates of pay

In one instance, a former Deputy AG, contracted to continue a case, occupied his previous office, used the same facilities and was being paid R480 000 a year (about R340 000 more than his erstwhile colleagues, some of whom are silks or senior counsellors)

He had none of their responsibilities but earned twice as much as a full Attorney General, Dr D'Oliveira stated

"I am still waiting to hear if there is going to be any tangible sign of improvement for prosecutors in terms of career advancement and salaries," he said

Dr D'Oliveira said he had talked with the authorities and although he personally expressed the dire urgency needed to address the situation, he was in no position to make any final decision

At present there are six vacancies in critical senior positions in the Pretoria AG office alone

"I can also say with complete confidence that the despondency regarding salary and career prospects is a common problem in all the AG divisions country-wide," Dr D'Oliveira said

The very junior vacancies very gradually being filled and the situation was being attended to but the real problem was finding experienced personnel for the middle to upper management positions, he said

"We cannot have a balanced attack against crime if all the arms of justice (police/courts/prisons) are not fully operational and although Minister (Dullah) Omar and the Director General are working hard for a better deal their hands will remain tied as long as the Public Service Commission refuses to recognise prosecutors as professionals and instead as ordinary administrative civil servants," he said

"There is a wealth of talent out there but we are in dire need of retaining experienced personnel and filling key vacant positions," Dr D'Oliveira said

"In the fight against crime we cannot rely entirely on the police, the justice system in totality must receive urgent attention"

Change laws on divorce, Cape judge president urges

JACQUELYN SWARTZ
Staff Reporter

THE laws relating to divorce in the Supreme Court should be changed, Judge President of the Cape Mr Justice Gerald Friedman has said in an address to the Hoexter Commission.

The commission is conducting an inquiry into the rationalisation of the provincial and local divisions of the Supreme Court.

Speaking on behalf of his region yesterday, Judge Friedman said uncontested actions should be dealt with in a lower court as it was unnecessary for judges to hear them.

"In this division we have approximately 250 unopposed divorces a week — about 1 000 a month — and it's a matter of putting a rubber stamp on the procedures

"It is totally unnecessary; I think the law should be changed," he said, citing the huge expense involved in divorce actions.

But Judge Friedman said that serious issues arising from divorces should be dealt with by judges

"There is room for a family division in the Supreme Court," he said, explaining that such a division would deal with cases where custody and property

rights were being contested

Judge Friedman also recommended an intermediate civil and criminal appeal court to fall between supreme courts and the Appellate Division.

He said the Appeal Court, although no longer burdened with appeals against the death sentence, would still have a huge work load because of the constitutional jurisdiction which was to be conferred on it.

The increase in the civil jurisdiction of magistrates' courts would also result in more civil appeals in the Supreme Court

"In order to determine whether the intermediate court of appeal should be established and, if so, what form it should take, (these) factors will have to be considered," he said. Referring to its structure, Judge Friedman recommended that it be a permanent court with its own infrastructure

Judges should also be permanently appointed as it was difficult to appoint them on an ad hoc basis because the recess periods of the supreme courts and Appellate Division did not coincide

Judge Friedman also said that, should the commission decide to recommend such a court, it should have its own headquarters and move around the country using the facilities of existing court structures

Vlok ready to face truth commission

BD 9/1/96

(252)

Wyndham Hartley

CAPE TOWN — Former law and order minister Adriaan Vlok is prepared to testify before the truth commission

Vlok told Business Day yesterday that he was "prepared to go to the truth commission" but it remained to be seen whether or not group applications for amnesty would be entertained by the commission

Referring to the comprehensive submission being prepared by Deputy President FW de Klerk and other old order leaders, he said part of the workings of the commission would be to establish whether or not group applications could be submitted to the commission's amnesty committee

Vlok, who was among about 2 000 police and security force applications for indemnity turned down by the ANC last year, was last week reported as saying he would not go to the truth commission and that De Klerk would do so for him

Yesterday he said he welcomed the fact that the truth commission was getting up and running "so that we can get some certainty as soon as possible"

Former police commissioner Johan van der Merwe, speaking on behalf of the Foundation for Equality before the

Law, agreed with Vlok that if the commission decided it was possible then there could be a group application for amnesty. He was one of the 2 000 denied indemnity last year

Van der Merwe said the foundation was specifically designed to ensure that the law was equally applied to those who fought for apartheid and those who were in the liberation movements. Unequal treatment would lead to a court challenge of the work of the truth commission, he said

He stressed that there were already "skewed" issues the truth commission would have to put right as matters of priority. He pointed to the protection afforded senior members of the ANC through temporary indemnity, and the fact that senior members of the old order were being prosecuted before the truth commission had begun its work.

He cited the case of former policeman Brian Mitchell, sentenced to death for his part in the Trust Feeds massacre in the Natal midlands. Mitchell, despite the Currin review committee's recommendation for amnesty had his application "turned down by justice and the President" while one of Stompie Seipei's assailants (the Winnie Mandela kidnap case) had his application granted

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Judge urges shakeup of Supreme Court

CAPE TOWN — The exorbitant costs of Supreme Court civil litigation and the delays in cases being heard should be the subjects of a judicial investigation, Western Cape Judge President Gerald Friedman told the Hoexter commission yesterday.

Friedman called on the commission to urgently request a widening of its terms of reference to allow it to investigate these and other pressing issues.

"It is not feasible for this commission to undertake such an inquiry, then a special commission should be set up for this purpose," he said.

The Hoexter commission is holding public hearings on the rationalisation of the provincial and local divisions of the Supreme Court.

Friedman said he understood the investigation would prolong the commission's life but it was necessary if access to the Supreme Court was to be improved.

(25/2) 20 July 1992

"The average citizen does not have access to the Supreme Court. The cost of Supreme Court litigation is beyond the reach of the ordinary person. Only the very, very wealthy can afford it."

The high costs were due not only to the legal fees charged by attorneys but also complex and time-consuming court procedures which led to expensive delays.

Friedman said the procedures required drastic modification to reduce the amount of time spent on cases.

"The rules allow practitioners who are bent on slowing the progress of litigation too much scope. The rules leave the progress of litigation in the hands of the parties and their legal advisers."

A system of case management and a more hands-on approach by the courts was needed to ensure that all proceedings were conducted efficiently.

Friedman said he was strongly in favour

of a family court being established as a division of the Supreme Court to hear divorce cases. The Western Cape division heard about 250 divorce cases a week, and an increasing number of litigants were appearing on their own behalf, because of the expense involved.

Judge Ian Farlam told the commission that the Western Cape division supported retaining the distinction between the Supreme Court and Magistrate's Court. He said proposals for the amalgamation of the two were impractical, and would involve unnecessary expense with no guarantee that a better service would be created.

He questioned a proposed senior civil magistrate's court, provision for which is contained in the Magistrates Amendment Act of 1993, saying it would be irresponsible to set up a new body with vast jurisdiction if there were not enough sufficiently qualified personnel available — Sapa.

'Human face' for truth group

CT 9/1/96 (252)

JOHANNESBURG: The Truth and Reconciliation Commission will probably open regional offices in a number of provinces, following a recommendation at a meeting of the group's human rights violations committee here yesterday.

Commission vice-chairman Dr Alex Boraine said the offices were necessary to make the commission more accessible to the public and to give it a "human face".

Provincial officials would conduct preliminary hearings with victims and relatives of victims of human rights abuses, he said.

Dr Boraine said he was reluctant to reveal details about the proposed locations of the offices until he had spoken to commission chairman Archbishop Desmond Tutu, who is still on holiday.

He said the commission was about to sign a rent agreement for three floors of office space at 106 Adderley Street. This would be the commission's permanent seat for the next two years. — Sapa

International role for HSRC

(252) CT(BR) 9/1/96
By AUDREY D'ANGELO

Cape Town — South Africa's Human Sciences Research Council is beginning to play a leading international role "not only in the human rights arena but also in the field of international science and technology collaboration," says Jim Ramdin, its manager for international networking.

The council and Egypt's Academy of Scientific Research and Technology will hold a bilateral symposium in Cairo in March. It will focus on urbanisation with emphasis on ultra-large cities, crime and violence and related social science.

Ramdin said he was being "inundated with requests from institutions worldwide who are keen to enter into bilateral agreements with the council."

The council would have to be "pragmatic and offer high-quality service in the human sciences discipline so that it may effectively put South Africa at the forefront of a global network of innovators," said Ramdin.

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Reports to be lodged on spying allegations

BD 10/1/96

Wyndham Hartley

CAPE TOWN — The National Intelligence Agency must submit a written report on allegations of spying on senior police officers within 14 days, parliament's joint standing committee on intelligence decided yesterday

The meeting, attended by 15 of the 17 members, was called as a result of allegations that telephone bugs had been used to monitor senior police officers, including police commissioner George Fivaz

Committee chairman Lindiwe Sisulu said that all heads of institutions affected by the allegations would be called on to submit reports on the matter.

A formal investigation of the allegations will commence when Parliament is back in session on February 12 "after the committee has had the time to receive and study the reports from the affected parties", Sisulu said.

Thereafter the committee would request the relevant people to appear before it

The terms of reference of the committee's investigation, which is authorised by the Intelligence Services Control Act, will "inves-

tigate the veracity of the allegations of the use of listening devices and other forms of surveillance on senior members of the SAPS" and any other matter which arises from the investigation

It will report on its findings and recommend action if necessary.

Sapa reports that Fivaz's office said yesterday police investigator Supt Hoothra Moodley had reported former Vlakplaas commander Dirk Coetzee as admitting having been tasked to spy on top police officers

Police spokesman Supt Leah Shibambo said Moodley claimed Coetzee had told him this during an investigation into the murder of anti-apartheid activist Griffith Mxenge

Moodley, in the police's national priority crimes section, said Coetzee had made the admission in December in an interview related to the investigation. Fivaz had immediately been informed, he said

Fivaz last week said Coetzee had admitted to a senior police officer that he had been tasked by the agency to spy on police commanders including Fivaz.

Coetzee denied the allegations, saying it was a typical strategy by an old security policeman

ANC slams new foundation for 'not adapting to reality'

(252) BD 10/1/96

Wyndham Hartley

CAPE TOWN — The ANC has slammed the newly launched Foundation for Equality before the Law for misleading Afrikaners and failing to adapt to the new SA.

Former police commissioner Johan van der Merwe and former NP health minister Rina Venter, both supporters of the foundation, were described as part of "a motley crew of ex-politicians and retired civil servants who are unable to accept their loss of influence"

In a statement on Monday, Van der Merwe said the foundation would be watching the activities of the truth commission and would take legal action if state functionaries did not receive the same treatment as members of the liberation movements.

ANC spokesman Carl Niehaus said that protest actions planned by the foundation were sad because "instead of coming to grips with the new reality

of a democratic SA these kinds of attempts are being made to drag sectors of the Afrikaner community back into the dark ages of apartheid".

Niehaus challenged statements from the foundation that all conscripts in the apartheid defence force would be condemned by the truth commission. He said the commission would deal with gross abuses of human rights and "it is interesting that some of the leading figures in the foundation have been accused of involvement in exactly such human rights abuses"

He issued a stern warning to those in the foundation that "there is nowhere to hide", and reminded them that the only way to achieve amnesty was through the truth commission.

Niehaus also lashed out at the apparent support offered the foundation by Deputy President FW de Klerk. He called on De Klerk to clarify his position with regards to the protest actions being organised by the foundation.

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ET 11/1/96

Truth Commission

(252)

comic needs funding

FOREIGN embassies and the Truth and Reconciliation Commission are being lobbied for funds to finance more than a million copies of an educational comic explaining how the commission will operate.

The comic is an initiative of the University of the Witwatersrand-based Centre for the Study of Violence and Reconciliation, and was officially launched in November with a limited 10 000-copy print run.

It was compiled with the assistance of members of the Khulumani Support Group, a Gauteng-based organisation which has brought together more than 600 victims of apartheid human rights abuses.

The centre's Mr Brandon Hamber said yesterday hopes of printing a further million copies by the end of January would be dashed unless R150 000 could be found.

"We need R200 000 for the print run and we've managed to raise about R50 000 so far. We've been canvassing embassies

and we're also hoping the Truth Commission will match whatever we can raise."

He said the comic would be distributed to non-government groups and rural advice offices as part of an educational package which includes a video made by a group of victims and a flip-chart explaining how the commission will work.

"We decided on the comic because the medium was so effective during the elections," he said. "It's easy to read and it's something people can take home."

The comic tells the story of a hospital worker whose son goes missing and is then found dead.

Father Sean O'Leary of the South African Catholic Bishops Conference, which is supporting the centre, explained "It chronicles her search for the truth as she tries to find out why he died. It ends with her meeting up with the Khulumani group." — Sapa



In defence of Magnus: The state will pay legal costs for all the accused in the Malan trial

Taxpayers to bear Malan's costs

~~251~~ (252) M+G 12-18/1/96

Vuyo Mvoko

THE taxpayer is going to pay legal costs for former defence minister Magnus Malan and 10 senior officers in their murder trial which begins in early March in Durban.

General Malan and his co-accused, including former SADF chief General "Kat" Liebenberg, are accused of complicity in the massacre of 13 civilians at KwaMakhuta in KwaZulu-Natal in 1987.

The indictment against Malan and the others includes allegations about a secret sub-committee of the State Security Council which approved millions of rands for training Inkatha hit squads in the Caprivi from 1986.

Malan and others were arrested after the Durban-based Investigation Task Unit found secret documents linking them to the training of the hit-squads

and the execution of the massacre.

Responding to a *Mail & Guardian* inquiry this week, Lieutenant-Colonel Damien de Lange, on behalf of the Minister of Defence, said defence costs of former SADF as well those of South African National Defence Force (SANDF) members involved in trials are and will be borne by the ministry. He would not explain how this decision had been reached beyond saying it was "at the instruction of the Treasury for Finance". He said he presumed the decision had been taken by the Cabinet.

De Lange said there was no provision to recover the money if the accused were found guilty and some would probably not be able to pay back the huge sums involved in their defence.

Office of the President spokesman Parks Mankahlana said the payment

of the defence costs of the Malan 20 was never discussed in Cabinet.

The South African taxpayer has already paid out more than R3-million in legal costs for the defence of former policeman, Vlakplaas commander Eugene de Kock, in a trial which will probably end in March.

African National Congress spokesman Carl Niehaus said the organisation was "extremely uncomfortable" with the situation, but understood the dilemma facing the ministry, and that as long as there was a legal provision it was difficult for the ministry not to abide by it.

However *M&G* has learned there is some unhappiness about the government paying for the defence of Malan and his co-accused in the recently formed Secretariat for Defence. The Secretariat was established to ensure civilian accountability in the military.

Law society supports probe call

Staff Reporter

(252) ARG 13/1196

THE Law Society of the Cape has come out in support of the region's Judge President Mr Justice Friedman, who proposed this week to the Hoexter Commission that an investigation be conducted into the high costs of litigation in the Supreme Court

Mr Justice Friedman suggested to the commission, which is conducting an inquiry into the rationalisation of the court, that the causes of delays in Supreme court matters, which contributed

to these high costs, be questioned

"Attorneys have long been concerned about the high cost of litigation and resultant inaccessibility of the courts to the ordinary person of average income," said Andries Landman, president of the Law Society.

"We agree with the Cape Judge President that there is no quick solution for the reduction of the high costs"

Mr Landman said court procedures were in urgent need of simplification and judges should

be involved to a greater extent in case flow management, which was one of the causes of delays

These matters, however, fall outside the Hoexter Commission's terms of reference, but are already being addressed by attorneys in a quest for improved access to justice for all.

"In an effort to afford their clients the benefit of reduced Supreme Court trial costs, attorneys have moved quickly to take up their newly awarded right of appearance in the Supreme court," Mr Landman said

'Stop lying about Truth Commission'

By BENISON MAKELE
and Sapa

CP 14/1/96

PRESIDENT Nelson Mandela yesterday appealed to the Broederbond's youth section, the Ruiterswag, not to mislead Afrikaners as to what the Government's true reconciliatory aim was with the Truth and Reconciliation Commission

"You are only doing harm to the cause of the Afrikaner - and you are doing your own people a great injustice by misleading them," the President said

Mandela addressed the Ruiterswag near Hartebeespoort Dam amid tight security

He said remarks made by Ruiterswag members under the banner of the Foundation for Equality before the Law were unfortunate in that they had left the impression that an attempt was being made "to mobilise Afrikaners against the Truth and Reconciliation Commission"

(252)
Mandela said true reconciliation implied that "we will take note of the pain which one has caused the other and also that we will show concern about those who have suffered"

He said that the terrain of struggle presently facing all South Africans was a "war and a struggle against division and large-scale social inequality" in which all Afrikaners must contribute

Wishing the youth organisation well in the new year, Mandela said that all South Africans should be happy at having succeeded in liberating themselves from the chains of apartheid and racism

■ Meanwhile, about 1 000 Afrikaners at a protest meeting yesterday in Pretoria demanded an end to the prosecution of former security force members until the temporary immunity of some senior ANC members was lifted

Former police commissioner, General Johan van der Merwe, insisted that the commission ensure the equal treatment of all political parties before it began its work

THE Department of Justice has been accused by civil servants of blocking the promotion of white, male state attorneys in a move they claim flagrantly disregards anti-discrimination laws passed by President Nelson Mandela.

In papers filed with the Transvaal Supreme Court three days before Christmas, the 100 000-member Public Servants Association claims that the department acted unlawfully by reserving vacancies at state attorneys' offices for affirmative action appointments.

It also claims that irregular procedures were followed in selecting candidates for the posts and that association members were discriminated against simply because they were white and male.

The department's decision to reserve senior vacancies for women and people of colour was conveyed to senior officials on October 27 last year at a meeting in Pretoria attended by the Justice Minister, Dullah Omar, and director-general, Jasper Noth.

Implemented within weeks of 30 vacant posts for state attorneys being advertised on November 12, the department's policy is being challenged in the Supreme Court.

But it may finally be up to the Constitutional Court to rule on whether the department is doing what it regards as a "constitutional duty" or contravening legislation that outlaws race and gender as criteria for filling posts in the public service.

The Public Servants Association sought an urgent interdict last month to halt the appointment of three state attorneys, nine deputy state attorneys and 18 senior assistant state attorneys at offices in Cape Town, Durban, Port Elizabeth, Bloemfontein, Johannesburg and Pretoria.

But its application was held over, at the Justice Department's request, in light of the Christmas holidays. It is now due to be heard in Pretoria on February 7.

The department agreed not to make any appointments until after the matter had been brought to court.

The association's application is supported by affidavits from 16 white men, with experience ranging from four to 21 years, employed in state attorneys' offices in Cape Town, Johannesburg, Pretoria, Port Elizabeth and Bloemfontein.

All 16 qualified for promotion and submitted applications for more senior posts advertised, but, none were called before the selection panel.

A Department of Justice liaison officer, Pieter du Rand, confirmed on Friday that not one white male employed by the department had been interviewed for the posts. Of the 431 applications received, 73 were from incumbent employees, but Mr du Rand declined to say how many of these were white men. He would also not disclose what criteria had been used to draw up a short list of candidates.

But Enver Daniels, a special adviser to Mr Omar, said the vacant posts had been a "good place to start" making the Justice Department "representative of the population as a whole, which we have a constitutional obligation to do".

He said the department believed that Section 11 of the Public Service Act — which states that "no person who qualifies shall be favoured or prejudiced" in filling government posts — was "in conflict" with a requirement in Section 212 of the constitution that the public service be representative and efficient.

The Act, proclaimed by Mr Mandela soon after he took office, also demands that only the qualifications, efficiency and suitability of candidates for public servants posts be taken into account.

By MARLENE BURGER

The Public Service Staff Code, one of several amendments to the Act in the past 18 months, goes even further, stating that "methods used and/or instruments utilised in the selection process should be free of racial or gender bias".

Mr Daniels said, however, that the state attorney's offices were "overwhelmingly white-male dominated".

"It is no accident that white men hold virtually all the senior posts. Throughout the apartheid era, thousands of people were denied the opportunity of joining the public service, and our criteria for future appointments will include race, gender and even disability."

"This is not about reverse discrimination, we are determined to redress the historical imbalance within the department."

He said that, as far as the Justice Department was concerned, "Section 212 of the constitution takes precedence over the Public Service Act, and we will not only vigorously oppose the pending court action, but will seek the Constitutional Court's support if necessary".

At least one senior official resigned in protest after learning that the department planned to fill vacancies by means of a quota system, and more resignations are expected.

An exodus of experienced staff at a time when crime is at unprecedented lev-



DULLAH OMAR: at the centre of the row

to an affirmative action quota of "two or three to one".

Mr Wagener said he expressed concern at the meeting over a possible loss of efficiency, but his argument was rejected.

According to the court papers, when he asked what message he should convey to staff members about the advertised posts, Mr Omar replied that they should apply.

However, Mr Wagener said, when he asked the personnel head, Nic Grobler, immediately after the meeting "whether present incumbents at the offices of the state attorney would be considered and whether it was worth their while to apply", Mr Grobler said they would "merely be wasting their own time".

While the Justice Department will not disclose which employees are being considered for the posts, the association claims that only three officials — all women — were granted interviews.

One of them is Gadija Behardien, who qualified as an attorney five years ago but has only one year of experience in the Pretoria state attorney's office.

Ms Behardien's husband, M N Hendricks, is also employed by the department, and was the man to whom inquiries about the advertised posts had to be directed.

At least nine of Ms Behardien's white male colleagues applied for the same post. All of them have been senior assistant state attorneys for between eight and 10 years, and each have about 19 years' service with the Justice Department.

els and conviction rates at their lowest in 17 years would place additional pressure on remaining employees, already stretched to the limit by an exodus in the past two years of experienced legal practitioners.

Jan Wagener, a deputy state attorney in Pretoria, tendered his resignation four days after the new staffing policy was spelt out, and filed one of the affidavits supporting the Public Servants Association court application.

He said the meeting was told that certain of the vacant posts would be reserved as "so-called Section 11 posts" while others would be "affirmative action posts". All posts that fell vacant this year would be filled according

(252) (ST 14/1/96)

promotion

Too pale, too male for

'No truth, no justice' say some

(252) *Sowetan* 15/11/96

THE Truth and Reconciliation Commission has moved quickly to become operational in the six weeks since President Nelson Mandela announced the names of the 17 commissioners, but sceptics question whether it could possibly succeed in its Herculean task.

The commission held its first meeting within 24 hours of Mandela proclaiming its existence in the *Government Gazette*. At that meeting commissioners decided where its headquarters would be, and members were elected to three committees: a human rights violation committee, an amnesty committee and a reparation committee.

Hard at work

While most of the country went on holiday during December, commission vice-chairman Dr Alex Boraine and his staff at Justice in Transition, a non-governmental body, were hard at work putting together the "nuts and bolts" of the commission.

Advertisements appeared for a chief executive officer, and Boraine went hunting for a suitable address for the commission's headquarters. Last week he found one: 106 Adderley Street, Cape Town.

The commissioners cannot be faulted for the earnestness and diligence with which they have addressed their task, but doubts are being raised about the commission's aims.

Promoting national unity

The legislation governing the commission says it should promote national unity and reconciliation in a spirit of understanding that transcends the divisions of the past.

This should be done by establishing as complete a picture as possible



Flashback: The funeral of slain Dr David Webster. The activist was shot outside his Troyeville home in 1989.

of human rights abuses during the apartheid era, and establishing the fate and whereabouts of the victims. Survivors should be given an opportunity to relate the abuses they suffered.

However, Fr Sean O'Leary of the Southern African Catholic Bishops' Conference's justice and peace department says the commission is hamstrung by weak legislation which will prevent it being an effective truth-seeker or an instrument of reconciliation.

"If you take the legislation as it stands, it will bring about neither truth nor reconciliation. Too many compromises were made to bring the National Party on board," O'Leary said.

The legislation is "perpetrator-orientated, not victim-orientated", he said, making it easy for perpetrators to

get amnesty but difficult for victims to get access to the commission.

"And when they do, they don't get justice, they don't get the truth. They just get their stories recorded."

"I don't know how many victims will actually appear before the commission. It is just physically and logistically impossible. The commission's task is just too enormous."

Hundreds abused

O'Leary has worked with hundreds of human rights abuse victims in KwaZulu-Natal. "How many can they hear each day? It will be up to the churches and NGOs to forward their stories to the commission."

This is echoed by Maggie Friedman, the partner of Wits University

academic Dr David Webster who was shot dead outside their Troyeville, Johannesburg, home in 1989. She has since helped to set up the Khulumani Support Group, a Gauteng-based body which has brought together more than 600 victims of human rights abuses.

"For a whole lot of people who don't know the truth about what happened to their loved ones, they are not likely to get closer to the truth through the commission. There are a lot of reasons for this. The sheer volume of cases and the lack of evidence in many instances."

Time ticking away

Friedman says more time should have been spent getting in touch with victims or their relatives before the commission began its work.

"It upsets me that the commission has not started getting in touch with the victims. They've only got 18 months and the clock is ticking. Maybe they should have set time aside for preliminary work before saying, 'Now we are officially up and running.'"

"There are going to be many people who will want to testify but who will not be accommodated because of time constraints."

If the commission has a lot of victims who have not been able to take part, then it is going to jeopardise the credibility of the whole exercise."

Nevertheless, Friedman hopes that in some way, through the commission's mere existence, she will be able to make peace with the past so that she can put it behind her.

"I am hoping, but not expecting, to find out the truth (about Webster's murder)," she says.

The SACBC has started a campaign urging people who suffered abuse under apartheid to come forward with their stories. O'Leary says hundreds of victims he has spoken to are looking for more than the truth.

"They want justice. They want to see the perpetrators behind bars. That feeling is very strong."

He says the best the commission will be able to do is create a record of human rights abuses which can be used as the foundation of a new human rights culture.

"True reconciliation cannot be achieved through a legislative process with all the goodwill in the world. Let the process (the commission) take its course, but it's not enough."

O'Leary suggests that national days of reconciliation be set aside and peace rallies and walks be held, particularly in strife-torn areas. Victims' groups can be set up to share experiences.

"We also need a local equivalent of the Vietnam War Memorial in Washington so people can go and mourn the loss of their loved ones, as a kind of pilgrimage."

A commemorative monument was one of the reparation measures proposed by Chile's Truth and Reconciliation Commission after a 10-month investigation into the death and disappearance of more than 2 900 people between 1973 and 1990.

In its final report in 1991, it said "The depth of victims' suffering must be known. There must be a collective awareness that that was the way it was."

"Only at that moment, when everyone has truly understood what it is to suffer and to cause suffering, will there be repentance by some and forgiveness of others." — *Sapa*

Truth probe ⁽²⁵²⁾ group for ~~(252)~~ KwaZulu-Natal

Political Correspondent

THE Truth and Reconciliation Commission's committee on reparations and rehabilitation is to hold a "consultative meeting" with community organisations in KwaZulu-Natal early next month

Further meetings in other regions of the country would follow, said Hlengiwe Mkhize, committee chairman

The first day, February 7, will be spent in Port Shepstone, where community organisations will be consulted

"The purpose of the consultations will be to identify existing and potential community resources which the committee could draw upon in its work, and to be assisted in the formulation of recommendations on a reparation policy and a rehabilitation strategy," she said

The second day would be spent on internal committee business, Ms Mkhize added

The committee is to make recommendations to the president on both urgent interim relief and long-term reparation and rehabilitation for the victims of gross human rights violations committed between March 1, 1960, and December 5, 1993.

Strong backing in assembly for draft land law

TYRONE SEALE
Political Staff

DRAFT legislation that gives labour tenants a chance to become the owners of land they occupy and protects them against unfair evictions has been given overwhelming approval in the national assembly

However, parties such as the Freedom Front, Inkatha Freedom Party and Democratic Party, licking their wounds after a 226-35 defeat in the assembly after IFP MP Koos van der Merwe's call for a division of the house, are gearing up for tough debate in the senate

While the African National Congress and National Party supported the bill, speakers from the smaller parties rejected the draft legislation out of hand or, in the case of the Pan-Africanist Congress, pledged conditional support

Opening the second reading debate on the bill yesterday, Land Affairs Minister Derek Hanekom said the bill had been

largely accepted by all involved parties as an acceptable and reasonable measure that would contribute to peace and prosperity in the countryside

The bill regulates the conditions under which labour tenants may be evicted, including the nature of compensation to be paid to them in the event of an eviction.

Specifically, it states that labour tenants may be evicted only if they fail to provide labour in terms of the contract or are guilty of serious misconduct or if the owner of the land has specific needs for the land in question

The Land Claims Court is the body responsible for overseeing the process of evictions, which may be carried out only after a court order is obtained

The bill is retroactive from June 2 last year, the date it was gazetted, and it means labour tenants who left a farm or were evicted after that may apply to the Land Claims Court for a reinstatement of rights

(252) ~~252~~ ARG 16/1/96
within a year of the bill becoming an Act

The bill provides for a four-year period within which labour tenants will have the right to apply to buy the land which they have historically used and occupied. It provides for the state to help labour tenants in this purchase. It specifies that the land owner is entitled to compensation for the land, as provided for in the constitution

Where conflicts arise between tenants and land owners during a purchase, a mediator may be appointed to help resolve the dispute. Should the mediation fail, the application for purchase will be forwarded to the Land Claims Court, which will appoint an arbitrator to decide the matter. Either party has the right to appeal against the decision of the arbitrator or the court

Mr Hanekom said the bill was an attempt to extend basic human rights, legal protection and access to resources to one of the most oppressed groups

ings of South Africans

IFP MP Harriet Ngubane dismissed the bill, saying it failed to provide a precise time-frame in which labour tenants would acquire the land they occupied and used, and this meant there was no clear programme for the abolition of labour tenancy

Regulations on evictions and the criteria for acquiring land had to be made clear before the IFP could support the bill

Pieter Grobbelaar (FF) said the retroactivity of the legislation would make life unbearable on farms where there had been evictions since June last year

The Freedom Front was opposed to the means by which the draft legislation was controlling a private arrangement between the farmer and the labour tenant, who was paying for the land with his or her labour

DP MP Mike Ellis said his party could not support the bill in its present form

Bill for protection of labour tenants passed

Star 16/11/96
By PATRICK BULGER

At its first meeting of the year, the National Assembly approved the Land Reform (Labour Tenants) Bill yesterday - one of several land reform measures drawn up by Land Affairs Minister Derek Hanekom that were not considered last year.

The Inkatha Freedom Party, the Democratic Party and the Freedom Front voted against the bill which was passed by 226 votes for to 35 against.

Introducing the bill, Hanekom described labour tenants as "one of the most oppressed groupings of South Africans". He said "It (the bill) also attempts to create conditions that would restore stability and certainty to some of South Africa's most conflict-ridden rural areas".

Hanekom also said tenants had no protection under the law and they had been subjected to arbitrary evictions as farmers feared radical new legislation to protect tenants' rights and even to dispossess farmers.

The bill regulates the conditions of eviction of tenants and states they may only be evicted if they failed to provide labour, were guilty of serious misconduct

or if the farmer had a specific need for the land.

Tenants would be given four years to apply to purchase the land they occupied. The state would help them to buy land. Mediators would be appointed in cases of dispute.

The NP supported the bill, saying it provided a legal mechanism for farmers in disputes.

The IFP said the bill failed to outlaw labour tenancy and the FF said it interfered with the land rights of farmers.

The DP said the bill would entrench labour tenancy but the party was in favour of measures to regulate evictions. The PAC voted for the measure.

The bill has to come before the Senate before it becomes law. It is retroactive to June 2 1995.

Sapa reports from Witbank that 75 cases of farm evictions were reported in Mpumalanga in the past three months.

According to Mpumalanga Land and Labour Commission chairman Ivor Jenkins, the number of reported cases was contrary to the perception that "thousands" were being forcefully removed across the province. He stressed, however, this did not diminish the seriousness of the matter.

Rifling of Truth Commission case 'may have been intimidation'

ROGER FRIEDMAN, Staff Reporter

A MAJOR security scare has erupted on the eve of the historic first sitting of the Truth and Reconciliation Commission.

A locked case containing sensitive documents belonging to the head of the commission's investigative unit, Dumisa Nisebeza, was broken into between Durban and Cape Town airports on Tuesday night and the contents rifled.

South African Airways said yesterday

its security department would spearhead a joint investigation with the Airports Company luggage handling company Apron Services and the police.

Mr Nisebeza was on his way to Cape Town after discussions between commissioners and the police Special Investigation Task Unit operating in KwaZulu-Natal.

The document case which he put into the aircraft's luggage hold because he was carrying other hand luggage, was

locked with a pair of combination locks.

When Mr Nisebeza collected his luggage at Cape Town airport the locks had been forced, the leather torn and a brown envelope containing sensitive papers ripped open and the contents strewn on top of the case.

Someone made a point of ripping it open, whether to simply find out what was inside or to intimidate me or to send a message to the commission that it is go-

ing to have a tough time I do not know," he said.

"Am I seriously to think it was a coincidence with me on my way back from the most sensitive region and police investigation unit in the country?"

Mr Nisebeza said he did not believe anything had been stolen from the case, but if dirty tricks were involved, spies would presumably have had ample time to copy or photograph documents.

ARC 18/1/96

(252)

Ntsebeza's Truth Commission documents rifled aboard SAA flight

The head of the Truth and Reconciliation Commission's investigation team was shocked on Tuesday night when he got off an SA Airways flight at Cape Town and found his bag containing commission documents had been ripped open and rifled.

Dumisa Ntsebeza said he had caught a flight from Durban after spending several days there meeting the police's investigation task unit. The unit's investigation led to the current murder trial of Gen Magnus Malan and other former senior security force officers.

Ntsebeza said his document briefcase had been put into the plane's baggage hold. When he picked it up in Cape Town, he found both combination locks had been ripped from the briefcase and papers, some relating to Truth Commission work, had been tampered with.

"They ripped the leather from the entire unit. It was forced open so they could get at the documents," said Ntsebeza. Sealed envelopes had been torn open, and books and documents on the Truth Commission searched. Nothing appeared to be missing.

"It's obviously a matter of concern," Ntsebeza said. SAA spokesman Leon Els said the Cape Town baggage office had had a new bag in the office similar to Ntsebeza's damaged bag. Staff were able to replace the bag immediately.

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Sapa

Truth commission papers searched

ET 12/1/96 (252)

OWN CORRESPONDENT

EAST LONDON. The head of the Truth and Reconciliation Commission's investigation team got off in SA flight at Cape Town on Tuesday to find his document bag with commission documents in it had been ripped open and searched.

Unitat lawyer Mr Dumisa Ntshobane, the commissioner who heads the investigation unit, said he had caught a flight from Durban after spending several days meeting the Independent Task Unit. The unit's investigation led to the current murder trial of General Magnus Malin.

Mr Ntshobane said his large document briefcase was put into the plane's baggage hold. When he picked it up in Cape Town, he found that both combination locks had been ripped off and papers inside — some of which related to Truth Commission work — had been searched.

They ripped the leather from the entire unit. It was forced open so they could get at the documents, he said.

A sealed envelope had been torn open and searched and books and documents on the Truth Commission had been searched. Nothing appeared to be missing.

It is obviously a matter of concern, said Mr Ntshobane.

He went to the Cape Town airport baggage department to complain and was immediately given an identical replacement document bag which happened to be in the office.

There was another bag waiting for me, also with a combination lock, said Mr Ntshobane.

An SAA policeman, Mr Leon Ellis, said the Cape Town baggage office had had a new bag in the office which was similar to Mr Ntshobane's damaged bag. The airport staff were able to replace the bag immediately.

They keep a small stock of different sizes there to replace claim immediately, said Mr Ellis.

He said SAA would normally replace or repair baggage damaged in transit. The airline, with the police, was trying to combat pilfering.

Death penalty 'not the answer'

Improved methods of
crime prevention need to
be looked at

By Rafiq Rohan
Political Correspondent

Sowetan
19/1/96

A SOCIETY that demands blood for blood will continue to be a society where blood is shed daily. The death penalty has never been a deterrent against crime but, at the same time, the outcry around its abolition when crime statistics are mentioned is understandable.

Mr Carl Niehaus, chairman of the Portfolio Committee on Correctional Services, told the Institute of Citizenship at St Georges Cathedral in Cape Town yesterday that the death penalty cannot be a part of South Africa's justice code because it is unconstitutional.

"The calls for the death penalty are not the call of a society baying for blood but a call for help by frightened people. Reforming society will reduce that fear," he said. The death penalty is not the answer. Ensuring that criminals are brought to book and introducing improved methods of crime prevention is what must be looked into.

Greatest responsibility

"The greatest responsibility of the state is to set the moral tone of the country and, where the state leads the public will follow. If the state resorts to revenge and retribution, the people will see this as the way to deal with crime. If the state howls for blood, we will continue to live in a society in which blood is shed on a daily basis."

On escalating crime, he said with SA's transformation from a closed society has resulted in crime cartels moving in. "As we move towards a culture of human rights, as our borders open and our society becomes more open, the carpetbaggers have moved in to capture the spoils. As these super gangsters plot their moves and expand their activities, they recruit the young, the disaffected, the poor and the unemployed to do their dirty work for them."

ET 19/1/96

Security probe after case rifled

(252)

THE Truth and Reconciliation Commission is expected to review its security arrangements when it meets next week after the head of the commission's investigative unit had his briefcase ripped open and searched on a flight between Durban and Cape Town this week.

SAA spokeswoman Ms Anelda Duvenage confirmed yesterday that the airline's security department was investigating the incident. But she played down speculation that the briefcase belonging to Umtata attorney Mr Dumisa Ntsebeza had been deliberately singled out because of his involvement in the commission.

"It is possible someone saw the locked briefcase and thought there was something valuable inside."

Mr Ntsebeza said the "sinister" incident threw the spotlight on the commission's security arrangements. "One does not want to be paranoid, but when you imagine the sorts of documents that we will be carrying around, one solution, which I am not in favour of, is to have policemen accompanying the commissioners."

Mr Ntsebeza discovered his briefcase had been broken into when he stepped off the flight in Cape Town on Tuesday.

Sealed envelopes had reportedly been torn open and books and documents on the commission had been searched.

He said it was an "odd coincidence" that the incident should have occurred on the very day he was returning from a meeting with the Independent Task Unit, whose inquiry had led to the current murder trial of former Defence Minister General Magnus Malan. — Sapa



Picture ROY WIGLEY Staff Photographer

□ **JUDGES FOR RECONCILIATION:** At Bishopscourt yesterday, Truth and Reconciliation Commission chairman Archbishop Desmond Tutu and his deputy, Alex Boraine, met the three judges appointed to the commission's amnesty committee. From left are Dr Boraine, amnesty committee deputy chairman Judge Andrew Wilson, committee chairman Judge Hassen Mall, committee member Judge Bernard Ngoepe and Archbishop Tutu

Top politicians in bid for amnesty

(252) ARC 20/1/96

TYRONE SEALE
Political Staff

TOP political figures are among alleged violators of human rights who have inundated the Truth and Reconciliation Commission with about 2 000 amnesty applications in the three weeks the commission has existed.

Commission chairman Archbishop Desmond Tutu and his deputy, Alex Boraine, yesterday refused to name applicants, but Dr Boraine added amnesty enquiries also had come from what he called "household names" in current politics

The commission began its work only at the beginning of this month and it is fielding everything from amnesty applications to written and telephonic threats against commissioners and their task

But, Archbishop Tutu said the commission would do its best to produce its final report within 18 months — with a legal option of 24 months — as "the longer this process takes, the more difficult it is to achieve the

■ Amid anonymous threatening letters the Truth and Reconciliation Commission is set to begin its task which Archbishop Tutu describes as being "deeply spiritual".

goal, which is reconciliation and healing"

Archbishop Tutu was speaking at Bishopscourt yesterday after meeting the three Supreme Court judges appointed to the commission's amnesty committee by President Nelson Mandela

The three are chairperson Judge Hassen Mall, deputy chairperson Judge Andrew Wilson and Judge Bernard M Ngoepe. The other two members of the amnesty committee are Truth commissioners Chris de Jager and Sisi Khampepe

At a media conference Archbishop Tutu and his deputy on the commission, Alex Boraine, previewed next week's meeting in the Cape Town city centre of the 17-strong commission

The meeting, the commission's second, will focus on a range of issues

■ Where the seat of the amnesty of

committee will be,

■ How to decentralise the workings of the Cape Town-based commission,

■ The physical security of commission and committee members,

■ Witness protection,

■ Staffing, and,

■ The commission's budget and communications

Dr Boraine said recent events had suggested that measures had to be taken to ensure that the work of the commission and its committees would continue without the Commission becoming paranoid about security

Earlier this week a locked case containing sensitive documents belonging to the head of the Commission's investigative unit, Dumisa Ntsebeza, was broken into en route between Durban and Cape Town airports. The contents were rifled

Dr Boraine revealed that threaten-

ing letters and telephone calls had been received and taken by a number of commissioners

He had personally taken about half a dozen calls, including one asking him how he could dare sit in judgment over others

Dr Boraine said the letters were anonymous and he had simply dumped them

On amnesty, Dr Boraine said more than 1 200 applications had been received from people who were in custody or who were serving sentences for acts they believed were subject to the commission's amnesty provisions.

He said among the 800 other enquiries of which he was aware, were some from individuals active in politics

Next week's meeting begins with a retreat to Faure on Monday where, Archbishop Tutu says, commissioners will "spend time to strengthen our spiritual resources"

"The work we are going to undertake is very deeply spiritual work, being involved in the aim of the healing of a traumatised people working for national unity and reconciliation"

MXOLISI MGXASHI
Staff Reporter

THE South African Council of Churches (SACC) has established a special unit to help families of victims of human rights violations to deal with the trauma of reliving the pain when they testify before the Truth Commission.

The unit, headed by SACC director of Justice and Reconciliation Eddie Makue, will, among other things, set up a cluster of "healing structures" in churches throughout the country.

The structures, which will begin operating during Easter, will serve as healing centres and resources for strengthening the ideals of forgiveness and reconciliation.

Pastors and laypersons in all churches affiliated to the SACC, and some that are not, will be trained to help in the healing of families and

'Healing unit' to aid truth

next of kin of people who died from alleged torture by the apartheid government.

The Reverend Joe Seoka, an Anglican Church priest who is being ordained as Dean of the church in Johannesburg, has been given the responsibility of co-ordinating the initiative.

Speaking from his Johannesburg home, Mr Makue said the SACC felt morally obliged to give full support to the Truth Commission because the church was favourably disposed to the concept of reconciliation and healing.

The Truth Commission is headed by Archbishop Desmond Tutu and includes other prominent

clerics, such as Khoza Mgojo, a former SACC president, and the Reverend Bongani Finca.

"The fact that we have Archbishop Tutu and the others gives us all the more reason to give as much support as possible to the objectives of the Truth Commission," Mr Makue said.

The SACC would also use the influence of the Nederduitse Gereformeerde Kerk on the African people to convince them there is logic in the aims and objectives of the commission, which was not about vindictiveness but about peace and reconciliation.

The head of the SACC development division,

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body

died in their service to build a new South Africa?

"As you can see the church has all the resources and tradition to deal with these issues by giving adequate help to the victims of the trauma," Dr Gunna said.

According to Mr Makue, the process of healing would continue long after the Truth Commission concluded its work, because the impact of trauma will also be with the victims long after that process.

At that stage women in the church would also play a crucial role in the process. The youth, who played prominent roles in the removal of apartheid, would also be counselled to deal with the lasting effects of the traumas they underwent.

Mongezi Gunna, whose elder brother became an Apla commander and "disappeared in action" in Mozambique in the 1980s, sees the establishment of the SACC healing unit as a logical step.

"The questions that have arisen are: What is the church planning to do with the Truth and Reconciliation Commission? Can people handle the truth?"

"We feel some people cannot, and if they can't, who is there to help them handle it beyond the process of the commission? Is there life after all the evidence that will be led about the gruesome manner in which some people

Hundreds apply for amnesty as truth commission

Star 20/1/96

Cape Town - About 2 000 people, some of them well-known politicians, have already applied to Anglican Archbishop Desmond Tutu's Truth Commission for amnesty for human rights crimes under apartheid.

Tutu, named by President Nelson Mandela last month to head the 17-member Truth and Reconciliation Commission, said at a news conference yesterday the probe into crimes committed by both sides in the battle over apartheid would be "traumatic"

He said he did not know whose bid for pardon would be heard first, but hinted that it could be a high-profile application, saying "Maybe it is important that we get the nation accustomed to how harrowing the process will be."

The commission was established last month and given up to two years to probe human rights offences under apartheid, to grant amnesty to perpetrators and to award compensation to victims.

The full commission will meet them from prisoners for the first time on Monday, to start making arrangements, including venues, rules and budgets. Tutu said the commission is about the process of application and the terms for amnesty to white, Afrikaner veterans of the apartheid government, household names Boraine said would also decide when and where to begin hearings.

Tutu's deputy, former liberal parliamentarian and human rights analyst Alex Boraine, said two years allowed, but added "We are going to do our damndest to complete the task as

quickly as possible.

"The longer this process takes, the more difficult it will be to achieve the goal of reconciliation and healing."

Tutu said the commissioners would begin next week with a day-long retreat to "strengthen our spiritual resources for the very special work of being involved in the healing of a traumatised people".

Boraine confirmed that several members, including Tutu, had received threatening letters or telephone calls.

Although Boraine dismissed the calls and letters as the work of "cranks", he said security for commissioners would be on the agenda at next week's meeting of the full commission in Cape Town.

"Recent events suggest that we have to take measures in order to ensure that the work of the commission and its commit-

gets underway

tees is not going to be impeded," he said.

"Without becoming paranoid, we have to ensure that the commissioners have adequate protection."

Earlier this week, a briefcase belonging to Umtata attorney Dumisa Ntsebeza, the commissioner who heads the commission's investigative unit, was ripped open and rifled somewhere between Durban and Cape Town airports.

Boraine said he had received

five or six "crank calls" and several letters, which he had "filed" in his wastebin.

He was aware that a number of other commissioners had received similar threatening calls.

Tutu also confirmed receiving several letters.

Access to his Bshopscourt home in Cape Town was being strictly controlled yesterday by uniformed policemen guarding the gates to the property - Reuters and Sapa.

FORTY years ago, when they started their legal careers, Hassen Mall and Andrew Wilson kept advocates' chambers next to each other near the Supreme Court in Durban.

This week, the long-time friends, now both judges of that court, found themselves together once again — as chairman and deputy chairman of the Amnesty Committee.

During the past four decades, their careers have counterbalanced each other.

Judge Mall, 73, a political activist in the Natal Indian Congress and the South African Indian Congress, was banned for five years under the Suppression of Communism Act. But his legal practice focused on civil work rather than contentious political trials.

Judge Wilson, 66, has no comparable party political history, but his legal practice included a number of lengthy and high-profile political cases.

Their personalities form a similar contrast.

If friends of Judge Mall wonder whether he might not be too kind and perhaps too much of a "gentleman"

CARMEL RICKARD reports on the men who will decide whether the perpetrators of political crimes committed during the apartheid era will receive amnesty

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The immigrants' sons who pack a hefty legal punch

to grill confessed criminals appearing before the Amnesty Committee, there can be no such fear about Judge Wilson.

Judge Mall is strongly influenced by Mahatma Gandhi, and a bronze head of the guru stands on the windowsill in his chambers. The judge recalls that when the Natal Law Society opposed Gandhi's application for admission as an advocate, one of their

complaints was that he "was not a gentleman."

Despite that prejudice, Gandhi was admitted to the Bar. Almost 60 years later, in 1952, the young Hassen Mall made a similar application, the first person of colour to do so since Gandhi.

There was no problem with his admission, but he could not find chambers in the same building as the rest of the advocates

because the Group Areas Board refused to allow him to share toilets with his white colleagues.

The Supreme Court administration, similarly scrupulous, emptied a tiny room — little more than broom storage — for his sole use, labelling it "Non-European Robing Room."

His colleagues, however, insisted that he share their facilities, and the brooms eventually returned to

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BALANCING THE SCALES OF JUSTICE
Hassen Mall and Andrew Wilson have been colleagues and friends for 40 years

Picture: RICHARD SHOREY

Andrew Wilson was eight but an education beting his background was already assured. He went to Clifton, Hilton College and Cambridge University and was admitted to the English Bar.

His practice — which included both civil and criminal work, some of it in political trials — took off soon after he returned to Durban. He appeared for Chief Albert Lutulu's family at the inquest into his death and led the defence in the prolonged trial of PAC leaders held in Bethal in 1978/79.

His appointment to the Natal Bench in 1984 coincided with a period during which it developed a reputation for the independence of some of its members. These judges, among them the new appointees, commented in open court on the injustices of the laws they were expected to administer. During the emergency years some

their cupboard
Judge Mall's grandda-
ther came to South Africa
just over a century ago as a
"passenger Indian" — a
businessman who paid his
way. He settled first in the
Orange Free State and
then — forced to trek by
the laws of the province —
in Dannhauser, Natal,
where he opened a general
dealer's store.

Some years later his son
returned to their home
village of Ghala near Surat
in India to marry Hassen,
the first of six children,
argue his case.
He took silk in 1978. In
1987, he became the coun-
try's first black judge
when he accepted an
acting appointment to the

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was born there. The family moved to South Africa when he was four. His father died before the boy completed school, and Hassen helped support his family. Every afternoon he worked as a clerk for Cambridge Outfitters in Durban's Grey Street. Thanks to a combination of bursaries, odd jobs and tenacity, he eventually qualified with a BA LLB from the universities of Fort Hare and Cape Town.

The struggle to establish his practice in the face of apartheid restrictions was followed by a banning order from 1962 to 1967. He was restricted to the Durban magisterial area. Members of the Durban Bar recall that he was allowed to appear in the Supreme Court in Maritzburg in certain cases only. He had to report to the Durban police before he left, go straight to their Maritzburg counterparts to tell them he had arrived, and then travel to the court with two police escorts. These policemen would sit in the public gallery for the duration of the appeal, watching advocate Mall

Natal bench. The resulting uproar among some of his politically active colleagues was particularly painful to him. Organisations such as the Democratic Lawyers' Association — of which he was a founder — castigated him for accepting the post because he would have to administer apartheid laws. Such characteristic independence of thought, and his refusal to be pressured into taking a politically popular position conflicting with his own principles, will stand him in good stead in his new office.

His family, many of them poorly educated, instilled in him a love of learning. Of all his achievements, the one which probably means the most to him is his appointment as Chancellor of Durban-Westville University. Like his colleague, Judge Wilson comes from immigrant stock. His father, a medical doctor from Edinburgh, came to South Africa after fighting in the First World War. He set up practice in Bellair, outside Durban, and married a Swedish nurse. His father died when

handed down judgments which tended to favour the liberty of the individual over state security. Judge Wilson was appointed, during successive states of emergency, to visit detainees and ensure their wellbeing. He first made headlines, however, with a political trial — the 1991/2 Trust Feeds case, in which he convicted a police officer, Brian Mitchell, of murder and sentenced him to death.

He has a reputation for outspoken comments on police investigations. Like Judge Mall, he has shown a marked sense of independence. In 1989, despite strong opposition from the Justice Minister, he and six colleagues attended a conference in Oxford, England, addressed by ANC members.

● Judges Mall and Wilson will have their first meeting next week with the other members of the committee. Mr Justice Ngoepe, of the Transvaal Division, Conservative Party, advocate Chris de Jager and Sisi Kamphepe of the Black Lawyers' Association.

(252) CT 22/1/96

Tutu trying to heal wounds of apartheid

IT'S been almost 20 years since a young Anglican priest wrote a passionate letter to the then-prime minister John Vorster to warn him of his "nightmarish fear" that violence and bloodshed would soon consume the country.

The letter was dated May 6 1976. Five weeks later, on June 16, the shooting of 13-year-old schoolboy Hector Peterson triggered a bloody revolt against the state in dozens of townships, which left scores dead.

The letter-writer who had sought to warn Vorster was the Dean of St Mary's Cathedral in Johannesburg.

"I write to you Sir, because like you I am deeply committed to real reconciliation with justice for all, and to peaceful change to a more just and open South African society in which the wonderful riches and wealth of our country will be shared more equitably."

Twenty years on, the letter-writer has the Herculean task of setting a country, riven by divided memories of the apartheid years, on the road to national reconciliation as chairman of the Truth and Reconciliation Commission.

Archbishop Desmond Tutu has few illusions about the task ahead of him or the time constraints he and his 16 fellow commissioners face.

Sitting in an armchair in his study at Bishopscourt in Cape Town, Tutu talks earnestly about the importance of closing that chapter of the country's history which brought suffering to so many thousands of people.

If the chapter is not closed, he says, the country's stability will be undermined by continuing revelations, like those which have characterised the Colonel Eugene de

Kock murder trial.

"The Truth and Reconciliation Commission is the middle path between two extremes," says Tutu. "Some say let us forget the past while others want revenge."

"We are saying we are not going to forget and we do not want revenge. Nobody would claim that the commission is the perfect solution but it is great deal better than a Nuremberg trial situation."

Tutu says the commission will serve an important function by publicly acknowledging that victims of human rights abuses had their personal dignity violated.

The commission will have professional mental health workers to counsel victims who come to give evidence.

"It just won't do for someone to come along and be expected to tell his story and then at the end of the day we say goodbye. We are going to have to have a professional support system."

While acknowledging the time constraints within which the commission will be operating — it has 18 months to complete its task with an option to extend that to two years — Tutu points out that it will not be starting from scratch.

"We have a fair amount of information already through non-governmental organisations and human rights groups. There is also the work of the Goldstone Commission."

"We are not going into totally virgin territory," he says.

And to ensure that the commission works at maximum speed in processing the thousands of cases likely to come before it, its human rights committee will probably operate in three or four centres of the country simultaneously. — Sapa



HERCULEAN TASK: Archbishop Desmond Tutu

Truth evidence 'harrowing'

POLITICAL WRITER

THE Truth and Reconciliation Commission, which has to complete its task by the end of next year, gets down to business this week when it meets in Cape Town.

Its first public hearing, almost certainly involving a high profile figure, will be held soon, although its chairperson, Archbishop Desmond Tutu, said he did not know who it would be.

"Maybe it is important that we get the nation accustomed to how harrowing the process will be," he said at a press conference.

About 2 000 people have already applied to the commission for amnesty and its deputy chairperson, Dr Alex Boraine, said lawyers acting for "household names" had been in touch with the commission.

The commission will meet in Faure today under tight security for a one-day retreat, which Tutu said was to "strengthen their spiritual resources".

Handwritten signature

INTERPELLATIONS

The sign * indicates a translation. The sign †, used subsequently in the same interpellation, indicates the original language.

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Offices of Attorneys-General, crisis due to non-appointment of qualified staff

1. Sen R J RADUE asked the Minister of Justice

- (1) Whether the Offices of Attorneys-General are experiencing a crisis due to the non-appointment of qualified staff in vacant positions, if not, what is the position in this regard, if so,
- (2) whether he has taken any steps to ensure that the effective prosecution of criminals and the administration of justice are not prejudiced thereby, if not, why not, if so, what steps?

S36E INT

The MINISTER OF JUSTICE Mr President, the reply to the question is as follows. It has been alleged in certain quarters that the morale in the Attorneys-General's offices is low, that there has been a spate of resignations in those offices and that the appointment policy of the Minister is responsible for what is referred to as a "crisis" in the Attorneys-General's offices.

Firstly, with regard to the Offices of the Attorneys-General, I wish to say that whilst problems in certain of the Attorneys-General's offices should not be underestimated, they should also not be exaggerated. Therefore, one must look at the facts which are as follows. Firstly, the approved establishment of the Attorneys-General division for the whole country provides for 278 professional posts. This includes additional posts to the approved establishment. The total number of vacant posts throughout the country is 27.

Secondly, the position at the various offices—if we were to break them down—is as follows. In Cape Town the number of posts is 38, the number of vacant posts is two. In Johannesburg the number of posts is 63, the number of vacant posts is 11. In Pretoria the number of posts is 74, the number of vacant posts is 7. In Grahamstown the number of posts is 30, the number of vacant posts is two. In Kimberley the number of posts is 14, the number of vacant posts is one. In Pietermaritzburg, the number of posts is 44, the number of

vacant posts is 4. In Bloemfontein, the number of posts is 15 with no vacant posts.

Then there is the Office For Serious Economic Offences. In Cape Town the number of approved posts is three, the number of vacant posts is nil. In Pretoria the number of approved posts is nine, the number of vacant posts is one.

From the above statistics it is clear that except for Pretoria, with seven vacancies, and Johannesburg, with eleven, there are indeed very few vacant posts. This does not justify statements alleging a general or countrywide crisis.

The procedure for appointments is time-consuming as it entails, among other things, the placing of advertisements and interviews with prospective candidates by a selection committee on which the Attorney-General is represented.

It is the policy of the Department of Justice that in the filling of vacancies every endeavour should be made to make the service broadly representative in terms of race and gender as required by the Constitution.

It should be stressed that appointments are made in terms of the Public Service Act of 1994, the Public Service Staff Code, lawful directives from the Public Service Commission and with due cognisance taken of section 212 of the Constitution.

Promoting representativeness does not mean appointing unqualified persons. However, it does mean that in appropriate cases, previously excluded men and women with qualifications but with little or no experience, may be appointed.

The fact that apartheid laws denied Blacks the opportunity to acquire experience in the past must be taken into account as one of the relevant factors in considering appointments, especially when there is an endeavour to promote representativeness [Time expired].

Senator R J RADUE Mr President, the NP supports the principle of affirmative action. It is necessary to redress the imbalances of the past. Its object is the attainment and enjoyment of full and equal opportunities for all South Africans. With that we have no problem.

What is of grave concern to the NP is the obvious general dissatisfaction being voiced by the personnel of the Department of Justice at the

arbitrary manner in which affirmative action is being applied in the department. We understand that the courts have been asked to find upon the constitutionality of the application of affirmative action in the department.

The latest outcry—which is receiving wide media coverage—only serves to confirm what the Attorneys-General warned about six months ago when they reported to the joint sitting of the justice committees of the Senate and the National Assembly in September 1995 in Pretoria. Without exception the Attorneys-General referred to the problem of vacant posts and an uncertain career future.

Adv D'Oliviera, Adv Atwell, Adv McNally, Adv Du Plessis and many others pleaded for job reassurance and career security for their staff. To put it bluntly, throughout the offices of the Attorneys-General in South Africa there are vacancies, including many important senior vacant posts.

We understand that the hon the Minister has the responsibility of approving these appointments. The buck does stop with him. Existing competent and qualified staff apply for these posts, but they are not appointed. The vacancies remain open because no suitably qualified applicants from the disadvantaged category are, in fact, available. The applicants—who apparently belong to the non-disadvantaged but experienced personnel and who are overworked and underpaid—despair of promotion and become demotivated and uncertain about their future. They are resigning in ever-increasing numbers. In fact, they are becoming the disadvantaged.

Insensitive and imperialistic application of affirmative action is resulting in the destruction of morale and will debilitate the administration of justice.

The hon the Minister may deny the crisis, but he cannot escape the facts. Senior personnel are leaving his department and if he is not careful he will be left with a depleted, incompetent and inexperienced prosecutorial authority, which will be overwhelmed by the present avalanche of violent criminal cases and serious economic offences.

Can the hon the Minister give us further assurances in this regard? Can he be open and admit that there are shortages of staff, and is he taking all the steps reasonably necessary to remedy the problem?

*Senator J R DE VILLE. Mr President, in spite of what the Minister has now told us, the assurance he has given us, it is clear that there is a crisis in the offices of the Attorneys-General.

The hon the Minister admitted this himself. In *Die Burger* of 14 February it is stated:

Mr Omar erken dat die afdeling prokureurs-general in 'n krisis is.

If he admits it, and he has never at any stage denied it, it is clear that a crisis does exist.

What is worst of all is that, as the hon Senator Radue has just said, the hon the Minister was warned last year by three Attorneys-General that these crises were going to arise. I have their reports here, and the hon the Minister can look at them. The reports come from the Attorneys-General of the Witwatersrand, the Transvaal and the Cape of Good Hope. All three these reports clearly indicated to the Minister that a crisis was going to arise. What did the Minister do about this?

Last year we also had an interpellation about the magistrates who find themselves in the same position. In this case the hon the Minister also told us that the matter was under control. However, it is clear from all the reports we are receiving from all over, also from the Attorneys-General [Time expired].

Senator A E VAN NIEKERK. Mr President, it is of vital importance for South Africa to get answers from the hon the Minister on the following questions and allegations. Why did State attorneys and advocates in the Western Cape and do State attorneys and advocates in Gauteng want to take him to court on his affirmative action appointments? The Minister's motivation for his actions in the face of the Constitution and the Public Service Act is dubious.

I wish to state here today that I am sure that the Minister's intended appointments are invalid, for he never followed the correct statutory prescriptions. However, let the court decide. If he, at least, had a look at the Public Service personnel code, he would have been familiar with the fact that it caters for affirmative action. We support that, but not as an objective on its own as he is doing it right now. The hon the Minister should be brave and tell this House today what criteria he has used in these appointments.

The Minister, the ANC and South Africa are losing the fight against crime. It is thanks to the

Minister and the ANC's intended appointments without experience and their incapability to remunerate this sector sufficiently. [Interjections.] [Time expired.]

Senator J SELFE. Mr President, when all is said and done, this interpellation is about the fears of White members of the Department of Justice regarding affirmative action. The public servants in question believe that they are being prejudiced, while the Minister wants to make his department more representative of the public it serves. And so it should be. Nowhere do the public and the State interface more closely than in our courts. It is essential that the criminal justice system becomes more user-friendly to the vast majority of people who get caught up in it.

It is, however, also essential that the criminal justice system works efficiently. This is a key element in any crime prevention strategy. It will not work well while people are leaving or threatening to leave in droves from the Attorney-General's department.

I support the comments of Adv Frank Kahn, who states that there is room enough for everybody in the Department of Justice. However, this will take money. Somehow the Minister needs to bargain for more money to make the department both efficient and representative.

Senator M L MUSHWANA. Mr President, I think hon members in this House must learn something in the new South Africa, namely that people who are leaving this job are not leaving because there is job insecurity. Some of them are leaving these jobs because they are afraid Blacks will be employed as well. [Interjections.] They have, for so many years, enjoyed the exclusion of Blacks. The moment they realise there is rationalisation, they start moving out of the department and claim that they are moving because there is too much work.

I think it is high time that we educated our people, and taught them about the new concepts so that we all move together. They must learn to accept that we are not there in the higher hierarchy of the Department of Justice, and we need to have other people moving into these hierarchies before we start. [Interjections.]

Experience is not gained from a tree. We were excluded. How were those people to get experience from the tree? It is high time that we put them in this employment, and then they will gain experience. We cannot now say we need experi-

ence, meaning that we want to take those people who were advantaged throughout the years and put them in the portfolio, because we do not have the experience, and exclude the rest of the people.

Senator R J RADUE. Mr President, let me repeat the NP supports affirmative action. [Interjections.] and its fair and equitable application. The NP does not support unfair racial discrimination in reverse, for which there is no constitutional justification.

The NP is anxious to ensure the establishment of law and order and effective justice in this country. We are against criminal licence. We are for the security of the person. The NP is against discriminatory appointments which are not based on equity and merit. Any appointment which ignores merit and equity is unjust.

The NP regards the proper application and administration of justice through the Ministry and the courts as the cornerstone of our constitutional state and our democracy. If it fails, they too will fail.

All we in the NP ask is an assurance that when the hon the Minister exercises his power in terms of the Constitution, his power to apply affirmative action in his department, he does so in the spirit of the Constitution, justly and fairly on an equitable basis, within the limits of what is reasonable and justifiable in an open and democratic society.

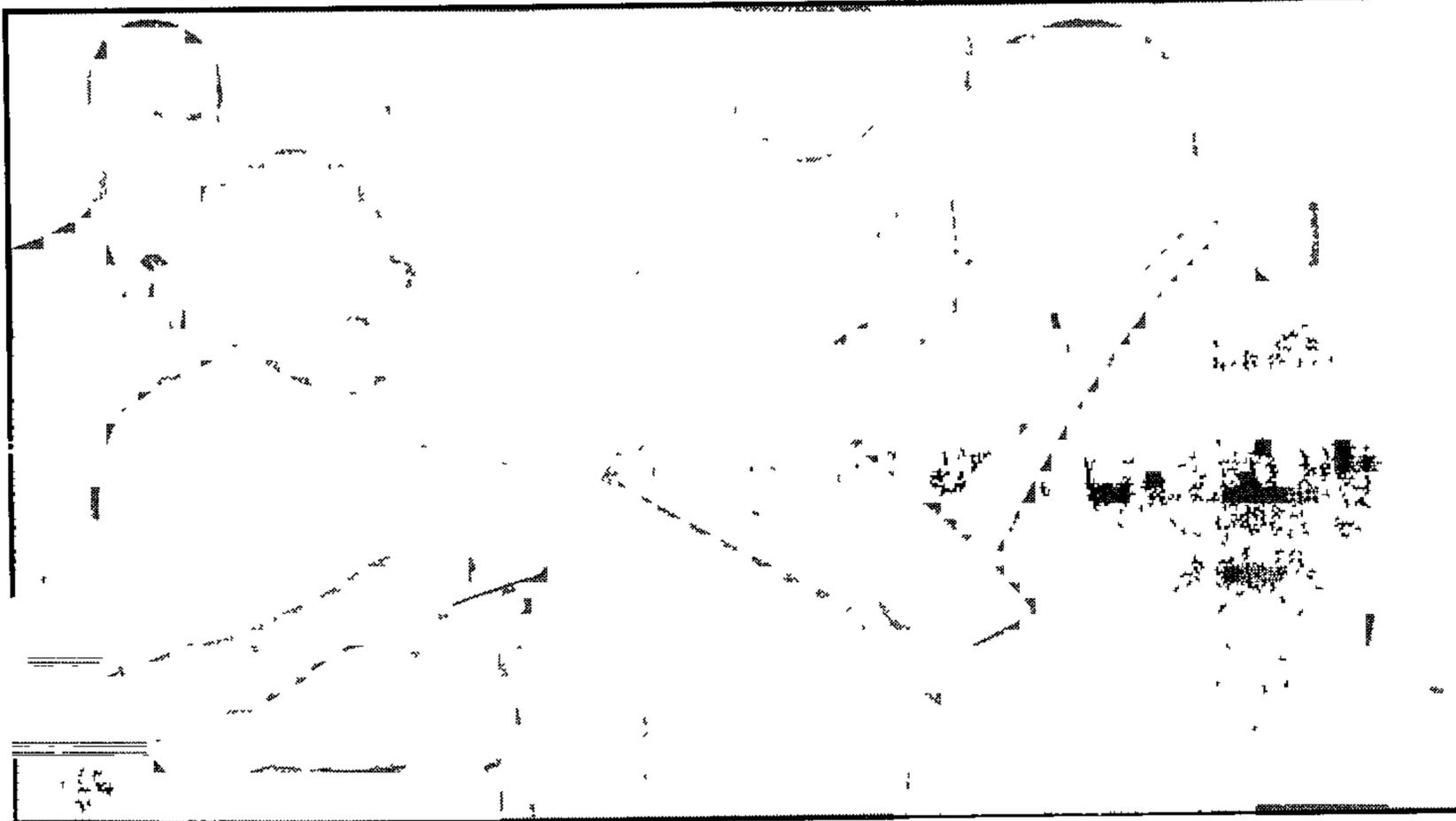
Let us not, through short-sighted efforts to achieve a total instant reversal of the effects of apartheid, destroy what is a well-founded prosecutorial and judicial infrastructure and reap a harvest of anarchy. Wrongly administered, affirmative action can become the most effective catalyst for polarisation of the people of South Africa. Wrongly administered, it will disunite and divide rather than bind. Wrongly administered, it will spoil rather than promote the new patriotism for which we are all looking. Wrongly administered, it will achieve in reverse what apartheid achieved in forward gear. [Interjections.]

Affirmative action must be handled with discretion and great care by those who are obligated to apply it. We trust that the hon the Minister and all Cabinet Ministers will heed this call. [Time expired.]

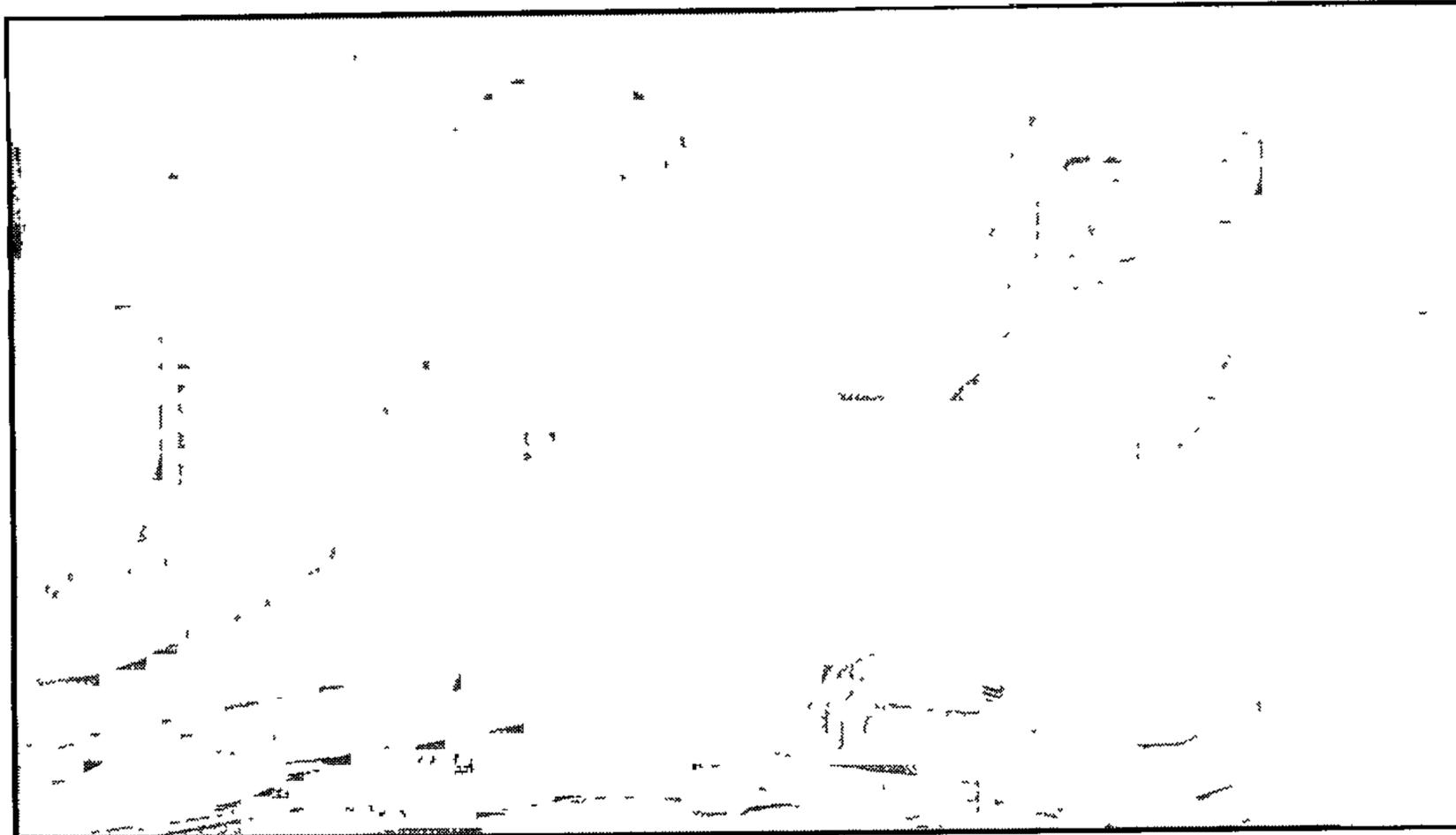
*Senator A E VAN NIEKERK. Mr President, on a point of order. During the hon senator's speech, one of the hon senators opposite called him a liar. Is that parliamentary?

Truth Commission hopes to announce its first hearing soon

(252) ARG 23/1/96



TEAM COMPLETE: The Rev Khoza Mgojo is sworn in as a member of the Truth and Reconciliation Commission by Archbishop Tutu. Mr Mgojo, a Methodist cleric from Kwazulu-Natal and executive member of the SA Council of Churches, was unable to attend the commission's first meeting and took the oath at a meeting today.



COMMISSIONERS: Getting down to tough decisions about the workings of the commission are Chris de Jager, a former Conservative Party MP and Volkstaat Council member, the Rev Bongani Finca, an executive member of the SA Council of Churches, and former National Party and Democratic Party MP Wynand Malan.

CLIVE SAWYER
Political Correspondent

THE Truth and Reconciliation Commission hopes to announce at the end of the week the date and venue of its first hearing

Emphasising the eagerness of the commission to begin work, its head, Archbishop Desmond Tutu, said "We would like to have had the hearings happen yesterday" But much remained to be done before they could get under way

The commission's Adderley Street offices have yet to get furniture, telephones and other equipment — and staff recruitment has just begun

Commissioners, who spent yesterday in spiritual retreat got down to discussing administrative matters today

These include witness protection, remuneration of commissioners, staffing, report backs by committees assistance from donors and media liaison

The discussions will continue until Friday

Because potential witnesses are likely to be subjected to screening before appearing at public hearings, staff will have to be recruited to conduct these initial interviews

At the beginning of today's hearing, commissioner Khoza Mgojo was sworn in. He was unable to attend the commission's first meeting in December

With the commission due to sit for about 18 months, it has not been decided whether commissioners will be expected to act on a full-time or part-time basis

Most of the work of the commission will be done by its three committees, on amnesty, human rights violations and reparation and rehabilitation

The amnesty committee has not yet met

The committee is made up of judges from the Cape, Kwazulu-Natal, Gauteng and the Free State and will have to decide where it will base itself

It has significant power because its decisions are not subject to review by the plenary of all 17 commissioners

Archbishop Tutu opened today's meeting with a moment of silence and a prayer which included the words "Teach us to listen to the whisper of the hopeless and the cry of the forgotten"

Crime forces government to reconsider rights bill

ARGUS 23/1/96 (252)

ROGER FRIEDMAN
Staff Reporter

THE government is being forced to look "very critically" at certain areas of the Bill of Rights after failing to anticipate the crime wave bedeviling the new democracy.

African National Congress MP Willie Hofmeyr said yesterday the government's revisiting of contentious issues relating to the criminal justice system — such as bail, limitations clauses and imprisoning juveniles — should not be construed as an attempt to water down the Bill of Rights.

He was speaking after a panel discussion on crime, justice and the Bill of Rights hosted by the Human Rights Committee at the University of the Western Cape.

"The issue of crime is a vital one. We cannot simply ignore these concerns.

"Otherwise populist demands for tougher action against

criminals will eventually sweep away all the rights for which we have fought so hard in this country," said Mr Hofmeyr.

Earlier, the government was roundly criticised by the gathering of legal academics and human rights workers for releasing a draft bill of rights for public scrutiny and comment in November while simultaneously "continually amending" it through political party negotiation in the Constitutional Assembly.

In a statement, the Human Rights Committee said the delegates to the conference which preceded the panel discussion had "criticised the freedom of expression clause and rejected the provisions restricting freedom of expression, like those relating to hate speech".

The group felt the general limitations clause was sufficient in allowing appropriate regulation.

NO grounds for death penalty

Calls for the people to decide on capital punishment in a referendum are pointless, writes Piotr

23/1/96

Stw 23/

Nowosad



South Africa has recently joined nearly half the countries around the world in discontinuing the use of the death penalty through the landmark decision of our Constitutional Court.

Now, with the discussion on the right to life in the draft constitution, the debate has been re-opened. Calls have been made for "the people to decide" in a referendum. One such call was made by Mandela Seleane of the Human Sciences Research Council (The Star, January 5).

Seleane states correctly that "because of the emotive nature of the debate, it is often not easy to inquire into the issues involved on a consistently rational basis". But then he goes on to recommend that the issue be decided by referendum. A referendum is unlikely by its very nature to be rational.

Emotional, appeals and not reasoned analysis are the stuff of referenda.

The Constitutional Court has already examined the issue in a rational, intelligent and unbiased manner. The top legal minds

of South Africa were involved in the case. The Court came to the conclusion that the death penalty violates basic fundamental rights and is at odds with a free society.

It also found that the death penalty held no special powers of deterrence for criminals.

Seleane would probably ask: "What rights? Rights are only relative to the society in which we live." The idea of human rights has indeed developed throughout history. However, today we have a universal minimum standard - the Universal Declaration of Human Rights. This standard is applicable to all people. It does not make exceptions for different societies and has been accepted by all states in the United Nations.

Local public opinion cannot limit these rights. From Hitler's Germany to Cambodia we have seen terrible crimes inflicted upon powerless minorities. Some of these crimes may have the support of the majority of the local population. That does not make genocide, judicial murder or torture acceptable.

Seleane says in the new South Africa there is no such discrimination. That is utopian. There is always discrimination. A major problem with the implementation of the death penalty is in its selective application. It is inflicted on the most vulnerable members of society - the poor, the mentally disturbed.

The argument that because South Africa now has a non-racial democracy we will have an unbiased application of the death penalty is not borne out in the rest of the world. Studies in the United States have shown that black people are far more likely to be sentenced to death than whites, that the poor are more likely to be executed than the well-off, despite mandatory pro deo counsel, automatic appeals and opportunities for clemency.

Just as it is not possible to create a death penalty system free from caprice, discrimination or error, it is not possible to find a way to execute a person which is not cruel, inhuman or degrading. An execution, like torture, involves a deliberate physical assault on the prisoner. The long-term social effects of the message that the state is a

petrator of violence should not be underestimated. The death penalty cannot be used to condemn killing - it is killing.

There is a logical inconsistency in condemning torture while supporting the death penalty. If hanging prisoners by their thumbs in order to cause extreme pain is rightfully condemned as torture, how are we to describe the hanging of someone by the neck in order to kill them?

On the issue of deterrence, Seleane produces the following ingenious submission. "There is also no empirical evidence that capital punishment does not succeed as a deterrent." The evidence available is as follows. Statistical analysis cannot be used to prove anything, but it can be used to indicate a correlation. Study after study worldwide, despite different countries, times and methodologies of analysis, show no correlation between use of the death penalty and the rate of crime. The two are simply not connected.

A United Kingdom commission surveyed seven European countries, New

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Zealand and individual states in the US and Australia. It concluded: "There is no clear evidence in any of the figures examined that the abolition of capital punishment has led to an increase in the homicide rate, or that its reintroduction has led to its fall."

A United Nations survey concludes that there is no evidence that use of the death penalty reduces violent crime.

The death penalty will not affect South Africa's crime rate in any way. Too often we look for easy solutions to difficult questions. Crime could be reduced by improved polic-

ing, a more efficient judicial system and addressing the social and economic roots of crime.

Cruel, arbitrary and irrevocable the death penalty is, and has always been, imposed disproportionately on the poor and powerless. It has no special ability to reduce violent crime. It is a violation of human rights. Like other fundamental rights issues, like torture, it cannot be subject to the vagaries of public opinion.

■ *Piotr Nowosad is the national secretary of Amnesty International, South Africa.*

COURAGEOUS RAPE VICTIM SUES GOVERNMENT

SA's shocking legal shambles

(252) ET 23/1/96
A YOUNG WOMAN who was raped and left for dead by two men who were out on bail in connection with other rape charges is suing the government. "Someone didn't do his job properly," says her lawyer JACKIE CAMERON reports

AS one of the country's high profile rape victims prepares to take on the government over the legal shambles that led to her ordeal, politicians and legal experts have lashed out at a justice system grossly ill-equipped to cope with South Africa's shocking crime rate.

The Port Elizabeth woman, identified only as Alison, received awards for her bravery and courage in surviving a terrible attack by two men in December 1994. They raped her and then tried to kill her, wounding her critically.

Alison survived by crawling to a nearby road with her throat and stomach cut open. She became the conscience of a nation as she bravely spoke out about the attack, and what raped women suffer.

Now she is suing the departments of justice and safety and security for at least R500 000 to cover her medical bills.

During the trial of her two attackers, Frans du Toit and Theuns Kruger it emerged that when they attacked Alison they were out on bail in connection with two other rape charges.

The two men are now in prison serving life sentences, while Alison was back in hospital yesterday undergoing another operation, her attorney, Mr Michael White, said.

He said "This claim is for compensation for genuine loss. She has huge medical bills. She is tired of publicity now and this is also not about profit or morals."

"The reason her attackers were released on bail had nothing to do with the law. Someone did not do their job properly," White said.

Meanwhile, at a conference on crime, justice and the draft Bill of Rights at the University of the Western Cape, ANC MP Mr Willie



WILLIE HORNMEYER - Less than 20% convictions obtained

Hornmeyer said convictions were obtained in less than 20% of cases brought to court and that 25% of people released on bail failed to reappear in court.

Ms Alison Tilley, of the National Association of Democratic Lawyers, said there were three people "trying to deal" with 40 000 maintenance cases at the Mitchells Plain Magistrate's Court and that "the best law in the world cannot deal with this."

Police-legal experts and community representatives also said:

- The entire administrative staff of the justice system, courts and police need to be retrained;
- Adequate facilities for law-nile offenders need to be built; and
- Staff need to be trained to prevent them from escaping and committing crimes again, and

• Constitutional law must send a clear message to criminals that they cannot expect five-star treatment.

Hornmeyer lashed out at critics who believed the government was moving away from the human

rights culture with amendments to the Criminal Procedures Act. The onus is now on a suspect to provide reasons why he should be released on bail, rather than on the state to prove why he should not.

He said "We do not think our constitution needs to give our criminals greater rights than in other rights-based democracies. Our bail system is still more generous than most European countries and is based on Canada's, where there is a similar constitution."

Members of the Human Rights Committee have expressed "concern" that "draconian" laws may be passed that no longer mean a person is innocent until proven guilty — and believe the onus should still be with the state to prove that someone should be deprived of liberty.

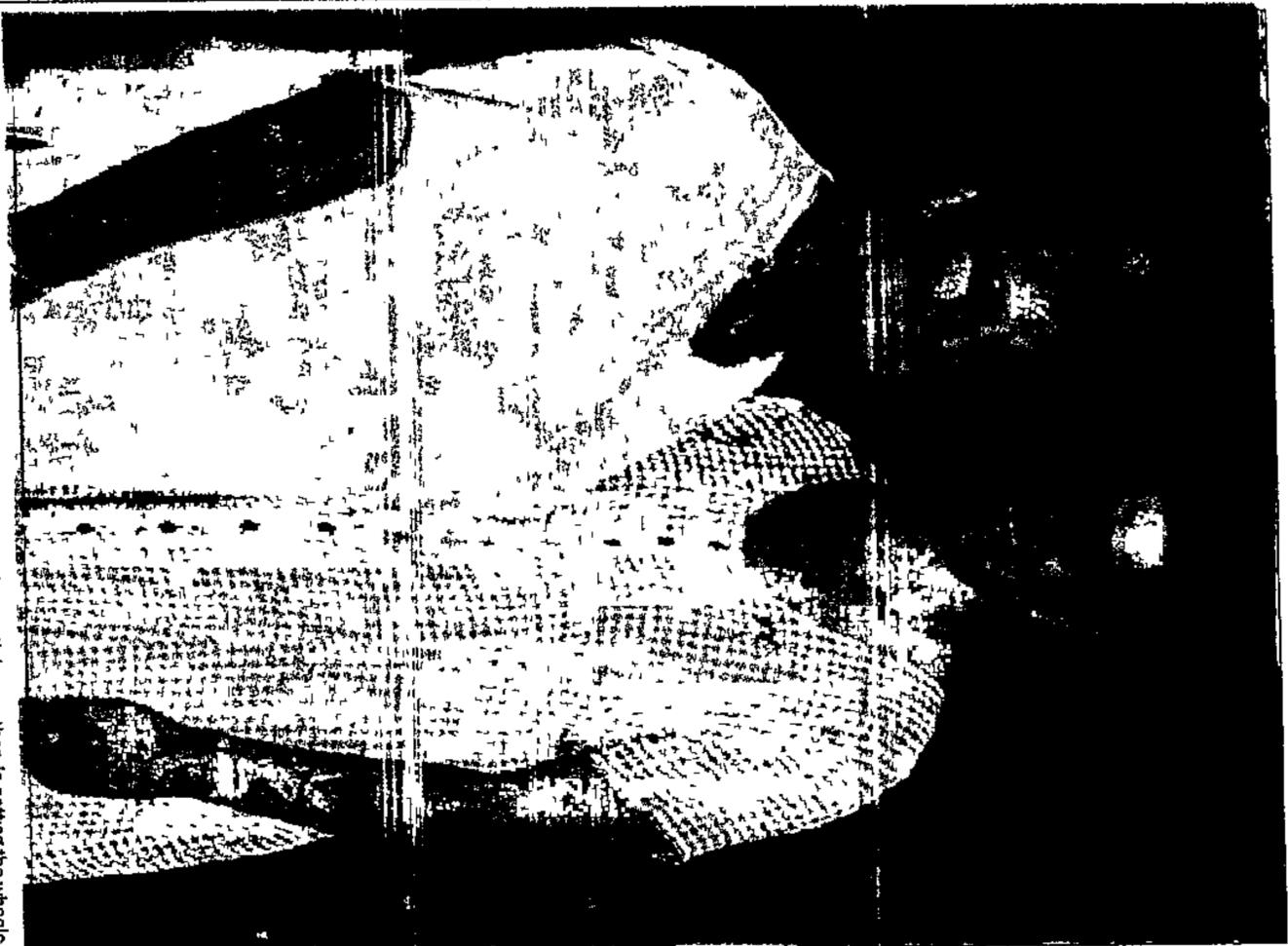
The Western Cape's Anti-Crime Forum representative, Mr William Basson, said: "We must not abort our aim to build a human rights culture, but we must also be realistic. Communities are struggling every day in the hands of offenders."

"Police are not doing their work. At least 40 dockets involving gangsters and drug-related cases have disappeared from Mitchells Plain court. We must accept that, in this new dispensation, organised criminals are abusing the human rights culture."

MP Mr Chand Steyn said: "The fight against crime is no longer an issue between the state and the accused. The victim and the real crime community are involved."

The Human Rights Committee, which monitors human rights in the legislative sphere, is preparing a report on concerns about the draft Bill of Rights which will soon be made available to the public.

A spokesperson for the committee said "The standard of scrutiny in this bill is lower than in the interim constitution. It gives the government more leeway."



VICTIM OF THE SYSTEM Port Elizabeth rape victim Alison, seen here with her mother, is setting the wheels in motion to sue the government for at least R500 000. Bungling led to her attackers being released from police custody on two separate occasions before the night she was raped and had her stomach and throat slit.

PICTURE COURTESY OF FEMINA

Truth Commission gets down to work

THE 17-member Truth and Reconciliation Commission, headed by Archbishop Desmond Tutu, began a crucial week-long session in Cape Town yesterday which started with the swearing in of KwaZulu-Natal commissioner the Rev Khoza Mgojo

Mgojo, a former president of the South African Council of Churches, was unable to attend the first meeting of the commission at Tutu's Bishops-court residence in mid-December.

Umtata attorney Mr Dumisa Ntsebeza, who heads the commission's investigative unit, was the only commissioner not present at yesterday's meeting.

Tutu said Ntsebeza had left Cape Town suddenly on Monday - while his fellow commissioners were on spiritual retreat at an Anglican estate outside Somerset West - to attend to

an "urgent family crisis"

Tutu confirmed that the commission hoped to be in a position on Friday to announce when and where its first public hearings would be held.

Commission spokesman Mr John Allen told a Press briefing afterwards that it was unlikely Tutu would be in a position to say which case the commission would hear first as the staff needed to complete preliminary assessments of cases.

He said the commission's media office was to be expanded to deal with the flood of media queries. "At the moment we are just not coping."

The commission is this week expected to take decisions on the location of regional offices, the commission's investigative unit, a communication strategy and offers of foreign assistance - Sapa

(252)

Journalist 24/11/96

Prayer marks start of long-awaited truth body

Date of first hearings into human rights abuses during apartheid years to be announced on Friday

AFP
Cape Town

The Truth and Reconciliation Commission came into practical life yesterday refreshed and spiritually strengthened by a day at an Anglican retreat with their chairman, Archbishop Desmond Tutu

The commissioners began their first meeting with a moment of silence and then Tutu led them in prayer which beseeched. "Teach me to listen, Lord"

The commission is now almost ready to listen to confessions concerning the cruel history of apartheid, but it must first establish the machinery for its inquiries into a dark past

Tutu acknowledged that they would have liked to have started with witnesses immediately

"We would like to have the hearings happen (as from) yesterday," he said "But clearly we

Star 24/11/96 (252)
have to prepare. We've got to appoint people, and we've all just got back from holiday."

Tutu said the commission would announce the date of its first hearings on Friday, at the end of its three-day meeting

One of the members of the panel, Dr Khoza Mgojo, who had missed the swearing-in ceremony last month, then took the oath

Afterwards, the 16 commissioners got down to the business of establishing the three committees that will conduct the hearings

The 17th commissioner, Dumisa Ntsebenza, had been given leave to attend to a family crisis, sources at the commission said

Tutu's spokesman, John Allan, who is now also the commission's spokesman, said a chief executive officer for the commission, as well as secretaries for the three committees, had yet to be appointed

The commission might also have to appoint legal staff to examine potential witnesses and to lead evidence before the committees

The three committees will separately

- Examine gross abuses of human rights during the apartheid era.

- Decide on the granting of amnesty to perpetrators who have made full disclosures

- Decide on appropriate reparation to be paid to victims.

The real work of the commission will be done in these three committees, which have been augmented by the appointment of a number of judges

The amnesty committee, for example, will not have its decisions reviewed by the full commission, said Allan

It is likely that the committees will travel the country to undertake their hearings, he added

Omar brings down the gavel on a new era of legal access for Sowetans

BY ABBEY MAKOE
Soweto Bureau

Justice Minister Dullah Omar officially opened the Soweto offices of the Legal Aid Board in Mofolo during a ceremony yesterday

"This is a step in the right direction. It is now time that our people must know their rights in terms of the constitution," Omar said.

He foresaw a stage where all sectors of the SA community, in-

cluding rural areas, would soon benefit from a further opening of more legal aid offices throughout the country.

"This is an act of empowering our people. We need to ensure that there is access to justice for everybody."

He added that a bill, which has been approved by the Cabinet, has already been submitted to the state law advisers.

"It will extend the application of the South African Legal Aid Act

to the areas of the Republic where it does not apply at present," Omar said.

He said the country also needed an independent judicial system. "If our courts were to depend on public opinion, they would lose credibility in the long run."

Among other dignitaries who attended the ceremony were Soweto's senior public prosecutor Lampies Lambrecht, Constitutional Court president Arthur

Chaskalson, Sowetan editor Aggrey Klaaste and a host of councillors.

The newly opened law office is staffed by one principal attorney, three candidate attorneys, a legal aid officer, an assistant legal aid officer and two other administrative personnel.

The office is headed by Mashumi Mzaidume. A further seven candidate attorneys will be appointed soon, according to the Legal Aid Board.

(252) STW 24/1/96

Truth body CT 20/1/96. meets in city (252)

BARRY STREEK
POLITICAL WRITER

THE Truth and Reconciliation Commission began a four-day working session in the city yesterday to decide on structures and procedures and to begin preparations for its first hearing on human rights violations under apartheid.

"We would like to have had a hearing happening yesterday, but clearly we need to prepare," said commission chairman Archbishop Desmond Tutu.

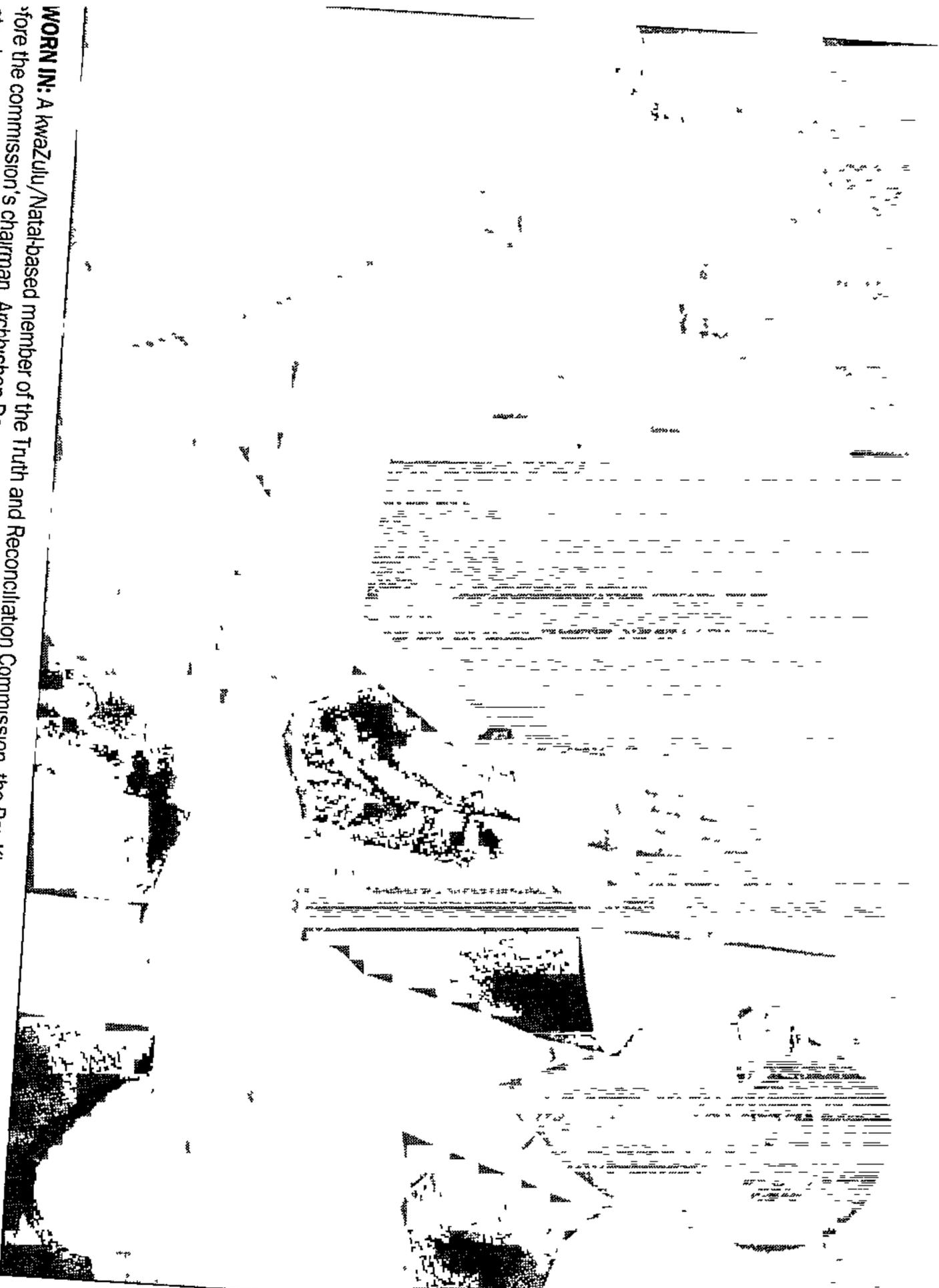
"We've got to appoint staff and we have just come back from holidays," he added.

The 17-member commission will meet daily until Friday, when a news conference will be held to disclose its plans.

Tutu said he hoped the commission would be able to announce on Friday the date and venue of its first hearing.

Yesterday's proceedings were opened with a prayer and the swearing in of kwazulu/Natal commissioner, the Rev Khoza Mgojo, a former president of the SA Council of Churches. Mgojo was unable to attend the commission's first meeting in December.

Tutu said the commission had



WORN IN: A kwazulu/Natal-based member of the Truth and Reconciliation Commission, the Rev Khoza Mgojo, yesterday took the oath of office before the commission's chairman, Archbishop Desmond Tutu. The full complement of 17 commissioners started a four-day meeting in Cape Town yesterday morning after a day-long retreat on Monday.

PICTURE BENNY GOOL

CT

24/1/96

252

... fed on the law stipulating
its activities and on proposals on
how its committees and investiga-
tive unit would operate.
This included an analysis on
how the Promotion of National
Unity and Reconciliation Act gov-
erned its three committees — on
human rights violations, amnesty
and reparation and rehabilitation
— and an explanation of how deci-
sions by the committee on
amnesty could not be reviewed by
the commission.
The commission was told it
had powers to inspect premises,
seize articles and issue subpoenas.
It was also told it could request
a court to postpone proceedings
before it after the receipt of an
application for amnesty and it
could recommend reparation to
victims.

Cape Town base for amnesty panel

Political Correspondent

THE Truth and Reconciliation Commission's amnesty committee is to be based in Cape Town, commission head Archbishop Desmond Tutu has announced

The two other committees, on human rights violations and on reparations and rehabilitation, will be headquartered in Gauteng (252)

Regional offices of the commission are to be set up in Cape Town, Johannesburg, Durban and East London.

Members of the amnesty committee will begin scrutinising the about 2 000 applications which have been made

Archbishop Tutu said some progress had been made towards drafting a standard form for applying for amnesty

Budlender to lead land reform

CT 25/1/96
POLITICAL WRITER

A FORMER president of the University of Cape Town SRC, Mr Geoff Budlender, was appointed director-general of land affairs yesterday

His appointment was approved by the cabinet at its first full meeting of the year in Pretoria, cabinet secretary Dr Jakes Gerwel said

Budlender, who heads the Legal Resources Centre, chaired the Nusas management committee in 1973 after eight student leaders were banned following a report of the Schibusch Committee

An attorney who was involved in several major legal challenges to apartheid laws, Budlender will now spearhead the government's land reform programme

ANC, NP in judges deadlock

(252) CT 25/1/96
CONSTITUTIONAL negotiations over the appointment of Constitutional Court judges and attorneys-general deadlocked yesterday, the ANC said.

ANC MP Mr Carl Niehaus said the ANC and the National Party were unable to agree on the issues at a meeting of a sub-committee of the constitutional committee

The ANC believed judges should be recommended to the Constitutional Court president by the Judicial Service Commission, while the NP wanted Parliament to play a role in the appointments.

Niehaus said this was undesirable because the judiciary should be independent of party politics.

The second controversial issue was the ANC's push for a national attorney-general.

Niehaus said justice was a national issue, not a provincial one. The present system of 14 attorneys-general meant policy decisions were inconsistent.

— Sapa



Truth body starts KwaZulu inquiry

(252) BD 26/1/96
Wyndham Hartley

CAPE TOWN — The truth commission's reparations committee will begin its work on the KwaZulu-Natal south coast where 19 people were massacred in political violence on Christmas Day

Hlengiwe Mkhize of the truth commission staff said yesterday the committee would meet organisations in Port Shepstone early next month to begin its work.

A mass attack by more than 600 armed men left 19 people dead in Shobashobane near Port Shepstone late last year, in an area that has been plagued by political violence for years

Police commissioner George Fivaz announced earlier this week that there was clear evidence that some police officers were involved in the incident

Mkhize said this first consultative meeting with community organisations on February 7 would be followed by others in other regions of the country.

The purpose of the meeting would be to draw on the experiences of various community organisations in drawing up recommendations on a policy for reparation and a strategy for rehabilitation, Mkhize said

"The function of the reparation and rehabilitation committee is to make recommendations to the President on both urgent interim relief and long-term reparation for the victims of gross human rights violations."

VAT on gambling plan raises 1

Tim Cohen

CAPE TOWN — The Katz commission's recommendation that gambling be subject to VAT was met by a chorus of disapproval from provincial government representatives yesterday

The representatives claimed that a potential investment of R20bn would not take place if the proposal was implemented.

At a hearing on the commission's report before the parliamentary finance committee, Scott Scherer, a representative of Las Vegas-based company International Game Technology, said should the proposed taxes be applied, a host of very successful casinos around the world would run at a loss.

Scherer said it was expected that 34 casinos would be created if the proposed legislation was implemented, which would create 40 000-60 000 jobs. If a 15% gambling tax was imposed on top of VAT, this investment would simply not take place, and many illegal casinos would continue to the detriment of the fiscus.

Sun International MD Peter Bacon said his company's calculations demonstrated the same results VAT was normally applied to casinos' net win and not to their profit, which meant that direct expenditure, overheads and capital charges were not taken into account

Sapa reports Bud Russell, former CEO of US-based International Game

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Classification dispute as matric passes fall

Ingrid Salgado

THE pass rate for black matric pupils last year fell 10,5% to 43,4%, according to figures published by the SA Institute of Race Relations in its journal Fast Facts yesterday

The figure compared with a pass rate of 55,25% for matric candidates of all races.

The institute said that Education

(252) BD 26/1/96
Minister Sibusiso Bengu's claim that government had been able to "arrest the trend of decline in education" was contradicted by a deterioration in black pupils' results

The institute said Bengu was unwilling to publish results broken down by race. However, the Central Statistical Service believes classification should be reintroduced to track the demise of racism.

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Clash over judges, attorney-general

By JOVIAL RANTAO
Political Reporter

The ANC and the National Party have deadlocked on two key issues in a subcommittee of the Constitutional Assembly dealing with the judiciary. ANC spokesman Suedé Villiers said the two had serious differences over the appointment of Constitutional Court judges and the establishment of a national attorney-general's office.

On the appointment of judges, the ANC position is that the present system,

through which the country's president recommends names to the Judicial Service Commission, who would then make the appointments, should be retained.

The NP, De Villiers said, wants Parliament to play a role in these appointments.

"The NP suggestion is highly undesirable, given the principle that the judiciary should be independent of party politics. Giving the task of making such key appointments to Parliament would lead to the possibility of party-

political horse-trading."

The second disagreement is over an ANC proposal for the establishment of the office of a national attorney-general. The ANC wants the present 14 provincial attorneys-general to be replaced by one office because, it says, justice is a national and not a provincial issue, while the NP's proposal is that the present system should be retained.

Danie Schutte, the NP's justice spokesman and representative on the subcommittee, was unavailable for comment yesterday.

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Eugene de Kock is free to apply to commission, says Tutu

MICHAEL MORRIS

Staff Reporter

FORMER Vlakplaas commander Eugene de Kock, accused of hit-squad activities, is free to apply to the Truth and Reconciliation Commission (TRC) for amnesty, but has yet to make a formal application

If he did, he would have to submit himself to the process of disclosure and a full assessment of whether he should be granted amnesty

This emerged at a Press conference by TRC chairperson Archbishop Desmond Tutu and vice-chairperson Alex Boraine

It also emerged that a formal request for amnesty would not automatically lead to the suspension of his trial. This would be up to the Attorney-General, who would consider an application for a suspension

Dr Boraine said that in all cases where someone was on trial for a crime or crimes which might fall under the terms of the TRC Act, "the onus is on the accused" to apply for amnesty and submit to the process

He added "There have been indications that (De Kock) may wish to apply, but there has been no formal approach"

Dr Boraine said the set procedure for application for amnesty was the same for Colonel De Kock as for anyone else

"There is a prescribed form. Once that has been filled in and submitted, it is treated like anybody else's application"

Equally, anyone — even Colonel De Kock — wishing to make a presentation to the TRC's human rights violations committee could simply make application to do so

The first 2 000 seek amnesty . . .

MICHAEL MORRIS

Staff Reporter

THE first steps towards drawing the veil on apartheid atrocities will be taken next week when the Truth and Reconciliation Commission's committee on amnesty begins processing the first batch of nearly 2 000 requests for amnesty

The TRC has set a target date of late March or early April for its first public hearing — probably in the Eastern Cape, a region beset by waves of repression during the 1980s

The commission is also embarking on extensive logistical and administrative preparations

Details were spelled out yesterday by TRC chairperson Desmond Tutu and vice-chairman Alex Boraine

The committee on amnesty is to travel to Pretoria next week to collect — from the Department of Justice — the first batch of amnesty "representations". A prescribed form for applicants will be published soon in the Government Gazette. Anyone seeking amnesty will have to fill this in and submit it to the commission before December 15 1996

Names of people given amnesty — and information indicating the crimes involved — will be published in the Government Gazette at the end of the process

Archbishop Tutu also announced that he and Dr Boraine had met deputy Presidents Thabo Mbeki and F W de Klerk for "informal" discussions on the work of the TRC — as part of a broader process of finding ways to secure the cooperation of parties in parliament

He added "We were satisfied that they (Mr Mbeki and Mr De Klerk) were genuine in expressing a willingness to be cooperative"

The Archbishop also indicated that priority was being given to establishing an investigative unit to verify all claims made to the commission

"It's task will be to verify information, not seek people out," he said

People accused of violations would be given the chance to respond to allegations before any hearing, Archbishop Tutu said

Stressing the importance of ensuring the TRC was as representative as possible, he said "We are trying to be as sensitive as possible to ensure that the commission and the opportunities we have are not rejected out of hand"

■ The Truth and Reconciliation Commission is about to start assessing the first batch of about 2 000 requests for amnesty.

"This is not a game of marbles — it's the lives of people, the nation and its stability and survival that we are about

"The results, either way, will have an incredible impact on our country and therefore you do all you can to ensure that it is not on principle that people say 'nonsense' and reject it out of hand

"We are committed to showing the commission, is not going to be a witch hunt. We want to reflect what is in the law and we are going to exercise impartiality as far as possible. This is not an academic exercise"

On threats to commissioners, Dr Boraine said the TRC took threats seriously, though would not become "obsessed" by them

Security experts would be called in to advise commissioners on their safety and other measures would be taken to protect them

Other logistical and administrative priorities of the TRC are

● Improving representativity. It has the option to appoint an extra 12 members to its committees and is considering additional people from North-West Province and women from the Eastern Cape and KwaZulu/Natal. It also seeks, specifically, "people broadly trusted across the spectrum" in KwaZulu/Natal, as well as people to "fill the gap in representation of the Dutch Reformed churches and the Jewish community"

● Setting up offices and employing staff in regional districts. The regional offices — in Johannesburg, Durban, East London and Cape Town — will be the main points of contact for victims and survivors. Commissioners will do a substantial part of their work in regional offices

● Drawing up a budget before March. This would amount to a "substantial" sum, Dr Boraine indicated

● Setting up an investigative unit to verify claims made to commissioners and setting up a sophisticated data base to help with the collection, analysis and cross-referencing of information

● Putting witness-protection procedures in place

● Consulting non-governmental organisations — a series of consultations starts on February 7 in Port Shepstone

Parties lock horns over bill of rights limitations

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By CYRIL MADLALA
Parliamentary Correspondent

ST 28/1/96

SOUTH AFRICA'S high crime rate has prompted heated debate amongst constitutional negotiators about the protection afforded to individuals by the bill of rights

Constitutional Assembly negotiators all agree that the bill of rights may be limited in certain circumstances, but this week could still not reach agreement on the extent of the limitation.

The debate is whether the rights should be limited when it is "reasonable and justifiable" to do so, or whether it must be "necessary" as well.

Locked in tough bargaining is the African National Congress against the Democratic Party, the latter supported by the National Party and the Freedom Front.

ANC negotiator Willie Hofmeyr argued that the bill of rights was being devalued and seen to be protecting criminals, therefore the constitution should not make it very difficult for law enforcers to deal effectively with criminals.

He cited practical examples "Every measure used to fight crime violates the rights of the alleged criminal in some way."

"If a strict test had to be applied before these rights could be limited, it would be very difficult for example for the police to hold roadblocks, or to cordon off and search houses for illegal weapons."

"How do you balance the rights of individuals, including criminals, with the rights to safety and security?" he asked.

But the DP's Dene Smuts argued differently.

"The ANC is setting this debate in the context of crime to the exclusion of all other rights of innocent citizens. We say you can be tough on crime without diluting constitutional rights."

"Improve police services and improve your own performance, as government and anything that needs to be done can be done under a constitution that is strict on the limitation of rights. I want a very strict test of necessity before the government cancels the next election," she said.

The DP option would ensure that debate would not be silenced through censorship, or movies classified, before a strict "necessity" test was done.



DENE SMUTS

The ANC's argument that human rights will be protected sufficiently by testing what is "reasonable and justified" in a rights-based democracy is backed by the example of the Canadian bill of rights.

Mr Hofmeyr said "It is good enough that we protect rights as much as in an average rights-based democracy. Given the serious crime situation, we do not need to lead the world when it comes to the protection of rights that impact on the ability to fight crime."

A possible resolution to the impasse could be to revert to the interim constitution's provision of applying different tests for different rights.

Still to be resolved between the parties is limitation on the freedom of speech with regard to hate speech.

Ms Smuts said that there was no need to list what forms of expression were not protected by the constitution, since other laws could deal with the consequences of hate speech.

"None of us like hate speech, it is appalling. But we ask if it is healthier for society to suppress unacceptable views or is it healthier for them to be ventilated? We can then deal with the consequences," she said.

The ANC's Mr Hofmeyr was adamant "We should have a clear message in the constitution that hate speech is not acceptable. It should not be given constitutional protection."

The debate continues next week.

Truth body to swell its ranks

By CARMEL RICKARD

THE Truth and Reconciliation Commission is about to appoint another 12 members to its subcommittees so that it will be more representative

The commission's chairman, Archbishop Desmond Tutu, said yesterday that he hoped the first public hearings would take place in two months. The Eastern Cape was a likely venue.

Before hearings could begin, however, a number of issues, such as staffing, office accommodation and additional members for two subcommittees, had to be finalised.

The commission wanted to improve representation from the North West province, from

women in the Eastern Cape and Kwazulu Natal, from the Dutch Reformed Church, and the Jewish community, and to ensure that any new people appointed from Kwazulu Natal had the trust of a broad spectrum of that region.

Archbishop Tutu said the commissioners had decided on a number of new appointments: an extra 10 for the committee on human rights violations and a further two for the committee on reparation and rehabilitation.

At their first meeting this week, members of the amnesty committee drafted a form for those wanting to apply for amnesty. This week the committee will start to wade through more than 2 000 applications from prisoners wanting freedom on political grounds.

The first public meeting to be held by any of

the three subcommittees is scheduled for Port Shepstone on February 7 when the reparations committee will consult local organisations on strategy. Similar meetings are planned for other parts of the country.

Archbishop Tutu said shortlisted applicants for the position of the commission's chief executive officer would be interviewed next week and that more staff advertisements would soon be published.

Experts have advised the commission on setting up a sophisticated computer data base to collect, store, analyse and cross-reference information. Commissioners have also been working on the establishment of a special investigative unit to help verify information presented at public hearings.

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EXORCISING THE PAST

SOUTH AFRICA IS following the example of at least 10 other countries in setting up a truth commission to probe human rights abuses during the apartheid-era

But while there are lessons to be learned from similar commissions in other countries, the way ahead for commission chairman Archbishop Desmond Tutu and his 16 fellow commissioners is still largely an uncharted one

The body's vice-chairman, Dr Alex Boraine, said that in setting up its Truth Commission, South Africa drew on the experiences of a country like Chile which had established a similar body

However, he stressed, there were still "vast differences" between the South African commission and those that had gone before or were under way in other countries

At least 15 truth commissions have been set up since 1974, mainly in Latin America and Africa, and mostly in countries in the midst of political transition

Other countries

Governmental commissions have been set up in Uganda (where there have been two), Bolivia, Argentina, Uruguay, Zimbabwe, Philippines, Chile, Chad, Germany and Ethiopia

One commission, in El Salvador, was sponsored by the United Nations, and three by non-governmental organisations

These three – according to Priscilla Hayner, author of a study of truth commissions published in *Human Rights Quarterly* – include the Skweyiya and Motsuenyane commissions set up by the African National Congress in 1992



Truth Commission chairman Archbishop Desmond Tutu ... charting new territory in South Africa.

Truth commissions have become popular in countries in transition because of the need to demonstrate a break with the past and promote national reconciliation, reports **Ross Colvin**

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and 1993 to probe alleged human rights abuses in its detention camps, and the international non-governmental panel which reported in Rwanda in 1993

While truth commissions have become increasingly popular in countries in political transition, with six established between March 1992 and late 1993 alone, they are still relatively under-studied

Most commissions, claims Hayner's study, are set up to demonstrate a break with a country's past record of human rights abuses and to promote national reconciliation. They also serve an important function by establishing an accurate record of a country's past

"Leaving an honest account of the violence prevents history from being lost or rewritten," she says, "and allows society to learn from its past in order to prevent a repetition"

However, commissions can also be abused by governments to manipulate public perceptions of their tarnished human rights record and past practices

One example of this, she says, was the truth commission set up by Uganda's Idi Amin in 1974 to investigate alleged disappearances at the hands of military forces during the first years of his government

The commission report, which documented 308 cases of disappearances, had little effect on the behaviour of the Amin government and the four commissioners were targeted for reprisals

Many commissions have an explicit time limit written into their mandate – most with six to nine months to complete their investigations and submit a report. Rarely, says Hayner, has a commission worked for more than year

In Uganda, how-

ever, the commission of inquiry set up in 1986 was given no time limit and is now in its ninth year

South Africa's commission has an 18-month deadline which can be extended to two years

Hayner says most human rights organisations believe the positive benefits of a truth commission outweigh the political risks involved, although there are those who argue that it can create deeper resentment and exacerbate old wounds

Opening old wounds

Jose Zalaquett, a Chilean activist who served on his country's truth and reconciliation commission, likens the role of the commission to a doctor suturing an open wound

"You have to do a bit of poking around to cleanse it and remove possible infection before closing it so that it can heal properly," he said in an interview from his home in the Chilean capital of Santiago

"Countries that do not deal with this problem because of fears that it will exacerbate passions, have to pay the price later. That is the experience of Eastern Europe"

Chile's truth commission, possibly the best known of all the commissions, was set up in 1990 to investigate 3 000 deaths and disappearances during the previous 17 years of military rule

"It was a daunting challenge. We thought we could not do it but we went ahead at a forced march. We were given nine months and a staff of 60 people. The whole apparatus of the state was put at our disposal," Zalaquett said

"I believe Chile went further towards national reconciliation in the first year of democratic government. We now have a higher degree of social peace than some of our neighbours"

The commission accounted for nearly 3 000 victims and put their fate on record so there was no dispute about what had happened to them

This was important, Zalaquett said, because the military government had always maintained that the victims had gone abroad and had never been killed

"You cannot achieve reconciliation on a divided memory of such basic facts. You need the truth about such major crimes in order to build reconciliation" – *Sapa*

The St James massacre: Two army men in court

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JOHAN SCHRONEN, Staff Reporter

SOUTH AFRICAN National Defence Force members Thobela Mlambisa, 25, and Sichumiso Simpiwe Nonxuba, 30, appeared briefly today in the Wynberg Magistrate's Court in connection with the St James Church massacre

Magistrate Elizabeth Baartman told the suspects that they were co-accuseds on charges of murdering churchgoers at the St James Church in Kenilworth on July 25, 1993

They were accused along with Basie Mzukisi Mkhumbuzi, 19, who as accused number one, was charged on January 21.

Major Nonxuba, dressed in a blue jacket and brown trousers, stood motionless in the dock with his hands behind his back. Beside him, Lance Corporal Mlambisa, also wearing a jacket, appeared slightly nervous

Both were in leg chains

The case was postponed to February 9 for a bail application. The State will argue against bail for the accused

A request from the investigators for body tissue and blood samples from the accused was refused after the defence argued such a move would infringe the constitutional rights of the accused



PROTEST: Protesters gather outside the Wynberg Magistrate's Court to call for the release of "political prisoners" after the arrest of three new suspects in connection with the St James massacre. Picture LEON MULLER, The Argus

The State will oppose the argument on February 9 on the grounds that the samples would be vital forensic evidence

The Court ordered that no pictures of the accused could be published, pending an identity parade next weekend

Meanwhile, Western Cape Pan Africanist Congress vice-chairperson, Victor Myataza, who attended the hearing, told reporters the latest arrests were a political ploy, and condemned police for "sensi-

tively timing it" before the upcoming local elections in May

Mr Myataza said he could not reveal the PAC's planned action but added that it would be discussed at a meeting soon

He said the PAC felt "offended" that its members were arrested while serving in the country's defence force

"The situation is unacceptable. We will now consider what to do but we will not overreact," he said

Truth commission will present 'large' budget

Wyndham Hartley

CAPE TOWN — The truth commission, which has almost no funds, will present a "large" budget for approval by government on March 1.

Commission vice-chairman Alex Boraine said on Friday that because of the state expenditure policy of unspent money going back to the treasury, very little of the money allocated to the commission in the 1995/96 budget remained

In the current budget R55m was allocated to the truth commission. But the commission was formed only in late December and according to Boraine most of that money had been returned

It has been estimated the truth commission will cost about R100m over two years.

Desmond Tutu, who is commission chairman, said last week's four-day meeting had targeted late March or early April for its first public hearings. The aim is to have the first hearing in the East-

ern Cape

He said hearings on both human rights violations and amnesty applications would begin at roughly the same time

Tutu said the commission had also decided to approach the country's political leaders for meetings. After receiving a request from Deputy Presidents Thabo Mbeki and F W de Klerk for a meeting they met them last Friday. They discussed how political parties in Parliament could assist the commission.

BD 29/1/96

Call for rethink on prisoners' amnesty

(253) (252)

The ANC has urged the Truth and Reconciliation Commission to consider reviewing the applications of about 2 000 political prisoners for amnesty

The ANC said yesterday it had knowledge of applications pending from at least 2 000 prisoners. These applications could not be finalised after October 8 1990, a cut-off date stipulated in terms of the old indemnity laws

The indemnity laws stipulated that political prisoners in respect of acts committed after this cut-off date did not qualify for release

It was the ANC's view that the cut-off date now was December 5 1993 and that those applications needed to be considered

The previous government had applied the indemnity laws "in a totally unacceptable manner", the ANC said

As a result, many applications for the release of political prisoners had to be refused

The ANC stressed that every prisoner who had applied for amnesty and who fell within the category of a political prisoner should have his or her matter disposed of by the commission as a matter of priority - Sapa

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to review
prisoners' cases

POLITICAL WRITER

THE Truth and Reconciliation Commission should give its urgent attention to the many political prisoners who were in jail, the ANC said yesterday

The prisoners' applications for amnesty had not been finalised or granted because the cut-off date under the old indemnity law was October 8, 1990, the ANC said in a statement

"It is our view that these applications for release need to be reconsidered as the cut-off date is now December 5, 1993"

According to ANC records, at least 2 000 applications are pending.

"The ANC is aware that some applications are not political, as found by the Currin Committee. But every person in prison who has applied for amnesty and falls within the political prisoner category should have his/her matter disposed of by the Truth and Reconciliation Commission as a matter of priority"

Amnesty cut-off date is December this year — Tutu

(252) CT 29/1/96

POLITICAL WRITER

THE cut-off date for all applications for amnesty, in terms of the law, is December 15 this year, according to Archbishop Desmond Tutu, chairperson of the Truth and Reconciliation Commission

As Parliament was composed of reasonable men and women, this date could be changed if there was good reason for it, he told a press conference. As the law stood, the cut-off date was 12 months after the Truth and Reconciliation Commission legislation was gazetted — which had been on December 15 last year

This means anyone who has committed a criminal offence for political purposes but does not apply for amnesty could be charged in the courts.

Tutu said the applications that had been received would be scruti-

nised this week by members of the Amnesty Committee. About 2 000 had been received — most of them from people serving sentences

He emphasised that the Amnesty Committee's decisions were not subject to review by the Truth and Reconciliation Commission. The amnesty process should be separated from the hearings on human rights violations.

The first human rights hearings were expected to be held at the end of March or beginning of April, probably in the Eastern Cape

A form for applicants is to be published soon in the Government Gazette. Each individual has to apply even, if the offence was committed by a group

The names of those granted amnesty are to be published in the Government Gazette

Commission vice-chairperson Dr Alex Boraine said former Vlak-

plaas commander Colonel Eugene de Kock was free to apply for amnesty, but had not done so yet

His application would not lead automatically to the suspension of his trial. This would have to be decided by the attorney-general of the Transvaal

Tutu said a shortlist of candidates had been chosen for the post of the commission's chief executive officer.

The candidates will be interviewed on Wednesday

Other staff members would be appointed soon for the commission's headquarters in Cape Town and its regional offices in Johannesburg, Durban and East London

It was essential to the commission's work that an investigative unit be established under one of the commissioners, Mr Dumisa Ntsebeza, as submissions would have to be verified, Tutu said

WEDNESDAY
JANUARY 31, 1996 ★

POLITICAL BRIEFS

Deadlock over death penalty

THE major parties remained deadlocked yesterday over whether the death penalty should be outlawed in the next constitution.

The ANC, DP and PAC all support a clause providing that "everyone has the right to life", thus abolishing the death penalty in terms of last year's constitutional court ruling (252).

The NP, Freedom Front and African Christian Democratic Party all support a clause which provides that 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".

CT 31/1/96

Tutu assures Viljoen of evenhandedness

ET 31/1/96 (252)

THE Truth and Reconciliation Commission is committed to evenhandedness and will process amnesty-applications without bias, commission chairman Archbishop Desmond Tutu has assured Freedom Front leader General Constand Viljoen.

Tutu gave Viljoen this assurance when the two met at his Bishopscourt residence on Monday night for dinner and an hour-long discussion on the management of the commission.

Viljoen said yesterday he had left the meeting convinced of Tutu's determination to achieve national reconciliation through the commission, but said he still feared it might turn into a witch-hunt.

The meeting, one of a series planned with leaders of all political parties, was arranged in response to an offer by commission vice-chairman Dr Alex Boraine when he appeared on a radio programme with Viljoen recently. — Sapa

Time for 'big guns' on Bill of Rights — ANC

David Greybe

CAPE TOWN — ANC negotiators frustrated by the slow rate of progress in private discussions on the Bill of Rights, particularly with the NP, said yesterday it was time the political "big guns" became involved.

An ANC source described the latest meeting with the NP yesterday as largely a "waste of time", and also singled out NP senior negotiator Sheila Camerer for criticism.

The source said it seemed Camerer was trying "to create as many areas of dispute as possible on the Bill of Rights, with an NP eye on forcing ANC concessions in other areas in the new constitution such as the executive and second chamber in Parliament".

As far as the ANC was concerned, it was time to send in "some of the big guns" such as Cyril Ramaphosa, Roelf Meyer, Valh Moosa and Leon Wessels "to crack some nuts".

If not, the ANC could be forced to resort to some of its original negotiating positions "because the ANC is not prepared to deadlock on its compromise positions". The source cited property and economic activity clauses.

It was reliably learnt that NP and ANC negotiators decided yesterday to refer the contentious labour clause (which deals with issues such as the right to strike and lock-out) to Ramaphosa and Wessels after the par-

ties failed to make any progress.

Camerer rejected the ANC "spin" given to the private discussions. As far as she was concerned, "real progress" was made this week on the equality clause (the ANC claims there never was anything substantive in dispute) and the socioeconomic clauses.

However, she accused the ANC of an "apparent (new) tendency" to introduce "special limitations" in the clauses dealing with freedom of expression, access to information and administrative justice.

Camerer said it was premature to pass judgment on many other clauses as the parties only yesterday got expert advice requested in the Constitutional Assembly, and awaited more.

The parties are scheduled to meet again on Monday in a further attempt to resolve their differences. Ramaphosa, in his capacity as Constitutional Assembly chairman, has set next Wednesday as the deadline for finalisation of the Bill of Rights chapter.

However, no-one really believes that this is possible. In the words of an ANC negotiator, "the battle lines are now drawn".

The most contentious clauses still outstanding include the right to life, freedom of expression, economic activity, labour relations; property, language and culture; access to information; administrative justice, and the limitation clause in the Bill of Rights.

BD 1/2/96

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Rastas want to test dagga laws in the Constitutional Court

(252) M+G 2-8/2/96

Rehana Rossouw

IN a field on the edge of Parkwood Estate in Cape Town is a ramshackle wooden building with a tiny garden lending a splash of colour to the dreary township. The garden is filled with petunias, marigolds, tomatoes, cabbages and dagga.

This is the home of Bernard Brown of the Burning Spear Movement, a Rastafarian congregation with close to 1 000 members. This is where they want to retreat from the modern, capitalist world they call Babylon, plant a larger garden to feed themselves, and worship *Jah* (God) with the help of regular spliffs.

But the area is also regularly targeted by police, who arrested Brown and fellow Rastafarian Quinton Solomons in June last year and charged them with possessing 80 dagga plants. The two have refused to plead to the charges in the magistrates court, saying they want the case taken to the Constitutional Court, where they can contest their right to smoke dagga.

They have identified no fewer than 34 clauses in the draft Constitution which they say indemnify them from prosecution — clauses relating to religious freedom, indigenous law, freedom of association, discrimination, promotion of culture and even those protecting business from state interference.

"We use ganja for religious purposes, but in South Africa today it is illegal, so our religion is regarded as being illegal. This is completely out of step with the draft constitution, which allows freedom of religion," said Brown.

He was drawn to Rastafarianism in 1979. "A few of us gathered regularly and learned about ancient Christian values, revived from Ethiopia by Haile Selassie, King of Kings, Lord of Lords, conquering lion of the tribe of Judah, whom we believe is from the line of King David and fulfilled the prophecy of Jesus Christ," Brown said.

"I found myself working so I could have just enough money to buy books on Rastafarianism so I could learn more and liberate myself from spiritual slavery. Rastas are not materialistic, we do not need money to survive.

Brown said Rastas believe their bodies are temples of God and do not contaminate them with alcohol or processed and preserved foods. Most



Jah guides: Cape Town Rastafarians, from left, Quinton Solomons, Bernard Brown and Naftali Brown has been to prison eight times for dagga offences

PHOTOGRAPH ERIC MILLER

are vegetarian. They separate themselves from decadent society so they can maintain their purity.

He stopped cutting his hair in 1979 and grew dreadlocks, following a verse in Numbers which indicated that Nazirites like Jesus Christ did not cut their hair or beards.

Brown said the Burning Spear Movement was not seeking conflict with the authorities over the issue of the legalisation of dagga, as the religion preached negotiation. Rastas had participated in United Democratic Front activities in the 1980s, but withdrew when protests against the government became violent.

"You can never find a solution when you go to war; we would rather spend our time praying. When the negotiations started in South Africa, we stepped back in. We marched for the legalisation of ganja after 45 years of banning, and the freedom to practise our religion," Brown said.

"We explained that we don't use chemicals like mandrax, we don't even touch tobacco. We use ganja for spiritual upliftment, to meditate on the laws of God and for ancestor worship. But still I went to jail twice after those discussions with the police."

Brown believes Rastas are being persecuted for their religious beliefs. He has been to jail eight times on dagga-related charges, and was committed in 1987 to the Valkenberg Mental Hospital for three months. "Jail had no effect on me. I remained a Rasta every time I was released."

Although Brown does not believe in working in the "Babylon system", he makes ends meet by growing and selling vegetables. He also provides vegetables for a soup kitchen which feeds school children in Parkwood.

The Burning Spear Movement would also like the government to reintroduce the wide-scale cultivation of dagga, which they say was what the Khoi-Khoi did before South Africa was colonised.

"No-one has ever died of a dagga overdose, in fact it has widespread medicinal use. Traditional healers have been using it for centuries and now modern medicine is realising it can be used for asthma, to treat the nausea of chemotherapy patients and stimulate the appetites of people with Aids," said Burning Spear member Naftali.

With South Africa's dagga crop estimated by police to be worth R54-billion

last year, the Rastas believe state-approved cultivation of hemp could be worth double that. Hemp can be used to produce fabric, paper, rope and fuel.

The movement has made a submission to the Constitutional Assembly accompanied by supporting research and documentation, as well as a film on the uses of dagga.

Brent Williams, a lawyer representing Brown and Solomons in their petition to the Constitutional Court, said the matter was bedevilled by the conservatism of Cape magistrates and the absence of expert witnesses on Rastafarianism in South Africa.

He had found a case heard in the Zimbabwe Supreme Court concerning a lawyer who was not admitted to the bar as he was deemed unsuitable because he was dreadlocked. The supreme court decided that Rastafarianism had to be regarded as a religion.

"The case sheds some light on the religion and seems to be precisely what we are dealing with here. Expert testimony was given by a gentleman called Horace Campbell, who is a scholar and has written a book on Rastafarianism. If I could find him and get an affidavit from him, we would be well on our way."

DP, NP nearer a common front on the Bill of Rights

David Greybe

CAPE TOWN — The NP and DP gave warning to the ANC yesterday that it was still in for a long haul on the Bill of Rights in the new constitution, after the DP came out in support of the NP's latest rights submission.

It was the first clear indication that opposition parties were forming an opposition negotiating front against the powerful ANC. The latest development has finally put paid to any chance of meeting next Wednesday's deadline — set by Constitutional Assembly chairman Cyril Ramaphosa — for finalisation of the Bill of Rights chapter.

DP senior negotiator Dene Smuts said another reason why the chapter could not be completed next week was that the assembly had set February 20 as the final deadline for party and public submissions. Parties are awaiting answers to a number of queries from the technical experts assisting the process, before negotiations can proceed.

Smuts issued a warning against an apparent trend that the process was developing into an "one party bilateral" between the ANC and NP. The DP would not allow the smaller parties to be sidelined, and planned to take steps to prevent this, she said. Parties had a public duty to "stay true" to the public participatory nature of the process.

NP negotiator Sheila Camerer described the latest NP submissions as an attempt "to clarify the NP's positions and make some constructive suggestions". It was a "conscious-seeking document", she said. The document deals with 17 of the 38 clauses in the draft Bill of Rights.

Camerer conceded that some of the more contentious clauses — such as the right to life and labour relations — "will have to be dealt with at a higher (political) level because parties are deadlocked". It appeared at this stage that progress was possible on, among others, the property clause, economic activity, belief and opinion, the socioeconomic clauses, freedom of religion, equality, and academic freedom, Camerer said.

Bill to repeal homeland laws

Wyndham Hartley

CAPE TOWN — Justice Minister Dullah Omar has signalled his intention of repealing hundreds of homeland laws to bring legal uniformity to SA's nine new provinces.

Some of the homelands' laws which will be repealed when the Justice Laws Rationalisation Bill becomes law are almost 60 years old. They were inherited from the all-white government and survive while they have been repealed from the national statute book.

The Justice Laws Rationalisation Bill, tabled in Parliament yesterday, will repeal more than 500 laws and decrees from the former TBVC countries and self-governing territories and replace them with 94 current national acts when approved.

References to the Supreme Court will also be rationalised on the basis that, even though the Hoexter Commission probe into those courts is not yet completed, any reference will be deemed to be to the Supreme Court jurisdiction in the affected areas.

Laws on the national statute book such as the Insolvency Act, the Magistrate's Court Act, the Commissions Act, the Wills Act, the Matrimonial Affairs Act, the Maintenance Act, the Inquests Act and the Insolvency Amendment Act, will now become applicable

Also, unlike the ex-TBVC states, in SA appointment of attorneys-general are governed by the Attorney General Act. The Bill will enable attorneys-general to continue in the TBVC, until the Act can be extended to those areas.

Former police chief weighing up truth body

Stephen Laufer

FORMER police commissioner Johan van der Merwe and "people from our ranks" would observe the proceedings and work style of the truth and reconciliation commission before deciding whether to respond to it, the retired general said yesterday.

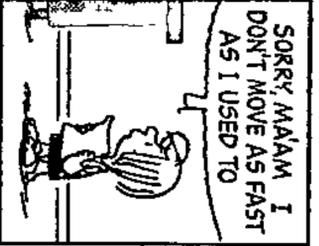
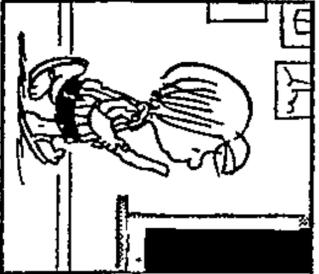
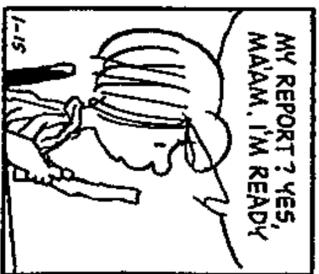
SA appointment of attorneys-general are governed by the Attorney General Act. The Bill will enable attorneys-general to continue in the TBVC, until the Act can be extended to those areas.

At a lunch hosted by the Johannesburg Press Club, Van der Merwe said he was in touch with former colleagues and the Foundation for Equality Before the Law, a predominantly Afri-

Both sides in the battle for SA had been at fault, Van der Merwe said. Reflecting concerns that some of the constitution's guarantees could disappear in the final document, leaving former security force members vulnerable to prosecution, Van der Merwe said: "Our goal is to uphold section eight of the interim constitution, which guarantees equality before the law."

PEANUTS

By Charles Schulz



TTTT

Two join truth probe

(252)

Cape Town - The Truth and Reconciliation Commission yesterday announced the appointment of two members to its committee on reparation and rehabilitation.

They are former Delmas treason trial accused Tom Manthata and Nederduitse Gereformeerde Kerk leader Prof Piet Meiring.

Manthata, formerly SA Council of Churches justice and reconciliation di-

vision worker, was jailed in the Delmas treason trial in the 1980s. Meiring was one of 134 NGK pastors who in 1982 called the church to task for its justification of apartheid.

Commission chairman Archbishop Desmond Tutu said the commission hoped to finalise on Monday the names of 10 additional members of the committee on human rights violations - Sapa.

Star 2/2/96

Public servants taking Omar to court

By SUSAN MILLER

A showdown is looming between the Public Servants' Association and Minister of Justice Dullah Omar over alleged discrimination against white males when it comes to filling vacant posts

The department has been holding interviews for 51 vacant positions advertised in newspapers - but white men say they are being overlooked and ignored by the selection committees and that only women and black applicants are being interviewed

The matter will come to a head on Tuesday in the Pretoria Supreme Court, where the PSA will seek an interdict against Omar over the "unilateral application of affirmative action" and disregard for previously agreed procedures.

The pending case has halted new appointments in the understaffed department, doing nothing to alleviate the staff crisis

According to papers filed by PSA general manager Casper Janse van Rensburg, the Department of Justice never provided it with particulars regarding its personnel plan, policy framework and other information, including affirmative action.

Van Rensburg said they were not against the creation of a more representative public service, but felt angry by the department's decision to proceed with an affirmative action personnel plan that was still being negotiated "We want to protect the collective bargaining process and must protect existing personnel in the department as it is not considering applications of existing staff members."

Van Rensburg added the PSA would request information from the department, including the minutes of meetings where an affirmative action policy was supposedly discussed, and seek to prevent the department from

making appointments until the matter has been negotiated

The PSA contends the department ignored a "plethora" of statutory provisions and provisions of the various chapters of the Public Service Staff Code in reserving or earmarking certain of the vacant posts for so-called affirmative action appointments.

It also contends its members are being discriminated against on the basis of their race, colour and gender, contrary to section 8 of the interim constitution.

Although saying many interviews were being done, Witwatersrand Acting Attorney-General Kevin Attwell said it appeared that senior white males were being overlooked in favour of women and African staff members.

"It seems as if the department is actively trying to fill the posts but there could be some unhappiness among white men if they feel they have been overlooked"

SA and EU launch R65-million human rights programme

President Nelson Mandela and EU commissioner Joao de Deus Pinheiro yesterday jointly launched a R65-million human rights

programme in South Africa at the Union Buildings in Pretoria.

On October 10 1994, the EU and the SA government signed an

interim agreement committing both parties to the promotion and respect of human rights and democratic principles. - AFP.

ENFORCING CLAIMS

fm 2/2/96
The Constitutional Assembly (CA) is considering beefing up the powers of the Human Rights Commission (HRC) to enable it to enforce the socio-economic rights — housing, land, health, food, water, social security and education —

FINANCIAL MAIL FEBRUARY 2 · 1996

36 CURRENT AFFAIRS

entrenched in the Bill of Rights .

The move is set to reawaken conflict between the ANC and smaller parties who fear such rights will place the State under financial obligation which, if not met, will render the rights worthless

The latest draft of the final constitution says the State may not interfere with the exercise of socio-economic rights

As these rights may not always be justiciable, there is often scepticism about their inclusion in a Bill of Rights

But if creative ways can be found to ensure their enforcement, SA's new constitution could play a leading international role in this sphere

This is the view of the CA's constitutional panel of experts, which has tabled a motion to amend Section 109 of the interim constitution to provide the HRC with a reporting function

The amendment places an onus on the commission to obtain information from government departments on measures they have taken to secure socio-economic rights

The panel says in this way "enforcement will not be left to legal procedures in courts only but will become part of public consciousness and thus the democratic process "

Commissioner Karthy Govender, professor of public law at Natal University, says "We can't make (socio-economic rights) directly justiciable but, rather than relying on NGOs and other public organisations, we can have a watchdog body, the HRC, to ensure that the Executive and Legislature work progressively towards implementing them "

Commission chairman Barney Pitso Moseneke says a mechanism will be needed to test the degree to which the State is enforcing socio-economic rights ■

Truth body to look at NGOs

(252) Star 3/2/96
The Truth and Reconciliation Commission's human rights violations committee, chaired by Archbishop Desmond Tutu, will look at its relationship with non-governmental bodies and church groups when it meets in Johannesburg on Monday. The committee will also finalise the appointment of 10 additional members to assist the commission in processing the thousands of cases expected to come before it - Sapa

Amnesty body (252) appeals for help

ST 4/2/96

By CARMEL RICKARD

JUDGES of the Truth and Reconciliation Commission's amnesty committee have made an urgent plea to the public for help in contacting victims and perpetrators of political offences.

The vice-chairman of the committee, Mr Justice Andrew Wilson, said the public, particularly non-governmental organisations and religious groups, could play a role in relaying information.

Speaking at a clergy briefing organised by the Diakonia Council of Churches in Durban this week, Judge Wilson said that many people had applied for amnesty. However, these applications had been made to bodies which had since been disbanded and replaced by the amnesty committee.

Among the applicants were more than 2 000 prisoners who wanted the committee to consider whether their crimes were political, and therefore whether they were eligible for amnesty.

The judge said these applications were no longer valid: under the law setting up the commission, amnesty applications had to be made on special forms. These forms were not yet available, but would be distributed after publication in the Government Gazette.

He said the committee needed to tell the applicants to reapply on new forms. The public could help in passing on this information.

The judge also asked for help in locating victims of gross human-rights abuses. Unlike previous bodies dealing with amnesty, the commission and its subcommittees focused on victims and ensuring their involvement in the process.

Judge Wilson spoke of the "extreme importance" of victims being heard. "We need the help of the non-governmental organisations and the churches to find the victims for us," he said.

The chairman of the amnesty committee, Mr Justice Hassen Mall, said victims would be given every opportunity to be present during hearings.

One of the 17 commissioners, Yasmin Sooka, said that in setting up the commission, society had decided that the right to know what had happened in the past was more important than the right to try offenders.

Lawyers slam public servants' court action

Star 5/2/96

(252)

(~~252~~)

BY DAISY JONES

The National Association of Democratic Lawyers (Nadel) has strongly condemned the Public Service Association for contesting the Justice Department's decision to apply affirmative action policy to the appointment of new attorneys-general and state attorneys

Nadel said statements by the civil servants, who will appear in the Rand Supreme Court on Wednesday to argue against the allocation of upcoming posts to "people of colour and women", could not go unchallenged

"The Department of Justice has accepted the challenge to do what is reasonable, necessary and justifiable to redress the racial and gender imbalances and disparities of the past," the association said.

"These white males", who had "profited from past inequities", did not have "the credentials to do what is necessary to give effect to rectification, mechanisms and indeed the constitution of this country"

Many black and women lawyers outside the public service had the necessary qualifications, experience and capability to per-

form the duties of attorneys-general and state attorneys

Affirmative action appointees would "bring to the public service a human rights culture needed in the new South Africa, where the supreme law is the constitution with a justiciable bill of rights"

The Public Service Association's application to the Supreme Court was based on racism and an attempt to return to the old apartheid order. The Department of Justice was to be congratulated for working "to make liberty in South Africa a reality and not an illusion", Nadel said

The block against illegal govt

CT 5/2/96

(252)

HUGH CORDER

THERE can be no doubt that the most important development in government internationally over the past 200 years has been the establishment of the "rule of law". Simply put, this means that all government action must be authorised by law and be subject to the control of the legal process.

The chief means through which government may be limited in this way is the law of the constitution. The French and American social upheavals of the late 18th centuries have bequeathed to modern states the idea of a written constitution, incorporating a bill of rights, as the most appropriate way of achieving government limited by law.

Almost all democratic states have adopted written constitutions as expressions of the social contract between governments and their citizens. As written documents cannot speak for themselves, and as words and phrases are often difficult to interpret, some human agency must be identified to give life to the constitution. This considerable power is usually given to the highest judicial authority in a country, in the hope that its wisdom, impartiality and independence will resolve tricky problems and lend authority to its decisions.

No South African needs reminding of the horrific effects of the uncontrolled exercise of power. Indeed, one of the most important formal cornerstones of the transition from autocracy to democracy in this country was the agreement by all political parties, for a variety of different motives, that government power should be limited by law in accordance with a formula approved in advance by those parties.



DULLAH OMAR

vides that formula until the final constitutional text is agreed to by the Constitutional Assembly.

And that final constitution must also provide for its own supremacy as the framework for the exercise of government power, whether by Parliament or the Cabinet. In this way, SA has at long last joined those nations which have chosen to create the structures and procedures typical of a formal democracy.

In our case, we have set up a specialist Constitutional Court as the final authority on the meaning of the words used in the constitution. Of course, Parliament retains the power to change those words (by amending the constitution) provided that it follows the special procedure (a two-thirds majority) laid down in the constitution itself. But most Parliaments are reluctant to use such power too easily, as such amendments inevitably undermine the special status of the Constitution as a "super law" binding on all political power. In addition, amending the constitution to correct or neutralise a judgment robs the court of the authority on which the success of the entire constitutional system depends.

To apply these general principles to our situation, the Constitutional Court has delivered a number of very



TOKYO SEXWALE

important interpretations of the transitional constitution in its first year of operation. Both Parliament and the executive authority have been found wanting in these cases, and the government, led by President Mandela and Justice Minister Omar, has accepted such judgments willingly, even though they have led to inconvenience.

This attitude is admirable and has helped establish an atmosphere in which the rule of law can take root. But the flourishing of constitutional democracy in SA is by no means assured, even though the formal conditions are present. The success of the enterprise demands a whole-hearted commitment to it by all South Africans, especially our leaders.

In this respect, there has been one profoundly discordant set of voices. Consequent on the unanimous decision of the Constitutional Court that the death penalty is outlawed by the transitional Bill of Rights, several political figures, notably Dame Schutte and Tokyo Sexwale, and popular organisations have called for a referendum on the reinstatement of that punishment. The merits of this argument are not my concern now (although I believe it to be fundamentally flawed).

What does worry me is that such

calls amount to a direct attack on the central features of our constitutional system that certain rules of law, agreed to and stipulated in advance, limit the power of government to do as it likes, that the Constitutional Court has been designated as the highest interpreting authority in regard to the meaning of the constitution, and that the capacity of the constitution to fulfil its intended objectives as a carefully crafted balance of interests relies absolutely on the consistent respect which ought to be accorded to it by those who participate in our politics. You either play by its rules for all purposes, or you forfeit the right to invoke its protective mechanisms at any time.

This is, of course, not to say that the court's judgments are not open to criticism or that the constitution is perfect. It is merely a plea to recognise that the political game is being conducted under new rules, whose overall effect is the security and benefits of all the players.

One of those rules (drafted by the negotiators at Kempton Park) was to remove difficult and emotive decisions (such as the desirability of the death penalty) from the crude cut-and-thrust of the hustings to the relatively dispassionate rationality of a court of law. Deliberate subversion of such rules will take us back to the type of duplicity which resulted in the pilage of the protected franchise of coloured voters in this country in the 1950s.

Perhaps we need to resurrect an organisation for the "Defenders of the Constitution" (the original name of the Black Sash) and ask Dame Schutte and Tokyo Sexwale to join President Mandela and Dullah Omar as founder members.

Hugh Corder is Professor of Public Law at the University of Cape Town

Truth body bound by time constraint

Kevin O'Grady

BB 6/2/96

(252)

IT WOULD be "totally impossible" for the truth commission's human rights violations committee to hear evidence on a potential 100 000 cases of gross abuse, chairman Archbishop Desmond Tutu warned yesterday.

The committee had 18 months to complete its work, he said.

At a news conference during which he announced the appointment of six additional members to the committee, Tutu said: "We need to make it quite clear that there is no hope of us being able to hear every single story or investigate every single case."

Legislation required the committee to "give as full a picture as possible. Therefore we will be doing extrapolations and seeing whether there are patterns to the major causes and extent of human rights violations." It was also critical for the committee to recommend structures which would ensure "similar things do not occur again".

Tutu said he "would not be sur-

Continued on Page 2

Truth body

(252)

BB 6/2/96

Continued from Page 1

prised" if the figure of 100 000 cases estimated to fall within the committee's brief was a "modest" one.

The commission was addressing security fears raised by the ransacking of a commissioner's luggage on a recent domestic flight and reported death threats against others. He would not disclose details of the measures taken.

He named the new committee members from KwaZulu-Natal and the Free State as human rights lawyer Ian Lax and former SA Council of Churches vice-president Virginia Gcabashe.

Appointments from the Eastern Cape were Black Sash activist June

Mary Crichton and Umtata attorney Judith Yolisa Maya. Northwest premier Popo Molefe's legal adviser, Peter Mothe, and Young Women's Christian Association of SA general secretary Joyce Seroke were appointed from the region covering Gauteng, Northern Province, Mpumalanga and North-west. Four other members would be appointed later this week.

Tutu said "even-handedness" would be the committee's watchword when it began hearings towards the beginning of April. Legislation did not allow members "to say this kind of violence is different from that kind of violence".

Liaison with non-government organisations active in the human rights area had begun. Their input would be "crucial to the work of the commission and particularly this committee".

Eastern Cape wins Truth forum voice

ARLT 6/2/96
(252)
Reparation committee to be expanded

THE Truth Commission's reparation and rehabilitation committee is to be expanded to give the Eastern Cape, which is not represented on the body, a voice in its decision-making, commission vice-chairman Alex Boraine has announced.

Dr Boraine said the decision to appoint at least one additional member to the seven-person committee was an attempt to address concerns raised by Eastern Cape commissioner Bongani Finca.

Dr Boraine said "Clearly, the Eastern Cape must be represented on the committee. It suffered major oppression over a long period. It will be important to have someone representing the province at an official and senior level."

The move comes as a surprise. No further committee appointments were expected after the announcement by commission chairman Archbishop Desmond Tutu that former Delmas treason trialist Tom Manthata and Nederduitse Gereformeerde Kerk leader Piet Neiring had been chosen as additional members.

However, the Rev Finca's concerns prompted Dr Boraine and the commission's legal experts to consult the legislation governing the commission.

"From our reading of it, we can appoint at least one other person, possibly even three. We will now look to (Mr Finca) to put forward a name the committee can consider."

Dr Boraine also disclosed that he and Archbishop Tutu would meet European Union ambassadors in Cape Town on February 21 to brief them on the work of the commission.

It is understood the talks could pave the way for offers of foreign assistance.

Denmark and the Netherlands have already offered to second experienced police detectives to assist the commission in its investigations.

"The chairman and I will sit down and look at our needs, such as equipment, computers and a database, all of which is very costly."

The commission also was looking at the possibility of establishing a trust fund to manage private donations towards its operating costs.

He said the proposal would be discussed at the next full meeting of the commission on February 12.

The commission is to appoint a financial manager this week.

One of his or her first priorities will be to compile a new budget for the commission. -Sapa

Court halts appointments

~~Stefans Bothma~~ (252)

PRETORIA — A status quo order granted by the Transvaal Supreme Court yesterday will halt any appointments to the state attorney's office until a dispute between the Public Servants Association and Justice Minister Dullah Omar about employing white males has been resolved.

In December the 100 000-member PSA applied for an interdict against Omar, claiming the justice department was acting unlawfully by reserving vacancies at state attorneys' offices for affirmative action appointments.

The matter was postponed to this week, but last Friday the justice department filed a counter application.

Yesterday's status quo order will allow the PSA to reply to the documents filed by Omar, PSA GM Casper Janse van Rensburg said last night

Boraine pledges equal treatment of victims

STAFF WRITER

THE conflict in South Africa had been resolved before a situation of "victor and vanquished" had been reached — so all victims of the violence would be treated equally by the Truth Commission, commission vice-chairman Dr Alex Boraine said yesterday

He told a meeting of the Institute for Multi-Party Democracy in

the city that the commission would not meet the 18-month deadline set for it to complete its probe as the task was too overwhelming

The commission can apply to sit for a further six months

Boraine said it was already clear the commission would need the extra time to probe the thousands of cases expected to come before it

(252) CT 7/2/96
However, he dismissed media reports that as many as 100 000 cases could be brought before the commission

"That is just speculative"

He said the emphasis would fall on gross violations of rights, such as torture, rape, assassinations, murder and "disappearances"

Amnesty would be granted to people on both sides. The commission could not react in different

ways to bombs placed by right-wing or left-wing operators

Amnesty had to be extended in this way because this was part of the country's negotiated agreement

Those wanting to apply for amnesty had one year from the promulgation of the names of the commissioners in which to do it, and it had to be on a prescribed form

Amnesty: 2 700 must apply again

(252) ARG 1/2/96
ABOUT 2 700 individuals who applied to the justice department for indemnity from prosecution for apartheid-era offences will have to reapply to the Truth and Reconciliation Commission's amnesty committee

Amnesty committee member Andrew Wilson said these represented outstanding cases which the department had not yet processed and had referred to the Truth Commission.

He said the 2 700 applicants — many of whom are in jail — would have to fill in a new application form. A copy of the form, which would be widely available at magistrates' offices, would be published soon in the Government Gazette.

The forms would be sent to the original applicants at the addresses given in their files.

Judge Wilson said two committee members, commissioners Sisi Khampepe and Chris de Jager, had begun sifting through the applications at the office of indemnity and amnesty in Pretoria.

In terms of the legislation governing the commission, the committee may grant amnesty only if it is satisfied the applicant has made a full confession of all the facts and that the action was linked to a political objective.

The act must also have been committed between March 1960 and December 1993.

Judge Wilson said the 2 700 files would not be removed from the justice department to the amnesty committee's new headquarters. Only those relevant to the committee's mandate would be studied and copied.

He said a date for public hearings had not yet been set, although this would probably be decided when the committee next met.

Judge Wilson said it was "extremely unlikely" that the first hearing would be held before March.

— Sapa

Truth commission may have to go into extra time

(252) ARG 7/2/96
JOSEPH ARANES
Staff Reporter

THE Truth and Reconciliation Commission (TRC) has barely begun its work — but already commissioners are hinting they want extra time to complete their task.

"The TRC is alive and well and its commissioners are working like hell," said its vice-chairman Alex Boraine in an address to representatives from non-governmental organisations yesterday.

Dr Boraine and fellow commissioners Glenda Wildschutt and Denzil Potgieter were the guest speakers at a focus meeting organised by the Institute for Multi-Party Democracy at a Newlands hotel.

Although the TRC is only about two months old, the commissioners are already hinting they will ask President Mandela to extend its life by six months as stipulated in the National Unity and Reconciliation Act.

The commission could, as part of their recommendations

to the president, ask that a smaller commission continue the work after the present lifespan expires. In terms of the Act, the commission has 18 months to wrap up its work but provision is made for it to be extended by six months, by which time they should submit their recommendations on how to prevent the future violations of human rights.

Dr Boraine said it was pure speculation that 100 000 cases would be presented to the commission during its two-year life, but it expected thousands of inquiries into human rights abuses would be heard.

Dr Boraine said the commission was still setting up infrastructure and forming a trustworthy team for the 17 commissioners. Commissioners had agreed the only way to make a success of its task was to decentralise.

"We can't achieve our objective unless we decentralise and have a presence in every town and township in the country," he said.

Bill of Rights may be finalised by deadline

David Greybe

DD 8/2/96

(252)

CAPE TOWN — Parties could finalise the Bill of Rights by the May 9 deadline for the new constitution, Constitutional Assembly chairman Cyril Ramaphosa said yesterday, after a "good day's" public negotiating.

Ramaphosa's "scorecard" on the 33 clauses in the draft Bill was a deadlock on three issues; 11 issues were still under discussion; parties had reached broad agreement on 17, and technical experts were dealing with the rest.

He was speaking at the end of what he described as a day of "incremental progress" in the assembly's deadlock-breaking committee.

He put the progress down to the latest round of private discussions between parties in Kempton Park. Ramaphosa said he was "much more confident" about the parties' ability to resolve the outstanding issues by the May 9 deadline.

The deadlocked issues are the right to life clause (death penalty), the labour relations clause (lock-out and right to strike), and the ANC proposal to ban "hate speech" in the freedom of expression clause.

They have been referred to a "higher authority", represented by senior negotiators from the various parties such

as Ramaphosa, Roelf Meyer, Colin Eglin, Valh Moosa and Leon Wessels.

The 11 outstanding issues — many close to completion with only subclauses outstanding — are property rights, economic activity, education, access to information, just administrative action, arrested, detained and accused persons, limitation of rights, application of the Bill of Rights, freedom of religion, belief and opinion, states of emergency and freedom of expression.

On the property clause, parties are now considering dealing with the sensitive issue of land reform separately to a general property clause in the Bill.

Negotiators are working towards the replacement of the clause guaranteeing freedom of economic activity with a "right to occupation" clause found in other constitutions.

Broad agreement has been reached on the inclusion of academic freedom, artistic creativity and scientific research in the freedom of expression clause. Technical experts were to find the appropriate wording.

Parties agreed to hold a one-day private "multilateral" meeting on February 23 to try to resolve, among other issues, the property clause and the limitation clause.

Negotiators are expected to meet soon to discuss the education clause.

THURSDAY
FEBRUARY 8, 1996 ★

Public ~~(148)~~ (252)
servants
CT 8/2/96
block Omar

OWN CORRESPONDENT

PRETORIA: A Supreme Court order has halted further affirmative action appointments in the Justice Department pending the outcome of a court action involving the Public Servants' Association and Justice Minister Dullah Omar

Following an agreement between the parties, an interim order was granted interdicting Omar from filling certain vacancies in his department and offices of the state attorney unless the parties conclude a written agreement regarding a particular post

No arguments on the merits of the case were heard and a final decision has still to be taken

Mr Justice H J Preiss yesterday postponed the case indefinitely to give the applicants time to reply to the Minister of Justice's counter-application and answering affidavit

This response must be submitted to the court by February 16 Omar must file a reply to the PSA's answering affidavit on the counter-application by February 23

Omar has also been ordered to furnish documents to the applicants, including copies of letters between himself and Public Service and Administration Minister Dr Zola Skweyiya.

Azapo to fight indemnity bill (252)

LAWYERS representing the Azanian People's Organisation in its bid to have the Truth and Reconciliation Act suspended because the organisation believes that it violates the interim constitution are to soon lodge an application in the Constitutional Court.

Azapo wants the indemnity clause in the Truth and Reconciliation Act to be nullified as it was opposed to amnesty being granted to criminals and people who committed crimes against humanity.

CT 8/2/96

Sapa-AFP

The Argus Correspondent

PRETORIA. — A Supreme Court order has effectively halted further affirmative action appointments in the Department of Justice pending the outcome of a court challenge by the Public Servants Association.

The PSA challenge to Justice Minister Dullah Omar over the appointment of state attorneys is based on a section of the Public Servants Act which stipulates that posts should be filled without regard to any criteria other than qualifications, level of training, merit and efficiency.

Section 11 of the Act says people who have applied for a post should be considered regardless of race, colour or gender.

After an agreement between the parties yesterday, Mr Justice Pries granted an interim order interdicting Mr Omar from filling certain vacancies in the Department of Justice and offices of the State Attorney unless the parties conclude a written agreement on particular posts.

No arguments on the merits of the case were heard and a final decision has yet to be taken.

Judge Pries adjourned the hearing indefinitely to give the applicants time to reply to the Minister of Justice's counter-application and answering affidavit.

This response must be submitted to the court by February 16. Consequently, Mr Omar must file a reply to the PSA's answering affidavit on the counter-application by February 23.

Mr Omar has also been ordered to furnish several documents to the applicants, including copies of letters between himself and Public Service and Administration Minister Zola Skweyiya, internal memoranda and a document setting out proposals for filling vacant posts.

In an affidavit, PSA general manager Casper van Rensburg stated "This application concerns the unlawful actions of the respondent and/or his department and employees under his direct control in deciding to reserve certain vacant posts by way of affirmative action appointments."

The PSA's application affects three posts for state attorneys, nine for deputy state attorneys and 18 posts for senior state attorneys.

Court challenges affirmative action

252

ARG 8/2/96

25

Flood of painful truth faces inquiry

(252) ARG 8/2/96
JOHN YELD Staff Reporter

THE Truth and Reconciliation Commission, which will have its third session at its new headquarters in Cape Town next week, is acutely aware of its awesome responsibilities, of its unique nature – and of its inability to meet all the expectations which are piling up on it.

This emerged during a focus meeting of the Institute for a Multi-Party Democracy in Newlands this week, addressed by the Commission's vice-chairman, Alex Boraine, and commissioners Glenda Wildschutt and Denzil Potgieter.

Asked whether disclosures during the Commission hearings might not contribute to more violence, as people sought vengeance for wrongs now coming to light, Dr Boraine said there had been two options – a cover-up, by drawing a veil over past activities, or trials and prosecutions.

The option of silence was "quite attractive" but never worked. "In order to heal, sometimes you have to have pain."

The desire for retribution through trials was also an attractive proposition for some people.

"That is a very understandable reaction, but the Commission has attempted to avoid both – neither to indulge in amnesia or revenge, but to attempt to reconcile the nation while not ducking the truth."

"It's my hope that even people who are critical of the Commission because they feel it doesn't go far enough, and who want prosecutions, will come and testify."

There were likely to be "some very painful moments" ahead when people realised just how inhumanely some of them had been treated, Dr Boraine warned.

The 17 commissioners were already working to capacity, and for most of them, the work ahead was likely to be the greatest challenge of their lives.

"It is almost, but not quite, overwhelming – it's a massive, massive task," Dr Boraine said. "None of us realised how awesome the task is, in the number of hours in the day and the sheer volume of work that has to be done."

"But more than that, we will be working with people who have walked through very dark ways and suffered incredible trauma, and you don't do that lightly. We must never forget that the Commission is at the disposal of those who have borne a very heavy weight in the past."

It had been difficult to get going, particularly as the commissioners did not all know each other in advance. "There were these 17 strong, bolshie, suspicious people, having to make decisions before we knew and trusted each other, and there was considerable difficulty in just working out the dynamics of who would do what, and how."

The Commission would not succeed, unless it was able to decentralise, Dr Boraine said. Although there would be regional offices in Gauteng, Durban and East London, that would not be enough to help the Commission achieve its objectives.

"What we would like to see happen – and which we will try to achieve – is to have a presence in every town and township throughout South Africa."

"We can't just operate from Cape Town. A lot of people out there have been hurt very badly, and we want to give them a proper opportunity to come and tell their story."

"We're talking about the Commission as a dynamic force that can impact on the whole of South Africa, and to do that it must have a public face."

"It's dead in the water without a synergy between the commissioners, the staff and the people [in civil society] who are working every day with the ghastly heritage of apartheid."

There had been an overwhelming response to the Commission, both nationally and internationally, Dr Boraine said.

Mr Potgieter said the commissioners were not yet certain how many cases they would have to deal with.

"But we can fairly accept that within the timeframe of the Commission, it won't be possible to deal with each and every individual conceivable case, so one will have to find a way to do justice to this process."

This did not mean that the Commission would ignore many whose personal stories of human violation were not prominent.

"It's important to us that we should reach out not only to high-profile victims but also to unknown victims. We will have to give due attention to those people whose stories have never been told."

Ms Wildschutt said one of the key aspects of reparation was ensuring that such human rights violations never recurred in South Africa.

"We have to create a situation where this will never, ever happen again, and that's the hardest part."

"What do we do with someone who made a conscious decision to become a torturer? With people who consciously made laws to oppress others?"

"That's the challenge for us – it must become impossible for someone even to think about it (becoming a torturer)."

"And that's the challenge for the whole nation, not just to the 17 commissioners."

Public's protector needs help himself

(252) (252) mtg 9-15/2/96

Selby Baqwa, the official appointed to fight the abuse of power, is himself tangled up in red tape, reports
Gaye Davis

PUBLIC protector Selby Baqwa may be one of the most powerful people in the country but he has run into major problems over the appointment of the nine provincial public protectors he needs to help deal with the cases flooding his office.

Mandated in terms of the interim Constitution to root out government corruption, abuse of power and bureaucratic rudeness and delays, Baqwa's headache stems in part from a tough African National Congress negotiating position on the final constitution that aims at ensuring provinces have limited muscle to flex.

The interim constitution says provinces must legislate for the appointment of the provincial protectors that Baqwa sees as becoming the hands and feet of his operation. But the draft final constitution makes no mention of them.

As a result, the Free State and Gauteng are holding back on their legislation because they first want to see what the final constitution says. State law adviser in the Free State, Johan Meyer, said there were contractual concerns about appointing a person to a seven-year term of office in a job that might not exist under the final constitution.

The seven other provinces have already adopted legislation, and Mpumalanga and the Northern Province have taken steps to fill the posts. But ANC MP and constitutional negotiator Baleka Kgosisile said a decision was taken at the weekend to instruct the provinces to withdraw their advertisements.

She said the ANC wanted provincial protectors to fall under Baqwa's jurisdiction and to be funded by the national office.

But Baqwa's problem is that he cannot set up provincial offices because he is governed by the interim constitution which clearly states this is a job for the provinces.

After Gauteng approached him to set up an office for the province, Baqwa wrote to Constitutional Assembly co-chair Cyril Ramaphosa. He was told the problem would be dealt with by "transitional arrangements".

"It was important I brought it to the attention of the Constitutional Assembly because it does represent a real headache," he said. "Right now I need these offices to be up and running. Everything is coming here."

"The offices are necessary to increase accessibility for the public and delivery of the service. If the aim is not to have provincial protectors appointed by the provinces, they could fall under my office and be financed from national level."

He has now asked Ramaphosa to spell out precisely what transitional arrangements are envisaged.

Kgosisile said she had sympathy for Baqwa's position, but

that it would not be in the long-term interests of the country — "not just the ANC's interests" — to have provincial public protectors as provided for by the interim constitution.

"Our problem would be one province setting up its own rules and regulations and acting autonomously, possibly duplicating the work of the national public protector and not feeling obliged to consult," she said.

'We say there will be a problem with nine provincial public protectors under a federal arrangement that you can't control from the centre."

She said the issue was raised at a meeting last weekend of the ANC's constitutional commission, which comprises national executive committee members and representatives from the seven ANC-led provinces, the Congress of South African Trade Unions and the South African Communist Party.

Provinces advertising the positions in terms of their own legislation had

been told to withdraw the ads, Kgosisile said. This did not, however, prevent premiers from going ahead and setting up offices, though it was best Baqwa did this "in consultation with the provinces".

Section 114 of the interim constitution says any provincial law shall not derogate from the powers and functions of the public protector. This gives Baqwa an override function over wayward provincial protectors — and raises the question whether ANC fears are not perhaps overstated. However, the interim constitution provides for the public protector and his provincial counterpart to have concurrent jurisdiction. It is argued that provincial laws would be duplicating Baqwa's role.

For Baqwa, a key concern is the volume of work he is having to deal with in the absence of provincial offices. "If I have to start saying I am overloaded it will start eroding whatever confidence the public has in this office. At the very least, I ought to be able to set up the structures I am entitled to in the law."

YOUR SMOKE CAN HARM THOSE AROUND YOU

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M+G 9-15/2/96
**Truth body
seeks head**
(252)

Gaye Davis

IT'S going to be the highest profile job in South Africa. And ideally the person who gets it should be black.

An interviewing panel of Cape-based commissioners has drawn up a shortlist of potential candidates for chief executive officer of the Truth and Reconciliation Commission, but wants the net cast wider, which may be another way of saying the names on the list belong to whites.

"The committee felt very strongly that — all things being equal — this should be an affirmative action post," said commission chairman Archbishop Desmond Tutu. "Part of the commission's job is to try and redress imbalances, and the image the commission projects must be part of that message to the country."

While it was important the appointee came from the sector of the community on the receiving end of apartheid abuses, Tutu emphasised that the determining factor would be whether a candidate could ensure the commission operated efficiently.

"It's a critical appointment. Colour is not the only criterion. If a person satisfies all the other requirements the amount of melanin in their skins will not be a factor."

The CEO would be responsible for about 150 staffers scattered across the country and would need considerable managerial skills, Tutu said. "We need someone with energy, drive and oodles of initiative. They would need to have their finger on the pulse not only in the regions but in the depots we hope to set up in smaller towns."

Azapo set for case against Truth Act

By JOVIAL RANTAO
Political Reporter

Lawyers representing the Azanian People's Organisation in its bid to have the application of the Truth and Reconciliation Act suspended because the organisation believes it violates the interim constitution are soon to lodge an application in the Constitutional Court

Pretoria attorney Cyril Morolo, for Azapo, told The Star that a senior counsel had been briefed to represent the organisation in its application and was expected to file papers against Justice Minister Dullah Omar soon

Azapo, together with the families of late Black Consciousness leader Steve Biko and Durban human

rights lawyer Griffiths Mxenge, wants the indemnity clause in the Truth and Reconciliation Act to be nullified as it was opposed to amnesty being granted to criminals and people who had committed crimes against humanity

They want the alleged perpetrators to be tried, sentenced if found guilty, and then to apply to President Nelson Mandela for indemnity

"Apartheid was declared a crime against humanity by the United Nations. The perpetrators must be punished and not pardoned. Judge Richard Goldstone is in Bosnia to prosecute people who committed similar crimes, why should that not happen here? The rule of law

must apply," Morolo said

He had been studying documents from Bosnia, the Nuremberg trials and Japan for reference. Also, the legal team was working on contradictions which he said existed in the interim constitution with regards to human rights and the Truth and Reconciliation Act

"We have a good case," he said, adding that his team was hoping to meet Omar to "narrow the issues" before the application was lodged

Azapo earlier said the legal process was being delayed by the exorbitant cost of approaching the Constitutional Court, but Azapo secretary general Mpotse Kgokong yesterday said the costs were not prohibitive

(252) Star 9/2/96

Tutu and PAC leaders discuss Truth Commission concerns

OWN CORRESPONDENT

Cape Town - Truth and Reconciliation Commission chairman Desmond Tutu has met leaders of the Pan Africanist Congress as part of the ongoing series of discussions with political leaders about the workings of the commission.

Meetings were also held recently with Freedom Front leader Constand Viljoen and

deputy presidents Thabo Mbeki of the ANC and F W de Klerk of the National Party

In a statement after the meeting, Tutu said he had met PAC president Clarence Makwetu, PAC member of Parliament Gora Ebrahim and R K Sizani to discuss the work of the commission.

"We discussed a number of concerns which the PAC had, including the issue of how polit-

ical parties will relate to the commission," Tutu added

The commission plans to continue consultations with these and other political leaders

The Truth and Reconciliation Commission will be holding an interfaith commissioning service at St George's Cathedral in Cape Town at 1pm on Tuesday

Religious leaders including

African traditional leaders and Christian, Hindu, Jewish and Muslim leaders are scheduled to preside at the service

The service, which will be open to all, will also be attended by members of the Government, other politicians, business and educational leaders

A symbolic commissioning of the members of the Truth Commission will be led by children

(252) Star 10/2/96

European aid for Truth Commission sought

Star 10/2/96 (252)

Cape Town - European Parliament president Klaus Hansch is to recommend to the body's member states that financial or material assistance should be offered to South Africa's Truth and Reconciliation Commission.

This emerged after talks with commission chairman Archbishop Desmond Tutu yesterday, Hansch said. Tutu had briefed him on the

work of the 17-member commission which was formally established in December to probe thousands of apartheid-era human rights abuses dating back to 1960.

"I said there was a chance that the European Union would support the work of the commission financially or materially," he said.

He would make this recommendation to the European

Parliament as well as the European Commission.

Tutu and his deputy Dr Alex Boraine have been invited to meet EU ambassadors in Cape Town on February 21. It is understood the talks could pave the way for offers of foreign assistance.

Denmark and the Netherlands have offered detectives to assist the commission in its investigations - Sapa.

ST 11/2/96

By CARMEL RICKARD

FINISHING touches are being made to a multimillion-pound scheme that will provide free legal representation for everyone charged with a serious offence who cannot afford a lawyer

The government has allocated R100-million for the first year of the scheme, which is to be administered by the Legal Aid Board

It is expected to come on line within three months, replacing the old *pro deo* system, which catered only for capital crimes

The scheme will ensure that anyone who could be sentenced to jail without the

Free lawyers for the poor

(252)

option of a fine will be properly represented. It will also provide opportunities for law graduates, who might otherwise be without work

The constitution says that, in cases where "substantial injustice" would otherwise result, legal representation at state expense for those who cannot afford it is a fundamental right

The acting director of the

Legal Aid Board, Tony Hutchinson, told the Sunday Times this week that the board had agreed to be the agency through which the state offered the service

Several steps must be taken before the system starts. These include legislation extending the jurisdiction of the board to the old TBVC states, which is expected to be passed next month

An agreement between the board and the Department of Justice — to replace the *pro deo* system and expand legal representation under the constitution — must also be finalised

A system of payment for lawyers appearing for the board's clients also needs to be finalised. A number of problems in the past have left the board owing about R20-million to practitioners, and has created suspicion among many lawyers about the advisability of taking Legal Aid Board work

A large number of administrative staff have been hired to wipe out the R20-million backlog

Negotiators inch closer to a new bill of rights

(252) ST 11/2/96

CONSTITUTIONAL Assembly negotiators this week put aside petty squabbles but still failed to overcome the key stumbling blocks in the bill of rights

Chairman Cyril Ramaphosa was pleased with the progress recorded after intense bilateral talks between political parties

At the end of the week his score card on the 33 clauses in the bill of rights read thus

Deadlocked on three clauses, agreement on 17, and still discussing 13.

The road ahead will be rough

As ANC negotiator Naledi Pandor said when reporting on the death penalty clause "There is a total and full deadlock" The same went for the labour relations clause and the "hate speech" aspect of the freedom of expression clause

Members of the Concerned Citizens Committee this week submitted to the assembly a petition of 160 000 signatures calling for the death penalty to be reinstated, but the ANC and the DP remained adamant that not even the state should be allowed to kill

The DP and the NP still insist that both the right to strike and the right to lock-out are both either in or out of the constitution The ANC wants the right to strike entrenched

There is no agreement between the ANC and the DP on whether the constitution should specifically state that freedom of expression does not extend to the advocacy of hatred based on race, ethnicity, gender or religion

The DP position is that before any rights are limited there should be a strict test of necessity, and in this case other laws should be sufficient to deal with the consequences

The ANC argues that with South Africa's history, it is imperative to send a clear message that certain utterances are unacceptable

The panel of constitutional experts, requested by the NP to provide an opinion, this week reported that a political decision was required to resolve the matter

The experts reported "If South Africans feel that it should be stated clearly that certain forms of hate speech fall outside the

scope of the right to free expression the specific mentioning of the exclusion in the free expression clause is justified The exact wording then obviously deserves close scrutiny"

NP negotiator Sheila Camerer said her party had reserved its position on this aspect

"We are open to being persuaded," she said

A multilateral consultation will be held with the experts on February 23 to try and resolve this matter

There was progress on other fronts

The negotiators moved to scrap the economic activity clause in the interim constitution, and to guarantee freedom of occupation instead

Citizens will have the right to choose their occupation or profession, their place of work and place of training The practice of an occupation may be regulated by law, according to a proposal made by the ANC, which has been agreed to in principle

"Economic activity" has been rejected because it is a broad and potentially open-ended liberty The Association of Law Societies of SA has also recommended this change

The separate clause on academic freedom falls away as there is consensus that academic freedom, and freedom of artistic creativity and scientific research should be part of freedom of expression

There was also agreement that reference to media financed by the state be removed from the bill of rights and be dealt with as part of state institutions supporting constitutional democracy

The DP has also settled for an amendment to the privacy clause which now guarantees the right not to have the privacy of communications "infringed" The party had originally proposed that private

communications should not be "intercepted".

It has also been agreed that the clause on political rights should be reformulated to exclude the franchise, which will be included in another section The voting age will therefore no longer need to be determined under the political rights clause

The debate on the property clause remained unsettled, but parties agreed to consider reformulating the bill of rights to deal with the question of land as a separate issue

Immovable property, and specifically land, has so far tended to cloud the discussions, and emotions have run high

The new arrangement means that the clause on housing will no longer cover land as well

The right to health care services, including reproductive health care, no longer has to be of the highest attainable standard, as

provided for in the present working draft of the constitution This right will now be guaranteed within the state's available resources

The DP said this week that it would no longer support the view that the right to access to information should also cover information held by ordinary or juristic persons, other than that held by the state.

DP negotiator Dene Smuts said other countries had freedom of information legislation, while South Africa was preparing to pass the Open Democracy Act this session, which would give effect to the right to access to information

There was no clarity, however, about the extent to which this right could be exercised in regard to information not being held by the state

"There is a wavy line and people have come to a dead end Until we arrive at a clear legal position we cannot push forward," she said

Mr Ramaphosa said the political parties had shown that they were willing to explore various options in order to reach consensus

He said many differences were technical.

Negotiators will focus this week on the national assembly, the national executive, the courts and the administration of justice

The public has until February 20 to make submissions



CYRIL MADLALA

At the Constitutional Assembly

QUOTE:

ANC and DP remain adamant that the state should not be allowed to kill despite a petition

We promised you a new world of entertainment. Find out how to get it. See page 9.

3 committees will assist truth body

(252)

Star 11/2/96

BY PATRICK BULGER
Political Correspondent

South Africa's Truth and Reconciliation Commission, which will soon begin its work, will be assisted by three separate committees. They are:

■ A committee on human rights violations which will inquire into "gross violations", which are defined in the legislation as "killing, abduction, torture or severe ill-treatment"

■ A committee on amnesty headed by a judge or a retired judge which will consider applications for amnesty, and

■ A committee on reparation and rehabilitation, which will make recommendations for reparation, the scale or nature of which will have to be decided by Parliament.

The committee on human rights violations is responsible for "establishing as complete a picture as possible of the causes, nature and extent of gross violations of human rights (and) restoring the human and civil dignity of victims"

The committee on amnesty can refuse amnesty, or grant it, subject to certain criteria.

WHEN the ANC finally dropped its opposition to a Bill of Rights for SA, it adopted a philosophical approach to rights that was a far cry from the classical liberal framework embodied in the US constitution. The ANC's approach emphasized societal interest over individual autonomy and, far from limiting state action, gave an injunction to the state to intervene widely in citizens' lives.

In the Constitutional Assembly, the ANC has put this approach into action with great effect: the Bill of Rights in the working draft of the new constitution, dated November 22 1995, is substantially an ANC document, far more so than the interim Bill of Rights.

The ANC does not, however, enjoy the two-thirds majority required in the National Assembly to adopt a constitution, so the approach of the minority parties to the key sections of the Bill of Rights will be highly significant. The focus is now on the NP, the IFP and the DP, which, together with the Freedom Front, have the numerical strength to veto the constitution.

As things stand now, the ANC is set to win the contest of ideas with relative ease. The IFP and the DP are both divided internally, with those who would defend the liberal idea of rights struggling to persuade their colleagues not to accede to the ANC's wishes.

The IFP is boycotting the assembly over the international mediation dispute, but is nonetheless studying and debating the working draft in anticipation of a possible return.

The NP denies that it is experiencing any internal disagreement on the Bill, yet its response to key ANC proposals is at best confused.

The debate revolves around three key topics:

- First, the question of whether so-called "socioeconomic rights" should be included in the Bill;

- Second, whether the Bill should be "horizontal" in its application, that is binding on persons as well as on the state; and
- Third, the section over which the

Will the Bill of Rights in fact limit people's rights?

COLINDOUGLAS

BD 12/2/96

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NP, IFP, and the DP are most united in their opposition to the ANC's stand, the extent to which rights appearing in the Bill may be limited.

Also at issue are the ANC's proposals to tamper with the rights themselves, most notably to exclude constitutional protection for "hate speech" from the section on freedom of speech.

In the working draft of the new constitution, the "socioeconomic rights" include the rights to have access to adequate housing, access to health care services "of the highest attainable standard", a social security system, and basic and further education. The state is required to "take reasonable and progressive legislative and other measures" to secure these rights.

Some officials in the IFP, the DP, and possibly also the NP, have misgivings about including what are really socioeconomic entitlements in a Bill of Rights and so making them constitutionally enforceable.

However, there are also prominent members in all three parties who endorse "softened" versions of these sections of the Bill of Rights, some openly admitting they are choosing electoral reality over philosophical consistency.

The IFP's constitutional adviser, Mario Ambrosini, is understood to have argued that it would be polit-

ically untenable for the party to reject "socioeconomic rights".

DP leader Tony Leon is said to be largely satisfied with the sections' formulation in the working draft of the constitution, as they have been significantly "watered down" from the ANC's original proposals. But in both parties there are senior public representatives determined to persuade their colleagues to oppose the inclusion of these "rights".

The NP's Sheila Camerer said her party was opposed to the socioeconomic sections as they currently stood, but would accept an alternative formulation provided the rights were properly qualified.

For those who wonder about the implications of the "horizontal" application of rights, Prof Albie Sachs, the ANC activist who is now a Constitutional Court judge, has spelled them out in his book *Protecting Human Rights in a New SA*. What citizens will have to "learn to live with", Sachs says, "is that in relation to anything outside the immediate private or family sphere, there will be constitutional norms of non-discrimination". These norms will apply to everything, from business to restaurants to churches to sport. In these cases "the right to

equal protection would prevail".

In the working draft of the constitution, the Bill of Rights is made binding on all natural and juristic persons when this is "applicable". In addition, the section on equality holds specifically that "neither the state nor any person may discriminate" against anyone, on any one of numerous grounds.

"Horizontal" thus transforms the Bill of Rights from an instrument for citizens to use to keep the state in check into one for the state to use against private citizens and private institutions.

The prevailing view in both the IFP and the DP is that "horizontal" is acceptable. The DP wants an "audit" of rights to declare which will and which will not be subject to "horizontal" application, while the IFP's proposed Bill for KwaZulu-Natal would limit the horizontality of "socioeconomic rights".

But there are members of both parties who are opposed to the "horizontal" application of rights and are saying so within their parties. Some members of the IFP say they fear "horizontal" will result in massive intrusion by the state into people's lives.

Peter Leon, leader of the DP in the Gauteng provincial legislature, says "horizontal" will create major problems in the courts, severely

disrupting the common law.

Camerer says the NP is opposed to "blanket horizontality" but could accept some aspects of the current provisions. She denies that there is any doubt in the NP over this issue, but could not declare whether the party would support or oppose the provisions, saying only that there was heavy negotiation ahead.

Commenting on the applicability of the equality clause to persons Camerer said the NP was "not enthusiastic" about this, "but we concede the equality clause is likely to be horizontal".

The limitation section of the draft Bill, perhaps the most important section of all, states that "The provisions of the Bill of Rights do not prevent the state from adopting any legislative or other measures designed to prevent or prohibit (unfair) discrimination". (The inclusion of "unfair" is optional.)

The section also provides for limitation of rights where such limitation is acceptable "in an open and democratic society based on freedom and equality".

In contrast to the "socioeconomic" and "horizontal" sections, the NP and DP have both been firmly opposed to the formulation in the draft Bill and the wide authority it gives the legislature and the executive to curtail rights. The IFP is also understood to oppose the section.

Legal academic Prof John Dugard, writing during the early stages of negotiations over SA's interim constitution, issued a warning that this country was likely to end up with a Bill of Rights considerably less rights-respecting than its US counterpart. "Our founding fathers bring to the negotiating table jurisprudential baggage that is likely to hinder rather than promote the advancement of rights," he said.

The question for liberals is whether one or all of the minority parties will take on the defence of classical individual liberties as a matter of principle.

- Douglas is parliamentary affairs manager of the SA Institute of Race Relations

Justice department could face second affirmative action challenge

David Greybe

CAPE TOWN — The justice department may face a second Supreme Court challenge to its beleaguered affirmative action policy, this time over the filling of posts for state advocates and magistrates.

The department suffered a setback last week when the biggest public service union, the Public Servants Association, won an interim Supreme Court order halting further affirmative action appointments concerning state at-

torneys. The association yesterday accused the department of "continuing to act in an autocratic manner" in filling vacancies within the department.

It said the department was guilty of unfair labour practice by not first negotiating a "collective agreement" with unions the way other departments did. The department had simply gone ahead with filling posts at the end of last year while negotiations with unions on a rationalisation and affirmative plan were still under way. The association sought to dispel

fears that government's overall affirmative action policy was under threat, and said it had no plans to challenge other ministries over hiring policies.

However, government sources have warned that the court outcome could have serious repercussions for the restructuring of other departments. At the centre of the row is an apparent inconsistency between the interim constitution and the Public Service Act. The constitution calls for promotion of a public service "broadly representative of the SA community", while the

Act stipulates candidates who applied for a post should be considered regardless of race, colour or gender.

Association GM Casper van Rensburg warned the department was "forced to fill posts in the absence of an affirmative action policy negotiated with unions."

Employee dissatisfaction over the department's hiring policy had spread to magistrates and state advocates (who appear in the Supreme Court on behalf of government).

The department, in turn, said "normal filling" of posts was continuing in accordance with the "relevant prescribed measures" and with due regard to the constitution.

Van Rensburg dismissed claims in some government circles that his association was concerned only about white public servants. "This is not a black versus white thing. This is about unfair labour practice."

He said his association was simply

Public service

Continued from Page 1

seeking a collective agreement on an affirmative action policy framework similar to those which unions had concluded with other departments without having to resort to court action.

The association is insisting that departments consider "all applications" as part of an agreed process to enforce greater representation.

The interim order granted last week interdicted Justice Minister Dullah Omar from filling 30 vacancies in state attorneys offices countrywide unless

the parties concluded a written agreement. A final hearing is scheduled for next Friday.

The association's challenge is based on a section of the Public Service Act which specifies that posts should be filled with regard only to qualifications, merit, efficiency and training levels. The department has argued the interim constitution supersedes the Act which, it contends, favours existing personnel in the filling of posts.

Omar's special adviser Enver Daniels said last month it was unacceptable that state attorneys were overwhelmingly white, and the department was committed to appointing "people of colour".

Continued on Page 2

Former attorney-general employees cash in

Amanda Vermeulen

THE Witwatersrand attorney-general's office is being forced to pay some former staff members at least R1 000 a day to complete cases amid an exodus of its advocates to better-paid jobs

Attorney-general Kevin Attwell said five former employees were being retained on a consultancy basis to complete cases, which included the spate of pre-election right-wing bombings

Former junior state advocates were paid R1 000 a day. A deputy attorney-general earns R14 000 a month

Attwell said six more officials, in-

cluding three senior state advocates, would be leaving the office at the end of this month, bringing its vacancy numbers to 23

Two of the senior advocates — one of whom was Herman de Beer — had extensive experience in commercial crime cases.

Junior state advocate Henk Louw, who has been handling the prosecution of former Absa executive Bob Aldworth, was also leaving

The losses were blamed on poor salaries — most of those who had resigned were going to the bar or to the private sector — and uncertainty

about promotion prospects

Attwell said it was not always possible to reallocate the workload to remaining staff

Three senior advocates had been recruited, but none had Supreme Court experience

The Pretoria attorney-general's office will lose 11 more staff members at the end of this month, leaving it with 20 vacancies

The Office for Serious Economic Offences, which is already employing private investigators due to its staff shortage, said it had lost another two senior officials

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Nothing bu

Commission gets down to business tomorrow

ARG 12/2/96 (252)

JOHN YELD and
JOSEPH ARANES
Staff Reporters

THE 17 members of the Truth and Reconciliation Commission meet at their new Cape Town headquarters tomorrow for the first time and will immediately plunge into a sea of detail and decision-making they need to cross before their real task starts

A critical area of discussion during the commission's third session, scheduled to last two days, is the appointment of staff, particularly a chief executive officer, whose post was advertised only in the middle of last month

They also need to devise a working relationship between the various committees and the committees' relationship to the commission's investigative unit

The commission consists of three committees a human rights violations committee of 10 commissioners and 10 additional nominees which will have its headquarters in Cape Town, an amnesty committee of three appointed judges and two commissioners, and a reparations and rehabilitation committee

Although the headquarters of the amnesty committee is technically in Cape Town, it is likely to work from Johannesburg and office space is being leased there, according to the commission's media liaison officer John Allen

"And it seems at this stage as though it will also hold hearings in other parts of the country"

It was possible this committee would split into two to facilitate its work - "but it's difficult to predict at this stage," Mr Allen said in an interview

One of the hurdles the commissioners have to negotiate before they get down to

'For the future of the country and for the health of the new democracy, no-one should be allowed to forget the past in the excitement of the new South Africa'

serious work is how this committee will react with the human rights violations committee

Although technically part of the commission, the decisions of the amnesty committee are, in terms of the legislation, not open for review by the commission

Also, there is no clarity on which committee will have precedence - for example, if a victim makes a statement to the human rights violations committee and the perpetrator of this particular act applies for amnesty, will the amnesty committee have the right to subpoena the victim to testify, to ensure there is the full disclosure specified by the Act?

Or will the human rights violation committee be entitled to order the perpetrator to appear before it first to answer the allegations?

In terms of the legislation, the amnesty committee has an obligation to deal first with applications from people who are serving prison sentences

These applications have to be made on a prescribed form which has yet to be officially gazetted

Although many people have already made submissions to the Department of

Justice in terms of existing amnesty legislation, they will all have to re-apply on this official form once it has been printed

There is also not yet clarity on how the human rights violations committee will conduct its hearings, although the run-up to such hearings - through the use of official statement-takers, for example - are outlined in some detail in the Act

This committee may decide to use counsel to lead evidence and help guide the victims through their testimony, or the commissioners may themselves ask questions as a way of filling in the inevitable gaps in the statements

"All these things are just now being looked at "It's all very speculative at the moment - we're feeling our way, bit by bit," Mr Allen conceded

The human rights violations committee is by far the biggest, and includes both commission chairman Desmond Tutu and vice-chairman Alex Boraine

So far, six of the additional 10 nominations have been filled and the remaining four are likely to be named soon

Mr Allen said legislation required the commissioners to be particularly sensitive to victims, and because of this the human rights violation committee was likely to conduct hearings in small towns throughout South Africa, and not just in the major urban areas

"That's the indication at this stage, and logic tells me that this committee will have to split up to do the hearings"

The commission is likely to give urgent attention to the appointment of staff, so that the operational logistics will be in place for them to start their actual work

Dr Boraine is on record as saying that the commission

will probably have a staff of more than 200 when in full swing, and Mr Allen will be asking for five professional journalists and three secretarial staff just to run the media section

The importance the government attaches to the commission was emphasised by Water Affairs and Forestry Minister Kader Asmal during a tree-planting ceremony at Cowley House Trauma Centre in Woodstock last week

Professor Asmal said there were those who wanted to erase the past - "to pretend that this past was simply a chapter of history which is now closed, to lose our memories"

But there were those for whom the memory would never be lost, Professor Asmal said

"Those who were tortured, mentally and physically

"Those who were torn from their homes and thrown away in forgotten rural areas, or driven from their homeland to live in foreign countries, among foreign customs and foreign languages

"Those who were raped. Those who watched children, lovers, parents, brutalised, tortured and killed

"Those who lost hope Those who lost their courage and betrayed their friends, their families, their comrades

"For these people the memory is indelible"

For the future of the country and for the health of the new democracy, no-one should be allowed to forget the past in the excitement of the new South Africa, Professor Asmal warned

"The Truth and Reconciliation Commission is intended to prevent exactly that happening It will preserve a collective memory, on behalf of us all"

There will be a service for the commission at St George's Cathedral at 1pm tomorrow

HEA

12/2/98

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the truth ...



SEEKING THE FACTS: The Truth commissioners – led by their chairman Archbishop Tutu – gather at Bishopscourt

Amnesty forms now on hand

By Rafiq Rohan
Political Correspondent

FORMS will be made available for those wishing to apply for amnesty from the Truth and Reconciliation Commission

The forms, supplied by the Government, will be available at magisterial offices and organisations like human rights bodies and church organisations

Applicants will have to supply full details of the organisations or institutions they served on when they fill in the form. They will also have to supply dates, places and particulars of actions for which they are seeking amnesty

(252) *Sametaw 13/2/96*
Applicants are also asked to state whether anyone was injured as a result of the action. They will also be asked for details of what political objective was sought, and for the justification regarding an act, omission or offence.

Applicants will have to say whether they had benefited financially as a result of the action and whether it was ordered, approved or carried out on behalf of an organisation. Names and addresses of those who gave orders will also have to be supplied.

The cut-off date for applications is December 14.

The committee (on amnesty) is bound by the law to give priority to

applications from persons in custody

It has asked that the approximately 1 200 prisoners who have already applied for indemnity under previous legislation should be informed that they now need to apply for amnesty on the newly-promulgated form.

The law provides for the committee to hold hearings unless it is satisfied that the act, omission or offence to which an application relates does not constitute a gross violation of human rights. In such a case, it can decide on an application without a hearing.

The thousands of policemen from the previous administration who applied for indemnity en masse will have to go through the new procedures as well.

Witness protection plan

□ Truth commission to decide on safety measures

(252) ARt 13/2/96

Staff Reporters

A DECISION on how to protect witnesses who could face risks when testifying about past human rights abuses in South Africa was one of the key items on the agenda of the Truth and Reconciliation Commission when it met today.

The commission began its third sitting since being established by President Mandela on December 15 at its new offices in 106 Adderley Street, Cape Town.

Topping the agenda for today's meeting was the difficult question of witness protection and how the commission will structure itself and operate.

Commissioner Denzil Potgieter said the TRC was still facing a highly demanding schedule, and all the commissioners were extremely anxious to get through the initial stages of setting up the structure.

"We still need to deal with the commission's infrastructure, and there are a lot of staff matters that need to be resolved. Hopefully at the end of this two-day session we will have some clear answers."

Mr Potgieter said a number of commissioners had been mandated to investigate certain aspects of the commission's work.

These included their relationship with the three judges on the amnesty committee and judges hearing cases which overlapped with the commission's work, how victims would be dealt with and how the investigators would utilise certain skills like forensic testing.

"But nothing is finalised yet. We will get reports today and see how we can fit into all of it."

Other items on the agenda in-

cluded report-backs from the commission's four regions and committees, and meetings with political leaders.

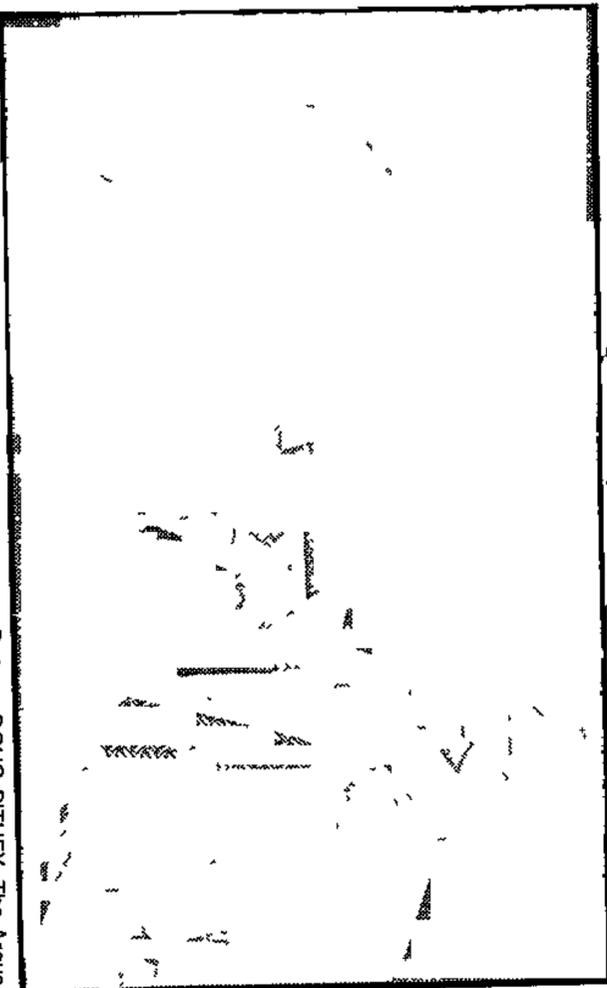
Yesterday, workmen pulled out all the stops to get the offices ready for today's sitting.

The TRC has leased four floors — seventh to the 10th — and the building will house most of the 200 administration staff.

It has a large conference room where some of the hearings will be held.

Workers have managed to complete the seventh floor, and the rest of the office space should be completed by April.

Painters were putting the finishing touches to doors and walls yesterday while a Telkom technician connected up all the telephone lines and a furniture company delivered much-needed furniture.



Picture: DOUG PITHEY, The Argus

DOWN TO BUSINESS: The head of the Truth and Reconciliation Commission, Archbishop Desmond Tutu, and his deputy chairman Alex Boraine, were in a cheerful mood before the start of their third session today. The session is the first to be held in the commission's new headquarters in an Adderley Street office block.

New procedure for amnesty applicants

(252)

Sowetan 14/2/96

By Rafiq Rohan
Political Correspondent

FORMS will finally be made available for those wishing to apply for amnesty at the Truth and Reconciliation Commission

The forms, promulgated by the Government, will be available at magisterial offices and organisations like human rights bodies and church organisations

"This will be done as quickly as possible so that the form can be made widely available," Truth Commission head Archbishop Desmond Tutu said this week

Applicants will have to supply full details of the organisations or institutions they served on when they complete the form. They will also have to supply dates, places and particulars of actions for which they are seeking amnesty

Tutu explained "Applicants are also asked to state whether anyone was injured as a result of the action, details of what political objective was sought, and the justification regarding an act, omission or offence as one with a political objective"

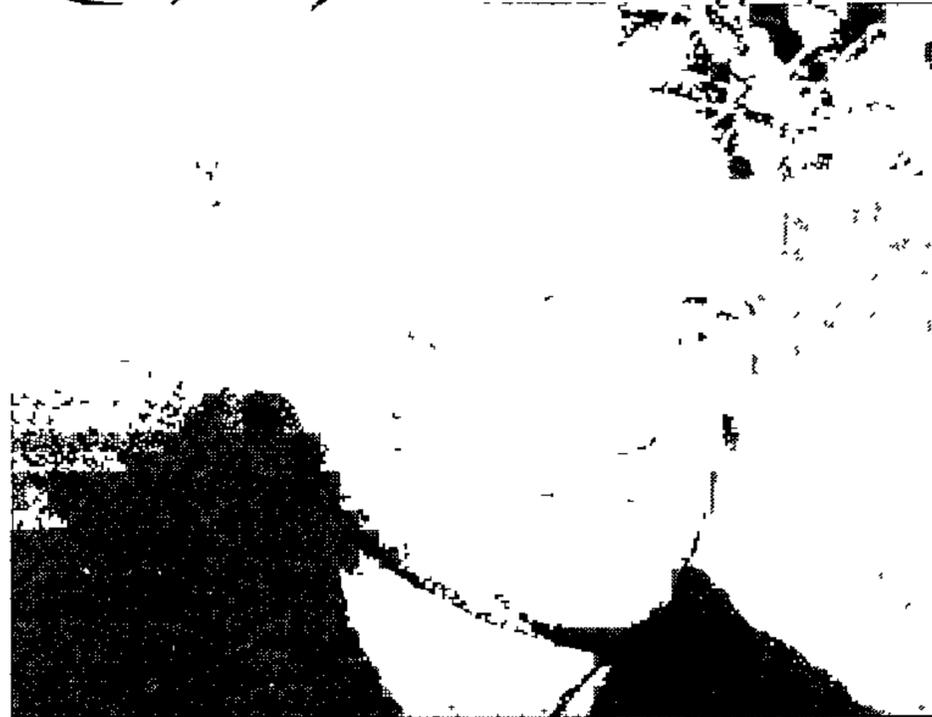
Financial benefits

Applicants will have to state whether they benefited financially as a result of the action and whether it was ordered, approved or carried out on behalf of an organisation

Names and addresses of those who gave orders will also have to be supplied, Tutu said. The cut-off date for applications is December 14

"The Committee (on Amnesty) is bound by the law to give priority to applications from persons in custody," he said

"It has asked that the approxi-



Archbishop Desmond Tutu ... the Committee on Amnesty is bound by the law to give priority to those in custody

mately 1 200 prisoners who have already applied for indemnity under previous legislation should be informed that they now need to apply for amnesty on the new form"

The law provides for the committee to hold hearings unless it is satisfied that the act, omission or offence to which an application relates does not constitute a gross violation of human rights. In such a case, it can decide on an application without a hearing

Policemen

The thousands of policemen from the previous administration who applied for indemnity collectively will have to go through the new procedures as well

● Norway would contribute

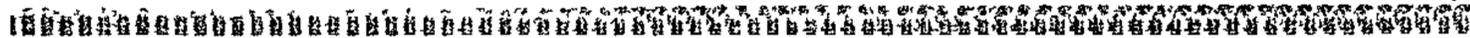
R2,5 million to the work of the Truth and Reconciliation Commission, Norwegian Prime Minister Gro Harlem Brundtland announced after meeting Archbishop Desmond Tutu on Monday

Aid for human rights

During the apartheid years, Norway provided more than R1 billion in financial support to the anti-apartheid movement, Brundtland said

A considerable portion of this amount had been given to various human rights organisations

She had already spoken to commission vice-chairman Dr Alex Boraine about the framework within which the financial assistance will be given, she said



Prosecutors 'in crisis'

STAFF WRITER

STATE advocates told Minister of Justice Dullah Omar yesterday that prosecutors' offices were in a crisis due to resignations and the department's affirmative action policy

The Society of State Advocates said they had told Omar they blamed their difficulties on "grossly

inadequate salaries" and the way he had been handling appointments and promotions in their ranks where merit was being "totally ignored" without possibility of promotion for those not qualifying on affirmative action criteria

The advocates said that since November last year 10% of state advocates had resigned

Tutu is looking for volunteers

Wyndham Hartley

BD 15/2/96
(252)

CAPE TOWN — The truth commission would have representatives in every town across the country, chairman Desmond Tutu said yesterday.

It had become increasingly clear it was unreasonable to expect people to contact one of the regional offices when they lived far away from them.

"We want volunteers, or if necessary paid people, in each town so that the little people who got the thin end of the wedge can get to tell their story," Tutu said.

Commission vice-chairman Alex Boraine said it had been decided to invite all organisations in the country which might have played a role in the conflict of the past to make submissions to the truth commission. They could apply to give evidence to a sitting of the full commission.

Boraine said the decision was aimed at "helping us to fulfil the mandate laid down in the law governing our operations, which is to establish as full a picture as possible of the nature, causes and extent of human rights violations between 1960 and 1993".

He said written submissions could be sent to the commission at PO Box 3162, Cape Town, 8001.

Asked about the meetings between the commission and leaders of political parties, Tutu said they were in the process of setting up a meeting with IFP leader Mangosuthu Buthelezi.

SANDF purchases 'need investigation'

Linda Ensor

CAPE TOWN — Irregularities in the procurement of spares by the SANDF appeared more widespread than originally suspected and further investigations might be necessary, state expenditure director-general Hannes Smit said yesterday.

Addressing the parliamentary public accounts committee on the follow-ups to the 1994 auditor-general's report, Smit said it appeared that more firms of suppliers might have been involved in the irregularities.

Auditor-general Henri Kluever expressed concern about the long delay by the justice department in taking action against the culprits and the committee agreed to request a report-back from the department.

In a letter to Smit in October last year, SANDF chief Gen Georg Meiring said a private audit firm had conducted an independent investigation into alleged irregularities, extended "to include a number of additional firms/suppliers who may also be involved."

"The auditor-general and state attorney have been requested to determine if other government departments have done business with the identified firms," Meiring said.

The volume of transactions examined was making the investigation time consuming. "However, the investigation has proceeded to the point

where a warrant of attachment in respect of relevant records and books of account of identified firms can be exercised."

The brief given to the state attorney and audit firm specified if irregularities were found, criminal and civil action be brought against firms, individuals and defence force members.

Reuter reports that Kluever also said mine inspections by the mineral and energy affairs department were not scientific and inspectors did not pay attention to some major causes of accidents on SA mines.

A performance audit of the department's mining safety and inspection procedures showed there was no overall strategic plan to achieve objectives or ensure standards were met.

"Aspects which had been identified as some of the biggest reasons for mine accidents — for example poor training of mine workers — did not receive the attention of regional mining engineers during inspections," the report said.

Corrective steps which might have resulted from inspections had limited impact, because they were applied to areas visited by engineers who "could only make a limited contribution towards general upgrading of standards". The report said some corrective steps had already been put into place, including efforts to improve training of mining engineers through "practical programmes."

'Rival truth commission' doubts

BD 15/2/96 (252)

Farouk Chothia

DURBAN — KwaZulu-Natal premier Frank Mdlalose is pressing ahead with a commission of inquiry into political violence in the province, despite being urged by non-governmental organisations yesterday to drop the plan as it would duplicate the truth and reconciliation commission's work.

In a government gazette issued last month Mdlalose said a seven-member commission would be appointed to investigate politically motivated crimes committed in KwaZulu-Natal since 1970 — before the IFP was formed, but by which time Umkhonto we Sizwe and trade unions were active in the province. The gazette said only crimes in which there were no convictions would be investigated. The commission should forward reasons as to why convictions were not achieved.

Violent actions conducted "under cover of law or by individuals operating within state structures or on the basis of instructions from authorities" would also be investigated.

The commission would also identify possible "instigators and masterminds", and the "history of the unfolding political violence", and highlight "the existence of possible common purposes, or strategies and tactics with a view to identifying ways and means of preventing further crimes".

The gazette said Mdlalose would ap-

point the commission after nominations had been received from the public. Those who had investigative experience and knowledge of matters related to violence should apply.

KwaZulu-Natal spokesman Prem Nxumalo said she could not say whether media advertisements had been placed for nominations, how many had been received nor when appointments would be made.

The KwaZulu-Natal non-governmental organisation's human rights and advocacy sector said the commission would require large sums of money, and this could not be afforded. Its brief was covered by the truth and reconciliation commission and the KwaZulu-Natal Implementation for Peace Bill, passed in the provincial legislature last year.

Human Rights Committee violence monitor Linda McLean said Mdlalose had still not established the structures envisaged in the peace Bill. The commission would merely become an excuse to delay action against perpetrators of violence.

ANC KwaZulu-Natal safety and security spokesman Bheki Cele said it was clear the IFP wanted to establish a body that would "justify the violent structures" it had established in KwaZulu-Natal.

The IFP also hoped the commission would emerge as a rival to the truth commission, which it opposed.

Schoeman pips Delport for NP post

Tim Cohen

CAPE TOWN — NP MP and party executive director Fanus Schoeman will replace former land minister Tobie Meyer, Deputy President and NP leader FW de Klerk announced yesterday.

Schoeman, who has been closely associated with developing the NP's negotiations and political strategy, is understood to have pipped conservative NP Eastern Cape leader Tertius Delport to the post.

Schoeman is to relinquish his position as executive director of the party and the post will be abolished, while Delport would continue to serve in the Eastern Cape provincial cabinet as transport MEC, De Klerk said.

De Klerk also announced that MP Martinus van Schalkwyk and Senator David Malatsi would become assistant general secretaries, promoting simultaneously a young MP and a black MP to prominent positions in the party.

De Klerk said there were no grounds whatsoever for negative conclusions drawn with the departure soon of deputy constitutional affairs director Leon Wessels and Meyer from politics.

De Klerk said most other changes would only be closer to the 1999 poll. Gauteng MP Aboo Kahn would succeed John Mavuso — to become a member of the Cabinet after the departure of Roelf Meyer — as Gauteng's agriculture MEC, De Klerk said.

Stakeholders in Wits transformation to meet

BD 15/2/96 (252)

Kevin O'Grady

A CONFERENCE of all stakeholders in the transformation of Wits University is to be held soon, vice-chancellor Robert Charlton announced yesterday.

The decision was taken at a university council meeting last night on the recommendation of four council members who had previously been appointed as mediators in the transformation process, Charlton said.

A steering committee comprising principal stakeholders would be appointed to draw up the programme for the weekend conference.

A 116-page report by a commission of inquiry, headed by adv Malcolm Wallis, into allegations made by

deputy vice-chancellor William Makgoba of wrongdoing by 13 senior academics was tabled at the meeting.

However, it was agreed the council needed more time to consider the report and would meet again tomorrow to discuss its response.

The council would also constitute a new tribunal "as soon as possible" to investigate the 13 academics' allegations against Makgoba, Charlton said.

The 13 have alleged Makgoba misrepresented his achievements on his CV, brought the university into disrepute and failed to fulfil his administrative duties. An international tribunal set up to investigate the allegations was disbanded last month after one of its members withdrew.

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Truth commission seeks meeting with Buthelezi

(252)

Star 15/2/96

Co-operation of IFP leader sought after other major parties pledge to go along with commission

BY ROBERT BRAND

Cape Town

The Truth and Reconciliation Commission has asked for an interview with Inkatha Freedom Party leader Mangosuthu Buthelezi, commission chairman Desmond Tutu said yesterday.

Other major political parties - including the ANC, the National Party, the PAC and the Freedom Front - have already approached the commission and promised their co-operation, Tutu told a media briefing.

Obtaining the co-operation of

the IFP was not an "obsession", Tutu said, but the commission would like to meet Buthelezi "as a matter of policy".

At a recent meeting between the commission's reparations committee and community organisations in Port Shepstone, KwaZulu Natal, community leaders expressed their concern that the commission would not be successful in the province without the co-operation of the IFP.

But Buthelezi's failure so far to meet with the commission did not create a crisis situation, Tutu said.

"We hope we will be able to

deal with the concerns and reservations they (the IFP) have. As soon as the commission gets under way, people will see we are even-handed."

He also announced that the commission planned to hold its first public hearing on April 9, probably in East London.

Application forms for amnesty have been printed in seven of the 11 official languages and will soon be available at magistrates' courts and human rights organisations throughout the country, Tutu said.

The Department of Justice had already received 2 700 applications for amnesty.

Human rights: First sitting set for April

ARLT 15/2/96

(252)

JOHN YELD
Staff Reporter

THE human rights violations committee of the Truth and Reconciliation Commission is likely to hold its first hearing on April 9, possibly in the Eastern Cape

This was revealed by commission head Desmond Tutu at a press briefing yesterday at its new headquarters at 106 Adderley Street

Archbishop Tutu also announced that the commission had decided to invite political parties, non-government and community-based organisations to make written submissions and/or to appear before it

"This decision does not alter the commission's determination to maintain the primary focus of its work on victims and survivors of human rights abuses," he said in a statement read out at the briefing

Responding to questions, Archbishop Tutu said the Commission had already met the ANC, PAC, National Party and Freedom Front

"And we intend, not out of obsession or crisis, to meet the leadership of the IFP

"Two nights ago I approached (IFP leader) Dr Buthelezi and told him Dr Boraine and I wanted to visit him in connection with the commission, and he's now waiting for us to set up an appointment"

Dr Boraine said he was not aware of any approaches for amnesty from police colonel Eugene de Kock, a former commander of the Vlakplaas counter-insurgency unit, now on trial on numerous charges including murder

Asked what would happen in the case of trials like that of former defence minister Magnus Malan, who is also facing several murder counts, Archbishop Tutu said these could be halted at the discretion of the presiding officer so that those charged could apply for amnesty

In someone appearing in a court trial applies for amnesty, the amnesty committee, together with the appropriate attorney general, can apply to the court to have the trial halted. The court may, but does not have to, suspend the trial

Asked about the date of the first sitting of the human rights violations

committee, Archbishop Tutu said the Commission was cautious about making any predictions

"We want to be sure the infrastructure is in place and not to have a shambles

"At present we're setting our sights on the first Tuesday after Easter which has symbolic significance

Asked whether the Commission would ask for access to security police files, Archbishop Tutu said the Act empowered the Commission to ask for whatever material it needed "to provide as full a picture as possible"

A meeting had been scheduled for next week with Safety and Security Minister Sydney Mufamadi to discuss this issue, Dr Boraine said - to find "what's still there, what's disappeared"

He conceded the commission was having problems finding a chief executive officer. Although several people had been interviewed, they were not the right person for the "very, very important" job

The commission was looking for a black person, he added, because

of its mandate and the nature of the political struggle in South Africa

"The vast number of people who have been very badly hurt are from the black community," Dr Boraine said

Archbishop Tutu said testimony to the Commission and applications for amnesty would be privileged and there would be a degree of confidentiality during the application process

"Confidentiality is particularly important. But ultimately virtually everything has to be brought into the open

"It is important that our people know the truth and, as far as possible, the confidentiality must not be used as a cloak for keeping information from the public"

Archbishop Tutu said he believed people, even those with reservations about the commission, would see that it was being even-handed as soon as it started work

Personally, he had struggled for human rights, justice and fairness, and it would be foolish to renege on those ideals, which were "absolutely fundamental", during the work of the commission

ON THE HOUSE MPs debate hot issues

Who'll get amnesty, and who won't?

The truth commission has a difficult task ahead in establishing who will get amnesty, writes the National Party's **Jacko Maree**

It has been reported that the Amnesty Committee of the Truth and Reconciliation Commission has already received 2 000 applications for amnesty. The question is "Who will receive amnesty and who will not?" To establish an acceptable amnesty test will be a very difficult task for the committee, because the granting of amnesty since 1990 has been a messy and dishonest affair. Direct political interference, double standards, blackmail, secrecy and unlawful administrative acts all featured strongly in the granting of amnesty to date. To develop an acceptable amnesty test, the committee must, in terms of truth commission legislation, take cognisance of criteria applied in the past.

In terms of the legislation, the committee must grant amnesty if the offence committed was done for political reasons, in proportion, and therefore justified, if weighed against the political objective that was pursued.

The committee, therefore, has to work, firstly, with a very vague proportionality test.

In Namibia, Professor Norgaard developed a set of rules to help establish when amnesty could be granted and when not. Many Namibians who had committed political offences were not granted amnesty because their deeds were judged to have been too serious and, therefore, out of proportion to the political objective pursued.

Secondly, the committee is charged to apply the norms that were used to grant amnesty in terms of the 1990 and 1992 Indemnity Acts. This will cause the committee enormous headaches, because the proportionality norm (Norgaard Principles) and the other norms used in terms of the 1990 and 1992 Indemnity Acts are not compatible. To understand the committee's problem fully, we must revisit the past.

The 1990 Indemnity Act states that "for the sake of reconciliation and for the finding of peaceful solutions" amnesty had to be granted. The upshot of this was that thousands of prisoners — the exact figure is unknown — benefited. These prisoners received the normal one-third remission of their sentence, but, in addition to that, they received one full year simply because they



were "related" to the African National Congress (ANC). Prisoners who belonged to other political parties did not and could not benefit from this strange remission arrangement.

In addition to the thousands who received remission, many others were granted amnesty. Initially, the Norgaard Principles were applied. More than 8 000 ANC members automatically received indemnity because they fell into certain categories and 1 400 applicants, all ANC members, were released on an individual basis.

But, the ANC were still not satisfied. They rejected the application of the Norgaard Principles and requested the release of all "political" prisoners. The government, however, was adamant that the Norgaard Principles should be applied and a stalemate ensued. The ANC then walked out of the Codesa talks in June 1992 and insisted that 350 prisoners — the names of whom it published — should be released before it would return to the negotiating table. In response, the 1992

Indemnity Act was passed. A new test to qualify for indemnity was developed.

In terms of the new test, a prisoner had to be released if the release might "promote reconciliation and peaceful solutions". Robert McBride, Barend Strydom and others who had received the death penalty or life sentences were released. A total of 168 long-term prisoners, nearly all of them affiliated to the ANC, benefited. With few exceptions, all of them had been sentenced for murder, and even multiple murders. The party returned to the negotiating table.

After the April 1994 elections, Minister of Justice Dullah Omar appointed the Currin Committee to attend to pending amnesty applications which were lodged before May 6 1994.

The committee carried out its task in the most extraordinary manner imaginable. It arranged for 56 people who were sentenced, but not in jail, to receive remission, 86 prisoners who were in jail were released and 104 people who had not yet been sentenced

received indemnity. The committee acted outside its mandate by arranging for amnesty to be granted to people whose applications had previously been rejected and, therefore, were not pending. They also granted amnesty to criminals who had committed crimes of a non-political nature. The many non-political prisoners released included the following: Jabulani Khubeka, ANC, sentenced after the death of Stompie Seipei, Elian Mabeza, ANC, robbed and shot the owner of a taxi, EK Mabilu, ANC, sentenced in 1994 to 18 years imprisonment for killing people he believed to be witches.

The common feature of the criminals released by the Currin Committee is that, with very few exceptions, all were ANC members or ANC sympathisers.

The committee has been most kind to the ANC and its followers. It is not surprising that the ANC component in the Justice Committee has decided to protect the Currin Committee as best it can and has, to date, refused all requests to have the curious conduct of the committee investigated.

Minister of Justice Dullah Omar has also come to the defence of the Currin Committee. He said in Parliament, when he was questioned about the erratic behaviour of the committee, that he was very happy with its work!

At present, most ANC members or sympathisers have already received amnesty or indemnity. They are immune, therefore, from criteria the Amnesty Committee may apply. The only exceptions are the 77 top-echelon ANC members, like Deputy President Thabo Mbeki and ministers Joe Modise and Pallo Jordan, who were granted temporary indemnity. The Amnesty Committee will have to deal mainly with security force applicants, their ANC opponents having escaped the net.

The relevant legislation demands that the committee ensure an even-handed approach between those who have already received amnesty and those who still have to receive it.

The committee will have to make a close study of what happened during our recent history of amnesty granting. They will find inexplicable, unlawful and sordid things have occurred. How will this influence them? What criteria will they develop out of this chaos? We will all be watching with great interest.

Jacko Maree is a National Party MP and a member of the Justice Sub Committee

(252) MAG 16-22/2/96

Williamson hides behind truth commission

Eddie Koch

SOUTH AFRICAN superspy Craig Williamson is trying to suspend a R900-000 civil claim against him for the 1984 murder of Jeanette Schoon and her daughter Kathryn on grounds that he plans to apply to the truth commission for amnesty.

Williamson will launch an application in the Pretoria Supreme Court to contest civil proceedings that have been instituted against him by

Schoon's husband, Marnus Schoon, in a test case which is likely to shape the relationship between the truth commission and the justice system. The truth commission's amnesty committee is entitled to indemnify people who make a full confession about their involvement in political violence, but has the power to refuse this for crimes of a particularly heinous nature.

Jeanette Schoon and her daughter were blown up by a parcel bomb in Angola in 1984. Williamson admitted

in February last year he was part of a team which planned and executed a bombing campaign which blasted the ANC's London offices and killed the late Joe Slovo's wife, Ruth First, in Maputo, both in 1982.

Williamson revealed that Slovo and Schoon, rather than their wives, were the targets of the explosive devices fitted in parcels by a special unit at Johannesburg's Jan Smuts airport.

Attorneys sued Williamson late last

year. Schoon is claiming R900 000 for emotional and psychological trauma suffered by himself and for that suffered by his son Herman, now 13, who was with his mother and sister in the room where the bomb went off.

Schoon's lawyers will oppose Williamson's application to have the civil case set aside.

Minister of Justice Dullah Omar believes people should not hold back or halt legal proceedings against people who committed crimes against them.

A criminal case is being investigated against Williamson by detectives in the South Africa Police Service. Scotland Yard is also investigating charges against him for the role he played in the London bombings

ahead.

just because there was going to be a truth commission, ministry representative Sue de Villiers said at the time.

Schoon believes there should be no amnesty for "unforgivable crimes," and that civil and criminal proceedings against Williamson should go ahead.

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(252) M+G 16-22/2/96

Omar wants to dilute human rights

(252)
(24)
M+G.16-22/2/96

David Beresford

THE Minister of Justice, Dullah Omar, wants key elements in the Constitution protecting individual rights watered down to facilitate the government's fight against crime.

Omar said on Thursday that he would support amendments to the Chapter of Rights protecting citizens' rights to privacy, freedom of information, and the rights of an accused to bail and legal representation. He also indicated that he supported a tougher stand in dealing with pornography, saying adults needed to be protected from it.

In a statement presented at a parliamentary briefing session for journalists, Omar conceded that his proposed dilution of fundamental rights was "controversial". But he said that "a starry-eyed and over-romantic approach to the question of rights is costing our country too dearly."

The minister cited three sections of the Constitution which he said were giving an advantage to criminals.

● Section 13, which says that "every person shall have the right to his or her personal privacy, which shall include the right not to be subject to searches of his or her person, home or property, the seizure of private possessions or the violation of personal communications"

● Section 23, which says "every person shall have the right to access of all information held by the state or any of its organs at any level of government insofar as such information is required for the exercise, or protection, of any of his or her rights"

● A section making provision for an arrested person to be released with or without bail "unless the interests of justice require otherwise", and for legal representation of a person's choice "where substantial injustice would otherwise result".

Omar also suggested that Section 33 of the Constitution — a limitation clause on certain rights — should be reviewed "to give the state greater capacity to fight crime by imposing reasonable limitations".

Questioned about the justification for limiting freedom of information, Omar said it was particularly important, in dealing with the prosecution of organised crime, that suspects do not have access to police dockets "at a crucial period of investigation".

He also supported critics of the government's latest censorship Bill who regard it as too permissive.

"I am for freedom and individual liberty, but I do think there is a need to protect children; there is even a need to protect adults", said Omar.

"We need to look very critically at the Bill, to ensure that we are not just giving the green light to pornography. Maybe I am very conservative in that regard, but that is my view."

SOURCE OF 'GREAT HARDSHIP'

Law 'discriminatory' on Muslim marriages

THE NON-RECOGNITION of Muslim marriages is in conflict with the interim constitution, it was argued in the Supreme Court yesterday **EUNICE RIDER** reports.

IN a test case, the validity and legal standing of Muslim marriages in South Africa is being argued in the Cape Supreme Court

Mr Wim Trengrove, SC, told Mr Justice I G Farlam yesterday that in terms of the constitution, which demands respect for the dignity and equality for all, regardless of culture, religion or race, it would be totally unacceptable to tell two Muslims married according to Islamic law that their marriage is not valid and their children are illegitimate

Trengrove was arguing on behalf of Mrs Thoerayah Edros of Athlone, who was married to Mr Moegamat Faud Ryland in a Muslim ceremony according to Islamic law in 1976

Ryland had the marriage dissolved in 1992 and recently brought an application to have his former wife evicted from the Athlone home in which they live, arguing that she has no legal claim to reside there

Trengrove argued that the couple's marriage could not be regarded as illegal because this amounted to discrimination on the basis of culture, when Christian unions were recognised as

lawful

He said the reason Muslim marriages were not regarded as lawful historically was because of the possibility of polygamy, which is allowed by Muslim tradition but considered distasteful or "offensive to public morals"

Trengrove said the practice of not recognising Muslim marriages had caused a lot of hardship in the past

"There can be no claim for the Muslim widow whose husband is killed in an accident, children are deemed illegitimate and wives may be left without support from husbands as the law stands at present," Trengrove said

He said public morality could not demand that such hardships be inflicted on Muslims simply because there was a possibility that they might enter into polygamous marriages

He added that the present constitution also expressly prohibited any form of discrimination on the grounds of race, sex, culture, religion or creed

"Everyone has a right to dignity. To tell two Muslims who are married that their marriage is invalid and their children are bastards would be totally unac-

ceptable," he said

Judge Farlam asked for statistics on the number of Muslim marriages in South Africa and on how many of them are polygamous. These figures will be given later

In evidence Edros said the house in which she and Ryland live in Olifants Street was a jointly acquired asset and that she is entitled to a share of it, as well as to support and maintenance for their three minor children

She said in papers that when she and Ryland entered into their "universal partnership" they had agreed to share their assets equally and had accumulated a joint estate, the house in Olifants Street being their joint home

In the event of the court finding that their relationship did not constitute a universal partnership, she submitted that she was entitled to an equal share of Ryland's estate on the basis of his unjust enrichment

She said Ryland was not entitled to evict her and should be forced to pay maintenance for their three minor children according to his means

Edros said she was unable to find work, largely because Ryland had injured her hand

The hearing continues on Monday

Mr Kevin Warner appears for Ryland

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CT 16/2/96

tical impossibility — syndicate prosecutions will simply collapse in this office "

D'Oliviera says nine senior and junior advocates have resigned from the AG's office since December. Eight of the office's 74 posts were already vacant, representing the largest brain drain it has experienced.

He blames the resignations on poor salaries, understaffing, an excessive workload and an unsympathetic attitude on the part of the Public Service Commission's central bargaining council, which determines most civil service salaries.

"They don't regard us as professionals," he says. "As a result the salaries and working conditions of senior staff through to junior staff cannot compete with the private sector."

He criticised the Justice Department's present approach to affirmative action, saying it was contributing to the understaffing of State law offices because key positions were being held open in the hope of filling them with suitably qualified blacks.

Two of the 11 deputy AG posts in his office are vacant for this reason.

"I have no problem with affirmative action, but with the way they apply it. Surely additional posts could be allocated to accommodate the policy," he said. "It's as if the folk in high places don't know the realities of the work we do."

Some government officials, however, dismiss such complaints as veiled attempts to maintain white staff dominance in justice offices.

Both the Transvaal and Witwatersrand AG's offices have been forced to hire former staff — at far higher retainers than the salaries they used to earn.

A former Transvaal deputy AG who has been contracted to complete a prosecution he was working on before he resigned, now earns R480 000/year — twice as much as the AG and R340 000 more than his erstwhile colleagues, some of whom are Silks.

Meanwhile, State attorney offices in at least five main centres are being prevented from filling 30 State attorney vacancies while a legal wrangle drags on between the white-controlled Public Servant's Association (PSA) and the Justice

Department over the department's affirmative action methods.

The Supreme Court has issued a status quo order on the appointments while it hears submissions from the two parties.

The PSA, the country's largest public sector union, claims the Justice Department failed to consult on its affirmative action plan and proceeded to implement a policy of racial quota-setting that unfairly curtails the careers of serving white civil servants. The Justice Department counters that it is acting in accordance with the Interim Constitution's stipulation that the public service be "broadly representative" of the population.

Justice Minister Dullah Omar outlined the department's new policy in a meeting with senior Justice officials last October.

PSA GM Casper van Rensburg says there are signs of disgruntlement from groups of State advocates and magistrates towards the Justice Department's affirmative action policy.

The PSA had received inquiries from State advocates in Johannesburg and Pretoria and magistrates in Cape Town about the possibility of legal action.

Dissatisfaction has also surfaced in the State legal profession in Durban, where five senior magistrates resigned earlier this month, citing dissatisfaction with salaries and lack of career prospects. ■



Dullah Omar

JUSTICE DEPARTMENT

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AFFIRMATIVE INACTION

FM 16/2/96
The criminal justice system — already strained by overworked and underpaid staff, poor morale and job shortages — faces a new crisis as controversy over the Justice Department's affirmative action practices appears to be growing.

Transvaal Attorney-General Jan D'Oliviera this week warned that prosecutions of criminal syndicates will collapse in the four former Transvaal provinces under his jurisdiction (excluding the Witwatersrand) unless key staff vacancies are filled by the end of the month.

Of the core team of four senior advocates who handle syndicate prosecutions, one has resigned and two are considering leaving, says D'Oliviera.

"That will leave only one to handle dozens of prosecutions, which is a prac-

FW readies his truth probe submission

(252) Star 17/2/96

Cape Town - Deputy President F.W. de Klerk said yesterday that his submission to the Truth and Reconciliation Commission was almost ready.

He was compiling it in his capacity as former head of state and government in consultation with some of the advisers from that period, De Klerk, who is also the leader of the National Party, told diplomats and journalists at a briefing in Cape Town.

In talks with commission chairman Archbishop Desmond Tutu and his deputy Dr Alex Boraine, he and Deputy President Thabo Mbeki had suggested that the major role-players of the past should put before the full commission a perspective of what had happened in South Africa's conflict-ridden

past.

It would explain to the commission what the policy frameworks were within which the past conflicts had occurred.

This would enable the commission to start with a holistic view of the role-players and then to see how to steer its investigations further.

A working draft of the submission he would make as former head of state and government was on his table.

Asked about the likelihood of the IFP rejoining the national constitution-writing process, De Klerk said he believed that if some of the "grey areas" surrounding provincial powers were removed from the draft constitution, the party might return, "even if they don't get everything they want" - Sapa.

R500 could spell the end for small claims courts

ST 18/2/96

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By CARMEL RICKARD

LAWYERS defending Sappi-Saiccor against a R500 claim for damages have put a question mark over the future of the small claims court

Sappi-Saiccor, based at Umkomaas on the South Coast, has been sued for medical expenses by a retired professor who says the company's pollution made him ill.

The day before the case was to be heard, Saiccor's lawyers wrote to the clerk of the Scottburgh small claims court demanding to be allowed to represent the company. The firm said a provision in the Small Claims Court Act forbidding legal representation was unconstitutional.

If the court did not agree, the firm said it would ask for the case to be stopped while an appeal was made to the Constitutional Court.

Such an appeal would have major

implications for the country's 113 small claims courts, which have given thousands of plaintiffs quick and cheap access to justice. Last year almost 26 000 trials were heard by small-claims commissioners, dealing with sums of up to R3 000.

Norman Brauteseth, Saiccor's attorney, said the "no-representation rule" should be challenged.

Professor Jack Booyens, a former professor of physiology at Medunsa, now living in Scottburgh, brought the claim after falling ill allegedly as a result of the "toxic fumes" emitted by Saiccor's plant at Umkomaas.

He said the company was using "bully boy tactics" in threatening to involve the Constitutional Court.

"Saiccor's sulphur dioxide fumes affect thousands of people in Umkomaas. Since I moved here I have been getting broncho-spasms."

"There is a court for small matters like this and then this huge corporation comes with this excuse, trying to damage the nature of the small claims court."

Mr Brauteseth said it was "inherently unconstitutional" to have a court system where no one was allowed representation of any kind.

"It is unconstitutional to disallow representation, especially when a person might find the process intimidating or might need expert help."

Sashi Bhimsen, a clerk of the small claims court, said he would meet the commissioner, Pat Bandulal, early this week to decide how to respond to Saiccor's move.

Constitutional Court set to hear crucial test cases

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ST 18/2/96

By CARMEL RICKARD

TWO bitter political fights over education dominate the first term of the Constitutional Court this year. The 11 judges will also hear cases which could have important implications for the right to remain silent during interrogation, presumptions of guilt, and a cabinet minister's right to make law.

In one case, a coalition of minority parties has asked the court to decide whether the Gauteng School Education Bill is constitutional.

They are seeking clarity on the clause guaranteeing the right to establish schools based on a common culture, language or religion, as long as they do not discriminate on grounds of race.

The parties want to know whether the government should provide such schools or whether citizens themselves have the right to start them.

The court will also consider the National Education Policy Act in another case brought by minority parties.

Some of them say the Bill enables the Minister of Education to impose policy in violation of provincial powers.

In another case, Jan Kemp Nel is contesting Section 205 of the Criminal Procedure Act, which forces witnesses to answer questions, even incriminating ones, or risk jail. Mr. Nel says this violates his right to remain silent.

Gary Scagell, charged with operating illegal casinos, is challenging the gambling law which states that anyone employed by such an establishment shall be deemed to be in control of it and therefore guilty of an offence. Mr. Scagell argues this infringes on the right to be presumed innocent.

In another case, a tea-packing company, Ynuico Limited, is challenging Parliament's right to give the Minister of Trade and Industry effective power to make law.

And businessman A.L. Coetzee is challenging two sections of the Criminal Procedure Act, which, he says, create presumptions of guilt.

By BHEKIE MATSEBULA

Erasmus to disclose facts

FORMER security policeman, Paul Erasmus, who was actively involved in dirty tricks during the apartheid era, says he is ready to testify before the Truth and Reconciliation Commission.

Erasmus told City Press on Thursday that he was prepared to disclose everything that happened during the period 1990 to 1994. "I am fully prepared to testify to the commission and I am waiting for an invitation from the commissioners," Erasmus said.

Erasmus, who was attached to Strategic Communication (Stratcom), a unit of the State Security Council, the duty of which was to spread false information about liberation movements, is still living in hiding. "Although I don't get threatened anymore, I must be cautious because something may happen to me before I could testify," he said.

Erasmus went into hiding together with his family after threats on their lives by his colleagues. He refused to disclose his whereabouts in the country when City Press spoke to him over his cellular telephone on Thursday. "That I cannot do 'I'm sorry,'" he apologized.

Erasmus hit headlines last year when he revealed to the press several incidents which involved the poisoning of former South African Council of Churches secretary-general, Reverend Chikane, and other atrocities against the African National Congress between 1990 and 1994.

He had been stationed at the Witwatersrand branch of the security police.

Erasmus revealed that the State Security Council, under the chairmanship of former president FW De Klerk, formulated a four-year plan which aimed to discredit the African National Congress.

Erasmus said he was assigned to carry out a smear campaign against Winnie Mandela by giving false information to the media about her.

This led to death threats for certain newspaper editors, as well as journalists, who were not cooperating with the police.

Erasmus said he was not involved in cross-border attacks on freedom fighters who were living

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in neighbouring countries. Meanwhile, the Institute for Multi-Party Democracy holds a focus conference on the Truth and Reconciliation Commission's functions on February 22.

The conference will be held at the Holiday Inn Garden Court in Johannesburg, starting at 2 30 pm, the MPD said.

Crisis for justice system as prosecutors quit

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Star 19/2/96

Some leave intricate cases behind,
or are rehired at exorbitant rates

By HELEN GRANGE

Constitutional Court Correspondent

The Justice Department was losing state prosecutors at an alarming rate to better-paid jobs and was being forced in some instances to hire them back at exorbitant costs as consultants, according to acting Witwatersrand Attorney-General Kevin Attwell.

He said the consultancy fee being paid to former junior state advocates stood at about R1 000 a day.

Five former employees were currently being retained on this basis, and six more officials — three of them senior state advocates — were leaving at the end of this month, which would leave 23 vacancies in the Witwatersrand office.

The Pretoria attorney-general's office would lose 11 staff members at the end of this month, leaving it with 20 vacancies.

The same problem was being

experienced in the offices of the other attorneys-general, Attwell said.

The staff losses complicated the prosecution of suspects because state advocates often departed while in the middle of intricate cases.

In Pretoria, the senior state advocate handling the case against bouncer Gary Beuthin had left the office for greener pastures and had recently tendered to conclude the case at a fee of R1 800 a day. Another, Henk Louw, who had been handling the case against former Absa executive Bob Aldworth, was also leaving.

Other major cases, including the Masterbond case and the fraud case against Johan du Plessis, the son of former manpower minister Pietie du Plessis, were also affected, Attwell said.

The result of the current state of affairs was that the standard of legal services provided by the state was steadily dropping.

Administration of justice legislation wins support

Linda Ensor

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CAPE TOWN — A too-broadly defined right to administrative justice in the constitution would inhibit government's attempts to transform the public service and would result in a deluge of litigation, ANC MP Wilhe Hofmeyr warned yesterday.

Hofmeyr, speaking at a Black Sash-organised conference on the right to administrative justice, said these difficulties were leading the ANC to support the idea of supplementing such a constitutional right with subordinate national legislation.

The idea of a separate administration of justice Act, which would create the mechanisms for the limitation and implementation of the constitutional right, won wide support across party lines.

But the ANC's detractors in the NP and DP also feared that the ANC's enthusiasm for the right to administrative justice was waning now that it was the government in power. The ANC has qualified its stand on the right as embodied in the interim constitution, submitting that its definition should not be too broad and that it should be subordinate to the "practicalities and interests of good governance".

Millions of administrative decisions were taken daily and if written records had to be kept on all of them in order to satisfy a constitutional right, the wheels of government would grind to a halt.

Black Sash Trust chairman Sheila Duncan said "The right to administrative justice is the most important right for people who have been bullied by bureaucrats for years."

DP MP Dene Smuts felt the ANC's emphasis on social reform at the expense of the right to administrative justice was just a way of allowing government to do what it wanted in an unobstructed way.

BO 20/2/96

Court scrutinises coercive legislation

(252) BD 28/2/96
Susan Russell

PROVISIONS of the Criminal Procedure Act, which can be used to compel a potential witness who might have information about a crime to answer questions before a judicial officer, will come under the scrutiny of the Constitutional Court today.

Section 205, which is often used to obtain documentation from banks in fraud investigations, became notorious under the previous government when the state used it on occasions in an attempt to coerce journalists to reveal sources of information.

People who fail to comply with a section 205 subpoena face up to five years' imprisonment.

The constitutionality of section 205 of the Act is being challenged by a potential witness, Jan Kemp Nel, who was subpoenaed in this way to answer questions in connection with a trial in the Johannesburg Regional Court last March.

At present the trial is on hold until a Constitutional Court ruling on the issue.

Nel and his lawyers contend that section 205 violates a number of guaranteed rights.

Among the rights they claim are infringed by the section are the right to equality before the law and equal protection by the law, the right to freedom and security of person, including the right not to be detained without trial, and the fair trial provisions.

The justice ministry, which is opposing Nel's challenge, contends that section 205 is a reasonable and justifiable limitation on the rights claimed by Nel and that in any case these rights are not absolute.

It will also be argued that section 205 proceedings are judicially controlled (by a judge or a magistrate) to ensure that they are fair, not arbitrary and are conducted according to the rule of law.

The two stages of a section 205 proceeding, the State argues, contain checks to ensure ill-founded interference with a person's rights is avoided.

In search of the truth

IF THE TRUTH and Reconciliation Commission fails, it will have horrendous consequences for the country, warned commission head Archbishop Desmond Tutu

"This is not just an academic exercise. It is hoped it will help in the process of nation building and reconciliation," Tutu said in an interview with *Sowetan*

He spoke about concerns of the TRC's overtly Christian character, about those who are convinced it is a compromise body and about whether the TRC will lead to people seeking revenge when atrocities of the past are aired

It will not come as a surprise, Tutu said, if people wanted revenge but the TRC has to do its work to ensure that evil spirits of the past are exorcised

"People were tortured and even now know who their torturers are and have not really gone after them. Many were on Robben Island, many were detained without trial. Very few of them go around saying they are looking for an opportunity to wreak revenge.

"The supreme example is a president who invites the prosecutor at his trial - who asked for the death sentence - to have lunch! Generally, most people actually are not hell-bent (on) seeking revenge."

Expression of remorse

All people want, Tutu pointed out, is to know what happened and an expression of remorse over what happened

To illustrate his point, he cited the case of slain United Democratic Front activist Matthew Goniwe and his grieving wife

"How do you compensate her? There's no way even millions of rands are going to make up for the pain she's experienced, and millions (of rands) are not going to bring her husband back.

"However, you will have to have something that says 'We acknowledge a wrong was done to him, that his humanity was undermined.' There ought to be a public acknowledgement."

But would the TRC not contribute negatively to the idea of impunity? For instance, why should the average person stick to rules, regulations and laws in the future if the TRC sends out signals that "big fish" responsible for serious crimes, which included murder, are being let off the hook?

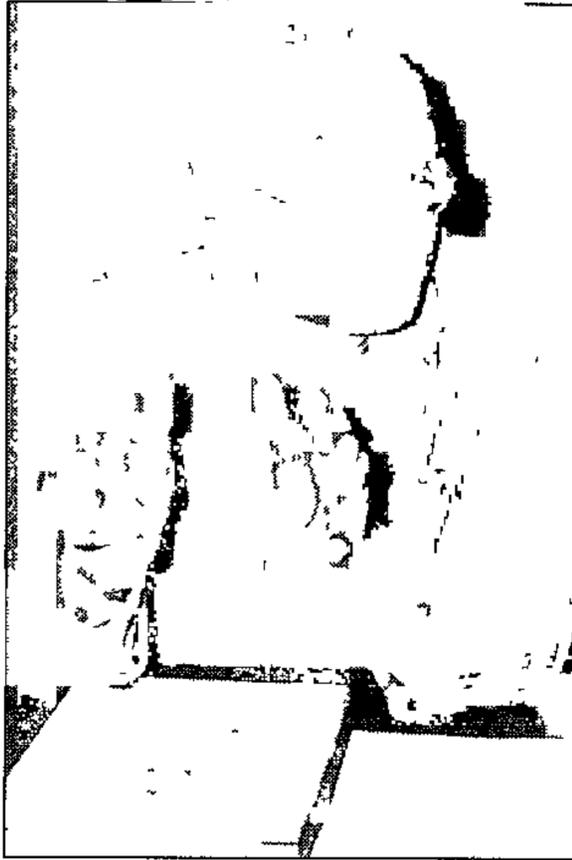
There will be no impunity, Tutu said, because amnesty will only be granted to those who satisfy certain conditions

These conditions are that the particular act or omission was for political ends, that it was consistent with the policy of a liberation movement or state at the time, that it happened between March 1960 and December 1993

"In order to get amnesty, you have to make a full disclosure. While it is not the same as

In this wide-ranging interview, Archbishop Desmond Tutu tells Political Correspondent **Rafiq Rohan** about the issues the Truth Commission will tackle.

(252) Sowetan 20/2/96



Archbishop Desmond Tutu ... "we must deal with the past".

appearing before a court of law, it still is difficult to say sorry. Only people who have not had to apologise would think that making a public disclosure is an easy way out.

"It is not as sharp and painful as knowing that you may have to serve a sentence, but it is a major embarrassment that is likely to happen," said Tutu.

Prevent atrocities

The TRC would have to make recommendations at the end of hearings to prevent atrocities of the past from recurring, he added.

"I don't know what those recommendations include, but some people have spoken about a recommendation that people guilty of such and such a level of atrocity should not be permitted to hold public office - things of that kind," Tutu said.

Appearing before the TRC also does not imply an automatic letting off the hook. Tutu said no-one would be able to say they can commit a crime and get off scot-free.

"There is a cut-off date. If you are caught after that cut-off date and are guilty of a human rights violation, you are in for the high jump."

One of the major criticisms of the TRC is that it is too strongly rooted in Christian ideas. In his inaugural address, Tutu emphasised forgiveness, repentance and cleansing from an Anglican Church perspective.

Most of the appointees also come from a strong Christian tradition. Would this not imply that rulings will ignore other religions, including African traditional ones?

Tutu promised the TRC would be non-denominational and would consider the perspectives of the wider religious community. He said all religions have been called upon to provide their adherents appearing before the TRC with methods of confessing and forgiveness and the rituals needed for purification and cleansing.

"I know the South African Council of Churches had hoped that there would be national/regional occasions when we would corporately confess and have corporate absolution by the use of things like water in liturgy."

Water, Tutu explained, could be used symbolically to cleanse an area that had seen suffering.

Cleansing ceremony

"One thinks of Boipatong, think of all the blood that's been spilled there. There could be a ceremony where water is splashed over those parts where blood has been spilled to say we are reclaiming this place and we are cleansing it. We would be exorcising the evil that was there," said Tutu.

How does he feel about those who say the TRC does not go far enough in addressing apartheid crimes while, conversely, there are those, particularly those responsible for upholding apartheid, who say there should be no commission at all?

"We have had to come to some kind of compromise between those who want amnesia and those who are saying let us have revenge and retribution," he replied.

"The TRC is a compromise arrangement that says if we don't have this, then we are going to have (this)."

"We are saying, for the country's sake and in order for us to have a better present and future, we must deal with the past."

All are guilty — Tutu

Sowetan 20/2/96 (252)

By Rafiq Rohan
Political Correspondent

CONFESSING the horrors of apartheid, in Truth Commission terms, is something that everyone in South Africa will have to do

In different measures we all have been guilty. Black people also need to confess, Truth Commission head Archbishop Desmond Tutu told *Sowetan* in an interview yesterday

Tutu was equally forthright about the question of the huge salaries that commissioners on the TRC will be earning. They are earning over R23 000 a month, salaries equivalent to those of judges

Not so long ago Tutu accused Members of Parliament of riding the gravy train because of their high

salaries. At the time he became something of an official spokesman for gravy train critics

Many MPs argued that they worked long and hard hours and that they had actually taken salary cuts by coming to Parliament

Could the TRC commissioners also not be seen as hopping aboard the gravy train, I asked Tutu?

"I am glad that quite a few of the commissioners felt sufficiently uneasy for it to have been raised immediately in our first meeting

"The principle is one that I think is quite right. If you are going to second three people from the Supreme Court — as has happened — to operate within the commission you cannot expect them to come from where they are used to their particular

salary level and come and take a lower salary. That is the principle," Tutu explained

He said that he was shocked at salary levels that people actually earned before coming to the TRC

"Some of the professional people on the commission actually seriously considered not accepting because even this level (of salary) is lower than what they earn

"If you are looking for the best people to appoint, and quite a few of them are professional people, it is then up to the commission to decide"

Tutu has volunteered to donate part of his earnings to charitable causes. He also said the salaries were due to the two year period that commissioners would serve

● See page 12.

Land claims date now extended

Sowetan 20/2/96

THE Regional Commission on Restitution of Land Rights has extended the period for the submission of claims for the restitution of land rights in the Alexandra, Pageview and Albertsville in Johannesburg to April 9

The initial deadline was December 13 last year. While the commission said it had received a great num-

ber of claims, there is reason to believe that not all potential claimants have submitted claims

Meanwhile, all former stand owners in Kliptown, near Soweto, have been invited to a meeting on Sunday to discuss land claims. Organiser of the meeting Mr Mthethi Mngomezulu said the meeting will be held at the

former Lilydale Community School from 9am.

He appealed to all landowners or their children to attend. All interested parties should bring along their title deeds, identity documents, death certificates of landowners and sworn statements to prove that they are the rightful applicants

Attorneys oppose court's right to rethink a law at MPs' behest

Star 20/2/96

(252)

By HELEN GRANGE
Constitutional Court
Correspondent

The Constitutional Court's right to review a statutory law on request of MPs - a right which all the political parties last week agreed should be included in the new constitution - has been rejected by the attorneys' profession as potentially detrimental to individual litigants.

In its submissions handed yesterday to the Constitutional Assembly (CA), which is drafting the new constitution, the Association of Law Societies (ALS) said the right to abstract review - review in the absence of a live controversy - should therefore not be included.

This was because the absence of a fact situation or an application of the law to live individuals could make it difficult to focus on the issues and difficult to see the constitutional infirmities of a

law, the ALS said.

"In abstract review, the court would often have to look at the law superficially, because the absence of a live controversy means the full constitutional ramifications of the law could not be fully appreciated.

"But having endorsed the law after what might necessarily be superficial scrutiny, the court would surely be under substantial psychological pressure not to strike it down in the more searching inquiry possible during a concrete review," it said.

As a result, abstract review could well pre-empt and undermine concrete review to the detriment of individual litigants.

The ALS has also suggested a restructuring of the socio-economic clauses to guard against the misguided interpretation that everyone has a directly enforceable right to health care, nutrition and shelter.

The deadline for submissions to the CA is today.

Pay disparity shock for legal fraternity

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ARLT 20/2/96

□ *Attorneys may earn seven times more than advocates*

JACQUELYN SWARTZ
Staff Reporter

ATTORNEYS appearing in the Supreme Court may soon be earning up to seven times more than advocates in certain cases

The disclosure has sent shock waves through the legal fraternity as advocates appearing *pro Deo* in criminal matters will earn substantially less than attorneys paid for by the Legal Aid Board

The disparity emerged in a murder trial now being heard in the Cape Supreme Court

In the trial, an attorney is being paid R1 600 a day as opposed to the R345 a day his *pro Deo* advocate counterparts are getting

Attorneys have been allowed to represent clients directly in the Supreme Court since the beginning of this year. Previously only advocates had this right.

The attorney's fee is being paid by the Legal Aid Board, which previously was not involved in Supreme Court criminal matters.

Advocates in the case are being allotted by the Pro Deo Committee of the Cape Bar Council, which previously had exclusive responsibility to appoint legal counsel for accused who could not afford their own lawyers in the Supreme Court.

This committee will continue to pay *pro Deo* advocates until this system is phased out and

the committee's duties taken over by the Legal Aid Board later this year.

But, until then, it is only attorneys who will benefit from the new rates instituted by the Legal Aid Board after its recent R100 million government budget increase. This increase coincided with the attorney's new right to appear in the Supreme Court.

"As a result of the increased funding, the Legal Aid Board has produced new tariffs, because they were not previously involved in criminal matters in the Supreme Court," a well-placed source, who wishes to remain anonymous, has revealed.

He said other such problems

could arise from the Legal Qualifications and Practise Amendment Act which was passed in November, allowing attorneys, for the first time, to practise in the Supreme Court.

"These tariffs provide for a range of fees, depending on the duration of the case, the experience of the practitioner and the complexity of the case. This can lead to a maximum fee of R3 000 a day or over R50 000 a month for an attorney against R7 000 for an advocate appearing *pro Deo*."

"The advocates are still involved in the *pro Deo* system so we have the situation where we can be working for potentially one-seventh of what the attorneys might be making."

Appeal for animal rights in constitution

MICHELLE LERNER
Staff Reporter

MEMBERS of the Animal Groups Alliance (AGA) today presented a proposal for the protection of animal rights in the new constitution to executives of the constitutional assembly in Cape Town

Backing its request that the welfare of animals be included in the new constitution are several influential members of parliament and more than 12 000 signatures from concerned citizens

ARC 20/2/96
Cape Town African National Congress MP Willie Hofmeyr says he will support the inclusion of a clause protecting animals from cruelty by humans

Current legislation to protect animals is insufficient, he says, because the laws vary from province to province and are not enforced adequately

"Government has an obligation to establish a principle that animals should also be protected," he said "A constitutional clause

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would enhance the effectiveness of existing or future legislation"

Minister of Forestry and Water Affairs Kader Asmal also said he might be in favour of constitutional protection for animals, but would not lobby for it because of his position on a constitutional assembly sub-committee

The AGA claims several other ministers have endorsed its proposal, but have requested anonymity

Court asks hard questions about duplicate counsel

Susan Russell

CONSTITUTIONAL Court judges, hearing their first case of the new year yesterday, questioned why government and the justice ministry hired separate advocates at taxpayers' expense, instructed by the state attorney, to argue the same submissions.

The judges, including court president Judge Arthur Chaskalson, asked both counsel for an explanation why they had been briefed separately when they shared the same attorney, their clients had the same interest in the case and had submitted substantially the same argument.

The court convened yesterday to hear a constitutional challenge to section 205 of the Criminal Procedure Act which authorises a judicial officer to question under subpoena a potential witness who is likely to give material or relevant information about an alleged offence.

Justice ministry council E Patel said he believed the decision had been taken "at the very highest level", but "at this stage I cannot advance a single reason why

there are two counsel representing two parties of the state machinery", he said.

"Does it mean that you never questioned it?" Judge Yvonne Mokgoro asked.

"I must concede that I never questioned it," he replied.

Government counsel PF Louw confirmed that the decision to hire separate counsel "had been taken at the highest level — a lot of thought went into it". Louw said he believed Safety and Security Minister Sydney Mufamadi felt he had a slightly different interest in the matter, and saw it from a different perspective than the justice minister.

"Because of that the minister wished to have his own representative," he said. "The decision was taken on a national basis."

This was not the first time separate counsel had been briefed by different arms of government to appear before the Constitutional Court in the same matter to submit substantially the same argument. It is, however, the first time that the judges have publicly called the practice into question.

Louw and Patel said that if the

court had any further questions, a letter or affidavit would be furnished by way of explanation.

Yesterday's challenge to section 205 was brought by potential fraud trial witness Jan Kemp Nel.

Nel applied for a referral to the Constitutional Court after he was ordered to appear before a Johannesburg magistrate in March last year in terms of section 205. He called into question the constitutionality of section 205 which required him furnish information which, he said, could be used against him by the Reserve Bank.

A 205 witness who refuses to answer questions may be sentenced to up to five years imprisonment unless he satisfies the presiding judicial officer that he has a "just reason".

This could include invoking the right against self-incrimination.

The State has argued that section 205 amounted to a reasonable and justifiable limitation on any of the constitutional rights which Nel's counsel submitted were infringed by the provision. These included the right to personal privacy and to remain silent.

The court reserved judgment.

Aliens could become poll topic

Bonile Ngqiyaza

THE question of illegal immigrants could occupy a central platform around which political parties mobilise for the 1999 elections, says Institute for Defence Policy's Hussein Solomon.

Speaking at the second African Centre for Development and Strategic Studies-organised workshop in Johannesburg recently, Solomon, a researcher, said there were already disturbing signs that, with the advent of a post-apartheid SA, foreigners had become the scapegoat for many of the country's ills — from crime to unemployment and being a burden on the state.

The centre — a non-governmental organisation established four years ago as a research, policy and strategic think-tank for the continent — operates from Ogun state, Nigeria.

There was already a marked degree of tension between political parties on how to approach the issue of illegal im-

migrants, with Deputy Foreign Minister Aziz Pahad arguing that illegal immigration be addressed through regional development, while the Inkatha Youth Brigade threatened to take tough action against the illegal aliens if government failed to do so.

"This new nationalism — no matter how benign — creates a dichotomy between 'insider' and 'outsider'," Solomon said. Anti-foreigner sentiments could have an adverse impact on domestic political stability.

"Farming, hotels, the domestic sector and construction, which are known to be the prime users of illegal labour, would run into difficulty if they did not employ illegal migrant labour."

A survey by the Human Sciences Research Council in October 1994 found that 56% of South Africans thought government should act more strictly against illegal immigrants. By February last year, the figure had increased to 72%.

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Mufamadi warns police to co-operate with truth body

By **PATRICK BULGER**
Political Correspondent

Cape Town – Safety and Security Minister Sydney Mufamadi yesterday issued a strong warning to policemen and women to co-operate with the Truth Commission or face "a serious charge"

Speaking at a media briefing after meeting Truth Commission chairman Archbishop Desmond Tutu in Cape Town, Mufamadi said Police Commissioner George Fivaz had issued a directive to relevant divisions in the South African Police Service to secure any police files or documents the commission might need

The commission is due to start its investigations into human rights abuses committed in the course of the political struggles of the past, and to consider amnesty for those who came forward and made a complete disclosure to its committees

Mufamadi also issued guidelines for SAPS members. The guidelines compel force members to go before the commission if they feel they have something to disclose. If they do not volunteer

and are then called to testify, they will be required to supply an explanation to the commissioner

"A member who is charged with ignoring a notice to testify from the commission, or with another offence in terms of the Promotion of National Unity and Reconciliation Act, will be regarded as facing a serious charge and will be dealt with in terms of normal departmental policy and procedure," the guidelines say

Any members who are charged in a court of law with criminal conduct involving a gross violation of human rights will be suspended. If the member then applies for amnesty, consideration will be given to granting full benefits

Mufamadi and Fivaz also briefed Tutu and his co-chairman, Alex Boraine, on internal structures the police had set up to handle the commission's demands. These included a contact person within the SAPS, assistant commissioner Frank Alton, while Secretary for Safety and Security Azhar Cachalia would have overall responsibility for the commission within the SAPS

STW 21/2/96 (252)

Mufamadi warns police to come clean

POLITICAL STAFF

(252)

SAFETY and Security Minister Sydney Mufamadi warned policemen and women yesterday to cooperate with the Truth Commission or face "a serious charge"

Speaking at a media briefing after meeting Truth Commission chairman Archbishop Desmond Tutu in Cape Town, Mufamadi said Police Commissioner George Fivaz had directed the relevant divisions in the South African Police Service to secure any police files or documents the commission might need.

The commission is soon to start its investigations into human rights abuses during the apartheid era and to consider amnesty for those who make full disclosures to its committees

After meeting Tutu, Mufamadi issued guidelines for force members and a strong warning that policemen and women who wanted to remain in the past should quit the force.

The guidelines compel force members to go before the commission if they feel they have something to disclose

CT 21/2/96

Europe aids Truth investigations

Staff Reporter and Sapa

(252)

ARG 21/29/96

MORE European countries appear likely to provide financial and logistical support for the Truth and Reconciliation Commission.

The Netherlands and Denmark have already offered to second detectives to the commission's investigative unit and to contribute financially to President Nelson Mandela's reparation fund for victims of apartheid-era human rights abuses.

In recent days, the commission chairman, Archbishop Desmond Tutu, has met diplomats from Austria, Poland and Japan. He and deputy Alex Boraine are to meet European Union ambassadors in the city today to explain how the commission will operate.

The Austrian government is considering a proposal to second experienced police detectives to the special investigative unit, after talks between Austrian ambassador Frans Palla and Archbishop Tutu.

Dr Palla said he had also recommended that Austria contribute financially to the President's Fund.

He expected his government to respond to the proposals before the commission began holding public hearings - probably in early April in the Eastern Cape.

A Polish embassy spokesman said there was a great deal of interest in the commission in Poland, but that it was too soon to say whether "concrete offers" of assistance would be made.

Retain possible Truth papers, police are warned

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ARLT 21/2/96

JOHN YELD, Staff Reporter

POLICE national commissioner George Fivaz has told police to secure all documents and files that may relate to Truth and Reconciliation Commission work — and warned explanations will be demanded for any missing documents

This was revealed by Safety and Security Minister Sydney Mufamadi at a press briefing yesterday after he had met Truth Commission chairman Desmond Tutu, deputy chairman Alex Boraine and other officials to discuss co-operation between police and the commission

Mr Mufamadi also said the SA Police Services was prepared to make detectives available to help the commission's investigative team

"(Such assistance) will have to be balanced with our ongoing need for capacity to deal with crime in our country"

The department was creating internal structures to support any of its members who might appear before the commission. Such support included legal advice and spiritual support

"Our members may (also) need to benefit from any rehabilitation programmes the commission may be thinking of introducing

"Even the perpetrators are victims. They require assistance, spiritual or otherwise," Mr Mufamadi said

According to a *Policy and guidelines on the Truth and Reconciliation Commission* document issued by Mr Mufamadi at the press briefing, no departmental steps such as suspension or disciplinary measures will be taken against any police member who applies for amnesty or who volunteers to testify before the commission — "unless special circumstances or the findings or recommendations of the commission necessitate such steps"

Members subpoenaed to testify can be required to explain why he or she did not volunteer to give evidence, and any member ignoring a subpoena will be regarded as facing a serious charge and will be dealt with in terms of normal departmental procedure

If a member is incriminated by evidence to the commission, no disciplinary steps will be taken if he or she "takes reasonable and timeous steps to explain, rebut or confirm such evidence"

But the service would act if the commission required or recommended that steps be taken against any member who testified, Mr Mufamadi said, although it would not be bound exactly by such recommendations

(252)
**Commissioner
resigns from FF**

TRUTH and Reconciliation com-
missioner Mr Chris de Jager has
resigned from the Freedom Front
and the Volkstaat Council to pro-
tect himself from allegations of
bias and conflicts of interest

De Jager said yesterday he had
not come under any pressure to
tender his resignation

CT 22/2/96

22/2/96

R1m to gather info on abuses

252

SWEDEN has donated R1 million towards setting up a computer database to help the Truth Commission gather information of human rights abuses over the past 30 years

And more foreign aid in the form of financial and technical help is expected in the next few weeks following talks yesterday between members of the commission and European Union ambassadors in the city

Commission chairman Archbishop Desmond Tutu, his deputy, Dr Alex Boraine, and the head of the commission's investigative unit, Mr Dumisa Ntsebeza, briefed the ambassadors on the task facing the commission

They also appealed for legal aid for victims appearing before the commission. Sapa

FW preparing report to Truth Commission

□ Submission will give 'insider view' of apartheid policy

JOHN YELD, Staff Reporter and Sapa-Reuter

DEPUTY President F W de Klerk is working on a comprehensive submission to the Truth and Reconciliation Commission — but he's not yet ready to say when the submission will be complete

Mr De Klerk told a briefing for diplomats and journalists he was completing a history of apartheid rule for submission to the commission, and that his insider view of the policies and strategies of apartheid would help the commission do its job

In talks with commission chairman Desmond Tutu and his deputy, Alex Boraine, he and Deputy President Thabo Mbeki had suggested that the major role-players of the past

should put before the full commission a perspective of what had happened in South Africa's conflict-ridden past.

It would explain to the commission what the policy frameworks were within which the past conflicts had occurred.

"A starting point for the commission should be to ask the major role-players of the conflicts of the past... to put before the commission a perspective as to what happened, why did it happen, what motivated the policies which were followed and what were the policy frameworks that were applied during those years of conflict"

Unless the commission understood the environment in which the apartheid struggle had taken place, it would "be trying to unravel a picture by picking at a loose thread"

(252) Ark 22/2496

"They should start with the holistic views of the various role players and from that move on to detailed investigations," he said

Mr De Klerk said he had been working on a fairly detailed submission in his capacity as former head of state and government in conjunction also with the senior advisers of that time.

Asked yesterday when the submission was likely to be complete, Mr De Klerk's spokesman said "When he's ready, he will give a comprehensive statement on the issue."

The issue of adequate security for the commission was discussed at a meeting of Archbishop Tutu, Dr Boraine, Safety and Security Minister Sydney Mufamadi, national police

commissioner George Fivaz and other senior officials of the commission and the department at a meeting this week

The meeting comes in the wake of at least two security scares: Commissioner Dumisa Ntsebeza's briefcase containing sensitive papers was broken into and rifled while he was travelling by air between Durban and Cape Town, and a police guard outside Dr Boraine's Constantia home spotted an intruder in the garden late at night. The man, who had not managed to gain access to the house, escaped

At a press briefing after his meeting, Mr Mufamadi said they had discussed the issue of security at the commission's national and regional offices, but he did not reveal any details

POST-apartheid SA, every aspect of society has been recast, redefined and even reinvented. No area has been left untouched by the ideals in our interim constitution to create a more open, more humane and democratic society.

But there is still work to be done, particularly in the legal arena where SA is in the privileged position of being able to pick and practice the best of the legal models internationally and discard the worst.

One area under consideration is class actions, which have proved so popular in the US, leading to settlements of millions of dollars in mass tort claims.

The term sounds like something out Karl Marx's theory of dialectical materialism, and, sure enough, many of the class action struggles are waged by working-class consumers against the "bourgeois elite" — government institutions and powerful corporations.

In the past, mere mention of the term would have sent defendants scurrying for (liability) cover. These days, however, a class action is no longer only the tool of the otherwise disempowered working classes. It has been elevated in the popularity — and controversy — stakes among all sectors of society, including the major corporations against whom these actions are usually fought.

Briefly put, class actions are brought about by a group (or class) of people in a single case with similar complaints getting the same award. But we are not talking about groups of plaintiffs in terms of a single digit, double digit or even triple digit figures, a recent, highly publicised, class action involved more than 200 000 women who registered claims against the major manufacturers of silicone breast implants. The women received a total settlement of approximately \$4,25bn. For them, class action offered a swift, predictable and relatively profitable resolution of cases that would otherwise drag on for years.

Advocates argue that class actions provide results for victims who may not have the means, time or inclination to wait for restitution by the painstakingly long, traditional

Class actions could become feature of our legal system

MICHAEL JUDIN

BD 23/2/96
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arm of the personal-injury case. They also argue that class actions ensure that defendants pay up before they are out of pocket. And, most importantly, class actions succeed in unlogging the court system.

Critics are beating their breasts over problems that make class actions hazardous to plaintiffs. They cite settlements with insufficient payouts or settlements that sharply limit recovery in future claims. There are also accusations that class action plaintiffs are inadequately briefed or notified of pending suits.

For example, when a consortium of 20 US asbestos manufacturers negotiated with three plaintiffs' attorneys to create an administrative process for claims, it generated heated controversy because the idea for the suit originated not from the plaintiffs, but from the defendants, who were eager for a quick-fix way of resolving the litigation crisis threatening their financial future. In return for settling 14 000 individual asbestos claims, the plaintiffs' lawyers received a whopping \$70m, sparking cries of outrage from consumer groups nationwide.

This is not the only class action to have generated cries of foul play. Disdain for and disillusionment with the system is spreading throughout the US as an increasing number of corporate defendants in

class actions work out settlements in which the principal beneficiaries are not the victims but the lawyers involved. Critics charge that even when the complaints have merit, lawyers compromise their clients' interests by colluding with corporate defendants who see a cheap way of ending protracted litigation, often by using transferable coupons or scrip as an alternative to equitable financial compensation.

Even in cases where plaintiffs are paid negligible sums — sometimes in the form of a \$400 coupon for a car, as was the case recently with a woman who won a suit against Ford on behalf of 65 000 owners of defective Mustangs — the lawyers involved insist they are protecting the public by putting corporate America on notice.

One of the most contentious class actions involving millions for lawyers and coupons for consumers involved General Motors. Last year a Texas appeal court rejected a \$1 000 coupon deal for 6,4-million owners of GM pick-up trucks which are in danger of exploding after side-impact collisions. The court said the transferable coupons awarded the plaintiffs were not an adequate balm to plaintiffs' wounds. Consumers are not the only ac-

tivists who perceive themselves as receiving the short end of the US class action stick. Corporate law suits have reached such proportions that the American Congress is considering limiting liability. The source of their concern is obvious: they fear that multimillion-dollar law suits could stifle innovation, kill off entire industries and discourage professionals from doing their best lest they suffer massive class action damage claims.

Yet, despite their obvious shortcomings, class actions look set to become a feature of the SA legal system. SA provides fertile ground for tort claims of this nature. The mining industry, for example, has an unenviable history of disasters. In SA, as in the US, it is not only the working class which is using the class action to claim damages for negligence. In May this year, the liquidators of Supreme Holdings and Armstrong Currie instituted an entrepreneurial form of class action against institutions and brokers whose employees advised and effected investments on behalf of clients in the two schemes. The 9 000 victims, who collectively lost R350m in the companies, forewent a 0,5c a rand liquidation dividend, accumulating more than R1m, which was used to finance litigation against some of SA's most powerful financial names.

In terms of the interim constitution, an applicant seeking relief on behalf of a class of persons must establish that the court has jurisdiction. In particular, he must define the class he represents, establish circumstances to render a class action competent, indicate what makes it appropriate for him to bring the application and why it should be brought in that particular forum. In order to satisfy the formal requirements for an interim interdict (a clear right), the court will have to decide whether, firstly, the class action is permitted; secondly, whether the class action is competent under the circumstances, and, if so, thirdly, where it should be brought and by whom.

In certain respects such action seems suited to a new SA where democracy and a new constitution are making consumers more conscious of their rights.

Which is why in March last year the SA Law Commission began investigating the possibility of formally introducing class action into our legal system. Although the commission did not state whether it favoured the right to bring class action, it published a draft working paper on the issue. In this it stated that the liability of professionals should not be limited, particularly among doctors and accountants accused of negligence or malpractice; and while it did not apply the same recommendations for civil liability cases, the commission said the law should be amended to ensure proper professional controlling bodies were able to compel members to take out professional liability insurance.

Critics argue that excessive class actions against companies could kill off entire industries, stifle economic growth and create serious unemployment, thus harming people it is designed to protect.

Unless the SA legal system introduces checks and balances to ensure the system does not become a tool for abuse, the US class action model might not be the classiest act for SA to emulate.

Judin is a senior partner in attorneys Goldin, Judin and Werner.

Victims will know of amnesty pleas (252)

BO 23/2/96

Ingrid Salgado

THE truth and reconciliation commission was by law obliged to inform the victims of specific abuses or human rights violations about any application by individuals seeking amnesty from those crimes, commissioner Yasmin Sooka said yesterday.

Amnesty would not be granted until victims had a chance to address the commission's sub-structures, she said at a meeting with non-governmental organisations yesterday. Similarly, the commission would inform alleged perpetrators of crimes about accusations.

Commission chairman Desmond Tutu said the costs to amnesty applicants of publicly disclosing the crimes they had committed under apartheid were "very substantial". This was despite the fact many South Africans believed

justice would not be done if applicants were not sent to prison.

Those who appeared before the commission would be forced to tell their loved ones, for example, they were murderers, Tutu said.

Sooka said the commission was discussing the form reparation should take. It was aware that government would not be able to fork out money for all who applied. Pensions for partners or parents of deceased victims had been suggested, as had paying medical expenses or providing grants to establish small businesses.

Sapa reports Tutu said members might be asked to suspend membership of political parties for the two-year duration of the commission.

Commissioner Chris de Jager resigned from the Freedom Front and Volkstaat Council this week to avoid allegations of bias.

End of 'instant court' angers prosecutors

By DAISY JONES
AND HELEN GRANGE

Angry Gauteng prosecutors say they cannot do their jobs properly following the scrapping of a controversial "kitshof" (instant court) intended to deal speedily with high-profile cases such as hijacking.

The "kitshof" - the brainchild of a senior magistrate and approved by Witwatersrand Attor-

ney-General Kevin Attwell - was scrapped yesterday, just 10 days after its inception, when a Rand Supreme Court ruled that it had breached an accused's constitutional rights.

The court was intended to speed up criminal trials which could drag on for longer than two years between arrest and sentencing, but the idea attracted fierce opposition from defence lawyers.

A senior prosecutor at the

magistrate's court countered: "The accused's absolute protection by way of rights is making our job nearly impossible. We may as well close the courts. How do we explain this state of affairs to the public?"

The "kitshof", formerly used for general criminal matters at regional level, was set up on the initiative of Regional Court president P A J Kotze and senior public prosecutor Brink Ferreira,

with Attwell's approval.

Attwell confirmed yesterday that he had endorsed the idea in principle.

"We agreed it should be done on a trial basis, but if there were snags, we would reconsider," he said.

The first snag came yesterday when Mr Justice J Myburgh overturned a ruling by magistrate J D

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Friday, February 23, 1996

End of 'instant court' angers prosecutors

Star 23/2/96
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Pretorius denying armed robbery suspect Sydney Sonto (62) a postponement for a bail application. "The accused has rights," said the judge.

Immediately after the ruling, magistrate H Wolmarans set Sonto's bail hearing for February 27 and announced the abandonment of the "kitshof", which has attracted only five cases and finalised only one.

Said a public defender, who asked to remain anonymous: "They had to try and combat this terrible crime of hijacking, so they set a court aside to bring matters to trial while they were still fresh in everyone's minds."

Private defence lawyer Jannie Kruger said there had not been enough cases in the court to justify scrapping it exclusively.

A public defender said it "denies the accused the right to legal representation and the right to a well-prepared defence."

This right had been denied in the case of Sonto, who had been brought to court two days after his arrest and had his case postponed for trial a week later.

On appearing for trial, he applied for a postponement to prepare a formal bail application.

De Klerk writing his submission to truth body

Star 23/2/96 (252)

The former head of state says the Truth Commission needs to understand the environment of the apartheid struggle

Deputy President F W de Klerk is working on a comprehensive submission to the Truth and Reconciliation Commission - but he's not yet ready to say when this submission will be complete

De Klerk has told a briefing for diplomats and journalists he was completing a history of apartheid rule for submission to the commission, and that his insider view of the policies and strategies of apartheid would help the commission do its job

In talks with commission chairman Desmond Tutu and his deputy, Alex Boraine, he and Deputy President Thabo Mbeki had suggested that the major role-players of the past should put before the commission a perspective of what had happened in South Africa's conflict-ridden past.

It would explain to the commission the policy frameworks within which the past conflicts had occurred, De Klerk said

"A starting point for the commission should be to ask the major role-players of the conflicts of the past to put before the commission a perspective as to what happened, why did it hap-

pen, what motivated the policies which were followed and what were the policy frameworks that were applied during those years of conflict"

Unless the commission understood the environment in which the apartheid struggle had taken place, it would "be trying to unravel a picture by picking at a loose thread"

Report will explain policies

De Klerk said he had been working on a submission in his capacity as former head of state in conjunction also with the senior advisers of that time

"A draft which is fairly near completion is on my table at the moment," he said

Responding yesterday to a question as to when the submission was likely to be complete, De Klerk's spokesman said "When he's ready, he will give a comprehensive statement on the issue"

The issue of adequate security

for the commission was discussed at a meeting of Tutu, Boraine, Safety and Security Minister Sydney Mufamadi, Police Commissioner George Fivaz and other senior officials this week

The meeting comes in the wake of at least two security scares: commissioner Dumisa Ntsebeza's briefcase containing sensitive papers was broken into while he was travelling by air between Durban and Cape Town, and a police guard outside Boraine's Constantia home spotted an intruder in the garden

After his meeting with the commission, Mufamadi said they had discussed the issue of security at the commission's national and regional offices, but he did not reveal any details

Commission media liaison officer John Allen said "For us to give public information about the exact nature of security arrangements would detract from the purpose of those arrangements"

Commissioner Chris de Jager has resigned from the Freedom Front and the Volkstaat Council to avoid possible allegations of bias and conflict of interest - Own Correspondent, Sapa-Reuter

Idasa parliamentary record

23/2/96

(252)

Next week in parliament

EVIDENCE will be heard next week on the crucial, but sensitive, issue of rationalising the public service. The Committee on Public Service and Administration will meet on Tuesday and Wednesday and will be hearing evidence from all the provinces on the rationalisation procedures under way. The various national Directors-General and the relevant Ministers are expected to brief the committee.

The Committee on Correctional Services will be hearing public submissions on Monday on a Private Member's Bill to be introduced by Carl Niehaus (ANC) which deals with the very controversial issue of juvenile detention.

The Home Affairs Committee (National Assembly) will continue to meet this week to hear evidence from the public and from various organisations on the Films and Publications Bill which seeks to balance freedom of expression with the need to protect the public (and particularly children) from certain forms of pornography. The committee will meet on Tuesday and Wednesday mornings.

The Joint Standing Committee meeting on Finance will be considering the Pension Fund Amendment Bill and the Special Pensions Fund Bill. They will meet on Monday.

Eskom will be briefing the Committee on Mineral and Energy Affairs on their tariff proposals for residential customers on Wednesday morning.

On Wednesday public submissions will be received by the Justice Committee on the Magistrate's Amendment Bill.

The Russian Ambassador will be addressing the Foreign Affairs Committee (National Assembly) on Wednesday.

Fact file: Desmond Lockey

Birthplace: Vryburn, North West Province

Party: ANC

Length of membership: Four years

Previous party: Labour Party of SA

Parliamentary duties: Chairperson of Home Affairs portfolio committee, Member of the Constitutional Committee of the Constitutional Assembly, Alternate member of the Constitutional & Provincial Affairs committee

Most liked aspect of parliamentary life: Committee work.

Most disliked aspect of parliament life: Sitting

for long hours in a plenary session

Most important reforms to be carried out in parliament. There must be a higher degree of separation between the executive and parliament in the final constitution.

Most important accomplishment since becoming an MP. Contribution to Home Affairs Legislation

Greatest fear for the new SA. That the government might fail to alleviate poverty, homelessness and unemployment

Marital status: Married

Number of children: Three

First language: Afrikaans

Other languages: English

Region most closely associated with: North West

Highest Educational qualification: BA (UWC)

Previous employment: High school teacher - House of Representatives

Favourite newspaper: The Sunday Times

Leisure activities: Golf, gardening, reading, playing with his children

Parliamentary Record

Has the government been responsive to public concerns? Correlating legislation passed with the extent of public concern expressed around an issue, as shown in Idasa's latest survey of public opinion, is not the only indicator of government responsiveness but it is a significant measure. A total of 73,4% of people surveyed said the issue of unemployment and job creation was the most important issue for the government to address. Yet the last year saw no legislation being passed in this crucial area. On the other hand, a very positive response to public feelings is indicated in the safety and security category, where four very substantive acts were passed.

The second table shows how productive the various government departments were in 1995. Again, it is important to recognise that law-making is not the only measure of performance, but is an important one, legislation is the most accessible and, since it has to pass through parliament, a more obviously democratic way of implementing policy.

On the face of the record the Department of Finance has been the most productive, but many of these laws were "technical" rather than substantive. As in 1994, the Department of Justice has been the most active of the policy-area departments.

Truth probe member cleared

(252) Star 24/2/96

Cape Town - Truth and Reconciliation Commission chairman Archbishop Desmond Tutu said yesterday he was convinced committee member Chris de Jager had never been involved in a secret conservative organisation.

An attorney who handed in an application for amnesty on behalf of a client yesterday "made a serious verbal allegation against advocate Chris de Jager" and claimed De Jager was a member of the Toekomsgeprek group, Tutu said.

De Jager was called urgently to Cape Town, where he assured the commission's executive committee he had never been a member of Toekomsgesprek or any other secret organisation, Tutu said. "This has been independently corroborated to my satisfaction."

De Jager recently quit the Afrikaner Volksfront and the Volkstaat Council to pursue his Truth Commission activities. - Sapa

Kahn quits society

in defence of Omar

(252) ~~252~~ AR 5 24/2/96

GLYNNIS UNDERHILL

Staff Reporter

WESTERN Cape Attorney-General Frank Kahn and three deputies from his office have resigned from the national Society of State Advocates in protest at its threat to take Justice Minister Dullah Omar to court over the exclusion of white males from the affirmative action process

The issue came to a head after society chairman Billy Downer said legal action was being considered. He also criticised the lack of transparency on an affirmative action programme

At the centre of the controversy is an issue highlighted in the recommendation by Mr Kahn that two senior promotions in his office go to a female and coloured candidate he regards as "excellent" professionals who have faced discrimination in past years

In response to the resignations Mr Downer stressed the society was committed to affirmative action — and denied its approach was racist

"The society welcomes the attorney-general's proposal that a dual system regarding appointments and promotions be instituted, encompassing both promotions on pure merit and promotions on an affirmative action basis," he said

Such a system would not exclude white males from promotional prospects, said Mr Downer

Mr Kahn said he believed the Society of State Advocates was "well-intentioned" but it was one of the many bodies which could not accept change at present

Representativity is too vital an issue to be shrouded in controversy. In some quarters, it cre-

■ The apparent exclusion of white males from the affirmative action process has sent ripples through the corridors of the office of the Western Cape Attorney-General.

ates unrealistic expectations, while in others it is perceived as being obstructive to career advancement. At this stage of our transformation, a clear strategy on representivity, however problematic, must be formulated

"To close the door on people who have been disadvantaged over the years, is shortsighted and unjust. What will have to be done during this transition is to put a greater emphasis on potential ability rather than proven ability. Potential ability in this context means shorter experience balanced by notable skill," said Mr Kahn

The Western Cape attorney-general's office had for the past three years embarked "zealously" on a process of demystifying the legal system through civic contact on various levels

"The ultimate destinations of community participation therefore lies in representivity. Representivity brings with it its own brand of communicative skills and informed thinking which would strengthen the arm of justice," said Mr Kahn.

Mr Downer said the society had learnt "with regret" of the attorney-general's resignation as a member, together with those of three deputy attorney-generals, a senior state advocate and a junior state advocate in Cape Town

"The society wishes to emphasise, once again its

commitment to affirmative action. Any perception that the Society is against affirmative action is false. So too is it false that the society seeks to protect a small group of white males, or that its approach is racist

"We insist merely that a procedure of affirmative action promotions be adopted, in which males, as a matter of fairness, are not totally excluded. Unfortunately, the most recent procedure seems to have excluded white males totally"

Legal action remained "under consideration," said Mr Downer

The attorney-general had indicated at an early stage that he differed from the society's approach to the question of affirmative action and he took no part in the society's decisions, said Mr Downer

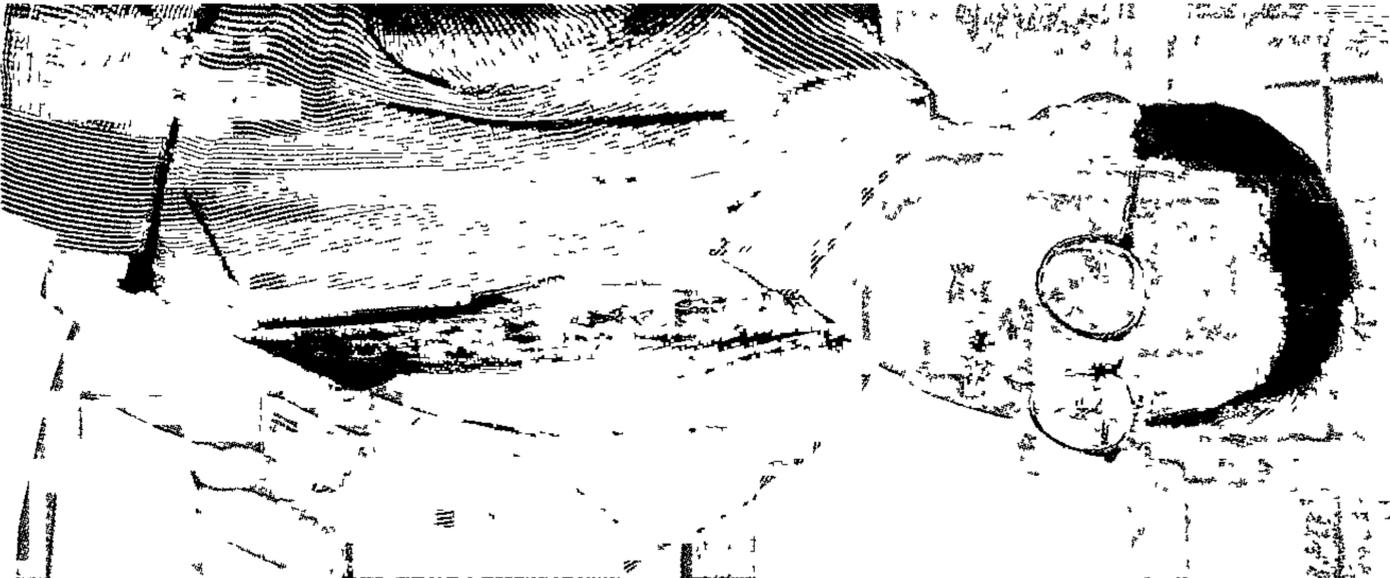
Mr Downer said Mr Kahn's resignation was respected, although regretted

"The other members who resigned did not give reasons for doing so. If they have anything to do with the Society's stance on affirmative action or salaries, such resignations are surprising and unfortunate. Full consultation regarding the society's stance took place and not a word of dissent came from any member

"Most members actively supported our actions and it is to be regretted that some of them appear not to choose to stand by their own decisions, in the glare of publicity"

Mr Downer said it "goes without saying" that employees should freely voice concern on matters regarding employment practices, without fear of retribution on the part of the employer.

"The society has sought to criticise the department's affirmative action practices in this spirit," he said



□ **SOCIETY CHAIRMAN:** The chairman of the Society of State Advocates, Billy Downer, insists the organisation is not opposed to affirmative action



□ **OUT:** Western Cape Attorney General Frank Kahn has resigned from the national Society of State Advocates.
Pictures: OBEID ZILWA, Staff Photographer

De Jager innocent, says Tutu

752 ARC 24/2/96
TRUTH and Reconciliation Commission chairman Desmond Tutu said he was convinced that committee member Chris de Jager had never been involved in a secret conservative organisation.

An attorney who handed in an application for amnesty on behalf of his client on Friday "made a serious verbal allegation against advocate Chris de Jager" and claimed that Mr De Jager was a member of the Toekomstgesprek group, Archbishop Tutu said.

The allegation was not mentioned in the application.

Mr De Jager was called urgently to

Cape Town, where he assured the commission's executive committee that "he has never been a member of Toekomstgesprek or any other secret organisation", added Archbishop Tutu.

"This has been independently corroborated to my satisfaction."

The archbishop said that in terms of the Act governing the commission's operations, the commission would not release further information about the application.

He did not reveal the nature of the "serious allegation" made by the attorney against Mr De Jager — Sapa

The Slog Test Creeze of Change

(252) ST 25/2/96

Two years after the adoption of the new constitution changes brought to the Supreme Court amount to little more than some new faces on the bench and the odd judge with a computer, writes CARMEL RICKARD

WHEN former Defence Minister Magnus Malan and his co-accused enter the Durban Supreme Court next month, they will immediately gain bits-on experience of the justice delivery system.

The notoriously unyielding dock benches on which they will sit for a trial likely to run into many months symbolise some of the more distressing aspects of the Supreme Court. With its almost Dickensian rigidity, little changed over generations, it appears to lack concern for ordinary citizens.

A leading lawyer says "A Supreme Court litigant in 1990 would notice no difference if he went back to court today, almost two years after the new constitution. The system is just as expensive, inflexible, inefficient and incomprehensible to the ordinary person."

The interim constitution promised freedom, equality, transparency, accountability, and, at least by implication, entry into the modern world.

But, with some notable exceptions, the reality of change in the Supreme Court amounts to little more than new procedures of appointment and some new faces on the bench.

Insiders in some provincial divisions of the Supreme Court say the constitutional winds of change have begun to blow through the judiciary, partly because of the change in the makeup of the bench. In those divisions, it is claimed, some judges have a growing sense that the judiciary too is a public institution which must in some way justify what it does.

The Judge President of the Cape, Mr Justice Gerald Friedman, says the composition of his court has changed significantly. It now includes, in permanent or acting positions, two women, the country's first permanent black judge and three Indian judges.

He says the public served by the Cape Town Supreme Court will also have noticed that over the past two years the number of courts hearing criminal cases has increased from seven to 10. While not a direct result of the new constitution, this significantly reduces the backlog and wait-

ing period.

However, a developing sense among judges of their role in post-constitutional society is by no means a general phenomenon. Many members of the judiciary still seem to believe their appointment elevates them to a rank only slightly below that of divine ordination — a view their secretaries often share.

Management systems vary slightly between provincial divisions, but the generally accepted practice of time and file management, judicial note-taking, and the preparation and typing of judgments would convincingly fail any business student who devised it today.

WHILE hardly life or death stuff, the way in which many judges take notes in court illustrates the antiquated approach that is still prevalent.

Judges routinely listen to cases from behind their grey, hard-covered foolscap "bench books", in which they take detailed notes in long-hand, often writing down evidence word for word.

"Judges should not have to do more than write the occasional brief note," says a senior advocate. "They should have access to a daily transcript of the record. Otherwise it slows the trial."

"When advocates cross-examine a witness, we are often hampered by the judge who asks how he is supposed to get down all the details."

"This could mean that a two-day case goes into a third day, so the parties pay thousands of rands more because of the judge's slow note-taking. There has to be a better system."

At the Johannesburg Supreme Court, some officials have entered the computer age.

The Deputy Judge President, Mr Justice Monas Flemming, recently devised a programme allowing the registrar to manage the file system by computer. It will also allow lawyers to dial in by modem and request information about particular files.

Judge Flemming says the waiting period for a civil trial in the Johannesburg Supreme Court has dropped from about 20

months to less than six.

He attributes this improvement, which has taken place over the past 18 months, to better management, part of which is due to computerisation.

He says a number of judges and their clerks have begun to use word-processing software

and at least one of the judges in his division uses a laptop computer in court.

Judge Friedman says he would like the registrar's office at the Cape Town Supreme Court to be computerised but he had not known such a system was available in this country.

Only one of his judges is computer literate. But Judge Friedman says he would have no problem with any judge taking notes on a computer in court.

Questions of note-taking style and computerisation are not merely arcane. They could have an impact on the sometimes stag-

gering length of time that people wait for judges to deliver their verdicts.

Going on reported judgments, the past record is held by Cape judges Selwyn Selkowitz and Robin Marais (now on the Appeal Court).

On August 31 1987 they heard a matter involving a default judgment. Their decision, which fills four-and-a-half printed pages in the law reports, was handed down four years and seven months later on March 13 1992.

Sitting solo, Judge Selkowitz has almost broken his own record on several occasions. He took four years and four months to hand down a decision involving a dispute about the Stellenbosch municipality's valuation roll.

THE delay takes on particular incongruity given that one of the points made in argument was that the court should not even consider the case since the applicant had delayed bringing the application "for an unreasonable time."

And in a tax case judgment handed down last year, the Appeal Court rapped Judge Selkowitz over the knuckles for delaying to a degree which threatened to bring the bench into disrepute.

He is now completely up to date with his judgments.

But even shorter delays than his past records can cost litigants dearly.

During 1984, Mr Justice Willem Booysse heard a case in the Durban Supreme Court. The claim, in dollars, had to be converted into rands when the case started.

During the nine months in which the judge considered his verdict, the rand plummeted in value, largely due to the then State President P W Botha's Ricon speech and the declaration of a state of emergency.

At the time the case was argued, the \$16 600 claim amounted to R14 400. But by the time judgment was handed down nearly a year later, the rand had lost against the dollar and R14 400 was equivalent to a mere \$8 000.

The problem continues today.

Transvaal judge Mr Justice Edwin Cameron heard argument on an important legal point about press freedom last November. Exactly 11 weeks later he handed down his decision. The identical principle was raised before Mr Justice Andrew Wilson in Durban last April, but no decision has been given yet.

Many lawyers speak bitterly about delays they may wish to

remind the judge concerned of an outstanding decision, but they fear their clients might be prejudiced if they nag.

Senior lawyers offer several explanations.

"Some judges are just lazy, others seem to develop a block and simply cannot put pen to paper. In addition, the roll system is not designed to allow judges with reserved judgments to keep up to date. No sooner is a case over than the next one begins. There is no time structured into an ordinary judge's court term to reflect, research and write."

"Clearly some judges manage despite the problems and should be commended, while others do not."

The general consensus seems to be that the Rand Supreme Court has the best record for getting reserved judgments out quickly, although attorneys and advocates stress this does not mean the quality of the decisions is uniformly good. Members of the Johannesburg Bar attributed this to the tough approach of Transvaal Judge President Frickie Eloff, and to the fact that the court's roll was so busy that any judge who dropped behind would never survive.

The Cape Supreme Court offers a unique service to the public: a weekly list of reserved judgments, noting the case's name, the judge involved and the date the case was argued. While this information was previously available only to the profession through the Bar Council and the law society, Judge Friedman has decided — with the unanimous agreement of the other Cape judges — to make it available to the public in the interests of transparency.

The list shows that 25 judgments are currently outstanding, nine of them due from Mr Justice Les Rose-Innes, including one from November 1994.

Meanwhile, the Constitutional Court, barely a year old, is already proving a new source of concern over delays.

Many judges of that court work extremely hard, a few, such as Justice John Dicoth, work so diligently that their health seems to be suffering.

A couple, however, are widely

discussed in legal circles for their less than industrious approach to the job.

Individual litigants find many cases heard by that court, delays cost money and do nothing to improve standards of efficiency in the other courts, where cases are held up awaiting the outcome from the Constitutional Court.

However, for the ordinary person needing access to the court, affordability could well be the most worrying aspect of all.

THE Legal Aid Board is on the point of introducing changes which will see everyone charged with a serious offence provided with a lawyer if they cannot afford their own defence. This move responds to the constitutional promise of state-funded legal representation for people who cannot otherwise afford it.

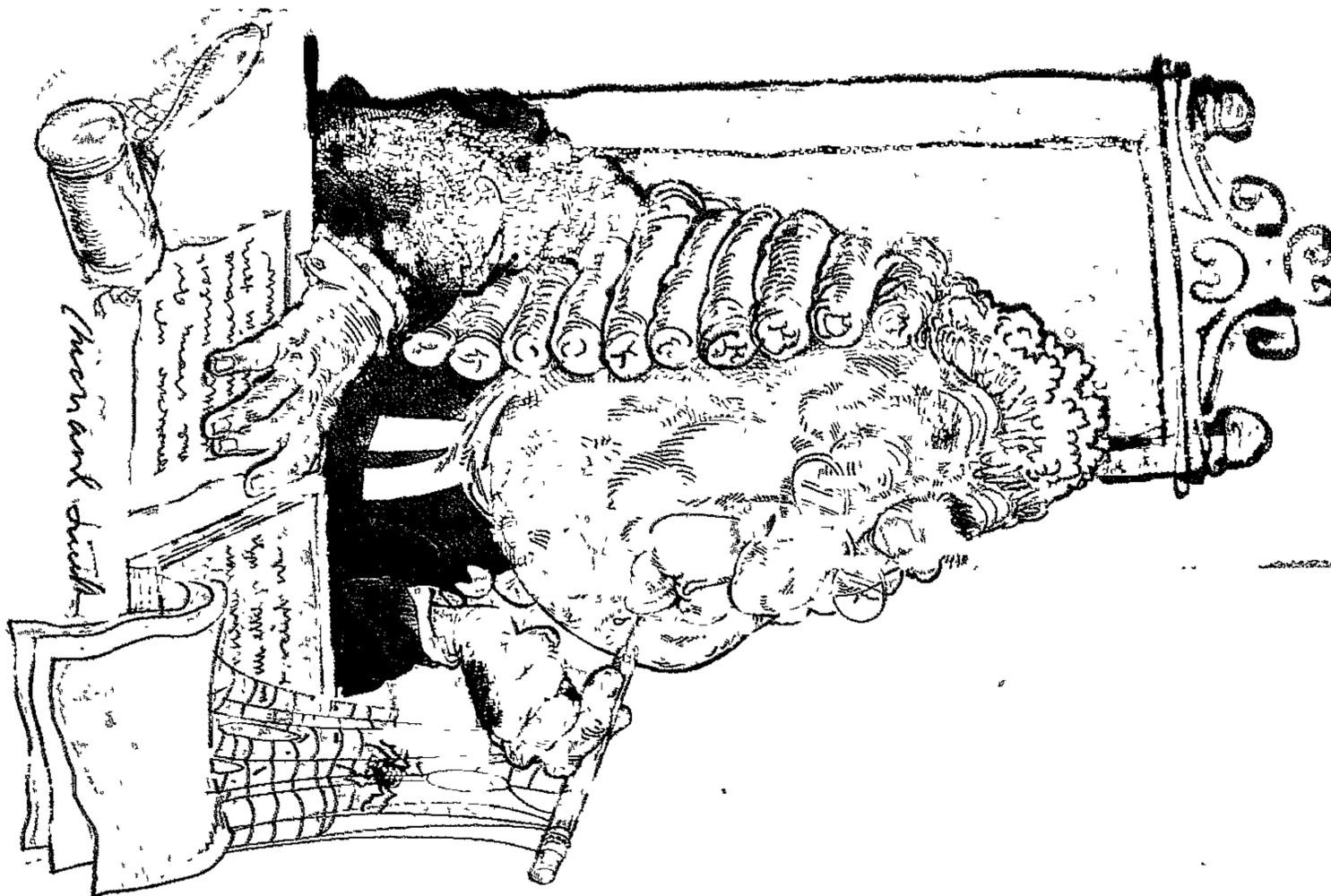
But it will not help the ordinary salaried person falling outside the Legal Aid Board's means test.

If such a person is accused in a criminal case, or wants to bring a civil case involving more than the small claims court limit of R3 000, then the justice system could well be just as inaccessible as it was before the new constitution.

Many members of the public hope inquires such as the Hoexter commission and the new Rules Board will help resolve some of the long list of problems they experience with the courts. But they could be expecting too much. The newly appointed Rules Board is determined to simplify and streamline rules of all the courts. One member, Judge Cameron, said the board would ensure the rules were written in a way that ordinary people could understand and that "plain language" experts had been asked for help.

But neither that much-needed improvement, nor the Hoexter commission's recommendations for restructuring the courts, will resolve the crucial problem of affordability.

It is an abiding problem and one for which the other branches of the legal profession must share responsibility with the courts



Important stuff

Truth commission's amnesty deal

252 ST 25/2/96
By MARLENE BURGER

POLITICAL offenders seeking amnesty from the Truth and Reconciliation Commission will have to disclose the nature of offences committed, as well as the names and particulars of everyone involved, including those who gave the orders.

The amnesty application forms, gazetted last week, require details of membership of any political organ-

isation or liberation movement or full information regarding employment by "the state, any former state or the security forces"

Applicants will be required to give dates, names of victims and places where offences were committed, the political objective and justification.

They are also asked to disclose any benefit, financial or otherwise, and whether the acts were carried out "in execution of an order, on behalf

of or with the approval of" an organisation, liberation movement, state department or security force.

The closing date is December 14. Forms will be available shortly from magistrate's courts, human-rights organisations and church groups. Priority will be given to applications from 1 200 convicted criminals previously refused amnesty. The commission hopes to hold its first hearings from April 9.

Truth maybe, but will victims accept this 'justice'?

Studies of other brutal regimes show that denial of the past can be harmful, reports The Economist

(252) Star

wants the truth, but then forgiveness. The commission is meant to put on record - and publish - the tale of past political crimes. It will offer amnesty to those who committed them, provided they meet the (distinctly subjective) conditions: full disclosure, political motivation, and action which, however nasty, accorded with their side's policy at the time. And, for the victims, symbolic reparation.

Headed by Archbishop Desmond Tutu, the commission has two years to complete its task. Public hearings should begin in early April.

In a country whose past political culture was built on deceit, there is a hunger to learn the truth about what really happened. Psychiatrists who have studied the aftermath of other brutal regimes suggest that

denial of the past can be harmful. Individuals are unable to mourn without the truth, and so find it hard to accept loss. The country carries social strains that may manifest themselves later in the politics of resentment. White South Africans, it is argued, need to know what was done in their name, and what so many implicitly condoned.

How much truth will emerge? The commission relies on voluntary confessions, and to confess implies some guilt. Many past political leaders, some still in government, believe they were acting within the law of the time and may not apply for amnesty, even though that might leave them at risk of prosecution. More practically, the commission has already received 2,700 applications for amnesty. None can be given much time if all are to be heard. If an applicant can persuade the commission his life is in danger, his confession may be heard in private

Is the process to be a pursuit of truth or of the confessional? The recent church service set the whole business up as a semi-religious experience, and the archbishop duly took his commissioners off for a day of silent and spiritual reflection. The commission's terms of reference call only for proof that the crime concerned was politically motivated, a definition in itself contentious. Nobody will be asked to say sorry

More tricky still, some people whose relations were murdered, "slipped in the shower," or simply disappeared argue that even truth - if that is what they get - will not be enough. Mandela has said that the commission will ensure that "justice is done for the victims." Yet the guilty will escape punishment. That enrages some who say that justice is incomplete without pun-

27/2/96

ishment
In 1983, while Marius Schoon was working for the then outlawed African National Congress in Angola, his wife and 6-year-old daughter were blown to pieces in their home by a parcel bomb. Thirteen years later, Schoon, who assumes the bomb was intended for him, wants the people who sent it behind bars. And if not, he says, "I will feel angry and betrayed. I'm not convinced the commission will bring about reconciliation for those who suffered."
Many others, such as the family of Steve Biko, who died in the back of a police van after being tortured, are pressing for prosecution.

Perhaps the most the commission can hope to achieve is a public acknowledgment of the horrors of the past - not individual healing, but at least a collective step towards it - The Economist

ell all, maybe
Each held a candle and an olive branch. They said prayers and hugged each other to offer strength for the task ahead. These were the 17 members of the Truth and Reconciliation Commission, gathered to be blessed in St George's Cathedral and to pledge themselves to work "for the purpose of healing our nation".

But as South Africa begins a brave experiment to deal with its grim past, it is still in fact unclear what it is trying to achieve. Nelson Mandela, who addressed the church service on February 13, told the commissioners their task was to help South Africans "come to terms with the past in ways which will enable us to face the future as a united nation at peace with itself." He



Archbishop Desmond Tutu . "If we try to forget the past, it will return".

Victim groups will appeal for redress

By Claire Keeton

THE WHEELS OF THE TRUTH and Reconciliation Commission have finally started turning, with commissioners processing thousands of applications, visiting communities and choosing their staff.

The appointment of personnel to run the commission is critical to its mission. They must be "people-friendly," according to commission chairman Archbishop Desmond Tutu.

The commission has advertised many posts in the past month, and staff are being selected from applicants with appropriate skills and experience to do this sensitive work.

The commission is victim-orientated and staff must be able to support the victims of human rights violations, many of whom will be traumatised again by talking about the most difficult experiences of their lives.

The chairman of the rehabilitation and reparations committee, Ms Hlengiwe Mkhize, says they have already started setting up working groups to give emotional support to those who will appear before the commission.

Face to face with torturers

They may even have to deal with victims who request personal meetings with the people who tortured them or murdered family members.

"The victims will be taken care of and not forgotten. We will establish a balance between individual needs and what the public needs to know," Mkhize says.

Tutu, Mkhize, several of the 17 commissioners and Sylvia Dlomo-Jele (who is from a victim-support organisation) addressed a focus meeting on the commission last Thursday in Johannesburg.

The meeting was organised by the

Perpetrators will have to make a full disclosure in order to get amnesty

Gauteng region of the Institute for Multi-Party Democracy.

Dlomo-Jele said the Khulumani Support Group supported the commission. "We have lost children in violent and mysterious circumstances. This has left us with stress, physical disorders, many victims are permanently disabled and have ongoing medical expenses."

She said the group would appeal for reparations including pensions, medical aid, disability grants and funds to educate dependent children.

Suffered much

"People complain and tell us they have never heard about this Truth Commission. They say they have lost hope. We have suffered so much, we hope the commission will succeed."

But Mkhize emphasised that the commission will only be effective with assistance from the public.

"It is most important that we make known the fate and whereabouts of victims," she said, calling on members of the public, church groups, non-government organisations, police and international monitoring groups to provide information.

Tutu said "Most of the victims are from the so-called 'ordinary people'. We have the highest level of respect for these special people. We will not succeed without your involvement."

"What we are asking the country for is not something light. Reconciliation is not cheap."

Tutu warned "If we say let us forget, the past will return, like in the Eugene de Kock trial."

He said the commission was a compromise between justice and revenge on the one side, which would destroy

South Africa, and truth and amnesty on the other side, which would allow the country's democracy to develop.

Tutu said there was a substantial cost to truth even though it could never compensate the victims. "The perpetrators will have to make a full disclosure for amnesty and their children may not have known their father was a murderer or a torturer."

"We can never make reparations to victims equal to the loss sustained, but it is a symbolic way to say to the country we are sorry."

The victims will have a chance to give their side of the story before amnesty is granted, a process which will influence the amnesty committee's decision.

"The commission is not about amnesty only. The main focus is the victims," added commissioner Yasmin Sooka.

Dark years

"We need to establish a picture of the dark years and take measures to make sure that human rights violations on that scale never happen again."

"We have exchanged formal trial and prosecution for the right to know. It is in the wider interests of society not to focus on revenge but we will not whitewash the past."

Sooka said South Africa could not transform unless it dealt with the past honestly. She said institutions tainted by the past needed to free themselves to become part of a new human rights culture.

"Elections are the first step to democracy. The second is to empower the majority with access to the economy and to create a new order of morality," Sooka said.

(252) *27/2/96*
Truth body's enormous task

By Sharon Chetty

THIRTY THREE years of wrongdoing under apartheid - deeds committed between March 1960 and December 1993 - will have to be dealt with in a mere 18 months by the Truth and Reconciliation Commission.

It is an enormous task and the commission will have to look at tens of thousands of cases regarding human rights violations, applications for amnesty and requests for reparation.

The focus will be on victims and the commission's guiding philosophy will be "unless we deal with the past we can't go forward".

And for it to be meaningful, the commission will have to make itself available to every interested person in even the most remote areas.

The commission will be based in Cape Town, but its three committees will have regional offices to make access to it easier for people.

The committee on human rights violations will be based in Gauteng.

That office will serve the old Transvaal areas. An office in Durban will cater for KwaZulu-Natal and the Free State, and two others in East London and Cape Town will service the Cape.

Gauteng will also be the base for the committee on reparation and rehabilitation of victims.

High-profile advertising on radio, television and newspapers will soon make public the finer details of how the commission will work.

In the meantime, its commissioners are travelling around the country, addressing seminars and speaking to interested groups.

And while their work is cut out for them, they have made it clear that they can only accomplish their task with help from people "on the ground" - religious groups, non-governmental organisations and advice offices are some of the channels that will be used to keep in contact with people.

Every submission counts. If, for example, a person makes a claim of a human rights violation, the details will be probed by the investigations com-

mittee. That unit is chaired and headed by a civilian and will have the back-up of NGOs, legal groups and human rights groups.

Commission members will have the powers of search and seize, and no one is above their investigation.

A witness protection plan will offer anonymity if necessary, and if a person is implicated in any deed they will have the right to reply.

If, during the hearings for amnesty, a victim not already known to the committee is identified, amnesty will not be granted until the victim has a say.

Amnesty will also only be considered once there is full disclosure of a politically motivated crime.

All hearings will be open to the public, although commissioners can make an exception, but only if it is in the interests of justice or a threat to someone's life.

Special safeguards will be in place to protect documents - commissioners will only work with copies, so that originals can be stored in a safe place to prevent loss or theft.

Amnesty application forms will be available from March 1 at magistrates' offices. Forms dealing with human rights violations will be distributed from March 15.

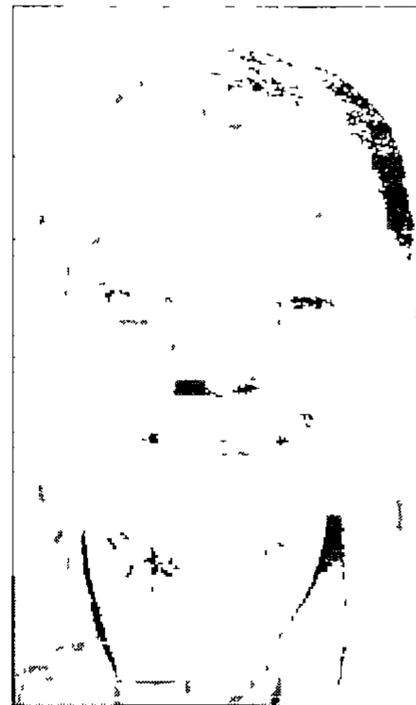
The commission can be contacted in the following ways:

Postal address: PO Box 1158, Johannesburg 2000.

Cape Town: 106 Adderley Street - Tel (021) 24-5161 Fax (021) 24-5225.

Johannesburg: 10th Floor, Sanlam Centre, cnr Von Wielligh and Jeppe Streets - Tel (011) 333-6330 Fax (011) 333-6340.

The East London and KwaZulu-Natal offices do not have telephone numbers yet.



Commissioners Hlengiwe Mkhize (above) and Dumisa Ntsebeza (below) ... the Truth Commission will have to deal with 33 years of wrongdoing under apartheid during the next 18 months.



“The commission members will have the powers of search and seize, and no one is above their investigation”

Applicants for amnesty free to tell public

CT 27/2/96
LEGISLATION governing the Truth Commission prevented members from disclosing information about amnesty applications but did not restrict applicants themselves, amnesty committee chairman Judge Hassen Mall said yesterday

Mall was speaking after an Afrikaans newspaper reported that right-wingers Lood van Schalkwyk and Eugene Marais had applied for amnesty under the Promotion of National Unity and Reconciliation Act

Van Schalkwyk was jailed for two fatal bomb attacks in 1990, and Marais for his part in an ambush on a bus near Durban in October 1990 in which eight people died. Both were sentenced to 25 years.

Mall said applicants "can do what they like even have their photographs published" — Sapa

Minister, legal profession re-examine free aid system

BD 28/2/96

(252)

Susan Russell

JUSTICE Minister Dullah Omar and representatives from various branches of the legal profession held talks recently to discuss the future of the old pro deo system which automatically provided free legal aid to people charged with crimes carrying the death penalty.

The pro deo system, which still provides free counsel for people tried in the Supreme Court for serious crimes such as murder, rape, kidnapping and armed robbery, which carry the possibility of the death sentence, has always operated separately from other state-funded legal aid.

Pro deo counsel have traditionally been drawn on a roster system from the Bar's ranks of advocates, who until recently were the only members of the legal profession entitled to directly represent clients in the Supreme Court. This changed last year when attorneys were given right of appearance in the higher courts.

The scrapping of the death penalty by the Constitutional Court last year has raised questions about the future of the pro deo system.

Following the Constitutional Court judgment last June, the justice ministry caused consternation among lawyers and jurists alike by announcing the pro deo system had been scrapped.

This directive was immediately reversed by Omar who emphasised that although the system did require reviewing, this would be done only in consultation with the legal profession and judiciary.

The justice ministry is now looking at incorporating pro deo representation into an umbrella legal aid system for what lawyers refer to as "section 25 crimes".

Section 25 refers to the rights of detained, arrested and accused people contained in the interim constitution and the definition includes any crime where punishment excludes the option of a fine.

Omar's recent meeting with representatives of the various branches of the legal profession was aimed at obtaining their views on ways of restructuring the present system.

According to an editorial in the latest issue of De Rebus, the attorneys' journal, there seemed to be general consensus that the current pro deo system was an

anachronism and that all legal assistance should fall under the Legal Aid Board.

Bar representatives made it clear that advocates would be reluctant to abolish the present system unless an acceptable replacement could be found.

Attorneys on the other hand were concerned that the pool of pro deo counsel should be widened to include members of their own profession.

Johannesburg Bar Council member and its pro deo committee chairman Guy Hoffman confirmed yesterday that it was still allocating pro deo counsel on a roster basis as it had done before. Counsel were continuing to represent clients who in the past would have faced the death penalty.

Available counsel were also still drawn from the ranks of younger advocates whose experience might range from a few months at the Bar to five or six years, he said.

Hoffman agreed that while the system might be restructured in the future, the only likely change would be that pro deo work would fall under the auspices of the Legal Aid Board.

Lawyers support revival of 'instant court'

Deborah Fine

(252) BD 29/2/96
SENIOR staff at the Johannesburg Regional Court may reconvene their controversial "instant court" following appeals from members of the legal profession not to abandon the project.

The court, the brainchild of Regional Court president Piet Kotze and senior public prosecutor Brink Ferreira, was scrapped just ten days after its inception when Rand Supreme Court Judge J Myburgh ruled it had violated an accused's constitutional rights to adequately prepare his defence.

The aim of the experimental court

was to deal with "dangerous offenders", especially car hijackers, within 14 days of their arrest. The court was to have been convened in cases where offenders were caught red-handed.

The Regional Court staff decided to abandon the project court after alleged armed robber Sydney Sonto, 62, last week successfully appealed against a ruling denying him a postponement.

However, Ferreira has since received correspondence from Adv Nazeer Cassim, supported by Adv Paul Pretorius SC, saying several senior advocates and attorneys fully support the court and are prepared to assist it.

'No need for Truth Commission'

PAC wonders if it was 'tricked' into taking part in negotiated settlement

(252) Sowetan 29/2/96

THE TRUTH COMMISSION and the murder trials of Apla members accused of slaying whites in Cape Town and King William's Town came in for criticism at Rhodes University this week.

PAC deputy president Dr Moiso Pheko told a packed Arts Major lecture hall that it was immoral and a breach of international law for the perpetrators of atrocities to appear before the same commission as the victims.

Pheko was addressing a Robert Sobukwe Day commemoration in

memory of the late PAC founder, which was hosted by the local branch of the Pan African Students Organisation. More than 70 students and youths from the Grahamstown filled the hall. At 10pm youths chanting PAC and Apla slogans toy-toyed their way home through the historic settler town.

Pheko said "We should have punished people without having to resort to the Truth Commission. I don't see what new truth can be established by the commission."

He said the trials of Apla members in two bombing and gun attacks were a "breach of trust" following the PAC and Apla's agreement to suspend armed attacks.

Pheko said "We want them all released. No one who fought apartheid committed any crime, so they are being illegally arrested and persecuted."

The PAC was beginning to wonder whether it had not been "tricked" into taking part in South Africa's negotiated settlement.

Pheko dismissed as "media propaganda" rumours of the PAC's demise following its thrashing at the hustings in the 1994 general elections.

"So many coffins have been prepared and when a coffin is opened you find there is no PAC inside."

However, he acknowledged that there had been "set-backs" and that there were internal differences which would be handled at the PAC's April congress in Bloemfontein.

Pheko slammed moves to privatise state assets as merely "benefiting the rich" and said the new government's land reforms were ineffectual.

He said the *imbizo* called in KwaZulu-Natal to discuss the carnage was unlikely to succeed because it was shrouded in "conspiracy" - *Ecna*

Conflict of interests: Truth body to meet A-Gs

JOHN YELD
Staff Reporter

(252) APR 29/2/1965
THE Truth and Reconciliation Commission is to meet all South Africa's attorneys-general to discuss the conflict between giving amnesty to criminals or ensuring they are brought to trial.

This move follows a meeting between a Truth Commission delegation, led by chairman Desmond Tutu, and the attorney-general of the Transvaal, Jan D'Oliveira, and members of his staff yesterday.

Afterwards, Archbishop Tutu said the meeting had been held to discuss the relationship between the attorney-general's office and the commission, given there was an inherent conflict of interest between certain of an attorney-general's duties and aspects of the commission's work.

"On the one hand, an attorney-general's duty is to ensure that justice is done by bringing to trial persons against whom there is evidence of a criminal offence.

"On the other, the mandate of the commission's committee on amnesty is to grant amnesty in respect of offences which are associated with a political objective.

"After preliminary discussion on these issues, the meeting resolved that further attention needed to be given to defining the working relationship between attorneys-general and the commission, and the commission has already taken the initiative in asking for a meeting of all the country's attorneys-general."

Western Cape Attorney-General Frank Kahn said he welcomed the meeting, scheduled for next month.

"Speaking personally, this office supports the objectives of the Truth Commission, as much as we feel the commission must respect us in our objectives of bringing criminals to justice.

"And I don't think there's going to be any conflict that can't be ironed out with a meeting," Mr Kahn said.

ANC softens stance on Bill of Rights property clause

David Greybe

CAPE TOWN — The ANC had bowed to pressure from the NP and DP on the property clause in the Bill of Rights and agreed in private talks to drop its demand to link compensation for expropriation to the state's ability to pay, sources said yesterday.

The ANC had offered to drop the clause in return for one stipulating "the need for effective land reform", the sources said. In determining compensation, courts would be required to take this into account, along with factors such as current use of the land, history of its acquisition, its market value and the aim of expropriation.

Agreement on the property clause continues to elude the three main negotiating partners. They will resume haggling in private talks at Arniston in the Cape today when they meet to try to resolve outstanding constitutional issues. Parties have 38 days to meet the two-year deadline for formulating

BD 1/3/96 (252)
a final document
The qualification subsection in the property clause is expected to be the next major stumbling block. It relates to the ANC's feeling that nothing in the Bill of Rights can stand in the way of land reform.

DP senior negotiator Dene Smuts has argued that including such a provision would destroy the property clause and property rights, just as including ability of the state to pay would destroy the expropriation provision.

The DP maintains that the Constitutional Court could not certify a property clause with such a qualification. It has asked the ANC to drop the invalidation subsection and to stop sending out signals that property in SA was not secure. Smuts warned yesterday of serious problems if the subsection was still on the negotiating table today.

Negotiators will also attempt to resolve whether or not property rights should be guaranteed, or only respected, as proposed by the ANC.

Law societies clash over issue of independence

(252)
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Business Day Reporter

A DISPUTE has arisen between the Bophuthatswana and Transvaal law societies over the future governance and independence of the Bophuthatswana Law Society.

The disagreement has arisen over a resolution adopted at a Bophuthatswana special general meeting in February last year whereby the Transvaal Law Society was to take over the other society's secretarial functions in September of the same year.

But Bophuthatswana society president Paul Sedile said most of his members had not been given sufficient notice of the special meeting and had consequently been unable to attend. They would have voted against the resolution had they been present because they believed it to be unconstitutional and invalid. The members believed that the two societies should co-exist until a new Attorneys Act, and consequently one law society, had been established.

He said members believed the Transvaal society was "resisting change" in that its council and staff were not representative.

Transvaal Law Society president Esme du Plessis said the society was not trying to force itself on Bophuthatswana attorneys.

The move had been made at their invitation at a stage when that association was experiencing financial difficulties. The resolution had been adopted to assist the society with its administrative function to the benefit of Bophuthatswana attorneys and in the public interest.

She emphasised that the Transvaal society recognised the independent status, although the position was not without problems.

Assurance given on even-handed treatment of those seeking amnesty

Star 1/3/96 (252)

By ROBERT BRAND

The Truth and Reconciliation Commission has not made a deal with attorneys-general to suspend prosecutions of former security force members charged with what appeared to be politically motivated crimes, commission member Wynand Malan said yesterday.

"We cannot intervene in court proceedings," Malan said during a meeting between commission members and non-governmental organisations in Pretoria. Among those at the meeting was former police commissioner Johan van der Merwe, now representing the Foundation for Equality Before the Law.

Van der Merwe and the foundation's chairman, Dr Theo de Jager, raised concerns about what they described as "an uneven playing field" for members of the security forces and members of liberation movements.

De Jager said it seemed unfair that prosecutions against former security

force members were continuing while former liberation fighters enjoyed temporary indemnity under the interim constitution.

Malan said the commission could not change the political framework in which it had to work, but would ensure even-handed treatment.

"The only assurance I can give you is that the commission will even-handedly employ the conditions of the National Truth and Reconciliation Act across the board."

The commission could not intervene in current court cases, but could ask the relevant attorneys-general to suspend proceedings only once the accused in these trials had applied for amnesty.

Commissioner Yasmin Sooka added that the commission could not give blanket amnesties to policemen and former policemen.

They would receive amnesty only for specific crimes deemed to be politically motivated.

What's the use of justice when there's no one to run it?

The offices of the attorneys general around the country are virtually bare, reports **Vuyo Mvoko**

OFFICES of the attorneys general in Gauteng and the Cape are heading for a crisis as senior prosecutors make a dash for entry to the Bar before it closes next week — undermining a whole spate of "third force" trials that need to be pushed through the courts in the next few months.

Problems hit the offices of the Johannesburg, Pretoria and Cape Town attorneys general this week, lifting a lid on a problem the government has been aware of since it took office almost two years ago.

Senior state attorneys and advocates, most in a rush to make it to the Bar before entries close next week, have resigned. The Bar's intakes happen only during the first weeks of March and of August.

Said Ministry of Justice representative Barend Heystek this week: "We may very soon be in a crisis, but we hope that will not happen."

At the Pretoria attorney general's office, advocates Andre Steenkamp and Jannie Greyling, who have been part of an investigating team into "third force" activities, were preparing to leave the office at the end of this week.

And only one junior advocate will be left at the

vehicle theft syndicate in Pretoria, after its head, senior state advocate Paul Huygens, as well as three others in the syndicate, left this week.

Advison dealing in specialised commercial crime in Johannesburg had to be closed last month, according to Justice Department representative Pieter du Rand, "because there was no manpower." And the crisis is rippling through down to the lower courts

where, he says, "there is too much work for those who have been left behind."

At the Johannesburg attorney general's office six people had left by Thursday, including Koos Pretorius, who has been the senior prosecutor in the trial involving the spate of bombings that took place just before the 1994 elections, allegedly perpetrated by the Afrikaner Weerstandsbeweging.

Chairman of the State Advocates' Society, Billy Downer, says "nothing up to now" has happened in attempts to avert the crisis.

Apparently the government, through the Public Service Commission (PSC), is offering increases of between 7% and 24%, while the employees say their research has found that state advocates need an increase of between 50% and 60% to be on a par with the private sector.

Downer says Justice Minister Dullah Omar "has done his best" to deal with both their grievances — Omar has agreed that their salaries are too low and, in what Downer calls "a morale booster", assured white males they will not lose their jobs in the wake of affirmative action.

Downer believes "government spending priorities are not perhaps as they should be", but whatever the case, he says, the present salaries situation is "unacceptable."

On affirmative action, he says "the department has no clear policy". There are no quotas and nobody seems to know what criteria are being used to implement the policy.

The salaries issue is being handled at the Central Chamber of Bargaining, but the PSC offer has been turned down twice by the professional personnel representatives.

(2152) M+G 1-7 | 3/96

By CARMEL RICKARD

THE powerful Judicial Service Commission, which chooses judges of the Supreme Court and helps appoint other senior judges, has been taken to task by one of its members for serious shortcomings in its selection process — including an alleged "nostalgia" for the methods used under the old regime.

The Sunday Times has obtained a document in which Professor Etienne Mureink outlines his views on the commission to the deans of law at universities around the country. Professor Mureink represents the deans on the commission.

Most of the commission's appointments have been correct, but some choices and procedures show serious shortcomings, he says.

Professor Mureink says that under the old order the selection process was "mysterious, secret and governed by a few known rules or principles — anthesis of the rule of law."

Now the process has to be open and conducive to public scrutiny, there should be a correlation between the appointees and the selection criteria, and the decisions should be based on a thorough inquiry into the merits and records of the candidates.

He says the principles of the rule of law are not being fully applied because of "powerful impediments", including the tenacity of the old approach to selection. Transparency is seen as an imposition on a judge president or the

The old order still rules in new judicial appointments

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chief justice, who, it is felt, should be able to choose their own judges.

Chief Justice Michael Corbett, who chairs the commission, denies that this attitude prevails, but Professor Mureink says certain deficiencies in the commission's process were difficult to explain unless they reflected a "nostalgia for a looser process."

The constitution speaks of a need to form a court which is "representative in respect of race and gender". The commission decided this did not mean the courts should "represent the races and genders in direct proportion to their share of the population."

However, Professor Mureink says a "cosmetic numbers game" to satisfy "the most vociferous constituencies" appears to prevail. "Do we have a

credible enough Afrikaner? Shouldn't we include a Zulu nationalist?"

He says some of the candidates chosen by this system failed to measure up to selection criteria.

Professor Mureink says the commission is not completely committed to openness, preferring secrecy. For example, the commission initially refused to allow the public to attend interviews for Supreme Court posts.

His public criticisms of the closed-interview system last year led to discussion about whether commission members were free to express criticism in public. The commission acknowledged the "right", but Professor Mureink agreed to give notice before publishing further criticism. He says the commission is inade-



ETIENNE MUREINK

quately prepared to interview and consider candidates. Without samples of legal writings, the commission cannot properly evaluate candidates' competence, yet the commission rejected Professor Mureink's proposal that nominees for the Constitutional Court submit three samples of written work, he says.

He criticises the commission for not having research staff. Members have demanding positions and cannot be expected to conduct research, scrutinise documents and prepare for interviews without help, he says.

"The commission has no research staff, nor has it asked for any. This seriously compromises the commission's capacity properly to scrutinise the records of the candidates."

Mr Justice Corbett and other members of the commission disagree with most of Professor Mureink's criticisms. "Due weight" is given to a judge president's views, but commissioners did not defer to them "unduly". Several appointments were made which did not accord with their wishes.

The chief justice says Professor Mureink's allegation of "cosmetic group thinking" gives a distorted and crude picture of "a delicate process of balancing different values and criteria, among which are the need for diversity and the need to address imbalances in the Bench."

The commission had used reports by legal bodies on short-listed candidates to make its decisions.

It had initially decided to hold interviews for Supreme Court posts in camera because the General Council of the Bar and the judge president of the Transvaal had warned that open hearing would inhibit good candidates from standing. "The commission was not just being secretive for no reason."

Mr Justice Corbett did not respond to Professor Mureink's comments on requesting samples of written work from candidates.

Professor Lourens du Plessis, dean of law at Stellenbosch University and the immediate past president of the Society of University Teachers of Law, said the society had endorsed Professor Mureink's views. Law teachers felt strongly about the need for transparency in judicial appointments and believed thorough changes based on merit should be made, he said.

By MARLENE BURGER

THE cost of baring the truth about South Africa's apartheid past will be significantly higher than the R55-million mooted for the first year of the Truth and Reconciliation Commission's operations

A new budget is expected to be approved this week. The commission's deputy chairman, Dr Alex Boraine, would not say how much was asked for, but said it was "a

lot more" than anticipated

"Since there is a two-year moratorium on the commission's operations, it makes more sense to be generous with funding now and allow us to do the job properly than to have to extend the life-span," said Dr Boraine.

The money set aside last year for the commission was returned to the Treasury after delays prevented it being spent in the prescribed time frame.

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The price of the truth

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ARC 4/3/96

JOHN YELD
Staff Reporter

THE anguished words of a mother of a young Gauteng student leader, shot dead by police during the struggle against apartheid "My heart is sore, sore, sore I don't think this pain in my heart will ever come out"

The mother, who still doesn't know the circumstances of her son's death more than six years ago, is one of thousands of victims of gross human rights violations whose cases will be investigated by the Truth and Reconciliation Commission

The commission is likely to start public hearings by the middle of next month, and there is deep concern in political and human rights circles that the heart-rending stories of the "ordinary" victims like the mother will be overwhelmed and ultimately ignored in the face of more "newsworthy" revelations by perpetrators - and particularly by big names which might reach into the highest levels of political life

There is also concern that the ordinary stories will become increasingly ignored by the South Africa media and its audience as a degree of moral fatigue sets in as the commission's work continues

over months, and that justifiable moral outrage at the deeds of the perpetrators will become diluted because of their equal treatment with victims at the hands of the commission

These are some of the issues which emerged during a workshop "Reporting the Truth Commission" in Johannesburg at the weekend, where journalists, academics and representatives of human rights and legal organisations examined the anticipated problems of the media in covering the work of the commission which is expected to last until the end of next year

Vice-chairman Alex Boraine noted a "major problem" in that most of the media coverage of the commission to date had focused on the perpetrators of gross human rights violations and not on the victims

"The commission is determined that the victims will at least receive the same primacy as the perpetrators," Dr Boraine said

"In so many instances it is the victims who are ignored, the victim who is put on the back-burner Let's take a look at all the actors involved, the victims and perpetrators"

Some of the victims have been forming groups and asso-

ciations where they can meet to talk about their individual traumas

One such group is Khulumani (Speak Out), which is being assisted by the Johannesburg-based Centre for the Study of Violence and Reconciliation

The centre commissioned a video production of the group which was shown at the workshop - and which made clear that victims have widely different responses to both their experiences, and to their hopes and expectations of the Truth Commission

Some victims want justice and to see the perpetrators facing criminal charges in court, other are looking for some form of reparation - money for a bursary to study, or assistance with finding a job Others seem only to want to know what happened to their loved ones

But for all of them, the truth is central to the individual healing process and - to those that want it - reconciliation and forgiveness

"How can you be expected to forgive someone you don't know?" asks one of the Khulumani women "They have not confessed their sins - how can we forgive them?"

Commission chairman Desmond Tutu said he under-

stood why some victims were unhappy with the structure and functioning of the commission

"Far too many people, especially in the white community, have come to think that forgiveness and reconciliation are cheap, and I welcome the resistance and hostility of some of the victims, so that people understand this is a very costly business

"To stand up in public and say 'I murdered five children', especially if you are a father - there is a cost involved in that"

In the telling of the stories to the commission, the community and the nation were acknowledging that gross human rights violations had occurred, Archbishop Tutu said

"This is a symbolic acknowledgement by the nation 'We are sorry, and with this symbol (of the commission) we are trying to rehabilitate your dignity"

"This should be seen as a process which involves the nation as a whole, and which brings about the healing of this nation We (the commission) are only a part of that

"If the objective is the healing of this country, the price we're going to have to pay is to listen to all sorts of things"



ARCHBISHOP DESMOND TUTU "Far too many people, especially in the white community, have come to think that forgiveness and reconciliation are cheap"



DR ALEX BORAINÉ: "In so many instances it is the victims who are ignored, the victim who is put on the back-burner"



Justice minister calls for moral distinction between

Stephen Lauffer

JUSTICE Minister Dullah Omar has called for the truth and reconciliation process to differentiate morally between the human rights violations perpetrated by the two sides in the apartheid struggle.

Speaking at a weekend conference for journalists on reporting the truth commission's work, he said he believed the right to equal treatment by perpetrators of human rights violations ended at the political act.

Apartheid perpetrators had participated in a system declared a crime against humanity by the UN. Apartheid activists had never participated in crimes against humanity.

Omar said there was a danger that the violations of the defenders of apartheid would be equated with those of people struggling for freedom and that morality would be sacrificed at the altar of political expediency in the name of reconciliation.

The offer of amnesty contained in the truth commission Act had been a

political compromise necessary to achieve the 1994 elections. But real reconciliation required a radical break with the past, and that implied a need to deal openly with SA's apartheid legacy. Without the truth, the values of the old order would continue to dominate the new democratic dispensation.

It was necessary to rescue morality and the rule of law from legal positivism. Without the ability to distinguish good from bad, the quality of amnesty would suffer, and with it the transformation of SA.

Supporting Omar's view, Prof Gees Hamelink of Amsterdam University said there were universally valid human rights, the defence of which was justified. Defending a system which had as its premise the violation of human rights could not be justified in the same way.

Speaking at the same conference, Centre for the Study of Violence and Reconciliation director Graeme Simpson said moral boundaries existed between perpetrators, but there were no such distinctions between victims.

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There was no need for them to say sorry to their victims. He welcomed some hostility from the victims because far too many in the white community had come to believe reconciliation came cheap.

Meanwhile, commissioner Yasmin Sooka said the body was discussing a recommendation to victims not to name perpetrators in open commission sessions. The fear was that they could be sued for defamation and become victims a second time.

Perpetrators appearing before the amnesty committee enjoyed privilege — anything entered in evidence by them could not be used against them in a court of law. In addition, government was required to pay for legal support for anyone employed by the police, military, or other state agencies.

But advocate Jules Browde told the conference he believed the Act provided similar protection to the testimony of victims.

The possibility of establishing an independent legal advisory service for victims could be examined, a commission member said.

Picture: Page 3

Given the political agreement on amnesty, it was important not to lose sight of the needs of the victims. The truth commission must be a vehicle for the expression of their pain and address material and moral reparations.

The commission had been "flabbergasted" to discover that the Act contained no requirement for perpetrators to make a personal contribution in return for amnesty, chairman Archbishop Desmond Tutu said.

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apartheid sides

Protecting us from worst of governments

(252) CT 4/3/96

LEON LOUW

CONSTITUTIONS are created to protect people from abuse by the state. Many South Africans argue that they have fought for 300 years to establish a state they can trust. They feel there is no reason to fear our present government. But what about the government that our grandchildren WILL vote into power? Constitutions are designed not to protect us from the best of governments, but from the worst. They are not intended for only a few years, they are there for the long term. The people in this country deserve a constitution that will protect them even if their worst political enemies come to power 50 years from now.

Constitutional safeguards consist of various checks and balances, many of which have been included in the draft constitution. However, there are still loopholes for abuse. The Free Market Foundation, in its new video *A Constitution Worth Fighting For*, proposes ways to close these loopholes.

Bill of Rights

IN A traditional Bill of Rights, such as that of the US, common-law freedoms are listed which can be enjoyed by all people simultaneously. Freedom of movement, speech and religion are examples. Some South Africans argue that these rights are not sufficient. Beyond protecting the basic rights of all citizens the constitution should help the poor to overcome the disadvantages they suffered under apartheid. Consequently, the draft bill includes a number of socio-economic "rights".

All far-minded South Africans agree that these are important goals but, for several reasons, the proper place for these goals is not in the Bill of Rights.

First, decisions regarding development and welfare should be made by elected politicians who can be voted out of office if they fail to act in the interests of the public. But if socio-economic goals remain in our final constitution, the Constitutional

Court judges will decide whether or not the provisions of the legislature with respect to housing, health and so on are correct so unelected judges will have to have the final say on these matters.

Also, socio-economic rights are often unenforceable because the government lacks the funds to pay for them. The inclusion of unenforceable socio-economic rights in the Bill of Rights has the undesirable result of undermining the enforceability of classical rights, such as the right not to be detained without trial. We believe that the task of reversing past wrongs should be undertaken in the political sphere and the chapter on rights restricted to upholding genuinely enforceable liberties and freedoms.

However, because of the urgent need to address socio-economic issues, these matters could be included under "National Goals" in the preamble to the constitution. In this way the socio-economic goals would be taken into consideration by the judges without compromising the fundamental freedoms or the power of the elected legislators.

The original purpose of bills of rights was to protect citizens from abuse by the state. But during recent decades the idea has developed that rights should also apply horizontally, between one citizen and another in the private realm.

Horizontal application

THE original purpose of bills of rights was to protect citizens from abuse by the state. But during recent decades the idea has developed that rights should apply not only between citizens and the state, but also horizontally, between one citizen and another in the private realm.

In the case of classical bills of rights which protect basic freedoms there is no point in applying rights horizontally because they are already upheld by the common law. It is only when socio-economic goals are included in a Bill of Rights that the question of horizontality becomes relevant.

Horizontality applied to our draft bill, for example, would mean that businesses would no longer be free to employ whomever they regard as the best person for the job. If challenged, they would have to prove in a court of law that, in choosing one candidate, they were not discriminating on the grounds of race or gender against any other candidate.

Horizontality, combined with socio-economic rights, places many common-law rights in jeopardy and puts various aspects of the law in contradiction with others. It also increases the power of the Constitutional Court to interfere in diverse aspects of private life. For these reasons the horizontal application should be removed from the draft bill.

Limiting rights

THE Bill of Rights has a limitation clause which says that entrenched rights may be limited to the extent that the limitation is reasonable and justifiable/necessary in an open and democratic society based on freedom and equality. No matter how well-intentioned this may be, it means the government at all levels has the power to violate fundamental rights, and this power is vaguely defined and open to differing interpretations.

If there must be a limit on the extent to which any particular right is protected, the precise limit should be written into the section that entrenches that right. In the German constitution, for example, the home is considered inviolable but this right is limited to allow violations in order to combat an epidemic or to protect juveniles. In other words, there are precise limits which are specific to the particular right.

Property rights

THERE is still debate as to whether the Bill of Rights should include a property rights clause. We believe there is an overwhelming case, both moral and pragmatic, for the unambiguous protection of property rights in South Africa's long-term constitution. The constitution should seek to restore and protect the rights of dispossessed people and to protect the rights of present and future holders of justly acquired property.

Fortunately, there are several means by which the government can redistribute land to compensate for past dispossessions without threatening security

of tenure. For example, the plethora of statutory and institutional restraints designed to protect whites could be scrapped, which would result in extensive, market-driven redistribution.

Second, the state could redistribute its own vast property holdings and other assets to the poor. Third, it could acquire property for redistribution in the market place.

More fundamental is the need to protect citizens from the violation of their property rights by future governments. The constitution should at least ensure that those who acquire property legitimately in the new South Africa, especially those whose property rights were so ruthlessly violated in the past, are never at risk again.

Devolution of power

Ideally, the central state should deal only with issues of concern to the whole country. All other powers should be vested in provincial and local governments. This would create diversity of political and economic systems.

IDEALLY, the central state should deal only with issues of concern to the whole country. All other powers and functions should be vested in provincial and local governments. This would create a diversity of political and economic systems. Regional and local governments that introduced bad policies would risk losing their citizens to more attractive areas and thus all governments would have to adopt the best policies to attract voters, investors and taxpayers.

Under the interim constitution, most powers vest in central government. Provincial legislative powers are not much wider than under the constitutions of 1910 and 1961 and the central parliament can make laws on every subject on which a province can legislate. In addition, provincial legislation can be overruled to "maintain national unity" and the provinces have no independent taxing power. Since they are not directly accountable to taxpayers, their incentive is to be spendthrift and to encourage central government to tax maximally.

The bottom line is that the provincial system under the draft constitution is much the same as in the past, and it will result in the same abuses.
□ Leon Louw is executive director of the Free Market Foundation.

Bill of Rights a start

THE COMPLETION OF THE DRAFT of the Bill of Rights has been hailed as a major victory for South Africa. A similar euphoria and enthusiasm was expressed by African-Americans after the United States Supreme Court ruled in 1954 that segregated schools were unconstitutional.

But 42 years later, they have realised that "the salvation of racial equality" has eluded them again. Naturally, we may ask, how has the system failed them and what are the implications for black South Africans?

Regarding the Bill of Rights, one school of thought holds that because national government is by definition the most remote, and potentially the most powerful, it is therefore the most suspect of all institutions.

It is for this reason that it must be carefully circumscribed by constitutional guarantees, such as the Bill of Rights.

An opposing view holds that individual liberty is more likely to be threatened if a weak and negligent government allows public problems to fester than if a responsive government acts vigorously in the public interest.

Although the right of free speech, free Press, freedom of movement, freedom from unreasonable searches and seizures and so on are guaranteed by the US Constitution and its Bill of Rights, these rights have proved to be inadequate to "assure equality in the pursuit of happiness".

In fact, the US experience has shown that, in the absence of other moderating factors, legal equality inadvertently preserves existing inequalities.

Most likely, it functions to increase inequalities between the educationally and economically strong and the weak.

While all manner of civil rights and precedents are in place, these are diluted by lax enforcement, the establishment of difficult-to-meet standards and by the increasing irrelevance of anti-discrimination laws to race-related (dis)advantages.

The implications for South Africa are obvious. The recent furore at Laerskool Potgietersrus, where black kids were denied admission, illustrates two points: that justice is a function of who you are and whether you can afford it.

Had Alson Matukane been an ordinary person, and not a director of the Department of Water Affairs, the incident would have passed without notice. The Matukane affair will hopefully lay the myth of equality before the law to rest.

Take the case of a worker allegedly shot by a farmer to test his gun as an example. The cost of seeking legal resources were beyond

The completion of the draft Bill of Rights for South Africa is important – but the United States experience has shown that equality before the law is often not as important as access to the law, writes **Sipho Seepe**

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Flashback ... Potgietersrus children waiting outside the Pretoria Supreme Court to hear whether they will be admitted to a local school.

his means, a situation that is true for most black South Africans.

Having the best constitutional guarantees without providing proper access can make a mockery of good intentions. And it should be stressed that proper access does not include the state's Mickey Mouse legal provision often reserved for the poor.

Another problem with most constitutions – and our constitution has not been able to avoid the pitfall – is the tendency to masquerade them as documents of all times.

They invariably tend to be couched in vague language that fails to capture the present conditions that led to their drawing up.

It is this vagueness that allows the combatants on both sides of the Matukane fray to muster support from the Constitution.

Without trying to impugn the honesty and integrity of the judges in the Constitutional Court, it can be expected that since they are also human, and therefore products of a racist and fragmented society, their human subjectivity may colour their adjudication.

Perhaps the role of human subjectivity in informing different interpretations of the same constitutional clauses is best captured by the fact that most important US Supreme Court rulings are rarely unanimous.

rights come to mind.

Put crudely, the latter suggests that black South Africans kiss goodbye the 87 percent of the land appropriated from them by means far from honourable (that is, unless they are prepared to do something about it).

While noting the considerable efforts of the Minister of Land Affairs to right the wrongs created by forced removals, it must be stressed that these are confined to addressing the 13 percent of the land which was reserved for Africans since 1936.

In conclusion, the elimination of national inequality, if it is to be more than a mere gesture, involves a complete change of the way in which the country's wealth is appropriated.

Removing racist statutes but leaving the economic status undisturbed will leave white domination in its essential form.

The economic gulf between impoverished black toilers and the privileged white caste is far too vast to be mediated by non-specific, general and vague constitutional provisions that might be open to a number of interpretations.

True individual freedom cannot exist without economic security and independence. (Professor Seepe is a lecturer at the University of Venda, Thohoyandou.)

In fact, the rulings have usually been of a 5-4 nature. If legal scholars are able to exploit this vagueness in language, why should we expect our judges to be immune to this?

It is here that the danger lies – that the Constitution may also be used against those who are concerned with bringing about the transformation of the present society.

The conflict around demarcation in the Western Cape and the constitutional clause on property

RAMAPHOSA CONFIDENT

Bill of rights: Parties close to agreement

ET 6/3/96

(252)

ONLY THREE ISSUES still need to be resolved for the constitutional assembly's negotiating committee to reach consensus on the bill of rights.

PARTIES moved significantly closer to agreement on the bill of rights for South Africa's final constitution yesterday, remaining deadlocked on only three issues at the end of an all-day session of the constitutional assembly's negotiating committee.

The issues are the death penalty, the property clause and the right to strike and lockout — none of which they discussed yesterday.

Closing the meeting, constitutional assembly chairman Mr Cyril Ramaphosa said he was confident they would resolve these outstanding matters over the next few weeks and that the new constitution

would be reached by full consensus.

In discussion on the freedom of expression clause yesterday, the Democratic Party softened its previously implacable opposition to a proposed constitutional ban on "hate speech"

Ms Dene Smuts said she would take back to the DP caucus an ANC proposal that advocacy of hatred based on race, ethnicity, gender or religion that could "cause harm" be explicitly banned by the constitution.

Previously the clause had referred to such speech constituting "incitement to discrimination"

But she said she could not guar-

antee the DP would not "dig in its heels" on its long-held total opposition to any constitutional limitation of free speech

The party has argued that "hate speech" should be subject to ordinary legislative sanction

Smuts said the DP would, for instance, "passionately uphold" the constitutional right of someone like ANC MP Tony Yengem to make the kind of "racist remark" he had uttered in the national assembly last week when he had said most whites had stolen their wealth from the majority of South Africa's population

But the DP would insist that his right to defend himself in any resulting court action be counterbalanced by whites' right to dignity. — Sapa

Doctors told to help Truth Commission

□ *The profession owes a debt, says Orr*

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JOHN YELD, Staff Reporter

THE South African medical profession was "particularly apathetic" in responding to human rights abuses during 40 years of apartheid rule, and should make a concerted effort to help the Truth and Reconciliation Commission rehabilitate the victims of such abuses.

This is the challenge of commissioner Wendy Orr, the doctor who earned the wrath of the P W Botha government by launching a successful Supreme Court application to prevent the systematic torture of detainees in St Albans prison in Port Elizabeth during the state of emergency in 1985, while she was working as an assistant district surgeon.

Dr Orr, who was guest speaker at an Institute of Personnel Management breakfast in Sea Point on Tuesday, said the process of giving evidence and re-living the physical and emotional pain of their ordeal could be highly traumatic for victims.

Because of this, the commission was employing a team of briefers who would explain the process to them before they testified and prepare them for likely emotional reactions.

This team would also debrief the witnesses and give them a safe place to ventilate their feelings.

"We will also rely on non-government and faith communities to provide follow-up counselling until long-term policy proposals around on-going services for victims have been adopted and implemented."

The South African medical profession had been "particularly apathetic" during the 40-year apartheid era about helping victims of human rights abuses, Dr Orr said.

She urged doctors to become involved in the rehabilitation process through professional organisations. "I do hope they will respond appropriately."

There was clear evidence from Chile and elsewhere where there had been truth commissions that victims needed to know what had happened before they could forgive the perpetrators, she said.

"Simply to adopt a 'forget and forgive' approach will not deal with the pain, the anger and the agony of not knowing."

"Forgetting the past means we learn no lessons from it and are likely to repeat the mistakes and abuses."

A telling example of how damaging a "let's sweep it under the carpet and forget about it" approach could be was the Anglo-Boer War, Dr Orr said.

Thousands of Boer women and children had been incarcerated under appalling conditions in British concentration camps, and hundreds had died.

The "scorched-earth" policy of the British government of the time had left people homeless and struggling to survive.

"After the war, all of this was simply brushed aside and the British government never acknowledged their wrongdoing, never apologised."

"The Boers were never given a real opportunity to talk about their anger, and families were never able to trace missing loved ones because the book had simply been closed."

"This cover-up and the damage it inflicted on the collective psyche of the Boer nation has undoubtedly been a significant factor in the development of attitudes and policies subsequently manifested in the Afrikaner community."

It had been suggested that if there had been a Truth and Reconciliation Commission after the Anglo-Boer War, it might not have been necessary to have the present commission, Dr Orr said.

Even-handedness would be crucial to its success.

"A human rights violation is a human rights violation, regardless of who commits it or who the victim is."

"Victims of the bomb blast in Pretoria have as much right to reparation as victims of the Fields Trust massacre."

"Someone who tortured prisoners in African National Congress camps in Angola is as much a perpetrator as someone who tortured detainees in St Albans prison in Port Elizabeth," he said.

The plight of the perpetrators could not be ignored, Dr Orr suggested.

"Many perpetrators are truly remorseful and are living with tremendous guilt."

"While disclosing their actions might bring relief in many ways, it could also bring problems—for example, revealing wrongdoing to ignorant friends and family members."

"Failure to counsel perpetrators is courting disaster."

Responding to a question about whether revealing the truth through the commission would not lead to vengeance attacks and "the bloody revolution that we avoided in April 1994", Dr Orr said that this possibility was "greatly troubling."

But many victims had always known the identity of the perpetrators and yet had not resorted to such attacks.

"I can't predict the future, but I can tell you what has happened in other countries in which truth commissions have taken place."

"Nowhere in the world has the situation after the commission been worse than the situation before."

"There has not been a spiral of bloody violence—experience has shown us that this doesn't tend to happen."

"But that doesn't rule out the possibility that there might be individual acts of vengeance I can't say that cannot happen," Dr Orr said.

Bill on fathers' rights approved

7/3/96

(252)

POLITICAL STAFF

JOHANNESBURG: The cabinet passed ground-breaking legislation yesterday to recognise the rights of fathers of children born out of wedlock.

The Powers of Natural Fathers of Children Born out of Wedlock Bill marks a decisive break with decades of legal discrimination against the fathers of illegitimate children. It also scraps the offensive term "illegitimate", replacing it with the term "born out of wedlock".

It will allow fathers who are not legally married to the mothers of their

children to approach the court to grant them custody, guardianship and adoption rights, providing these are consistent with the interests of the child.

The bill also makes it compulsory for mothers to notify the natural father when they intend putting a child up for adoption.

If the law had been on the statute books when Johannesburg father Mr Lawrie Fraser approached the Rand Supreme Court to adopt his illegitimate daughter, it would have provided the court with strict statutory guidelines.

The bill, which will come before Par-

liament later this session, had to make a choice between two competing options outlined by the South African Law Commission. Either the father has to approach the court to enforce his parental rights or he has an inherent right, in which case the mother opposing the action would have to prove that it was not in the child's interest that the father be allowed access or custody.

The competing options are likely to resurface during the parliamentary process but the bill as it stands now puts the onus on the father to approach the courts.

Victims (262) eager to testify

CT 7/3/96

THE Truth Commission's Eastern Cape office has been inundated by telephone calls from victims wanting to testify at the first public hearing, to be held in East London from April 16-19, says commissioner Mr Bongani Finca

Finca said yesterday the commission planned to hear four to five cases a day during the four-day hearing, likely to be held at East London's City Hall if problems of poor lighting can be sorted out.

The regional office was still being set up, which made preparations for the hearing doubly difficult, he said. "We are handicapped. We are looking for things like chairs and paper to write on."

However, interviews were taking place this week for key staff posts such as debriefers, who would play a crucial role in taking statements from victims at pre-hearing briefings.

Finca said non-government organisations in the Eastern Cape were helping the commission identify cases of apartheid-era human rights abuses which fell within the commission's mandate to investigate.

"They have lightened our burden. In most cases they are approaching us."

However, the commission still had the "added responsibility" of ensuring the cases heard at the first hearing reflected a cross-section of human rights abuses and did not concentrate on any single one.

Finca said the regional office had been flooded with telephone calls from survivors eager to testify at the hearing.

"We are going to take a wide variety of statements and then sit down and establish who qualify."

The office would then submit a list of cases to the commission to consider — Sapa

DATABASE ON APARTHEID OFFENCES PROTECTED

Truth body to fight hackers

er 7/3/96
(252)
THE TRUTH COMMISSION is taking the security issue of its inquiries "extremely seriously" and is striving to make it "impenetrable", says one of its consultants.

THE Truth Commission is taking steps to protect its sophisticated computer database — which will contain potentially explosive details of apartheid-era human rights abuses — from computer hackers

A consultant to the commission, Mr Paul van Zyl, said yesterday that the commission's regional offices in East London, Durban, Cape Town and Johannesburg would have complete access to the database, which will be used to ver-

ify and cross-refer written information from victims and perpetrators

The possibility of allowing investigators in the field to access the database using lap-top computers and modems was also being looked at.

However, Van Zyl said, security safeguards would be built into the system to prevent outside people from hacking into it.

"The commission is taking the security issue extremely seriously.

"We are trying to make sure it is

bullet-proof, impenetrable," he said.

The commission announced recently that Sweden had donated R1 million towards setting up the computer system, which would help in piecing together a comprehensive picture of the pattern and detail of human rights violations over the past 33 years

However, the records of more than 11 000 human rights violations compiled last year by a coalition of non-governmental organisations would not be included in this database

"We are going to start off with a clean slate. That information (the NGO records) will be kept separate

and treated as a secondary source of information.

"Only victims' accounts and the amnesty applications will be treated as our primary source of information."

There were also no plans to include the 7,5 tons of legal records dating back to the 1960s which the London-based International Defence and Aid Fund sent to the Wits University-linked Centre for the Study of Violence and Reconciliation last year.

The centre was processing the files and would submit a report on their usefulness to the commission in the next three to four months — Sapa

Constitutionality of Bill to be tested for first time

Susan Russell

BD 7/3/94

~~252~~ (252)

THE constitutionality of a parliamentary Bill will be tested for the first time when minority parties challenge the validity of proposed new legislation setting out national education policy in the Constitutional Court today.

At issue are provisions of the National Education Policy Bill which the DP, IFP and NP contend violate the provinces' constitutional right to legislative and executive autonomy.

The parties claim the Bill, if enacted, will unconstitutionally compel unwilling provinces to implement Education Minister Sibusiso Bengu's policy

Bengu is opposing today's application. Written submissions already put before the court on Bengu's behalf argue that the minority parties' objections are misconceived.

The government submits that the Bill specifically requires any national policy to be determined subject to the constitution generally and that ultimate decisions relating to education policy issues vest in Parliament and not the Minister.

It is also submitted that enforce-

ment of education policy on unwilling provinces is neither dictated by the Bill nor an inevitable consequence of the minister's policy-making powers.

According to government the Bill also envisages substantial constraints on the ministerial power to make policy and recognises the importance of broad participation by all those with an interest in education matters.

Government in its written argument also rejected as "misconceived" the IFP's contention that the minister's powers conferred by the Bill amount "to an impermissible delegation by Parliament of legislative functions to a minister".

The NP has also submitted written argument in which it contends that the Bill permits the minister to usurp the executive powers of the provinces.

According to the DP the disputed provisions oblige provincial governments to implement the minister's national education policy.

If the court found that this was not the case however and that the provinces were free to ignore his policy, the DP said its constitutional objections to the Bill would fall away.

Legislation on rights for unwed fathers passed by Cabinet

Star 7/3/96

(252) (252)

Bill ends decades of discrimination by enabling unmarried fathers to apply for custody, guardianship and adoption

BY PATRICK BULGER
Political Correspondent

Ground-breaking legislation to recognise the rights of fathers of children born out of wedlock was passed by Cabinet in Cape Town yesterday.

The Powers of Natural Fathers of Children Born out of Wedlock Bill marks a decisive break with decades of legal discrimination against the fathers of illegitimate children. It also scraps the offensive term "illegitimate", replacing it with the term "born out of wedlock"

If passed into law, it will allow fathers who are not legally married to the mothers of their children to approach the court to grant them custody, guardianship and adoption rights, providing these are consistent with the interests of the child.

The bill makes it compulsory for mothers to notify the natural father when they intend putting the child up for adoption.

If the law had been on the statute books when Johannesburg father Lawrie Fraser approached the Rand Supreme Court to adopt the son his former fiancée had put up for adoption, it would have provided the court with strict statutory guidelines.

The bill, which will come before Parliament later this session, had to make a choice between two competing options outlined by the South African Law Commission. Either the father has to approach the court to enforce his parental rights, or he has an inherent right. In the latter case, the mother opposing the action would have to go to court to prove that it is not in the child's interest that the father be allowed access or custody.

The competing options are likely to resurface during the Parliamentary process but the bill, as it stands now, puts the onus on the father to approach the courts. This may, however, still be adjudged to be discriminatory

Omar: Crime thrives in justice system

ESTELLE RANDALL
Staff Reporter

CRIME syndicates are thriving on corruption in South Africa's justice system, says Justice Minister Dullah Omar

Speaking at an anti-drugs conference in Paarl last night, he said bribery was occurring in the justice system as a result of poor salaries

He said many battles had been fought over the need to treat "professionals as professionals" While cabinet had accepted the principle, what this meant in practice for those involved in the justice system had yet to be worked out

He said that in some parts of the country, police dockets had mysteriously disappeared. Every court should establish systems to prevent this.

There should also be improvements to the expertise of prosecutors, who now had to

operate within the framework of the constitution and its bill of rights

"Everybody enjoys those rights and people who commit crimes often claim these rights before anyone else"

Mr Omar said he would attend a conference of Commonwealth law ministers in April, where countries would focus on drug trafficking and organised crime

Mr Omar said South Africa had the capacity to deal with organised crime

But doing so required greater cooperation between different components of the criminal justice system, a professional approach to prosecutions with proper training for prosecutors, adequate pay for staff, tighter laws and co-operation between South Africa and its neighbours

He was speaking at the open-

ing of the conference which is being hosted by the office of Western Cape attorney-general, Frank Kahn

"The problem is the fragmentation of the justice system. There is a specialised role for each department and a need for all to exist but we must ensure that we don't work against one another," Mr Omar said

Co-operation was more important now because South Africa was a target for international crime syndicates who were sophisticated and had access to many resources to ply their trade

Besides co-operation between the different departments, South Africa had to operate with countries in Africa and elsewhere

A Southern African group on safety and security had also been established to create a se-

cur environment in the region. An important aspect was control of South Africa's borders

Mr Omar said the causes of crime were essentially socio-economic and unless these were dealt with crime would not be reduced

"Whether or not we have the death penalty, we will still have to develop an effective deterrent to crime"

Key elements of such a deterrent involved ensuring that potential criminals knew with certainty that they would be arrested, their cases would be properly investigated and prosecuted, that they would get effective sentencing and that they would serve their sentences.

"Our main problem is that criminals are not being apprehended. So the rest doesn't come into play at all."

ARG 8/3/96

(252)

The truth commission's most powerful weapon

(252)

Gayle Davis

A HUGE computer database, capable of cross-checking names, dates and incidents, will be the truth commission's most powerful tool. It will allow for fast checks on the truth of victims' claims. It will also ratchet up the pressure on perpetrators to come forward — and come clean.

Building the database is central to the commission's mammoth task of uncovering, as far as possible, the suppressed and unwritten history of the past 33 years. One spin-off from the research operation about to kick into gear is it could expose the extent to which official records of acts done in

the name of apartheid were destroyed by the previous government.

Truth commission workers are to start taking statements from thousands of victims across the country on March 25. This information, along with details of amnesty applications, will be fed into the database.

Protected by a security system described as virtually state-of-the-art, the database will be primed with police and court records, historical and research data, and details of apartheid abuses gathered by lawyers and human rights agencies.

Sophisticated software and search techniques will enable researchers and investigators to cross-check

details, link individuals to incidents and pick up any patterns that emerge.

"We will be able to check victims' allegations, ensure that those seeking amnesty are making full disclosure and also provide the scientific underpinning for the commission's final report," said truth commission consultant Paul van Zyl.

"The database will allow us, in as scientific a way as possible, to manage the information at our disposal. It will also be a way of preventing the commission from being used as a means to make unfounded allegations."

In overall charge will be University of Cape Town social scientist Professor Charles Villa-Vicencio, named this

week as the commission's director of research.

While computer specialists will run the database — including United States expert Patrick Ball, who has worked on similar databases used by truth commissions elsewhere in the world — Villa Vicencio will head a team of 12 additional researchers spread countrywide.

The research team will give commissioners background detail on violations they deal with — information on the ANC's detention camps, or covert security force operations, for example. They will assist the commission's investigative unit and, ultimately, draft the commission's final report.

Lawyers and human rights organisations were already busy clearing issues of confidentiality with clients so that records could be made available, Villa-Vicencio said. Minister of Safety and Security Sidney Mufamadi recently agreed to make police records available. Attempts would also be made to get access to national intelligence archives and other state records.

Sophisticated cross-referencing techniques will enable researchers to input a policeman's name, for example, and call up information relating to other incidents he had been involved in. "We will be able to pick up patterns of violations, including instances where particular torture techniques crop up repeatedly," Villa-Vicencio said. "At the end we will put together the pieces of the puzzle."

MTG 8-14/3/96

AN AWFUL TRUST

(252)
KM 8/3/96
It is ironic that the law designed to uncover SA's murky past and help bring truth and reconciliation to our fledgling democracy contains some of the most Draconian provisions yet entered into our newfound statute books

Sweeping powers of search and seizure, subpoena and compellability of witnesses — even the right to demand and examine potentially incriminating

FINANCIAL MAIL MARCH 8 1996

46 CURRENT AFFAIRS

evidence — have been handed to the Truth & Reconciliation Commission

Here is a camel of hundreds, if not thousands, of unseen parts, commanded by 17 men and women — many of them untested by public office — who will traverse the country for most of the next two years with the purpose of establishing who did what against whom in the most militant phase of the apartheid era, from March 1960 to December 1994

They have the power to grant amnesty to the vilest criminals, if the perpetrators are deemed to have made full disclosure and if their crimes were politically motivated. Similarly, they can recommend reparations to victims — either symbolic in nature or materially from a President's fund established by parliament. They can order the search of any property, private or public, and seize any documents or evidence they consider necessary to their task.

Such is the commission's power that it can cause a Supreme Court hearing to be suspended in mid-stride if it receives a valid application for amnesty from the accused in the trial. Similarly, the granting of amnesty would dissolve the trial or, in the case of convicted prisoners, lead to their release.

"On paper, the search, seizure and compellability provisions are problematic, especially as regards the press," says Lene Johannessen, head of the media project at Wits University's Centre for Applied Legal Studies. But she doubts the commission will exert its powers to wrest information from the press.

But, for all the commission's awesome powers, it has at least one serious chink in its armour: it cannot protect witnesses, nor the media, from defamation suits. So, if a victim stands up at a public hearing of the commission and names an alleged perpetrator of an apartheid crime, that witness could be sued, as could the media that publish that information.

Despite its quasi-judicial status, this commission has not been granted judicial privilege — a grave omission, considering the purpose of the hearings is to bare the truth, wherever possible, for the purpose of national healing.

The implications are clearly of concern

to the commission itself, though it has yet to attend to the reporting dilemma.

At a conference last week on the responsibilities of reporting of the commission, prominent commissioners — chairman Archbishop Desmond Tutu, vice-chairman Alex Boraine and commissioner Yasmin Sooka — said that all hearings would be open to the public, except where doing so would interfere with the course of justice or pose a threat to a witness.

To protect witnesses from defamation suits, the commission has decided to give "pre-briefings" to victims in which they will be warned about naming perpetrators. But if they insist on giving names publicly, the commission will not stand in their way, says Boraine.

The commission's task, President Nelson Man-

dela emphasised at a blessing ceremony at St George's Cathedral last month, is to help South Africans "to come to terms with the past in ways which will enable us to face the future as a united nation at peace with itself."

Tutu reaffirmed the sentiment last week: "We really do mean this to be a process in which the whole nation is involved, over the next two years, we will seek to heal and create a culture of human rights."

The question of the extent of the commission's powers over civil privacy and the media, then, must be held in abeyance for now. For ultimately it can only be a matter of trust. ■



Desmond Tutu

FINANCIAL MAIL MARCH 8 1996

By JOHN YELD, who will cover the Truth and Reconciliation Commission for The Argus. JOSEPH ARANES will also report on the historic hearings.

FORMER security policeman and Vlakplaas commander Dirk Coetzee, who has been revealing details of alleged state hit squad activities and murders by policemen for several years, has applied to the Truth and Reconciliation Commission for amnesty.

Mr Coetzee, who arrived unannounced at the commission's Cape Town office two days ago, brought a "very long and large" document with him which he wanted to submit as well as his completed amnesty application form.

This was revealed at a media conference at the commission's offices today by vice-chairman Alex Boraine.

Mr Coetzee, a former commander of the security police's farm Vlakplaas, outside Pretoria, where prisoners were allegedly tortured and murdered, has been giving evidence in the trial of his successor at Vlakplaas, Eugene de Kock, who is facing 121 charges.

Mr Coetzee spent three years in exile in London after blowing the whistle on police activities at Vlakplaas.

Recently a senior police officer claimed Mr Coetzee had told him that while he was working as a National Intelligence Agency operative, he had been ordered to spy on senior police chiefs, including commissioner George Fivaz.

Mr Coetzee denied this allegation.

Dr Boraine today confirmed that Mr Coetzee had visited the commission's Cape Town office.

"We're not in the normal practice of announcing who comes and who doesn't, but obviously this is a name well known in South Africa," he said.

"Two days ago he arrived unannounced and asked if he could see me."

Dr Boraine said he had offered Mr Coetzee an amnesty application form but found he had already completed one.

Mr Coetzee also had with him completed application forms from two other people.

Dr Boraine said he had referred Mr Coetzee to the commission's amnesty committee.

"But I pointed out to him that in terms of the Act, people in custody must get preference."

It was also announced at the conference that details of a R70 million budget for the commission for this financial year are being scrutinised by the Audit Commission today and will be presented to Justice Minister Dullah Omar for final approval before next Friday.

Commission chairman Desmond Tutu said the R55 million budget proposal produced for the commission last year by the Department of Justice had been "a wonderful sort of thumb-suck".

Most of the budget would go on salaries and travel and accommodation expenses.

"If you want to attract the best people into these jobs, particularly because it's for a limited period of just two years, we have found that salaries have to be more than attractive."

"For example, we were considering R60 000 a year for investigators but were told 'You are playing with marbles,'" Archbishop Tutu said.

COETZEE says I D I R K C O E T Z E E , the am n e s t

(252) RRG-8/3/96

NEWS FOCUS

At last, a flattering portrait of SA in US's human rights report

Simon Barber

WASHINGTON — The state department's 1995 human rights report, released on Wednesday, contains the first flattering portrait of SA since the annual country-by-country compendium was launched under President Jimmy Carter.

The picture of the first full year of post-apartheid rule was not unalloyed, however, especially with regard to persons in police care, 189 of whom emerged feet first for causes other than the natural kind.

Based on the SA Police Service's own accounting, 102 died at the hands of police during or after arrest, 40 committed suicide, and 27 died from injuries inflicted by the "public" — in the course of being apprehended and after they were in custody.

The fate of the other 10 is not recorded.

The report does not offer a comparison with previous years, citing a lack of credible statistics. Nor is there mention of the crime problem or the role it may have played in cases where members of the public knocked off suspects.

The interim constitution's strictures against torture were not always honoured. Methods included "threats to the life of a detainee with drawn weapons, electric shocks to the body, including extremities and genitalia, simple assaults and ejection from a moving vehicle." Happily, such tech-

niques were used more sparingly than in the past, and the state department was pleased to note that "prison conditions meet minimum international standards".

Other "serious" problems noted in the report included the ongoing toll of political violence, chiefly in KwaZulu-Natal. As scored by the Human Rights Committee, the body count last year was 1 195. The SA Institute for Race Relations, which the US embassy seemed less loath to quote than previously, put the figure at 1 044.

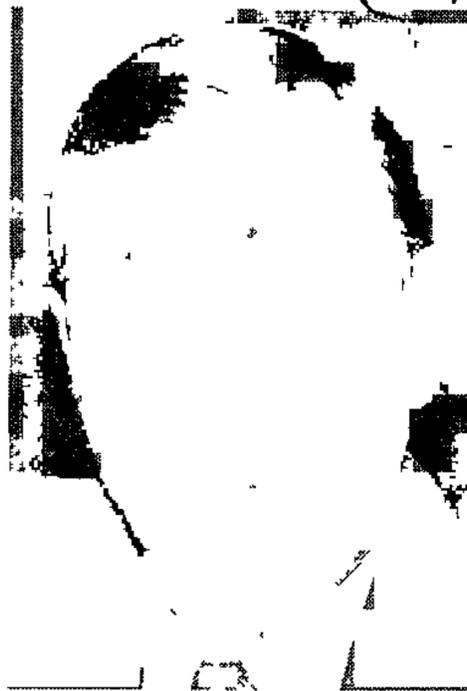
Either way, the numbers were well down on 1994's tally of 2 687, by the HRC's estimate.

Aside from the odd lynching, "there were no new reports of politically motivated killing attributed to right-wing organisations".

The report made it clear SA was far from becoming the "nonsexist" society of the ANC's credo and was not especially solicitous of its young folk, either. "Discrimination and violence against woman and violence against children continued to be serious problems," it said.

A group called People Opposing Women Abuse was the source of figures suggesting cases of reported rape rose from 18 308 to 27 056 between 1988 and 1993.

Traditional law was said to be a major factor in the continuing subjugation of women, even as modern legislators moved to end such in-



FIVAZ

equities as gender-biased taxation. Something had to be done to stamp out female genital mutilation, or ritual clitorotomy, still practised in remoter regions.

The disabled also needed more attention. Architectural regulations adopted by the Nationalists "to ensure equal access to public buildings" were not being enforced.

Apart from a few other quibbles, SA comes across as a shining beacon in its continent.

The report offered a positively glowing account of the government of national unity, noting that the Cabinet had functioned "exceptionally smoothly" and that Parliament had "changed from being a rubber stamp to its new role as the chief forum of

national political debate".

If there was one fly in the ointment, it had to do with "concerns about co-ordination and effectiveness of established bureaucracies in carrying out the policies of the new political leadership".

It said the defence force and the SAPS had undergone "monumental changes". Highlighted were the "successful" integration of the old SADF with Umkhonto we

Sizwe, the Azaman People's Liberation Army and the old homeland forces, and the "sweeping and positive changes" at the SAPS under Commissioner George Fivaz.

The state department was impressed by the independence of the judiciary, effusive about the new constitutional court and its readiness to abolish capital punishment and exert its powers of judicial review, and appeared enthusiastic about the Truth and Reconciliation Commission.

The freedom of the Press, the report found, was unabridged. Even the state-run SABC was "carefully building and protecting editorial independence from the government", offered "balanced coverage" and had turned down a government request for 30-minute prime time slots.

The decision of the In-

dependent Broadcasting Authority to set local content requirements for the electronic media was not welcomed. However, it was praised for bringing "real competition to the country's airwaves for the first time in history".

Although "considerable legislation" remained on the books permitting government to suppress information about the police, defence forces, prisons and mental institutions, and compel journalists to reveal their sources, it was "rarely" used.

"There were no instances of government- or police-sanctioned harassment of the Press, nor of systematic attempts by political organisations to intimidate the media."

The new labour relations law appeared to go down very well with the report's authors, except insofar as it did not mandate a minimum wage. Another complaint was that current occupational safety laws did not give employees the right to remove themselves from what they considered hazardous conditions without facing disciplinary action.

Reports of recent years have complained about the structure of corporate ownership in SA. The latest one has dropped that boilerplate. The report does, however, place responsibility for the high unemployment rate — 60% of the black population is said to be without formal employment — squarely on the shoulders of the ancien regime.

STILL ON DEATH ROW

... long after the penalty was scrapped

By Ruth Bhengu

AT LEAST 70 prisoners are still languishing on Death Row although the death penalty was abolished almost a year ago.

This emerged yesterday when Death Row prisoners from Pretoria Central Prison contacted Sowetan to complain about their continued incarceration in a section reserved for condemned prisoners.

The prisoners, from all over South Africa and neighbouring countries, said the Government had promised to relocate them to prisons near their homes but had not kept its promise.

"We were promised that we would be moved to prisons near our homes where our relatives could visit," said Henry Mopeli (52), who got two death penalties plus 15 years for robbery in 1992.

"We have not heard anything from the Gov-

ernment since we were visited by Carl Niehaus last June. He told us that we would be re-sentenced after we had been transferred to prisons nearer our homes.

"The anxiety and uncertainty is driving us crazy", said Mopeli.

Another prisoner, Thandazani Sthakane (29), of Empangeni, KwaZulu-Natal, who had also got two death penalties and 15 years for two murders and robbery, said the worst part was not knowing his fate.

"We hear that some people are calling for the death penalty and we worry that we may be hanged after all," he said.

Abram Masilo (49), who was sentenced to death in 1993, said it was torture not knowing his position.

Mozambican David Nkuna (35) claimed he acted under instructions from the Mozambican government when he committed murder. Nkuna claimed he was a Frelimo soldier

and that he came on a military assignment in connection with the death of the late President Samora Machel.

He said he had killed a person in the course of his duties for which he was sentenced to death.

Nkuna said there were four other prisoners with him who were also sentenced to death.

They are Elliot Mphahle, a Lesotho national John Mabuza, Johnson Lephalu and John Mthembu, all Mozambicans.

"I want my government to negotiate with the South Africans to repatriate us to Mozambique", he said.

Nkuna said the prisoners, some of whom were serving up to 600 years, were suffering from anxiety and needed psychiatric attention.

A Mozambican Embassy employee said his government was aware of Nkuna. He referred Sowetan to a Mr Tamele, who was not available for comment at the time of going to press.

yesterday.

Spokesman for the Department of Correctional Services Major Koos Gerber said he was surprised by the prisoners' claims that they were kept against their will at the Central Prison.

"Prisoners all over the country were given the choice to decide which prisons they wanted to be transferred to."

"As far as I know all those who remained in Pretoria stayed out of choice," said Gerber.

But the prisoners insisted they had tried to get the authorities to move them to other prisons and were told there was no space.

Gerber said prisoners from Mozambique could not be transferred to their country.

He said a total of 223 out of 289 prisoners had been transferred to prisons throughout the country. The Constitutional Court abolished the death penalty last year.

IKKELLING

Common rights denied

THE COUNTRY'S LEGAL PROFESSION has questioned the denial of long-standing common law rights to victims of apartheid as a result of the right to grant amnesty under the Promotion of National Unity and Reconciliation Act

The controversial provision is section 7(a) of the Act which stipulates that a person who has been granted amnesty shall not be criminally or civilly liable.

The section further provides that no individual or organisation of the state shall be liable, and that no individual will be vicariously liable either

Law associations agree that the often-repeated claim that the Truth Commission will not affect the due process of the law rings hollow because section 7(a) has already taken away not only the right to prosecute but also the civil right to claim damages

While the National Association of Democratic Lawyers (Nadel) will only discuss the issue later this month, it believes that - in terms of the Constitution and the political compromise reached during the Kempton Park negotiations - it is a "necessary incursion" into the rights of individuals

"The right to institute civil action is being curtailed by the section. The section took away long-standing common law rights," says Nadel spokesman Vincent Saldanah

However, he feels that this right is not being taken away completely, because some reparation can be made to the victims of human rights abuses

Saldanah further says it is "morally reprehensible" for the Government of National Unity to incur the debt of the previous National Party government

Internationally recognised

"It is an internationally recognised principle of international law that incumbent governments do not incur the debt of previous governments," he said

Advocate Wim Trengrove, a prominent constitutional lawyer and director of the Legal Resources Centre, says taking away from people the right to claims will probably be controversial

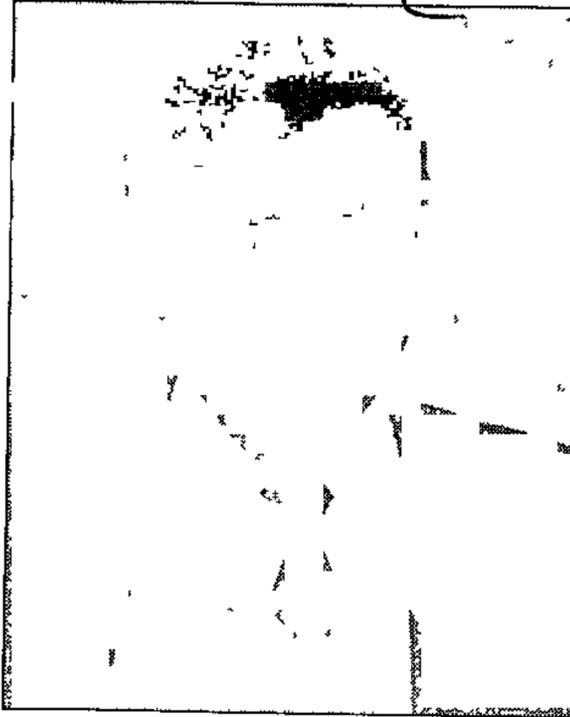
However, like Saldanah, Trengrove points out that while the Act takes away on the one hand, it does promise reparation on the other "Provided the reparation is adequate, the loss of claims would be upheld," he says

On the planned challenge of the Constitutional Court by the Azanian People's Organisation, he says "Everybody who attacks the process will have a hard time. It will not be easy under the Constitution"

Lawyers for Human Rights director Jody

Section 7(a) of the Promotion of Unity and Reconciliation Act denies victims of apartheid their common law rights. **Mzimasi Ngudle** has the story...

(252) Sowetan 8/3/96



Justice Minister Dullah Omar ... called for the rule of law to dominate the Truth Commission's proceedings.

Kollapen says the organisation is not happy with section 7(a)

"We have indicated many times that it takes away the civil rights of the victims," he says. He argues that the Reparations and Rehabilitation Committee will provide only symbolic or nominal reparation

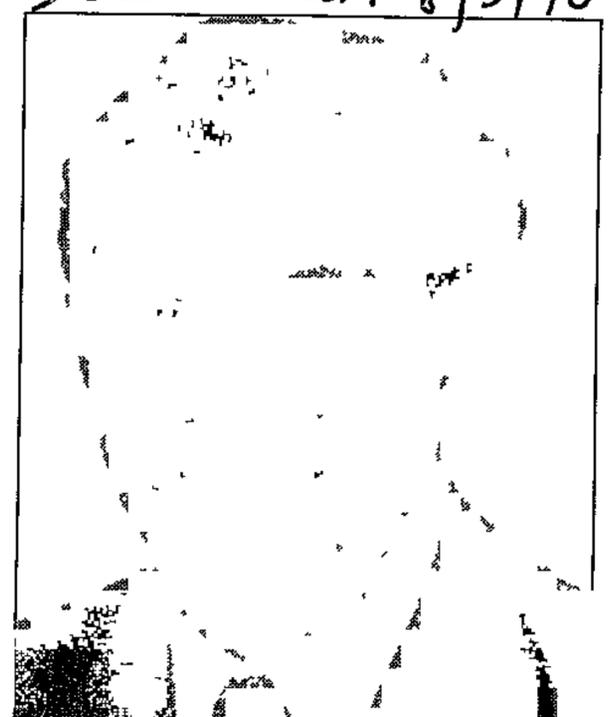
Kollapen says the LHR will be happy to assist anyone who challenges the section in court

The Black Lawyers' Association adopts a somewhat different position, insisting that the law should take its course. Offenders can then be pardoned or reprieved as and when the need arises

On this point, Trengrove feels it would be pointless and costly to proceed with criminal prosecutions and allow civil suits, only to absolve the offenders of criminal or civil liability

While the BLA still has to discuss this issue, the association's president, Advocate Justice Phosa, says many of its members feel that amnesty can be granted only after a person has been duly tried and convicted

"At all times the state has the right to pardon offenders," Phosa says, adding that many BLA members disagree with the concept of impunity



LHR director Jody Kollapen ... a section of the Reconciliation Act takes away the civil rights of victims.

"I am one of those who believe it's inappropriate to deny people their right of action against those who have wronged them"

The BLA's Durban branch has resolved that victims should not be denied their right to claim damages, and argues that the Government should take steps against offenders

Due process of law

"This will not be revenge or retribution but the due process of the law," says Phosa, who will represent Azapo and the Biko and Mxenge families in challenging the constitutionality of the Act

He says the applicants were trying to get financial aid from the Legal Aid Board. His instructing attorney, Cyril Morolo, says the LHR, the Danish Embassy and US Aid will be approached for assistance too

Morolo says a successful challenge to the constitutionality of the Act will reinforce Justice Minister Dullah Omar's call for morality and for the rule of law to dominate the proceedings of the Truth Commission

Morolo furthermore lashes out at the present composition of the commission, saying its efforts to uphold the rule of law will be hamstrung

Lawyers urge new deal on visitation rights

PRETORIA — Parents and guardians should no longer have the sole right to determine who could be granted access to their children under 18 and under what circumstances access could be given, the SA Law Commission proposed here

In a working paper gazetted in Pretoria, the commission suggested grandparents denied visitation rights by a legal guardian should be able to apply for a court order granting them access.

People claiming family ties or other relationships with a minor child should also be allowed to apply for such an order if it was in the child's best interests.

In such cases the court would determine the conditions for visitation.

Interested parties should comment on the working paper by March 30, the commission said.
— Sapa.

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ARG 9/3/96

Foreign detectives to aid Truth Commission

THREE Dutch police investigators have arrived in South Africa to help the Truth Commission's 60-member investigative unit and more detectives from Ireland, Denmark, Sweden and Norway are on their way, said commission chairman Desmond Tutu

Archbishop Tutu also announced that Ireland had given R300 000 to the commission for "general purposes"

Sweden has already sent R1 million to help set up a computer database, while Norway has indicated it will make available R2,5 million. The money will probably go towards the President's Reparation Fund for victims and meeting the commission's technical needs

Commission deputy-chairman Alex Boraine said money

was needed to equip the investigators with vehicles, telephones, cameras and laptop computers (252)

"We are not going out there with a begging bowl, but if people come to us it would be silly to turn them down," Dr Boraine said

Archbishop Tutu and Dr Boraine recently met a group of European Union ambassadors

in Cape Town to discuss the commission's needs

Archbishop Tutu said he was considering appealing to international donors to make "generous contributions" to non-governmental organisations who would assist the commission in its 18-month mission

Many NGOs were "feeling the breeze", following a cut-back in foreign funding — Sapa

ARG 9/3/96

By CARMEL RICKARD

(252) ST 10/3/96.
**Court
rejects
'hasty'
plea**

THE NP and other parties were roasted by judges of the Constitutional Court this week for having acted precipitately and irresponsibly in asking the court to rule on the validity of a proposed new education law.

During debate on the draft last year, the NP, together with the Democratic Party and the Inkatha Freedom Party, objected to certain sections and obtained enough signatures to have the issue referred to the court for a decision on whether the proposals were constitutional.

On Thursday, the parties argued that the draft was ambiguous because it could be misused and interpreted in a way that would allow the national education minister to impose his will on a "delinquent province".

The parties said this would be unconstitutional as it would violate guarantees giving the provinces jurisdiction over school education under certain circumstances.

They asked the court to rule that the contested sections of the draft were unconstitutional, or to make an official declaration on how the proposed law should be interpreted.

Representatives of the

national Minister of Education, Sibusiso Bengu, however, emphasised that he did not interpret the proposed law in a way which would allow him to impose his will on the provinces.

Instead, the draft promised the provinces more consultation than had been the case in the past.

The judges made it clear they were sceptical that the proposed legislation could ever be interpreted in the way the minority parties feared.

A number of them criticised the haste with which the minority parties had come to court to test the validity of the draft. They said if debate and discussion on the proposed law had continued in Parliament, many of the apparent misunderstandings between the parties could have been ironed out and might not have been

necessary for the court to have considered the issue at all.

Mr Justice John Didcott said the court could not accommodate cases every time enough support — based on "paranoid fears" — could be drummed up by parties in Parliament.

It was a serious matter when the Speaker of Parliament referred a case to the court, and this should not be done "just to quell fears based on a misreading of the Bill". He said a "high measure of irresponsibility" was involved in bringing the education case to the court under such circumstances.

Court president Mr Justice Arthur Chaskalson said it appeared that the objections of the three parties could easily have been cleared up. He did not see why the court should have to issue declarations on matters which the parties themselves "had not taken the trouble to sort out".

During the hearing, there was consternation among the judges when it was discovered that the draft upon which they had been asked to adjudicate had since been amended, and they had not been given copies of the new version.

Judgment in the case has been reserved.

'Death Row' prisoners still awaiting fate

ARC 12/3/96

(262)

Political Staff

PRISONERS on Death Row awaiting revised sentences following the scrapping of the death penalty by the Constitutional Court will have to hold out until the Criminal Procedure Act is amended

Justice Minister Dullah Omar said yesterday that a memorandum was being prepared for the cabinet and was expected to be completed within three weeks

The closing date for comments from the various ministerial departments was last

month and, once the cabinet approves the memorandum and President Mandela gives the go ahead, it will come before parliament

"There's no telling how long this procedure will take before a new Bill is tabled, after which it would have to go to the legal advisors," said justice department spokesman Barend Heystek

"In the past the CPA did not have a clause which covered the death sentence of a prisoner being revoked, and this will have to be amended before the

fate of the prisoners can be decided

"The new Bill will provide for the prisoners to be referred to the courts where they were sentenced to death

"This would ensure that no time is wasted in re-hearing the case as all the facts would be before the court," said Mr Heystek

He said the courts would decide the appropriate punishments, "but if a crime was so serious and the person a danger to society, life imprisonment would be imposed"

Reports that prisoners were still languishing on death row, long after the death penalty was abolished, were squashed by Correctional Services spokesman Chris Olckers

"There is no longer a 'Death Row' and prisoners awaiting the death penalty were moved out from Pretoria to various prisons throughout the country soon after the announcement was made

"They (the prisoners) are treated like the other prisoners and are in maximum security prisons," said Brigadier Olckers

A commercial tribunal faces regional obstacles

(252) BD 12/3/96

MICHAEL HARTNACK in Harare

A REGIONAL commercial arbitration tribunal — the mooted forerunner of a southern African court of justice — would have plenty of work to keep judges occupied.

Formation of the tribunal has been seen by legal and commercial circles in Zimbabwe as the essential first step towards evolution of real regional integration, breaking with the "talk shop" political rhetoric which downgrades southern Africa from the new trading blocs of Europe, Asia and North America.

Leaders of the 12 states of the Southern African Development Community (SADC) and of their would-be trading partners in East Africa (particularly Kenya and Uganda) have over the past 16 years frequently put their signatures to conventions that meant nothing to private sector businessmen trying to pioneer "south-south" trade.

Mozambique's punitive toll system on road hauliers from Zimbabwe, Zambia and Malawi is a classic example — and makes nonsense of the political goodwill supposed to

have been generated by the contribution of Zimbabwean, Zambian and Malawian troops to restoring peace after the 18-year civil war.

Hauliers are first charged \$150 a truck by the Mozambican ministry of works and construction, but since its officials are not available at border posts, the money has to be paid to customs officers who charge a \$15 handling fee.

Then Mozambique's state insurance company charges each truck \$35 for third party insurance, and the transport ministry charges \$30 for a 30-day road permit. Immigration officials charge \$10 to stamp the driver's documents and customs charges \$30 to stamp the vehicle documents. To park his truck while he is completing these formalities, the driver is charged \$25.

"It is a major rip off," said a leading Harare business source.

Former Beira Corridor group CEO Eddie Cross said Zimbabwe should take Mozambique to the International Court of Justice at the Hague for frustrating its right of ac-

cess to the sea.

Transit via SA is equally problematic, with customs officers requiring a deposit equal to 125% of the duty payable if the goods were being exported to SA for sale. The deposit is refundable, but it has contributed massively to overheads and cash flow problems — interest in Zimbabwe being about 40%.

Meanwhile, Zimbabwe claims that anti-dumping tariffs on its traditional exports to SA of textiles, clothing, footwear, foodstuffs and electrical goods, while SA retains subsidies on exports to Zimbabwe, constitutes a gross breach of fair trading practice.

At present there is no way of resolving such disputes except on an "old boy" basis between heads of state at summit meetings — when they are seldom well briefed enough to grasp petty technicalities.

Unless a regional arbitration authority is set up, the Hague may be the forum to settle the twin disputes between Zimbabwe and Zambia about the multimillion-rand assets of the former Rhodesia Railways and the Central African Power Corporation (Capcor).

Rhodesia Railways still owns the world famous Victoria Falls Hotel and the Victoria Falls bridge, as well as much of the pre-1963 infrastructure of the two states' national rail systems.

Zimbabwe claims Capcor owns the Kariba North Bank power station, while Zambia claims it was installed by Kenneth Kaunda's government in the late 1960s. Until the dispute is resolved, plans for the promising Batoka Gorge hydroelectric scheme, 60km below Victoria Falls, remain in limbo.

Hearings at the Hague would cost millions of dollars in legal fees, payable in scarce foreign currency.

Rapararian rights constitute a whole new class of dispute with potential rows looming over Zimba-

we's scheme on the headwaters of Mozambique's Pungwe River, and SA's dreams of abstracting water from the Zambezi. Malawi and Tanzania dispute the waters of the former Lake Nyasa, while Botswana and Namibia have quarrelled about an island with tourism potential at the Chobe-Zambezi confluence.

Legal experts say the formation of an SADC court of human rights would be, for the present, a pipe dream, in view of the widely different forms of regime in power, from Swaziland's monarchy to Zimbabwe's de facto one-party state. Robert Mugabe would never, for example, assent to protocols guaranteeing freedom of sexual orientation, as in SA.

The urgent need, however, to present local and foreign businessmen with one, common fertile soil for investment and economic development could prompt real progress, in the foreseeable future, on an economic arbitration mechanism, empowered to make binding rulings.

LETTERS

Vlakplaas man asks for amnesty

By JOHN YELD, who is covering the Truth and Reconciliation Commission for The Argus (252)

THE self-confessed killer of Durban civil rights attorney Griffiths Mxenge and the man who first blew the whistle on police hit squads, Almond Nofemela, has applied to the Truth and Reconciliation Commission for amnesty. ARG 12/3/96

His security policeman colleague at Vlakplaas, David "Spyker" Tshikalanga, who also confessed to taking part in the savage killing of Mr Mxenge in November 1981, has also applied for amnesty.

This was confirmed yesterday by a spokeswoman for the commission.

She said an application by former Vlakplaas commander Eugene de Kock, now on trial in Pretoria on 121 counts, including eight of murder, had not yet arrived.

"Apparently it's in the mail," she said. Nofemela was within hours of being sent to the gallows in October 1988 for the murder of Brits farmer Johannes Hendrik Lourens when he made a dramatic statement to Lawyers for Human Rights in which he admitted taking part in the murder of Mr Mxenge, and other human rights abuses.

He said he was part of a security police assassination squad, acting on instructions from his superior officers, brigadier Willem Schoon and then-Vlakplaas commander Dirk Coetzee.

Mr Coetzee, who subsequently also confessed to police hit squad activities, has already applied for amnesty.

Mr Nofemela was given a stay of execution so that he could testify to the Harms Commission of Inquiry into alleged police death squads.

● See page 5

De Kock applies to truth commission for amnesty

BY ROBERT BRAND

Col Eugene de Kock has become the fourth member of the notorious Vlakplaas police counter-insurgency unit base to apply for amnesty from the Truth and Reconciliation Commission.

De Kock, on trial in Pretoria on 121 charges including eight of murder, posted his application to the commission last week and faxed a copy of the application yesterday, according to his attorney, Schalk Hugo.

The commission confirmed yesterday that Butana Almond Nofemela and David "Spyker" Tshikalanga, who have both confessed to the murder of Durban lawyer Griffiths Mxenge when they were in the Vlakplaas hit squad, have also applied.

Former commander of the base, Captain Dirk Coetzee, who has confessed to instigating the Mxenge murder, said last week he

had submitted an amnesty application.

In terms of the Promotion of National Unity and Reconciliation Act, the commission's five-member amnesty committee can ask the "proper authority" to suspend a trial while a confession is being investigated, but no such request has yet been made by De Kock.

Hugo said De Kock had instructed his legal team not to apply "at this stage". The State's case against De Kock is due to be concluded next week, he said. "Then we might reconsider."

If De Kock, Coetzee and his henchmen are called to testify before the amnesty committee - as they almost certainly will - the hearings could turn out to be a replay of the Harms Commission, appointed in 1990 by then president F W de Klerk to investigate allegations of hit squads.

The Harms Commission was precipitated by Nofemela's con-

Ston 12/3/96
fession that police had killed Mxenge at his Umlazi home in 1981.

His evidence to the commission was backed up by Coetzee and Tshikalanga, Coetzee's former gardener, who later became a member of the Vlakplaas unit.

Their claims were denied before the Harms Commission by a parade of top police officers.

Nofemela confessed to the killing of Mxenge after being convicted and sentenced to death for an unrelated murder. His death sentence was later commuted.

In shocking testimony before the Harms Commission, he described how he, Tshikalanga, and two other policemen, Sgt Joe Mamasela and Sgt Brian Ngqulunga, had stabbed Mxenge to death on the orders of Coetzee.

Nofemela has also claimed responsibility for several other murders, kidnappings and harassment of enemies of the State.

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■ The Truth and Reconciliation Commission will hold talks today to discuss how the hearings are to be broadcast, according to SABC spokesman Ken Modise.

Michael Sparks reports that while the corporation will be covering the hearings in news bulletins, funding for extended, and perhaps live, broadcasts had not been resolved.

Modise pointed out that since there was no dedicated channel for such broadcasts, the problem of where to screen the hearings was also an issue.

Truth Commission spokesman John Allen said yesterday that the commission had already decided in principle to allow a camera or a limited number of cameras into the hearings, provided the cameras were not intrusive.

He said commissioners felt very strongly that victims giving testimony to the commission should be sensitively handled.

Acts must be assessed in terms of political objectives

The authors of the "Norgaard Principles", which form the basis for the granting of amnesty by the Truth and Reconciliation Commission, have emphasised that people who claimed they were merely following orders still have to accept responsibility for their acts. Staff Reporter JOHN YELD reports.

RESEARCHERS working for the Truth and Reconciliation Commission expect to gain access to highly sensitive state papers, including minutes of cabinet and late Security Council meetings, as part of their task to draw up a comprehensive background to human rights violations in South Africa.

In another development, the authors of the "Norgaard Principles" which form the basis for the granting of amnesty by the commission, have emphasised that people who claimed they were merely following orders still have to accept responsibility for their acts.

Distinguished Danish human rights lawyer Carl Norgaard formulated his principles in 1989 as a way of resolving the issue of the release of political prisoners in the run-up to Namibia's elections, in association with his wife Hedvig, who served as Danish public prosecutor and deputy chief of police for 30 years, and a Scottish lawyer.

Professor Norgaard told a media conference yesterday that acts had to be assessed in terms of the perpetrators' political objectives, and he was not aware of any incident in which the killing of innocent women and children could have been justified or which was "in proportion" to the political objectives. He declined to speculate on how these principles would be applied to people seeking amnesty for actual incidents in South Africa in which innocent people had died.

"That is impossible to answer. I cannot sit here without seeing the case and say "You can never have a situation where the killing of women and children is a political act". "I have never seen such a case, but I cannot say "Never, never".

Professor and Mrs Norgaard cited the actual example of the blowing up of a state-owned bank in which 30 women had died.

The sabotage had been committed at a time when the bank had been full of people, but it could have been done at some other time when no-one was present so that there was no loss of life.

The criteria of proportionality and proximity were among those which had to be taken into account when assessing such an act in terms of the Norgaard principles, they explained. "And of course when you are dealing with those criteria, you will have to investigate whether that was really necessary in order to achieve the goal, the purpose, of the the political objective".

Professor Norgaard said the legislation governing the Truth Commission faithfully represented the principles.

"What we had to deal with in Namibia was in a way a much easier task.

A number of people were in prison and they claimed they were members of Swapo and that the acts for which they were imprisoned were political acts for which they ought to be released.

"So it was a one-sided investigation, and on that basis we could apply the rules."

The task for the amnesty committee of the Truth Commission should become easier when it started dealing with actual cases, Professor Norgaard said.

"The criteria (for amnesty) are meant as guidance to help you make up your mind whether something was political or merely an ordinary crime, but I think it is nearly impossible to give a broad theoretical outline of how these criteria should be applied."

But the question of proportionality was vital, Professor Norgaard said.

"There must be a reasonable connection between the act you committed and the (political) goals you are aiming at."

Professor Charles Villa-Vicencio, holder of the chair in religion and society at the University of Cape Town who has been appointed the commission's research director, said a process was underway for the research team to gain access to official state records, such as minutes of the cabinet and State Security Council meetings, and many others.

This was a "sensitive and controversial" issue but the researchers were confident "We hope and realistically expect to have access to most of these sources," he said.

The researchers had a three-fold task.

To feed results into a database so that these could become part of the Commission's total record.

To provide contextual and background material to any alleged human rights violations and requests for amnesty, and

To draft the final report of the Commission - "a mammoth task".

"We have limited funding to appoint 12 researchers who will be located throughout the country in the commission's four regions," Professor Villa-Vicencio said.

"We will of course be drawing on existing material and negotiating with colleagues, academics, scholars and investigative journalists, from whom we will commission work."

"We will be making some interesting appointments - this is the beginning of a very demanding task."

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ARC 13/3/96

Truth is 'part of coming to terms with shameful past'

(252)

JOHN YELD, Staff Reporter
ARG 13/3/96

THE work of the Truth Commission and the publication of its report is only part of a much longer social process whereby a country comes to terms with its shameful past, says visiting Chilean human rights lawyer Jorge Correa.

Professor Correa, who holds a chair at Chile's Diego Portales University, was executive director of his country's Truth and Reconciliation Commission in 1990-91.

Addressing a media conference with another visiting human rights lawyer, Carl Norgaard of Denmark, at the Truth and Reconciliation Commission's Cape Town offices yesterday, Professor Correa said there were both similarities and differences between the Chilean Truth Commission and the South African version.

"But I guess the starting point is the same. When you have crimes, and especially human rights violations, it's the most important role of the state to prevent any such criminal sanctions and the full disclosure of those crimes and a way to channel social repudiation of those crimes."

"And of course reparations and the full disclosure of those crimes are also a way to mobilise society to express such repudiations."

Because the South African truth commission's hearings were open - Chile's victims and their families were heard behind closed doors - there were greater opportunities here for repentance and pardon, Professor Correa said.

"The process of telling the truth, of facing the past and the shame and the bad part of our country's history is a long process that doesn't finish with the work of the commission - at least that's the Chilean experience."

"I think it is important for a truth commission to have a concrete time in which to deliver its reports but it doesn't end that process, for sure."

"I think the end of the commission is probably a starting point of another process, of how to deal socially with this truth, how the truth is going to be told in schools and public education, and whether society is going to accept this truth."

He was asked if the Chilean truth commission was a success.

"That is very difficult to answer," said Professor Correa.

"Among its successes are that we now have a final history of what happened that is more or less accepted by the whole country."

"And when you have such a mirror to hold up to the crimes of the past and where the bad parts of the story are told, this starts social processes that are tremendously important."

"Of course we had for many years a more closed and silent repression than here in South Africa, so much of the truth was not known."

But the Chilean commission had been unable to discover the fate of about 1 000 missing people, Professor Correa said.

"So among the shortcomings in the Chilean situation is that, despite publishing the report, we couldn't find all the truth."

"And I would have liked to see more open reaction (to the report) - there was some feeling that the process had come to an end."

"The sentencing of some cases after that, there was a feeling that was the end of the story - there was nothing else to do."

E Cape truth offices inundated

(252)
sawetan
14/3/96

By Mzimasi Ngudle

IN just one week, the East London office of the Truth Commission has received more than 20 statements from victims of human rights violations and is expecting more.

The newly appointed communication officer Mr Phula Ngqumba said claims were coming in at a fast rate and more were expected as the province had a string of massacres, including the Uitenhage, Duncan Village and Queenstown massacres.

Already the membership of the Association for the Victims of Unsolved Apartheid Atrocities is well over 200, according to founder member Mr Churchill Mxenge. Many members are victims of the recent Bisho massacre, which claimed at least 28 lives and left hundreds injured.

Also, the victims of former Transkei bantustan dictator Kaiser Matanzima and former Ciskei military ruler Brigadier Oupa Gqozo are expected to come forward.

Slain leaders

Families of slain leaders like Griffiths Mxenge, Steven Bantu Biko, Mphahlele Mapetla and the Cradock Four of Mathew Goniwe, Fort Calata, Sparrow Mkhonto and Sicelo Mhlawuli are also from the province.

The province also has one of the highest disappearance rates of political leaders, including Qaqawuli Godolozzi and former Cosatu leader Siphwe Mthumkhulu.

Ngqumba can be contacted at (0431) 43-2885 or by fax at (0431) 43-9352. The postal address is PO Box 392, East London, 5200. The offices are located on the 5th Floor of the NBS Building at 15 Terminus Street.

Ngqumba invited victims from across the political spectrum, stressing that the office was neutral and would try to seek ways of helping those who had problems reaching the office.

Ngqumba said the first hearings of the committee on human rights violations would be held on April 15.

He said although the commission would eventually appoint eight people to take statements throughout the Eastern Cape, people should feel free to come forward now. Statement takers would be posted throughout the province.

Contact numbers for five statement takers already appointed are:

Queenstown - Nomaxabiso Klaas - (0451) 82270-1

Port Elizabeth - John Neer - (041) 54-1663 (w), 44-5767 (h)

Grahamstown - Khayalethu Plaatje - (0461) 32-0204

East London - Nelson Dawethi - (0431) 43-7122

Cradock - Siphwe Ngalo - (0481) 4889 (h), 3778/9 (w)

Amnesty application upsets Mxenge's family

Decision to deal with past through Truth Commission seen as betrayal of what slain lawyer stood for

By ROBERT BRAND

Family members of murdered civil rights lawyer Griffiths Mxenge say they feel "cheated" because his self-confessed killers have applied for amnesty from the Truth and Reconciliation Commission.

Together with relatives of the late Black Consciousness leader Steve Biko, they have launched a Constitutional Court challenge

against the validity of the Promotion of National Unity and Reconciliation Act, in terms of which the commission was established.

Mxenge, who represented members of liberation movements in terrorism trials during the 70s and 80s, was stabbed to death in Umlazi, near Durban, in 1981.

Former security policemen Butana Almond Nofemela and David "Spyker" Tshikalanga claim they murdered Mxenge as part of

a four-man police hit squad directed by Dirk Coetzee Coetzee, a former police captain, says Mxenge was eliminated on the instructions of senior security police officers.

Mxenge's brother, Dr Fumtha Mxenge, yesterday said the family wanted Coetzee, Nofemela and Tshikalanga to be tried in a criminal court before amnesty could be considered. "We feel very cheated that a person could kill and then just get away with it,"

He said he viewed the Government's decision to deal with the past through the Truth Commission as a betrayal of what his brother had fought for.

Another brother, Churchill Mxenge, said the family had instructed Pretoria attorney Cyril Marolo to prepare a Constitutional Court challenge of the act because amnesty for Coetzee, Nofemela and Tshikalanga would deprive Mxenge's immediate fam-

ily of their constitutional right to legal redress.

"We want justice. It is up to the court to pass an appropriate sentence. Reconciliation will come automatically after that, when people have been appropriately punished for the crimes they committed."

Marolo confirmed that papers were being drawn up and said the challenge would be lodged with the Constitutional Court about two weeks from now.

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Developing the truth

Mt. G. (POM) 15-21/3/96 (252)

Rick de Satgé

WORLD
GALLERY

WHEN you visualise the human rights violations which the Truth Commission will investigate, what comes to mind? Detention, dirty tricks, deaths, disappearances, discrimination

Whom do you associate with such acts? Security police, third force operatives, prison officials and defence force personnel

Yet there is another D that ought to be on the list — development — “separate development” — and all that went with it — forced labour, tenancy, forced removals, the establishment of bantustans and token local authorities, migrant labour, segregated cities and towns and the hostel system

Arguably it is this list of human rights violations which has had the greatest impact on the lives of the majority of South Africans

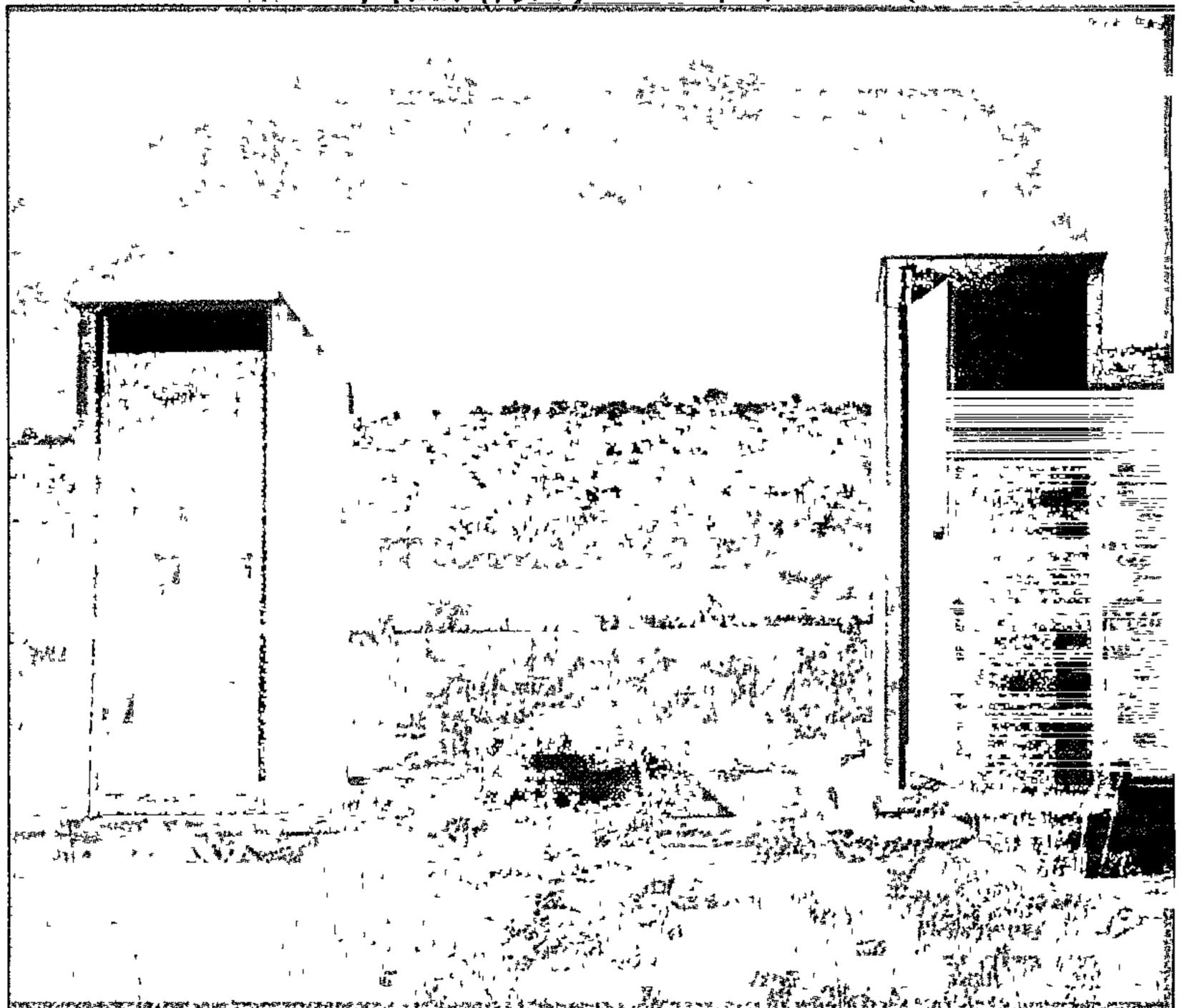
What is the cost of the racial engineering of the apartheid city where sprawl and segregation have been cast in concrete and reinforced with highways — all conveniently immune to the repeal of legislation?

Picture Oranienburg in the Herschel district, Transkei, a small and unremarkable resettlement — one of thousands. In this case, its inhabitants are farmworkers surplus to the farmer's needs

Families rounded up and trucked from farms in areas as diverse as Ladybrand, Wepener, Zastron, Aliwal North, Burgersdorp, Lady Grey, Elliot and Maclear. Dumped on a “spare” piece of land in Herschel in tin huts, with tin latrines

Without grazing rights. Without arable land. Dependent on seasonal employment, shearing sheep on the same farms from which they were evicted. A new “community” with no ties to bind one another except the competition for jobs and resources

The toll is not human lives lost in violent political confrontation, but lives whittled away in cul de sacs of



Homeland toilets in the veld. A crime against humanity?

PHOTOGRAPH COLLEEN LOWE MORNA

enforced poverty

Such figures do not begin to calculate the opportunity costs involved — the “what if things had been done differently?” scenarios. We are beginning to see these costs in the system we must now unravel

How much money is spent on transport subsidies? What does it cost to deliver services to areas which will never become viable communities?

How much do we need to allocate to rehabilitate vast areas of land eroded and deforested by concentrating people in the bantustans?

What is the cost of polluting groundwater owing to inadequate sewage provision?

How much of our national

resources must be allocated to re-engineering the distortions of the past before we can actually talk about development?

Who is responsible for these violations? A shadowy group of human rights offenders — the planners, architects, engineers and developers who made apartheid policies work

Why should these professionals be regarded in any different light to the security policemen involved in disappearances and torture? It is my view that they too must be called to account before the Truth Commission

The companies that profited from

apartheid planning should be named. Many of them have now cleaned up their acts and are repositioned to profit the second time round from projects designed to unravel the very problems they helped to create

Is it too far-fetched to consider reparations? If you profited before, can you profit again with no restrictions? Are there no penalties? At the very least the Truth Commission should precipitate a critical appraisal of professional ethics

Rick de Satgé is a trainer with the Development Action Group. This article is written in his personal capacity

Susan Russell

THE SA Law Commission has recommended that attorneys and advocates should in future be allowed to enter into contingency fee arrangements with clients, opening the way for them to fight civil cases on a "no win, no pay" basis.

To date the system has not been recognised in SA law, but is allowed in some other countries, including the US. The commission has published a working paper setting out its proposals.

A contingency fee agreement between lawyer and client provides

No win, no pay lawyers' plan

(252) BO 15/3/96
for the practitioner to conduct a case for a client on the basis that he charges no fee if the litigation is unsuccessful. If a legal practitioner wins a case, he recovers his fee, usually higher than the normal fee because of the risk of no compensation in unsuccessful cases, from the amount awarded to his client by the court.

The commission said yesterday that the system had been introduced in certain jurisdictions abroad mainly because

of its potential to promote access to justice.

A commission spokesman said it had provisionally concluded that allowing the contingency fee system in SA would contribute to promoting access to the courts in this country.

Among the commission's proposals is that the remuneration payable to the legal representative in a successful case could be double the normal fee, but should be limited to a determined percentage of the pro-

ceeds of the litigation.

Other proposals are:

- Contingency fee agreements should not be allowed in family law and criminal law cases;
- Agreements should be entered into only if the client has a reasonable prospect of success;
- Agreement should be modelled on a standard agreement containing certain safeguards prescribed by law; and
- The rule that the unsuccessful litigant is responsible for the winner's costs be retained.

ANC seeks early end to immunity from prosecution for its members

Wyndham Hartley

CAPE TOWN — The ANC has renounced the temporary immunity from prosecution enjoyed by senior members and declared its commitment to "coming clean" before the truth commission on the details of its war against apartheid.

Responding to the NP's recent complaint that temporary immunity enjoyed by high level ANC members was not extended to Magnus Malan, ANC deputy secretary-general Cheryl Car-

olus said Justice Minister Dullah Omar had been asked to withdraw the immunities.

The move is largely symbolic as the immunities are due to expire in mid-May. It was assured that the ANC would submit its records, leaders and members to the "scrutiny of the truth commission".

ANC legal adviser and Mpumalanga premier Mathews Phosa said the list of temporary immunities reached from sweepers to Deputy President Thabo Mbeki. He said the intention was to call "Fw de Klerk's bluff".

Carolus said the ANC would come clean on all excesses that might have been committed by the organisation in the morally right struggle against apartheid, including urban bombings. She challenged all other parties to do the same.

She said ANC members who had committed gross human rights violations and failed to come forward now would face the full force of the law. De Klerk and the NP have insisted that if the "even handedness" demand-

ed by the constitution is observed then temporary immunity should be accorded to Malan.

The renouncement of the immunities, if given legal effect by Omar and President Nelson Mandela, could expose ANC executive committee members to legal prosecution.

Carolus said the ANC would establish a special truth commission desk to advise people on the truth commission process and what the law demanded.

Provincial level as well

Phosa said the ANC would submit a party position to the truth commission which would "take off the gloves" and which would be "quite substantial".

Carolus said that while the ANC would never condone human rights violations by "freedom fighters" it firmly believed the commission would be able to distinguish between the anti-apartheid struggle and those who fought to support a crime against humanity.

She said the ANC would respect the independence of the truth commission.

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Tutu seeks 'Army of Volunteers'

Staff Reporter
THE Truth and Reconciliation Commission is looking for "an army of volunteers" from religious groups and human rights non-government organisations to help achieve its aims.

At a media conference yesterday after a two-day commission meeting, its deputy head Alex Boraine appealed for such groups to "enlist", saying: "Unless we have that co-operation and synergy, I don't think we can achieve our goals."

The commission's head, Desmond Tutu, said the commissioners were acutely aware of the high and possibly unrealistic expectations that were being placed on the commission, particularly as regards possible reparations.

"We will have to say constantly that the commission is the result of a compromise," Archbishop Tutu said.

The commissioners understood the feelings of those who expressed doubts about the commission and who wanted justice before reconciliation.

But in a sense, the debate is futile because it (the commission) is a *fait accompli*. It was a fact of horse-trading and we have to work within these boundaries.

Dr Boraine confirmed that a draft budget for this financial year of R759 million — more than R20 million over the department of justice's initial budget suggestion — had been handed to Justice Minister Dullah Omar on Wednesday, and was expected to be finalised shortly.

Archbishop Tutu said the first public hearing of the commission's human rights violations committee had been brought forward provisionally one day, to Monday April

ANC wants temporary immunities withdrawn

Leading members may have to ask Truth Commission for amnesty

JOHN YELD
Staff Reporter

THE African National Congress has asked Justice Minister Dullah Omar to withdraw immediately the temporary immunity granted to 73 of its members in 1990.

These members include high-profile leaders Deputy President Thabo Mbeki, ANC Kwa-Zulu-Natal leader Jacob Zuma, Defence Minister Joe Modise and his deputy Ronnie Kasrils.

The ANC has also indicated that it will co-operate fully with the Truth and Reconciliation Commission, and some of the names on the temporary immunity list may be among those applying for amnesty from the commission.

The temporary immunities were granted to allow key members of the ANC to return safely to South Africa to negotiate the transition to a democratic order.

Some of these were "typists, cooks and sweepers in Lusaka", Mpumalanga premier and ANC legal adviser Matthews Phosa told a media conference at parliament yesterday.

He said one or two of the people on the list had been involved in cases which, "under certain circumstances which are different from ours", could lead to prosecutions.

"But we don't believe that there will be any prosecutions — we don't think the circumstances allow that," Mr Phosa added.
The temporary immunity

had been renewed annually since 1990, but was scheduled to lapse for the last time on May 18.

The announcement from the ANC comes against a background of repeated criticism from the National Party of unequal treatment, in that the ANC's members were enjoying immunity while former government officials and politicians like Magnus Malan were on trial.

African National Congress deputy secretary general Cheryl Carolus said the ANC's national executive committee had considered the issue of temporary immunity for its members who had conducted negotiations to bring about a peaceful solution.

"Now that we are on the verge of completing the final constitution, these objectives have been achieved," Ms Carolus said.

"It is for this reason that the NEC has concluded that these temporary immunities no longer serve any purpose."

"It has therefore renounced these temporary immunities."

The ANC believed in the fairness and integrity of the truth commissioners and would submit its records, its leaders and its members to the commission's scrutiny, she said.

"We have nothing to hide."
"Instead, we want to help create a climate in which the healing process of our nation is enhanced," Ms Carolus said.



COCAINE STASH: Inspector Peter Fat Roods aloft one of the four shampoo bottles in which a man tried to smuggle cocaine with a street value of R125 000.

Cocaine at airport: Man



ARRESTED: A Johannesburg man arrested in connection with the cocaine haul leaves the airport under police guard. He will appear in court today.

'Hundreds of millions' may be lost in pensions chaos

CAROLUS CALLS DE KLERK'S BLUFF

ANC wants its leaders to confess or be prosecuted

ANC OFFICIALS who refuse to appear before the Truth Commission will face the music, reports Political Writer **BARRY STREEK.**

THE ANC yesterday disclosed that it had asked Justice Minister Dullah Omar to cancel the temporary immunities from prosecution granted in 1990 to 73 of its senior members, including Deputy President Thabo Mbeki and several cabinet ministers.

The ANC also announced that it would submit "its record, leaders and members to the scrutiny of the Truth and Reconciliation Commission". The immunities were granted in 1990 to allow senior ANC exiles to enter the country and start negotiations with the National Party government. They have been renewed on an annual basis since then.

The move opens the way for the possibility of the 73 being charged with criminal offences, unless they apply to the Truth and Reconciliation Commission for amnesty. Last night, a spokesperson for Omar said the minister had agreed to the ANC application, but he had to study the legal implications. ANC deputy secretary-general Cheryl Carolus said anyone who did not



EXPOSE CRIMINALS: ANC deputy secretary-general Ms Cheryl Carolus with ANC MP Mr Carl Niehaus at yesterday's press conference. **PICTURE: ALAN TAYLOR**

apply for amnesty, including members of the ANC, would have to face the consequences of criminal prosecution. In terms of legislation that set up the Truth Commission, the immunities were to have remained in place until a year after the adoption of the Truth Commission legislation on July 26 last year. Technically, the ANC leaders may now be prosecuted for offences they committed in the struggle against apartheid, as in the case of former

defence minister Gen Magnus Malan, who has refused the opportunity to appear before the commission. Mpumalanga Premier Matthews Phosa said most of the people on the list were "cleaners and sweepers" for the ANC in exile, but that there were "one or two hard cases". The ANC was calling NP leader F W de Klerk's bluff by turning down the temporary immunities which De Klerk has argued Malan should enjoy.

'Truth' to cost extra R20m

STAFF WRITER

THE Truth and Reconciliation Commission this week presented Justice Minister Dullah Omar with a R75-million budget proposal — R20m more than had initially been expected — commission chairman Archbishop Desmond Tutu said yesterday.

Speaking at a press conference at the Truth Commission headquarters in the city, Tutu said Omar had acknowledged that the original R55m estimate had been a rough guideline.

He said Omar would meet Finance Minister Chris Liebenberg and other experts to study the budget proposal, which covers the commission's activities from April 1 to March 31 next year.

Tutu hoped the budget would be approved soon. He said the details of the proposal would remain confidential until it had been approved.

No-success, no-pay plan for lawyers

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Law Commission feels such a system would promote access to the courts

SAPA
Cape Town

The SA Law Commission is in favour of a qualified system which would allow lawyers, advocates and their clients to agree on a "no-success, no-pay" basis

The system was desirable because it would promote access to the courts, although contingency-fee agreements should not be permissible in family and criminal law cases, the SALC said in a

statement

Such agreements would allow an attorney not to charge any fees if the client's case was conducted unsuccessfully

However, should the client win the case, the fee payable to the attorney would be recovered from the proceeds of the litigation and would usually be higher than the legal practitioner's normal fee

This was because the practitioner bore the risk of not being compensated in a number of cases

The SALC has called for public comment on its working paper, which includes the following proposals

- That both attorneys and advocates can enter into contingency-fee agreements with their clients
- The remuneration payable to the legal representative in the event of success may be double the normal fee, but should be limited to a determined percentage of the proceeds of the litigation
- Contingency-fee agreements

should not be permissible in family law and criminal law cases

- Contingency-fee agreements should be entered into only if the intending litigant has a reasonable prospect of success
- The agreement should be modelled on a standard agreement containing certain safeguards prescribed by law
- The existing rule, in terms of which the loser in litigation is responsible for payment of the winner's costs, should be retained

Call to retract immunity

ANC wants temporary immunity granted to its negotiating team in 1990 to be withdrawn, and urges individuals who may have committed human rights violations to come clean

SAPA
Cape Town

The ANC has asked Justice Minister Dullah Omar to withdraw the temporary immunity from prosecution granted in 1990 to members of its negotiating team who took part in the multiparty talks leading to the 1994 general election, ANC deputy secretary-general Cheryl Carolus said yesterday.

The list of 73 members who benefited from the Immunity Act of 1990, which is due to expire on May 17, includes the names of ANC MPs and senior cabinet ministers, such as Deputy President Thabo Mbeki.

Carolus also announced that the ANC intended going before the Truth and Reconciliation Commission to "indict" the previous apartheid government for crimes against ordinary men and women.

She told a media briefing that the organisation was calling on individuals who had committed human rights violations, including those within its own ranks, to "come clean" to the commission or face being treated as common criminals.

"They must come forward so that the process of healing can take place," she said.

However, the actions of those who had fought to maintain apartheid could not be equated,

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morally or politically, with the actions of those who had struggled for democracy, peace and justice.

Nevertheless, the ANC would never condone any human rights violations that may have been committed by its members during the "heat of the struggle".

"The ANC will submit its record, leaders and members to the scrutiny of the Truth Commission. We have nothing to hide. We are

Names of ordinary cleaners and typists on list

quite happy to talk about the war we conducted against apartheid," she said.

"We are quite confident that nobody who may have been guilty of gross human rights violations did so with the express mandate of the ANC."

Carolus said the aim of the Immunity Act had been to protect members of the party's negotiating team who entered the country to initiate talks with the National Party government.

At the time, ANC members risked arrest for "petty" offences such as being a member of the organisation or taking part in its activities.

"Now that we are on the verge

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of completing the final constitution, these objectives have been achieved.

"It is for this reason that the NEC (ANC national executive committee) has concluded that the temporary immunities no longer serve any purpose."

The ANC had sent a letter to Omar on February 22 formally requesting the immediate withdrawal of the immunities.

Attached to the letter was a list of the names of the 73 members including those of Mbeki, Defence Minister Joe Modise, his deputy Ronnie Kasrils, ANC KwaZulu Natal leader Jacob Zuma and South Africa's ambassador to France, Barbara Masakela.

The names of ordinary cleaners and typists who worked for the ANC in Lusaka were also on the list.

Carolus urged NP leader F W de Klerk and IFP leader Chief Mangosuthu Buthelezi to "come on board" to give the commission process a greater legitimacy.

She said the ANC had established a 16-member subcommittee to oversee the party's input into the commission. The subcommittee in turn had set up a Truth Commission desk which would have the responsibility of educating people about the commission, establishing committees, identifying victims of apartheid human rights violations and helping in the collection of statements.

Go to truth commission, ANC tells members

M+G 15/1-2/3/96 (252)

Eddie Koch

THE African National Congress has instructed its leadership and members to go to the truth commission if they committed human rights abuses during the anti-apartheid struggle—and, in a gesture of support for the truth process, has withdrawn temporary immunity given to its members by the old government.

"The ANC renounces the temporary indemnities (designed to allow exiled members back into the country before the 1994 elections) as they no longer serve any purpose. The ANC will submit its record, leaders and members to the scrutiny of the Truth and Reconciliation Commission," said a statement issued on Thursday.

"We have nothing to hide. Instead we want to help create a climate in which the healing process of our nation is enhanced."

This week the *Mail & Guardian* asked senior officials and Cabinet ministers from the party how it would deal with amnesty applications from its own members to the truth commission and found the ANC grappling to come up with a consensus policy around a number of sensitive issues.

It emerged there is concern in the organisation about groups of Umkhonto we Sizwe commanders who are anxious that they will have to shoulder the blame for the guerrilla movement's attacks on civilian targets carried out in the 1980s.

Members of these groups, said to include some senior MK officials, are demanding to know whether ANC political leaders now in government will go to the commission and accept responsibility for issuing the orders that led to these attacks.

Thursday's statement makes it clear that the ANC leadership will support its rank and file by accepting collective responsibility for actions during



Commission head 'won't take sides'

THE chief executive officer of the Truth and Reconciliation Commission, Dr Biko Mnyuku (left), says he will not differentiate between the victims of apartheid atrocities and those who suffered at the hands of the liberation movements.

Mnyuku says it is his overall objective to unify individuals who have suffered losses during the years of apartheid, irrespective of which side they were on.

Human rights violations touched the whole spectrum of South African society. "I do not see my role as playing one organisation off against the other. We are dealing with human beings whose rights have been violated and

violations know no affiliation," he says.

Although he is a card-carrying African National Congress member, Mnyuku says he does not regard himself as "overtly" ANC. "The fact that I am an ANC member has nothing to do with my effectiveness and efficiency as CEO to the Truth and Reconciliation Commission."

Mnyuku says it is his individual right to belong to the ANC, just as it is another's right to belong to any organisation of their choice. However, he would be willing to consider relinquishing his party political membership if the community at large felt it affected his impartiality as the commission's CEO.

Intelligence Chief Joe Nhlanhla, Justice Minister Dullah Omar and Transport Minister Mac Maharaj

This subcommittee has set up a truth commission desk at ANC headquarters to handle a range of issues relating to the truth commission which operates at national and provincial level. Officials in this department have to provide members with advice about how the truth commission will work and has been flooded by requests from victims of abuse at the hands of the security forces.

However some officials have, somewhat unexpectedly, found themselves dealing with requests from members who want amnesty for abuses they committed during the struggle. There were two commissions of inquiry by the ANC into human rights abuses in its detention camps during the 1980s.

"We are hearing some quite shocking things about what people did at this time and it is clear that a lot of

people in the organisation are worried about this. We are hoping that the ANC will use the truth commission to finally come clean and deal with these skeletons in its own cupboard," said one official who asked not to be named because the matter is so sensitive.

Early this week Justice Minister Dullah Omar told SABC radio the ANC would instruct its members who feel they committed abuses to approach the truth commission and would adopt an open policy about this. The M&G then submitted a number of questions to the ANC's Department of Information and Publicity and also to the ministers who sit on the NEC subcommittee dealing with the truth commission. These included:

- Will the ANC make public the names of its members who apply to the amnesty committee of the truth commission and the nature of the abuses they committed?
- How many ANC members have already applied for amnesty and what

categories of human rights abuse are these applications for?

● Has the ANC stipulated that members who feel they have committed abuses must go to the commission or is this a voluntary/individual decision?

● Will the ANC provide counselling and support for members who decide to approach the truth commission?

There is a general consensus in the ANC that the organisation was fighting a just struggle against an immoral system and, as a whole, does not have to account for the kind of human rights abuse committed by those who created and fought for the apartheid system.

"Apartheid was a crime against humanity and the struggle against humanity was pronounced by the whole international community to be just. The actions of those who fought to maintain apartheid cannot be equated — morally and politically — with the actions of those who fought for democracy," according to the ANC statement.

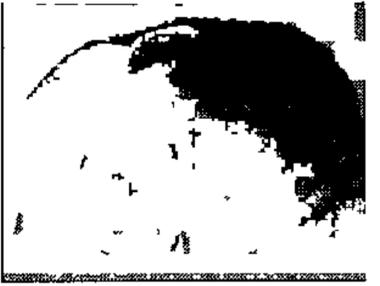
However, within this broad moral framework, there appears to be two main tendencies within the organisation.

One group reacts with indignation at the suggestion that they have anything to account for at the truth commission. Its proponents tend to say attacks against civilians were the exception during the guerrilla struggle and explain the detention camp abuses as the result of heavy infiltration by Pretoria's security forces.

Another section of the movement — which appears to have swayed official policy — believes the ANC should use the truth commission to deal, in an open and cathartic way, with the abuses committed in the camps and to compensate victims and families of victims who suffered in these detention centres.

Revenge is not the business of the Truth

Fine moral distinctions govern the reconciliation body's area of responsibility, writes Robert Brand



In little more than a month, the Truth and Reconciliation Commission will hold its first public hearing.

It will be a "victim hearing", giving the people who suffered losses during the apartheid years a chance to tell their stories. There will be intense interest from the media and the public they serve. In this glare of publicity, people who have lost sons and fathers will relate their experiences, and a nation will hear dreadful accounts about the struggle against apartheid.

The people who killed those sons and fathers will be allowed to fill in an amnesty application form, confess their crimes in public and walk off scot-free. They will not even have to say they are sorry. There is no justice in this process, and if

the objective were justice, then the Truth Commission would not be the appropriate instrument with which to obtain it. It is not a court. It cannot impose punishment. It is not even required by law to make a moral judgment about those whom it is called upon, on behalf of the nation, to forgive.

At a weekend conference for journalists reporting on the commission, Justice Minister Dullah Omar pointed out the danger of failing to make a moral distinction through the National Party, and others like it, who are sceptical about the commission because they believe it will obstruct reconciliation by opening old wounds.

He also seemed to be at odds with the commission itself, which is required by law to approach all human rights violations even-handedly and give the perpetrators equal treatment. Commissioners take great pains to point out that the law leaves them no leeway. "We will face moral dilemmas, but we are bound by the Act. And the Act makes no distinction. A gross human rights violation is a gross human rights violation," said vice-chairman Alex Boraine.

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Some commissioners have found this difficult to stomach. The chairman, Archbishop Desmond Tutu, told the conference members of the commission were "flabbergasted" - and some cried - when they re-

alsoed the Act says nothing about contrition. The reason for this lies in the commission's birth. It was the outcome of negotiations between the conflicting parties in the apartheid struggle, and the success of these negotiations depended on the principle of amnesty for both sides.

This was a compromise by the liberation movements, because Nuremberg-style trials in South Africa would have been legitimate and in compliance with international law. That would have been justice, and that is what the liberation movements wanted.

The NIP and its allies, on the other hand, wanted a blanket amnesty for violators on both sides, arguing that reconciliation could only be achieved by burying the past. "A niddle way was found to say no to blanket amnesty on one side and to whole-

The compromise gives amnesty to even the worst offenders, but only on the basis of full disclosure. Victims, on the other hand, are denied their constitutional right to redress after amnesty is given, a criminal cannot be prosecuted nor can his victims sue for civil damages. The danger is that, in treating perpetrators from both sides as equals, the commission will fail to attain its primary objective, which is, in Boraine's words, a restoration of the moral order.

Omar made the point that the commission needs the media and other organs of civil society to establish that consciousness of apartheid stand up and claim that they did nothing wrong can the country reach true reconciliation.

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sale prosecutions on the other," Boraine said

The crazy perils of the truth

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CP 17/3/96

If someone wants to get you, they get you - Tutu

By CHIARA CARTER

TRUTH and Reconciliation Commission head Desmond Tutu is coming to terms with the demands of his new job - such as being accompanied to church by a bodyguard

As an outspoken opponent of apartheid, Archbishop Tutu was a target of the previous government. However, he had no special security arrangements and could be spotted taking a brisk, early morning stroll around the wooded surroundings of Bishops Court.

Now, Tutu has a bodyguard from the SAPS VIP protection unit - and security considerations mean he exercises on a treadmill machine, instead of taking a stroll.

"I miss the walks and the treadmill is often boring," says Tutu.

Vulnerable

"We used to drive off and picnic or go to the beach. That's more or less out now," says Tutu.

But he jokes that it is lucky that his bodyguard is a "very nice Anglican".

"One must not be paranoid but one is vulnerable and there are crazy people out there. On the other hand - if someone wants to get you, they get you," he says.

"You also don't want to put others in an awkward position. What if you say no (to a security guard) - and something happens? Chris Hanu gave his bodyguard the day off."

After retiring as Archbishop in June, he had intended heading for Atlan-



COMING TO TERMS WITH DANGER . . . Now that he is guarded night and day, Desmond Tutu has to take his walks on a treadmill.

ta in the United States to watch the Olympics spending time with his grandchildren and working on a religious book.

"We've had to put our plans on the backburner," he says.

Time constraints have virtually ended his work as an archbishop - although officially he remains Archbishop of the diocese until June.

Tutu had planned to retire to his home in Soweto - but will now commute between Cape Town and Johannesburg.

He is determined that his new job will not impact on his personal relationships.

"You don't want a situation where your spouse has to make an appoint-

ment to see you."

Tutu confides he has one great fear - that he will burst into tears during the commission's hearings.

"I cried when the synod decided to ordain women. It was an emotional moment. The churchpeople say The Archbishop is a crybaby."

"I'm not certain how I will deal with hearing accounts that are harrowing."

Tutu, the other commissioners and commission staff know their task will be a huge challenge - physically and emotionally - and that they will need counselling to cope with the trauma.

"Being a priest with discussion time, quiet

time, prayer, and eucharist - that will help," he says.

Tutu acknowledges many will find it difficult to forgive the perpetrators of past atrocities and abuse - but argues the commission is a necessary cathartic process.

Could he, personally, forgive?

Tutu hesitates before saying "Ja. Humanly speaking, there are instances where one says This is unforgivable."

"Yet so many people do forgive."

"The Goniwe aren't going around looking for revenge. They want to know the truth," he says.

"The life of every black person consisted of violations of the rights of human beings - even on a personal level," he adds.

The Commission was established in a context of "ubuntu" - to achieve understanding, not revenge. It's also important to remember it was set up within the context of a negotiated settlement.

Stalemate

"You did not have clear winners and losers. The struggle ended in a stalemate, rather than one side being knocked senseless," says Tutu.

Pointing to the recent spate of international bombings, he says a thirst for revenge could have brought the country "justice and ashes", rather than "amnesty and the continued survival of the country".

"There might have been no one left to enjoy justice, if that path had been taken," he says.

Key massacre witness denies that he is a ruthless killer

By CRAIG DOONAN

TWO very different portraits of a key state witness in the murder trial of General Magnus Malan and 19 others were painted in the Durban Supreme Court this week.

One was of a disciplined military intelligence captain who meticulously executed an attack, sanctioned by his superiors, on the home of an ANC guerrilla who was believed to be paying Umkhonto weSizwe operatives to attack Inkatha.

The other was of a ruthless soldier who embarked on an independent "frolic" by ordering an alleged hit squad to attack a house full of women and children.

Johan "JP" Opperman, a key state witness in the Malan trial, was brought to the court under tight security just a day after proceedings got under way on Monday. His evidence is regarded as so sensitive and vital to the state's case that he has been living under a witness protection programme in Denmark.

Heading the prosecution team, Kwazulu Natal Attorney General Tim McNally meticulously extracted chilling evidence from Mr Opperman who told the court he was a trained soldier and member of the SADF's special forces involved in covert operations in the mid- to late-80s.

His evidence linked many middle- and lower-ranking security force officers in one way or another to Operation Marion — the secret army project which the state alleges was designed to supply Inkatha leader Mangosuthu Buthelezi with a security structure, including a paramilitary group of 200 Kwazulu Police recruits who were trained in the Caprivi in 1986.

Thirty of the recruits allegedly comprised an "offensive unit", effectively a hit squad, to be used against members of the ANC and its allies in Kwazulu Natal.

Mr Opperman told the court he had ordered 10 members of the unit — who were allegedly baying for blood after their intensive Caprivi training — to attack a house in Kwamakutha, believing it to be the home of UDF "paymaster" and trained MK operative Victor Ntuli.

Instead, seven adults who were part of a church congregation and six children under 10 were massacred by gunmen armed with AK-47 rifles at around 2am on January 21 1987 — just hours after attending choir practice.

Mr Opperman alleged the attack was approved by Brigadier John More, accused No 12, who was a military intelligence colonel at the time.

The state alleges the attack was the direct result of a wider conspiracy to kill members of the ANC and its allies — approved by General Malan and several other military bosses. All 20 accused are charged with 13 counts of murder and conspiracy to murder.

The evidence against most of the army chiefs lies largely in documents seized from military intelligence headquarters.

Mr Opperman, Andre Cloete — a sergeant who worked with him — and Daluxolo Luthuli, who headed the Caprivi trainee group, are vital witnesses in the case against the accused who include Inkatha's deputy secretary-general Zakhele Khumalo and six of the alleged hitmen.

Giving evidence was not always easy for Mr Opperman. Among the accused are former colleagues, including Cornelius "Dan" Griesel, whom he described as his best friend and who allegedly supplied the weapons for the Kwamakutha attack.

His evidence in chief was, however, impressive as he churned out names of brigadiers, colonels, majors and others whom he linked to Operation Marion.

He later detailed how he and Mr Khumalo chatted in a dry river bed while, nearby, Sergeant Cloete allegedly prepared 10 Caprivi trainees for the Kwamakutha attack the next morning.

He told how he deposited R300 000 into an Inkatha bank account each month to pay the Caprivi men.

But he was less convincing under cross-examination.

Mike Maritz, SC, acting for Brigadier More and Colonel Jacobus Victor, who allegedly took the weapons away after the attack, branded him a murderer who was fabricating evidence and at times lying to



TOTAL ONSLAUGHT . . . evidence was led this week that the SADF's covert hit squad plans were approved by General Malan. Picture: MICHAEL WALKER

cover up the "unauthorised frolic" which left 13 people dead.

Mr Maritz launched his "total onslaught" — the expression used by Judge Jan Hugo when referring to the start of cross-examination — with a protracted examination of Mr Opperman's contention that the Kwamakutha attack had been carefully planned, but went horribly wrong because the intended victim, Mr Ntuli, was not home at the time.

He pointed out that evidence led by earlier witnesses showed Mr Ntuli had been away from home for some time before the operation and Mr Opperman should have known this.

Referring to Mr Opperman's claims that intelligence reports indicated that Mr Ntuli lived alone at house 1866, he asked how a trained operative, such as Mr Opperman, had mistakenly approved an attack on a dwelling which was home to women, children and a church leader.

Mr Maritz asked why 10 men, armed with AK-47 assault rifles and 60 rounds each, were sent to kill a single target.

Why, he asked, did Mr Opperman tell

the court that he was shocked to discover that women and children had died in the attack, yet years later he had said in his statement to investigating officers from the Internal Task Unit that he was satisfied with the execution of the attack.

And why, under cross-examination, did he then agree that the operation was the biggest "fiasco" of his life and why was no one disciplined for the botched attack.

"You planned from the beginning to kill everyone in that house — it was a frolic of your own," Mr Maritz said.

But Mr Opperman denied the charge, pointing out that it would be impossible for an army captain to arrange the logistics required for the attack.

Mr Opperman faces further grilling from Mr Maritz and the six other defence teams when the trial resumes tomorrow. He will be facing a tough time over some aspects of his evidence, but he is only one pillar of the state's case.

The Kwamakutha massacre happened, and it is up to the state to corroborate Mr Opperman's claim that it was part of the apartheid-era's dirty tricks campaign.

By CAROL PATON
and RAY HARTLEY
ST. 17/3/96
THE government is to spend more than R30-billion on salary improvements over the next three years in an effort to keep professionals such as doctors and prosecutors in the public service.

The government has set aside R7,4-billion in this year's Budget to improve pay and Finance Minister Chris Liebenberg said this would continue, with R11,3-billion being spent next year and the same amount the year after.

He said the huge expenditure would be paid for in cash and through the savings resulting from reducing the number of public servants by 100 000 over the three years.

Health Minister Nkosazana Zuma said this week that the salaries of some doctors would double, while others would receive huge increases in an effort to halt the flow of South African doctors overseas.

She said 600 doctors were needed as a matter of urgency, while a further 2 000 were needed to fill vacancies. While more foreign doctors would be brought in, she said the "first prize" was the appointment of South African doctors.

The move has been welcomed by the Medical Association of South Africa, which believes it could halt the exodus of doctors.

Junior doctors will benefit most, earning almost double from July 1. Substantial increases are also planned for nurses and policemen Interns, or final-year medical students, who do the bulk of the work in hospitals and who often work a 60-hour week for an annual salary of R28 500, will now get R50 868.

Registrars and medical officers, who make up the majority of doctors working in hospitals, are also in for large increases. The annual salary of a registrar, who is a specialist-in-training, will go up from R50 844 to R78 141.

Senior and principal medical officers, who are doctors who have specialised but have not yet qualified, will receive increases from R63 474 to R98 463, and from R79 086 to R115 413, respectively.

Specialists — few of whom remain in public hospitals after qualifying — will be encouraged to stay in the public service through a new basic salary of R115 413 up from R88 230. And all public servants, will also now be paid overtime according to what they earn.

Professor Dave Morrell, spokesman for the Medical Association of South Africa, said the revised salaries would make a significant difference for doctors. They will be very pleased.



CHRIS LIEBENBERG

However, he warned that "certain adjustments would need to be made to ensure satisfaction across the range of senior doctors."

Senior doctors earning the top salary in their range could stand to benefit by only 7,5 percent if they are slotted into the minimum category on the new salary scale.

"Senior specialists will get the least reward and, when they look at their juniors and see their proportionate increase, they will feel badly done by," said Professor Morrell. He said it was important that the restructuring process be continued over the next two years for it to be really meaningful, and

estimated that a specialist in the private sector would still earn up to three times as much as a specialist in a hospital.

New nurses will also benefit from the salary adjustments. A professional nurse will now start on a salary of R40 836 — an increase of R15 000.

A police constable who earned R17 800 a year will now get a starting salary of R27 882. The conditions of overtime pay

for police are being negotiated and a deal is likely to be struck soon.

The new salary structure was accepted in principle by 17 of the 20 public sector unions in the central bargaining chamber last week, who also agreed to trim down the public service.

This will be done through "voluntary severance packages" and not compulsory redundancy, said John Ernstzen, who acted as chief negotiator for the minister of public service and administration in the bargaining chamber.

Improving the resignation benefits by changing the rules of pension funds will be an important component of trimming the public service without resorting to compulsory redundancy.

While a Presidential Review Commission, appointed to examine the public service, could still recommend that compulsory cuts be made, Mr Ernstzen said his ministry was confident that savings — to be ploughed back for salary increases — could be achieved through natural attrition.

The new structure, which has classified the 340 occupational classes in the public service into 16 broad bands, has not only brought a large adjustment for professionals. It has also raised the minimum wage from R13 200 a year to R17 100 and narrowed the wage gap between the highest and lowest earners.

Negotiations in the central bargaining chamber will resume on March 25, and issues of job cuts and voluntary severance packages will be discussed.

Salary hikes for professionals

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MINISTER OF JUSTICE Dullah Omar said he would not be intimidated by the gun-waving mob who burst into his home, writes ANTHONY JOHNSON Picture BENNY GOOL



A SECURITY ring has been thrown around Justice Minister Dullah Omar after he received death threats and an armed band of Muslims invaded his Rylands home late on Thursday night chanting "Allah u akbar" (God is great).

Safety and Security Minister Sydney Mufamadi told the Cape Times last night "I have instructed the national commissioner of police (George Fivaz) to make sure that steps are taken to protect minister Omar"

Those responsible for the security scare — branded as "mad" and "insane" by the two ministers yesterday — are understood to be aggrieved at the government's handling of crime, the drugs scourge, safety matters and religious questions.

Omar, who is also the minister in charge of Intelligence, said in an interview yesterday that Thursday's late-night march on his home by scores of protesters, some brandishing guns, was "much more than a security scare"

He said the action by the group involved "more than threats" to his life, adding that the authorities had "a lot of information about what they were planning", including other "special targets".

He declined to elaborate

Omar emphasised that the group, some of whom entered his home through an unlocked front door before being turned back by a policeman, were a "very, very tiny" coterie of extremists who were "not doing the work of 98% of the Muslim community"

He said he did not want to label those responsible, but he later stated that his information was that they were "either Qibla or an offshoot" of the radical Muslim splinter group

Mufamadi said he found it "difficult to imagine that Qibla will convince anybody that their motives are clean"

But last night the organisation denied that it was responsible for Thursday night's events.

When Omar attended a function at Livingstone High School in Claremont on Friday night the venue was swarming with security personnel. Omar, who is normally accompanied by only one or two protection personnel, acknowledged that the turn-out of Friday night was extraordinarily large

He said he would not be intimi-

dated by the latest threats to his safety. Although he had "great anxiety for my family because they suffer the most", he refused to be flushed out of his home to more secure premises by the latest scare

"I will continue to live my life and stay where I am in my community, where I have wonderful neighbours and many close friends whose respect and goodwill I enjoy," he said

"Maybe risks have to be taken, though there is no need to be reckless — but I will not allow anything to deter me from my work"

Mufamadi said steps would be taken to ensure the safety of Omar and his family. If people "who appear to be insane" invaded Omar's home again they would find a different set of measures in place

Mufamadi said the police had the registration numbers of the cars of many of those responsible for the incursion

While organisations had a right to protest and express their views, this did not extend to "indecent" invasions of a government minister's home "at such an

ungodly hour"

Any group that had complaints could avail itself of the many channels that were available

Mufamadi said he and Omar were jointly working on an integrated plan to curb criminality and that their doors were open to anyone wishing to discuss relevant problems

No organisation that had requested a meeting to discuss the problem of crime had been turned down

Omar said those who had stormed into his home had not written to him, telephoned him or asked to see him during "normal hours"

He acknowledged that he handled "a very difficult and contentious portfolio" and expected people to disagree with him, but he expected people with problems to see him or officials in his department about them

"What has happened here is that a small coterie of individuals have arrogated to themselves the right to violate democratic procedure," he said.

"I refuse to accept that as a minister I serve only Muslims and not other groups

"Muslims constitute about two percent of the population

"They are important, but my views on the religious rights of Muslims is the same as they are for the rights of other religious groups," he said

Yesterday morning Omar he took a walk in his neighbourhood and chatted to friends on the street, demonstrating that he would not be cut off from his community

(252)

Invaded

96/3/81

House

Dullah Omar's

TIGHT SECURITY RING FOR MINISTER



PROTECTED: Steps have been taken to protect Justice Minister Dullah Omar, seen here sitting next to his wife Farieda in the company of two bodyguards, after he received death threats and an armed band of Muslims invaded his Rylands home

No, it wasn't us — Qibla head

THE head of Qibla, Imam Achmat Cassiem, has denied that his organisation was involved in the invasion of Justice Minister Dullah Omar's home, and has pledged disciplinary action against any of his members who were

His denial was echoed by Mr Ganief Hendricks, spokesman for the umbrella Islamic Unity Convention (IUC), Qibla's parent body, which is also headed by Imam Cassiem, and which was formed in March 1994

Qibla first came into existence in 1980, and has been at the extreme, militant edge of the Muslim politico-religious spectrum as one of the smaller groupings

Cassiem said Qibla was "definitely not" involved. Asked about reports that some of his

leading members were observed at the head of the crowd at Omar's house, Cassiem said they would "be brought to book". He would not elaborate.

But Hendricks said Cassiem had ordered an IUC disciplinary inquiry, which had already started its work, and that steps would be taken against some individuals, one of two of whom were well known as ultra-militant.

"We had nothing to do with it, and are totally against that type of action. If they had problems with minister Omar they should have approached his office. The IUC distances itself from the incident," Hendricks said.

"It was out of place and out of line, and we will instruct our people who may have been involved to personally apologise to Omar."

CT 18/3/96 (252)

Britain to aid SA privatisation

BO 19/3/96 (252)

Wyndham Hartley

CAPE TOWN — The British government has pledged its support for SA's privatisation programme, offering its experience, skills and the opportunity of raising foreign investment.

Chancellor of the Exchequer Kenneth Clarke confirmed this at a two-hour meeting with, among others, Deputy President Thabo Mbeki, Finance Minister Chris Liebenberg and Trade and Industry Minister Trevor Manuel. He made it clear that British assistance would be governed by priorities determined in SA.

Clarke said the experience of his delegation was in the area of privatising airlines, telecommunications and other state utilities. It could advise SA how to raise the capital and in getting finance to flow. There had also been discussions on how to deal with trade unions in the context of privatisation.

Mbeki said the package of restructuring state assets had been discussed, as well as privatisation. Ways of opening up foreign investment for this were also discussed and the engagement between the SA government and the British private sector was reaffirmed.

Reuter reports Clarke said the dis-

cussions had focused on SA's delayed plan to privatise or sell shares in sections of the state-owned utility industry, including telecommunications and electricity generation. He understood the programme had been slowed down by opposition from trade unions.

"The reaction of British financiers was that they are used to these problems and that you tell us what you require, what the priorities of this society are, and we will try to devise a financial package, a package of technology transfer and management expertise that will aim to deliver that to you."

Clarke said he had discussed the interests of labour with Mbeki and underlined the need to persuade trade unions to support privatisation or rationalisation. "We understand that the key to this whole process is actually ensuring that trade unions see the benefits that could flow not only for the SA economy, but to people employed in these industries," he said.

Earlier in the day Clarke met Deputy President FW de Klerk, who said they had discussed the inflexibility of SA's labour market. Clarke said that since the British labour market had become more flexible, unemployment had dropped.

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Indemnity: ANC decision calls Nationalists

(252) Skaw

Moves could quash perceptions and fears about unequal treatment, writes Robert Brand

bluff
19/3/96

When the National Party and the ANC argue about the Truth and Reconciliation Commission, the debate almost invariably turns into a slanging match about amnesty. Last week, the ANC called the National Party's bluff by asking Justice Minister Dullah Omar to withdraw the temporary immunity granted in 1990 to 73 ANC leaders, including Thabo Mbeki, Joe Modise and Ronnie Kasrils.

Temporary immunity for ANC leaders - while former NP securocrats such as Magnus Malan and his generals are being hauled to court - is routinely cited by NP spokesmen as evidence of unequal treatment of liberation-struggle figures in the amnesty procedure, a sort of portent of what the Truth and Reconciliation Commis-

sion could turn into. The NP's arguments conveniently ignore the historical background in which temporary immunity was granted. There is a difference, both in intention and execution, between the immunity granted to the ANC leaders, F W de Klerk's subsequent attempts to indemnify members of the Government and security forces, and the commission's power of pardon.

Indemnity was from the outset a central issue in the negotiations between the ANC and the Nationalist government.

The first concern was about ANC leaders in exile, who could not return to negotiate because they faced criminal charges in South Africa. In the Pretoria Minute, it was agreed that they should receive immunity from prosecution and civil proceedings, and this agreement was embodied in

the Indemnity Act of 1990. The immunity was temporary, but could be renewed annually until it finally expires this May 28.

The debate then shifted to the predicament of members of the government and security forces who feared that they might be victimised by a future, democratically elected regime.

The ANC believed these people could only be indemnified by a new government, but the NP, perhaps understandably, was not prepared to bargain on that eventually.

Thus was passed in 1992, amid great public outcry, the Further Indemnity Act which did not require publication of details of the crimes for which indemnity was sought. Applications would be reviewed by a government-appointed council deliberating in secret, and the records would be destroyed. Only the names of those granted

indemnity would be published in the Government Gazette. Political offences were defined very broadly, and the act also extended indemnity to those who "advised, directed, commanded (or) ordered" these acts - in other words, the political masters.

Despite the public outcry and rejection of the Bill by one house of the trilateral Parliament, it was rammed through the President's Council and became part of statute law. The dust settled, and political developments and public sentiment came round to the notion that reconciliation required an understanding of the past conflict but not vengeance, reparation for victims but not retribution, and forgiveness rather than victimisation. This led to the creation of the Truth and

Reconciliation Commission

Amnesty granted by the commission will differ from indemnities granted under previous legislation.

Firstly, there will be full public disclosure of specific crimes for which amnesty is given. Secondly, acts which qualify for amnesty are subjected to objective criteria, the so-called Norgaard principles, slightly modified. Lastly, it goes hand-in-hand with reparations to victims because amnesty takes away their constitutional right to redress in the courts.

Whether the commission will be able to fulfil its dual role of finding the truth and promoting reconciliation remains to be seen. But it will be the final word on amnesty. The politics of indemnity during the negotiation years have already battered the rule of law to a state from which some fear it might never fully recover.

A UNIQUE product of "new South African" creativity, the truth and reconciliation commission will have to continue inventing itself in the months that lie ahead.

With the first hearing scheduled for East London in a month's time, the 17 commissioners are still wrestling with the administrative implications of their monumental brief. Fewer than a quarter of the projected 200 staff members have been recruited — at the time of writing a CEO had just been hired and the commission was still operating without a legal officer. One of the four floors in the Cape Town office was operational, in Johannesburg, only the boardroom had been furnished, Durban was without offices.

Once it has conjured itself into existence, the commission must apply the Promotion of National Unity and Reconciliation Act, a task which will require a generous dose of the inspired improvisation that has become a hallmark of SA's transition to democracy.

The Act, the product of 130 hours of parliamentary committee work and 300 amendments, is the ultimate expression of SA's historic compromise between white power and black insurgency. It mediates white fears of reprisal and black demands for a national reckoning on the gross human rights abuses of the apartheid era, steering a middle way between a general pardon and the "victors' justice" of war trials.

Its unique solution is to combine truth-finding and amnesty functions — amnesty will be granted for political crimes, but only if the perpetrator makes full confession. Victims, correspondingly, will be denied retributive justice but will be acknowledged in other ways: through the documentation of their suffering, through reparations and, perhaps, by learning the identity of their tormentors and seeing them at the bar of public opinion.

Underlying the Act is the idea that truth is like a powerful drug — therapeutic, but injurious to the health of the nation if administered for too long. The commission has a maximum of two years in which to document three decades of repression and counter-violence, between March 1 1960 and December 5 1993,

Truth commission Will have to go on inventing itself

DREW FORREST

AD 20/3/96
(252)

in all parts of the country. As the beginning of SA's "dirty war" 1960 is a logical starting point. It was the year the ANC was banned and foreshadowed the sabotage campaigns and the detention without trial system that made systematic police torture possible.

The statute also screens out innumerable rights abuses "lawfully" perpetrated under apartheid, such as detentions, banings and forced removals, and restricts the commission to considering killings, abductions, torture and severe ill-treatment, but it remains an impossible wide mandate. It carries the risk — as Magre Friedman of the victim support group Khulumani puts it — of a "broad brush" approach which will gloss over the suffering of individuals. Somehow, the commission will have to strike a balance between the meaningful processing of individual cases and the examination of broad patterns of violence.

In the context of likely "victim overload" — the commission's East London office has already received a flood of submissions — the administrative complexities facing the commission's human rights violations subcommittee are mind-boggling. Thousands of submissions will have to be scrutinised to ensure they fall under the statute. There is talk of a "help line" to filter out lesser violations. This will require guidelines, for example, on what constitutes "severe ill-treatment". Alleged perpetrators named by vic-

tims will have to be traced so that they can defend themselves.

The commission plans to test the water for some months and then, if necessary, take corrective action. The 20-member human rights committee may have to be broken into units so that parallel hearings can be conducted in different places. Commission chairman Desmond Tutu has pledged a two-year process, but a request to Parliament for an extension of the deadline may yet prove inescapable.

Court-like in some aspects — it can, for example, subpoena, hold in contempt and hear evidence in camera — the commission does not have as a background to its activities the centuries of jurisprudence and legal precedents available to the ordinary courts. It has the Act, and if the human rights committee has to grapple with some of its grey areas — for example, it is unclear whether testimony is privileged — the amnesty subcommittee stands before an interpretive minefield.

The Act sets out three conditions for amnesty: the deed in question must fall within the statutory period, it must be political and there must be full disclosure. Determining whether a witness has willfully omitted key facts, and what constitutes a sufficiently gross memory lapse to warrant a refusal of amnesty, is likely to prove problem-

atic. The commission's investigative units seen as helping in this area.

The real test of the committee's creativity will be in deciding whether an act is political according to guidelines set down by the legislation — the "Norgaard principles" applied during Namibia's transition. These ask the commissioners to weigh six factors: motive, objective, whether the deed was authorised, its "legal and factual nature, including its gravity", and its proportionality to a political goal.

These are meant to be considered together, but they are not necessarily complementary. They suggest, for example, that some deeds are too grave for amnesty. However, heinous acts might be proportional to a political aim.

It is hard to think of a more dreadful deed than the abduction and cold-blooded execution of Matthew Goniwe, but he was undeniably central to the popular uprising in Eastern Cape in the mid-'80s. His murder, and the manner of it, did indeed send out a terrible message to activists.

random and desperate acts by their relative powerlessness. Torture, as a means of extracting information, has an immediate link with an objective. The case with Umkhonto we Sizwe's Wumpy Bar bombings is less clear.

The principles rule out amnesty for acts driven by personal gain or malice — but this, again, will be subjective in many cases. Security policemen were notoriously spiteful, and their actions often an inseparable mix of politics and personal rancour. Determining whether an act has been expressly or implicitly authorised is likely to lead to an orgy of buck-passing by security force members, their superiors and political principals, with the committee having to adjudicate between conflicting claims.

Compounding the conundrums of amnesty is a clause stating that the criteria used in earlier indemnity laws — which make no mention of the proportionality principle — must also be considered. Thus, it has been suggested, is an escape clause to grant amnesty where it is desirable but where the Norgaard principles are too stringent.

In many other areas, the Act leaves scope for creative discretion. The amnesty committee, for example, may apply to the relevant attorney-general and judge for a trial to be suspended pending an amnesty application — but the criteria for a suspension are not specified. Reparations policy, a vexed area given the state's strained resources, is left entirely open.

At the end of its two-year life, the commission will have to present the president with a report of its findings, which will be tabled in Parliament and distributed throughout the country.

Decisions will have to be taken on its form: what, of the mass of evidence heard, should it contain? Will it reflect the experiences of individuals as well as broad trends of human rights abuse? And — critically — will it make moral judgments about the past, as Justice Minister Dullah Omar has urged, or confine itself to description?

On most questions, the commissioners are unforthcoming. The prevailing view is that the path must be made by treading it.

Sparks fly as head of Human Rights Commission urged to resign

Star 20/3/96

(252)

Law professor Denis Davis has called on Human Rights Commission chairman Barney Pitso Moseneke to resign after an acrimonious debate between the two men on SABC 3's *Focus* programme last night.

The debate was the climax of a war of words that has waged between the duo after comments Davis made in a newspaper column about the HRC and its low profile after its inception.

Davis criticised "a couple of appointees" to the commission whose knowledge of human rights "was conspicuous only by its absence". He believed human rights lawyer Prof John Dugard should have been appointed in their place.

Pitso Moseneke took the criticism personally and said in a letter that "Davis and his ilk are racists" who believed the only people qualified for human rights work were "Wits white liberal lawyers". He blamed the HRC's low profile on a conspiracy among newspapers and listed the commission's achievements since its inception.

These included holding monthly plenary sessions; formulating a submission to the draft working document on the constitution; visiting provincial governments and establish-

ing working groups, consulting community-based bodies; accepting speaking engagements, and travelling overseas.

Davis' next written broadside accused the HRC chairman of hate speech and explained that the HRC members he had in mind in his criticism were a former Conservative Party MP and a Nationalist Party member.

Pitso Moseneke denied the hate speech accusation last night as he stood by his description of Davis as a racist. He accused the lawyer of failing to accept that power was coming into the hands of black South Africans.

Davis repeatedly asked Pitso Moseneke to explain what parts of his original article were racist, repeating his claims that Pitso Moseneke's statements were a crude attempt to "smear" him and prevent his right to free speech. Davis became increasingly redder in the face as a smiling Pitso Moseneke continued calling him a racist, saying the insult was based on his "analysis" of Davis' articles.

Davis then said he had no option but to call on Pitso Moseneke to resign, saying the HRC head was "pathetic" and had no right to continue in his position as he lacked commitment to human rights. — Staff Reporter

Truth body unveils outreach plan

(252)
Sowetan
20/3/96

By Waghied Misbach
Political Reporter

Two events in Cape Town have been singled out as test cases

AN OUTREACH PROGRAMME to inform the public about the workings of the Truth and Reconciliation Commission was announced at a Press conference in Cape Town on Monday

Ms Pumla Gobodo-Madikizela said the commission was launching the outreach programme around two events which happened in Cape Town during apartheid - the Trojan Horse incident where three boys were killed by soldiers and the St James bombing in which PAC members allegedly killed a number of churchgoers

The two incidents provided an example of actions from the liberation forces and those from the apartheid government, said Gobodo-Madikizela

She said the programme would not provide a process of reparation or rehabilitation for victims seeking to tell

their stories because this would be "pre-empting" the work of the TRC's other committees

"There is the danger that we will tap into people's feelings. We don't have the resources to deal with that," said Gobodo-Madikizela

The programme will include educational aids such as overhead projectors, films and various printed matter on the TRC's workings

Training process

Meanwhile the TRC is in the process of training its statement takers and briefers to prepare the victims of violations for the upcoming hearings

The training starts next Monday. Commissioner Dr Mapule Francis Ramashala said the TRC was attempt-

ing to train the statement takers to be as "non-threatening" as possible

She said the statement takers would possibly be referred to as "narrative scribes". Ramashala said that the TRC was developing a number of "protocols" which would make it possible for "a systematic gathering of information"

This would also ease the work of the research department which would be collating all the information into a database. This will then be compiled into one report after the two-year sitting of the commission

The training will also include briefers who will provide emotional support for victims such as "holding their hands during the hearings" and debriefing afterwards

Truth commission to cost taxpayers R150-m

STAR 21/3/96 (252)

OWN CORRESPONDENT

Cape Town – Taxpayers will pay a hefty sum for unearthing the truth about violations of human rights during the apartheid era

The Truth and Reconciliation Commission's monthly salary bill for the 17 commissioners appointed by President Mandela is R404 558, or about R4,854-million a year. Its budget will be R75-million a year over the two years of its operation.

Commissioners' pay and other expenditures were presented to Parliament by Justice Minister Dullah Omar in a written reply to questions tabled in the National Assembly.

In terms of presidential regulations prescribing the remuneration, allowances and other benefits of commissioners, the following payments are applicable:

■ Chairman Archbishop Desmond Tutu is being paid R24 350 a month, or R292 200 a year, equal to that of a Supreme Court judge-president.

■ Vice-chairman Alex Boraine is being paid R23 958 a month, or R287 496 a year, equal to that of a deputy judge-president.

■ The other 15 commissioners are each being paid R23 750 a month, or R285 000 a year, equal to that of a judge.

The commission is operating from 106 Adderley Street in Cape Town and is in the process of establishing regional offices in Johannesburg, Durban and East London. Each of these offices will be regarded as a seat of the commission.

Every commissioner who is not permanently resident at the seat of the commission will be entitled to travel once to the seat from his or her home and back every six months by

Salary bills alone will be about R9,7-m over two years

air, bus or train. And, to accommodate family visits, each commissioner will be entitled to four air, bus or train tickets either way between the seat and his or her home. Tickets can be used by the commissioner or family members during each calendar year.

Every commissioner on official duties away from the seat of the commission will be entitled to an all-

inclusive subsistence allowance of R300 for every full 24 hours that he or she is actually absent from the seat of the commission or his or her home.

A commissioner who lives permanently elsewhere than at the seat of the commission may receive an allowance of R300 for every full day of his or her actual presence at the seat of the commission.

If commissioners spend less than the allowable R300 a day, they will be reimbursed only for the money actually spent.

The cost of the transport of a commissioner and his or her family, domestic workers and effects to the seat of the commission will be paid for by the commission if such a commissioner is not resident at the seat of the commission when he or she is appointed.

Commissioners will be entitled to government transport where they need to perform official duties away from the seat of the commission, and a commissioner who uses private transport in performing official duties may be compensated at a rate of R1,10/km or R1,40/km, depending of the vehicle's engine size.

The commission's gross annual rentals, inclusive of operating costs and electricity, is R4,14-million.

Black Sash hits at ANC over administrative rights

CF 21/3/96 (252)

POLITICAL WRITER

THE ANC had proposed watering down the right to just administrative action in the draft bill of rights so much that it rendered the provision toothless, the Black Sash said yesterday

"Have the feared realities of governance changed the ANC from a liberation movement to a middle of the road political party?" it asked in a statement, issued by its national office

The Sash said that in its advice offices throughout the country it daily experienced the continued existence of apartheid in the administration of pensions

The usual waiting period for processing a pension application was three months, but black peo-

ple waited between four months and two years for their pensions

"Unfair administrative action has been the order of the day for a long time. We have had a civil service that was neither civil nor a service and which has lacked understanding of accountability or transparency

"Our advice offices have identified the right to just administrative action in the bill of rights in the refined working draft of our constitution as the most important right for the people that we assist.

"The basic purpose of government administration is to administer law and regulations in a fair and systematic way. The right to just administrative action gives expression to the basic purpose of a civil service "

The Sash said it had found working co-operatively with officials, so that they and their clients came to understand the rights and obligations imposed by the right to administrative justice in the interim constitution, had led to a marked improvement in the way people were treated and the way a service was provided

"We have continually lobbied for this crucial right to be fully entrenched in the final constitution

"The ANC proposes watering down this right. The ANC's latest draft so waters down this right that it renders it toothless

"It simply states that the state must provide access to this right by way of relevant legislation. The irony is that it is the NP fighting for the full inclusion of this right "

Rights commissioners mute on Pityana, Davis dispute

Mduduzi ka Harvey

(252)

HUMAN Rights Commission members declined to answer media questions about last week's acrimonious confrontation between commission chairperson Barney Pityana and Wits University academic Dennis Davis at the launch of the commission yesterday.

When the commissioners were asked about the televised confrontation — in which Pityana repeatedly accused Davis of racism and called for his resignation from the university — they said the Press briefing was concerned only with the launch.

At the briefing, questions were also asked about commissioner Christine Routier's membership of the NP and how she reconciled her party's past with her participation in the commission. She said she had fought a battle in the previous government's President's Council to rid the country of human rights violations.

Other members of the commission sworn in were former DP stalwart Helen Suzman, UCT academic Rhoda Kadalie, advocate Pansy Tlakula, SA Council of Churches general secretary Brigaha Hlophe Bam, University of

Zululand vice-chancellor Charles Dlamini, University of Natal law professor Karthy Govender, human rights campaigner Max Coleman and social worker Shirley Mabusela.

Addressing government representatives, UN officials and diplomats at the launch, Deputy President Thabo Mbeki said the criterion to determine the success or failure of the commission was the extent to which actions resulted in the betterment or worsening of the human condition.

Specific attention, he said, had to be directed at beggars, prostitutes, victims of domestic violence, the disabled and those who "kill or are killed because of the terrible and blind force of superstition born of ignorance".

He said attention should also be focused on "the opening of the doors of learning and culture".

Deputy President FW de Klerk said by adopting a charter of fundamental human rights, SA had become a society based on values and principles enshrined in law.

He said government regarded the upholding of the Bill of Rights and the establishment of a human rights culture as one of its top priorities.

TB incidence rises with HIV infection

Kathryn Strachan

BO 22/3/96

THE incidence of tuberculosis in SA has risen dramatically over the past few years, spurred on by the HIV epidemic. With an increase of more than 30% over the past eight years, it is estimated that one person dies from TB every 40 minutes in SA.

The health department also estimates that the growing HIV epidemic will increase the number of TB cases 10% to 20% in the next year — and to spread awareness of the disease it has joined with the rest of the world to mark Sunday as World TB Day.

Emergence of new multidrug-resistant strains of the disease threatens to make TB incurable again. About 80% of the people who have died from TB in SA have been infected with a multidrug-resistant strain.

Inconsistent or partial treatment is creating the new strains which are resistant to existing and affordable drugs.

In an effort to combat the new emergence of TB, the National Tuberculosis Control Programme in SA, which is run by the health department, has adopted the World Health Organisation's control strategy where patients are given a short course of treatment directly administered by a nurse. At present, patients are given a wide array of medicine to take at home over a long period. Once the symptoms subside, most patients stop taking the medication, and the underlying virus recurs — each time with a stronger resistance to the medication.

A pilot project was launched in Mpumalanga in January, where 300 nurses have been trained in the new method of treatment. It is expected that other provinces will be able to gain from this experience.

When people are infected with both TB and HIV, TB is much more likely to become active because of the person's weakened immune system. As more TB cases become infectious, it means larger numbers of people carry and spread TB. WHO estimates that by 2000, HIV infection will annually produce at least 1.4-million active cases of TB that would otherwise not have occurred.

Truth body debates status of information

Wyndham Hartley

BO 22/3/96

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complete its work.

This meant it would have to look for themes in the history of abuses in SA such as the incidence of torture, train attacks and cross-border raids. Any pattern that emerged would have to be verified.

He stressed that complaints from victims would be investigated. However, he conceded that some perpetrators could indeed "get away with it", for example in cases where documents had been destroyed.

Sixty people — divided into four regional teams and a fifth national team — would handle the investigations. There would be two foreign policemen on each regional team and four on the national team. The 12 foreign policemen would have their salaries and living expenses paid by their home governments; the truth commission would cover their working costs.

Five senior investigators from the police forces of Holland and Denmark are already at work for the commission.

Ntsebeza said he did not know whether the 60 investigators could complete the brief of the commission in the time available. He said there was an inherent contradiction — the commission was asked to develop the most complete picture possible but was then put under a time constraint.

Some interviews among lawyers, policemen and others for the investigative teams had already taken place, he said, adding that they would get under way in the regions early next week. Serving officers in the SAPS would be "screened" to ensure they were suitable for the sensitive work of the commission. He said part of the problem being faced in the recruitment of investigators was that many had been swallowed up by the special task unit in KwaZulu-Natal and the D'Oliveira investigation into third force violence in Gauteng.

CAPE TOWN — Incriminating information on human rights violations coming before the truth commission may be passed to an attorney-general for criminal prosecution.

This emerged in a media briefing with the head of the commission's investigative unit, Dumisa Ntsebeza, who said there was a debate within the commission about the status of information supplied by victims of human rights abuses.

Ntsebeza stressed that information given to the commission by perpetrators in applications for amnesty would be privileged and could not be passed on to attorneys-general for prosecution.

He emphasised that if a person was accused of a crime by a victim during commission hearings the accusation would have to be put to the alleged perpetrator to give him an opportunity to put his side of the story. Any possibility that information about perpetrators of human rights violations could be sent to attorneys-general would increase the pressure on offenders to apply for amnesty and raised the possibility of a flood of applications in December.

Perpetrators have the rest of this year to make up their minds about applying for amnesty. Those implicated in evidence this year will have the decision made for them, but those hoping to escape detection could be implicated after the period for amnesty applications has closed.

They will have to decide whether witnesses could blow the whistle on them.

Ntsebeza indicated that not all 100 000 reports made to the commission could be investigated. The commission, charged with developing as complete a picture as possible of human rights abuses spanning a 33-year period, had only 18 to 24 months to

stand a chance of being selected

Learning truth won't come cheap for taxpayers

Commission's budget is estimated at R75-m a year

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ARG 22/3/96

Political Staff

TAXPAYERS will pay a hefty amount for unearthing the truth about gross violations of human rights during the apartheid era

The Truth and Reconciliation Commission's monthly salary bill for the 17 commissioners appointed by President Mandela is R4,85 million a year

The commission's budget will be R75 million a year during the two years of its operation

Commissioners' earnings and other expenditures have been presented to parliament in a written reply by Justice Minister Dullah Omar to questions tabled in the national assembly

In terms of presidential regulations, made in February and prescribing the remuneration, allowances and other benefits of commissioners, the following payments are applicable:

● Commission chairman Desmond Tutu is being paid R24 350 a month, or R292 200 a year, equal to the salary of a judge-president of the Supreme Court

● Vice-chairman Alex Boraine is being paid R23 958 a month, or R287 496 a year, equal to that of a deputy judge-president

● The remaining 15 commissioners are each being paid R23 750 a month, or R285 000 a year, equal to that of judges

The commission is currently operating from 106 Adderley Street, Cape Town, and is in the process of establishing regional offices in Johannesburg, Durban and East London. Each of these offices will be regarded as a seat of the commission

Every commissioner who is not permanently resident at the seat of the commission will be entitled to travel once to the seat from his or her home and back every six months by air, bus or train

And, to accommodate family visits, each such commissioner will be entitled to four air, bus or train tickets either way between the seat and his or her home

Every commissioner on official duties away from the seat of the commission will be entitled to an all-inclusive subsistence allowance of R300 for every full

24 hours that he or she is actually absent from the seat of the commission or his or her home

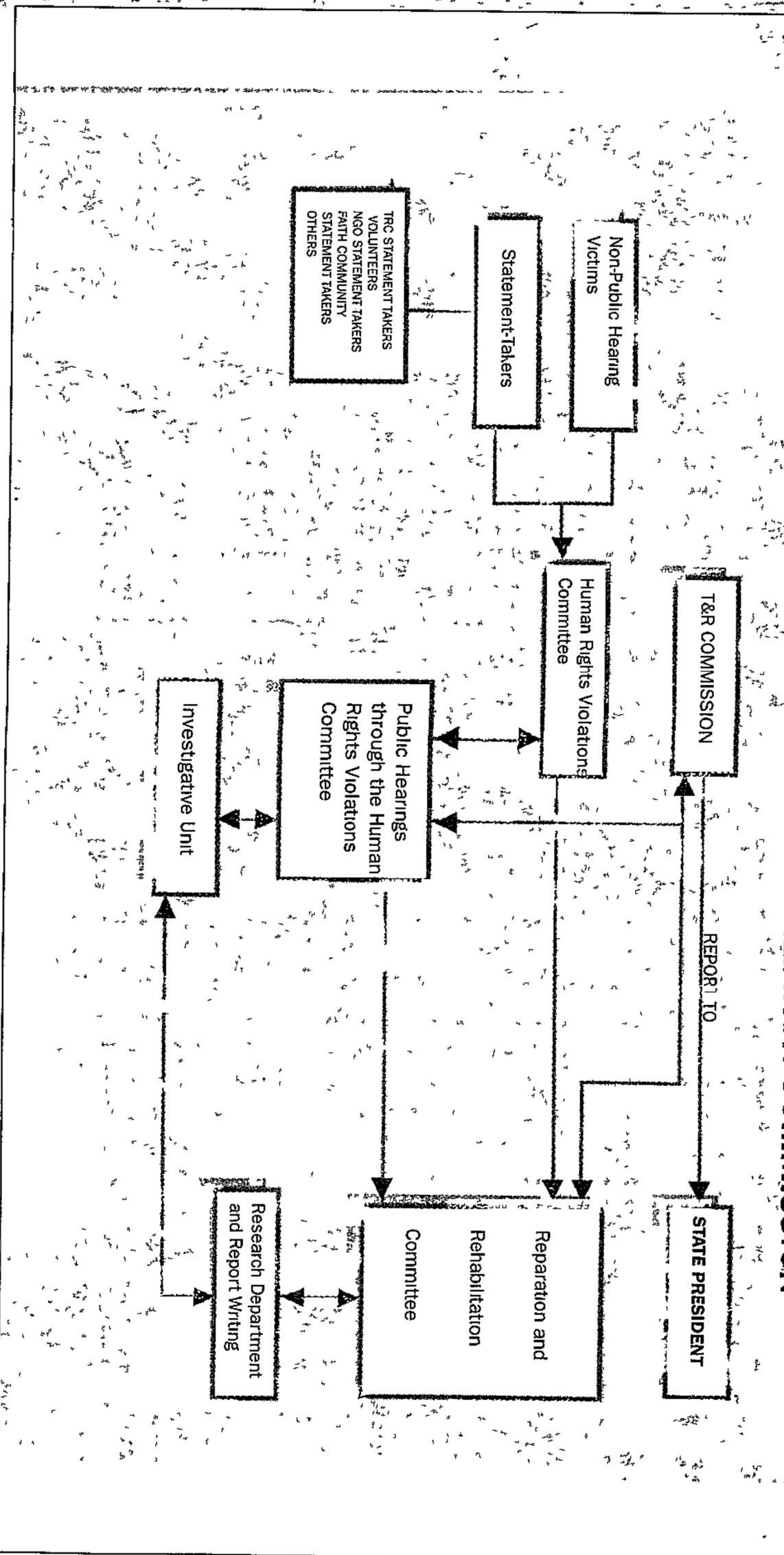
A commissioner who lives permanently elsewhere than the seat of the commission, may get an allowance of R300 for every full day of actual presence at the seat of the commission. Should commissioners spend less than the this, they will be reimbursed only for the money actually spent

The cost of the transport of a commissioner and his or her family, domestic workers and effects to the seat of the commission will be paid for by the commission if such a commissioner is not resident at the seat of the commission when he or she is appointed

Commissioners will be entitled to government transport where they need to perform official duties away from the seat of the commission

Senior staff members are entitled to a fixed, monthly reimbursive allowance ranging between R300 and R500 a month, to compensate for "out-of-pocket" expenses such as parking fees, and taxi fees

ACCESSING THE TRUTH AND RECONCILIATION COMMISSION



Getting to grips with truth and reconciliation

WILLEM STEENKAMP

THIS is how the Truth and Reconciliation Commission (TRC) will work

It is expected that when the TRC starts its hearings at the beginning of next month, many thousands of South Africans will come forward and tell their stories — either from the position of victim or that of oppressor

However, most South Africans, while aware of what the TRC is, do not know how it is constituted or how it will work

According to the TRC, a person wanting to testify can follow one of two routes, by either making a statement to a TRC or volunteer statement-taker, or — if not willing to testify before a public hearing — providing the TRC's Human Rights Violations Committee (HRVC)

with evidence

All information received is then processed by the HRVC, which also arranges the public hearings. Evidence which requires further information is referred to the TRC's investigative unit, consisting of South African and international investigators

Evidence placed before the public hearings and information collated by the HRVC are forward-

(252) CT 22/3196

ed to the TRC's Reparation and Rehabilitation Committee (RRR), which determines what reparations — if any — should be made. These recommendations, contained in a report compiled by the TRC's research department, are sent on completion of the commission process to the TRC, which will then make recommendations to President Nelson Mandela. Those wishing to apply for

amnesty before appearing before the TRC will appear before an amnesty hearing. The hearing then determines whether or not further investigation is necessary by the investigative unit, as well as identifying the victims involved. Once a hearing has determined whether or not an amnesty application is successful, the decision is final

Truth support office set up

(252) Sowetan 22/3/96

By Claire Keeton
Features Writer

THE VICTIMS OF HUMAN RIGHTS abuses in Gauteng, organised through the Khulumani Support Group, are setting up a centre in Johannesburg to prepare for the Truth and Reconciliation Commission

Survivors and families receive help in approaching the truth commission

someone from Khulumani in the office all the time so that people who feel desperate can phone and find someone who has been through a similar experience," she said

Organising Committee, Ms Maggie Friedman, said the office will try to provide legal advice and psychological support during this process

Khulumani is setting up an office in April to assist the survivors and families of victims of abuse to prepare their submissions to the commission

A member of the Khulumani

hospital reports, inquest reports, subpoenas and other documents to build their case

"This will concretely back up people's submissions to the Truth and Reconciliation Commission," Friedman said

She said the office will make it easier for Khulumani to plan activities like commemorations, as well as to liaise with the media

Help with documentation

Khulumani intends to help survivors and victims to organise their submissions to the commission by collecting

Khulumani was started to provide support for the victims of violence and the families of those who "disappeared" in South Africa and across its borders

The group feels that the TRC is a way of "speaking about the past and exposing the truth to ensure that such violations will never occur again"

Friedman said members of Khulumani have a wide range of feelings about the TRC, but they have decided to use the opportunity to tell their stories of suffering

Ms Sylvia Dlomo-Jele, whose teenage son was killed during the student struggles of the 1980s, said Khulumani members never had the chance to speak out about their problems under the previous government and they must come forward now

We want the truth

"Nothing will bring back the deceased or restore the health of people who were injured, but we want the truth," she said at a TRC meeting recently

Dlomo-Jele said reparations from the TRC did not mean members were willing to forego their claim to civil damages

"Many Khulumani members are elderly parents who sacrificed and assisted their children, who were leaders of the community. They come from impoverished communities and had expectations of moral and financial support from their children in later years"

She said many members whose children died in violent, mysterious circumstances have suffered from stress and physical disorders. Survivors who were permanently disabled have struggled to meet ongoing medical expenses or to educate their children

Khulumani has proposed forms of reparations which include medical aid, disability grants,

education grants and pensions for parents, husbands and wives with deceased children or partners

Dlomo-Jele appealed to people to petition the TRC, calling it the "last hope" for those who have suffered the loss of loved ones

The Khulumani office will open in April on the 15th floor, Devonshire House, 49 Jorissen Street, Braamfontein. Telephone (011) 403-3256

Can commission see that justice is done?

Only 60 members to deal with over 33 years' of cases

By Waghied Misbach
Political Reporter

IT IS SOMETIMES HARD not to think that the Truth and Reconciliation Commission is a complete waste of time and money – especially considering the meagre resources it announced this week to investigate crimes of the past

No matter how much that obviously noble man Archbishop Desmond Tutu preaches about it, the Truth and Reconciliation Commission Act cannot possibly provide any measure of satisfaction to those people who have been tortured, maimed or had loved ones killed by the previous government

It is a reality that the Act was born of a negotiated settlement and is a "politically expedient" measure to deal with the past (in the words of Justice Minister Dullah Omar)

But it surely does not make the victims of apartheid feel any better that perpetrators of crimes can confess and walk away as if nothing had happened

Shortcomings

The TRC's shortcomings were again brought into sharp focus at a Press conference in Cape Town this week, when the investigative unit of the TRC was announced by Commissioner Dumisa Buhle Ntsebeza

Although the five police officers obviously have impeccable credentials, there was one nagging question: Would the investigators be able to investigate adequately all the atrocities committed by the apartheid government, or would only the high-profile cases get attention?

Ntsebeza, who heads the unit, was not so sure. He talked about presenting as "complete a picture as possible", about a "brushstroke-across-the-canvas approach", and about a "window" approach to violations committed in the past.

He tried to assure journalists that it was not the unit's job "to be selective", nor did he want the commission to appear as if it was only "focusing on

the high-profile cases"

But it is obvious that the 60-member unit is seriously understaffed, and would never be able to deal adequately with the cases of over 33 years (from 1 March 1960 to 5 December 1993), in the mere two years of the commission

It was also worrying that – with less than a month to go to the first hearings in Eastern Cape – the unit has not managed to appoint experienced senior South African investigators

Those that Ntsebeza wanted, like Frank Dutton from the Investigative Task Unit which brought General Magnus Malan to trial, is simply not available

And it is not expected that the Malan trial will be over soon to release him to the TRC. Ntsebeza's commitment may be unquestionable, but even his promise of making his unit work 24 hours a day will not be enough to solve this situation

The bottom line for appointments to the unit – and Ntsebeza hinted at it – is that it will be hard to find police officers whose hands are clean enough to deal with the "sensitive" investigations that will have to be undertaken over the next 18 months.

However, having argued that the TRC is flawed, it must be remembered that not all victims want revenge or retribution.

In a film called *Kulumani*, compiled by the Centre for the Study of Violence and Reconciliation, some victims did point out that they wanted the perpetrators brought to book. Others wanted scholarships, or just the satisfaction of having the story of the suffering told.

So some victims may, after all, find



Dumisa Ntsebeza .. "a window approach to violations committed in the past"

some sort of relief from the TRC's hearings. And this has also been the thrust of Tutu's arguments,

He has continually said that the TRC should be "victim-orientated", that the country should aim for reconciliation, for "trying to heal the wounds of the past"

Justice not served

But having said that, justice can never truly be served by the TRC

Also, there is no compensation – financial or otherwise – for the loss of family members, or for the trauma of being tortured or maimed. In any case, the TRC's budget of R75,9 million for the coming year is inadequate for dealing with financial compensation

In the novel *The Incredible Lightness of Being*, the Czech writer Milan Kundera says we must not forget what happened in the past.

Perhaps piecing together our collective memory is some sort of rehabilitation. The reality is that we are not going to get anything more satisfactory than that

Face to face with the Truth Commission

By Claire Keeton

THEY are the ambulance-drivers of the Truth and Reconciliation Commission: the statement-takers. They will be the first to confront the brutality of South Africa's past and will influence whether the wounds heal, and the commission survives or collapses

The victims of human rights violations will tell their stories through them. The data and research on human rights' violations – the core of the commission's work – will be directly based on statements they collect

The TRC has appointed 32 statement-takers, eight for each of the regions in which it is based. The Eastern Cape and Gauteng groups attended a four-day training course this week at the commission's Johannesburg offices. The KwaZulu-Natal and Western Cape groups will do their training next week at the Cape Town offices

Community advisers

Most of the statement-takers were community advisers, paralegals, social workers and lay counsellors before being chosen by the commission

"I was working in a legal aid clinic as a candidate attorney but the aims of reconciling formerly belligerent parties motivated me to join," said Nelson Bawetu from East London

Bawetu and his colleagues will act as a vital link between the TRC and communities. "We want to move away from the model of a detached commission that sits from a distance and decides on people's lives," said TRC executive secretary Paul van Zyl

The commission is committed to working with communities and hopes to train up to 400 statement-takers from non-government organisations and religious bodies

"We have realised there is no way that we will be able to gather the information we would like on our own, given existing staffing," Van Zyl said. "We want a partnership with organisations. We have a common interest and they can be a useful watchdog over our work. We are committed to openness: if a shred of evidence is buried, it will negate the purpose of the TRC"

However, Van Zyl warned there were tensions between openness and putting the victim at risk. In order to minimise such problems, the commission has developed protocols around statement-taking, amnesty and reparations to guide staff in their work

The training course covers the proto-

col forms, legal training and psychological preparation for the statement-takers and emphasises the importance of psychological sensitivity to the victims. Brandon Hamber, a psychologist, said "We need to get detailed information for statements but it must be a healing process for the victims"

Observing the training, it was clear that the statement-takers would after the course be well aware of the diverse approaches and pitfalls in their work.

A session on the styles and types of questioning in statement-taking illustrated how much they could shape a victim's story depending on whether they were controlling, intrusive or interrogative during the interview

All the statement-takers participated in role-plays, which were followed by an analysis of how they felt and responded. Although they will have to confront problems with logistics, legal constraints and people's feelings, statement-takers were encouraged to remain empathetic, and at the same time establish the key facts

"They are the human face of the TRC. They must know what the commission means, answer questions, and deal with people's fears and anxieties," Van Zyl said. The commission will organise refresher courses for statement-takers during its two-year duration, which will allow feedback on the TRC

After statements have been taken, they will be entered into the TRC's database, then basic corroborative work will be done to check their accuracy

Exhaustive examination

This will not be an exhaustive investigation but an attempt to confirm that what the victim has been saying is true. Select cases will be subject to further investigation by the 60 investigators employed countrywide

"We are confident the TRC will not become an emptying house for lies and slander. Alleged perpetrators will have the chance to make a rebuttal," said Van Zyl. The database will allow the commission to monitor patterns and strategic issues, tracking how many cases are being collected from particular geographic areas or groups

At the end of the day, the circle will always come back to the statement-takers. "They will do most of the work. They are the heart of the commission," said Hamber

● Contact the statement-takers at East London (0431) 43-2885, Cape Town (021) 24-5161, Jo'burg (011) 333-6330 and Durban (031) 307-6747

Clawing our way to a date with destiny

(252) Star 23/3/96

Constitutional negotiators have been urged to have a 'completely agreed' document within the next few days, just more than a month ahead of the final May 8 deadline for South Africa's new constitution. What's outstanding, where do the parties stand... and are they nearing agreement? **MICHAEL MORRIS** finds there are no simple answers, but a fair measure of optimism

There is no riot's guide to the constitution, nor to the tortuous business of constitution-making, a seasoned politician notes wryly. He speaks with some experience "When people ask me how it's going," he says, "I just give them the big picture. If you go into detail, they glaze over and you realise you've lost them to never-never land."

Indeed, for those who are forging the constitution, word by word, under the pressure of headlines, party principles and the strategies of dogged opponents, there must be times they wish they too could adopt the expedience of a glazed withdrawal. Instead, they must haggle, and haggle is what they have been doing these past few weeks with all the art, patience and oversight that this vital project demands.

Now and then legal experts advising the constitution makers have been able to find essential non-political solutions, simply tinkering with phrases.

Consensus

The adjustment of a few words, or the slight alteration of just one, might be enough to secure consensus or allay the concerns of a dissenting party without raising the objections of another.

This is partly because, as one African Party negotiator puts it, differences are often more apparent than real.

To the person on the street technicalities appear hardly worth argument. Yet these are details that will for years to come impinge directly on how we lead our lives.

This is especially true in key areas of dispute. Whether the courts or Parliament should interpret the right to life. Whether the right to strike could be balanced by a right to pick out. How strong property rights could be.

Who chooses judges, and how. What powers are delegated to provinces and how they might be overridden. How a second chamber of Parliament, to replace the Senate, should work.

Whether the state should pay for mother-tongue education and whether any languages should get special protection.

In all, there are about 80 issues unresolved - half a dozen in serious dispute, a little more than 50 that require decisions and 25 which need technical refinement.

Across the board - with the exception of the Inkatha Freedom Party - there is optimism that the deadlines will be met - not least, one suspects, because the prospect of an election is too glibly to contemplate.

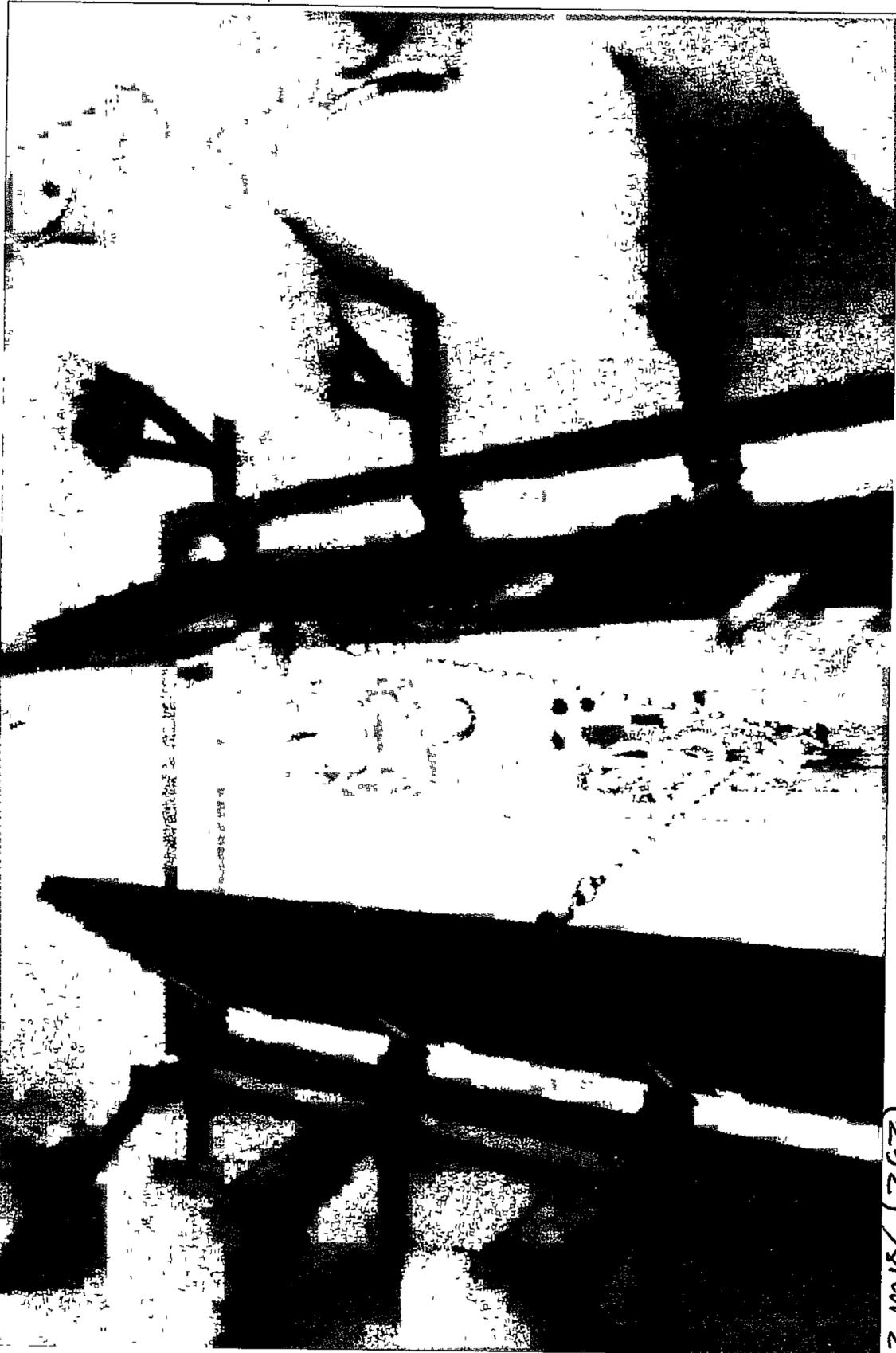
The Constitutional Assembly's management committee, while sticking to the May 8 deadline for adopting the final constitution, has agreed to two measures to sort out problems that might arise.

The first is that if the Constitutional Court finds that not all provisions of the new constitution comply with the constitutional principles, it must give its findings to the Constitutional Assembly, which will have another three months to fix the text.

The second gives the seven-member panel of experts 30 days to come up with compromises on the majority version of the final document if it is not passed by the required two-thirds majority of the 490 members of the Constitutional Assembly.

What is clear is that if Constitutional Assembly chairman Cyril Ramaphosa is to get the "completely agreed" document he wants by Wednesday, an exhausting few days lie ahead for the negotiators.

The cartography of the constitutional process matches the shifting terrain that it has been coming, yet the essential topography - the main features of the



DROP-OUT CLAUSE: The ANC sees little room for compromise in the constitution on the death penalty

On the death penalty, the ANC favours a right-to-life clause left to the courts to interpret

landscapes - is clear. One negotiator observed that it was sometimes virtually impossible, in the flurry of meetings between parties, to determine whether they were converging or diverging.

The ANC because, as one negotiator says, "one is trying to achieve a balance between security for people with property without entrenching patterns of land ownership established under apartheid." There is still some difficulty with this, but the "gap has been narrowed".

There has also been progress on a national council of provinces to replace the Senate, with the ANC seeking to accommodate other parties' concerns. It is now "pretty close" to agreement. The party is also confident of agreement soon on provincial powers, another big issue.

On the death penalty, the ANC favours a right-to-life clause left to the courts to interpret "according to circumstances". It does not see much room for compromise.

The ANC dismisses the right to lock out as having the same constitutional weight as the right to strike. On appointing judges, it wants the status quo retained - a balance between the Judicial Services Commission and the president - and rejects the "undesirable" suggestion that they be chosen by the president in consultation with leaders of the opposition parties, or by a 75% vote in Parliament.

For the National Party, the most difficult outstanding issues are the strike/lockout dispute, the death penalty and the property clause.

PHOTOGRAPH TJ LEMON

The Inkatha Freedom Party is concerned about what it describes as 'the race' to finalise the constitution

"We are not convinced they are as committed as they once appeared to be. They want a right to legislation for access to information, which is not quite as strong."

Nevertheless, there was a willingness to forge a compromise through creative wording. "Most of our arguments are about whether you have specific

limitations, or stick to general limitations. But we are trying to accommodate other parties which believe in special limitations where it's essential, such as outlawing hate speech."

Negotiators do not believe that any of the points should be considered "deadlocks".

The Democratic Party's key concerns are "getting a meaningful and justiciable Bill of Rights, a good judiciary to interpret them, the right balance of powers between central and provincial governments, and the right limit on the central government's power to override provinces".

Like the ANC, the DP believes the right to life should be left to the courts to interpret. Property rights remain a "thorny issue", but not an intractable one.

The DP is sticking to its guns on provincial powers.

Tangible

"We want provincial powers to be as extensive as possible, with limits placed on the central government's right to override them. We are the only party in the absence of the IFP, holding out on this one. The NP has capitulated."

Securing the principle of Afrikaner self-determination is the chief constitutional concern of the Freedom Front.

State-funded mother-tongue education is another concern. The FF believes this is part and parcel of internationally recognised rights.

On the property clause, the party believes there has been progress, but feels the protection needs to be strengthened.

It supports the proposal for a national council of provinces. On self-determination, it wants a tangible deal.

The IFP remains bitterly concerned about what it describes as "the race" to finalise the constitution. "It's a travesty after so many years of debate and apparent attempts to bring everybody on board," an IFP parliamentarian declared. "The deadline has been set and now everyone's simply determined to push it through. The concerns of the IFP are being brushed aside."

Constitutional negotiators have agreed that the issue of accommodating the IFP should be considered only if and when the party returns to the Constitutional Assembly.

Reliving ordeals will hurt

Support is there for victims of horror

PEOPLE who will relive traumatic and terrifying experiences when testifying to the Truth and Reconciliation Commission's first hearings in East London next month will receive psychological care and support

A member of the Commission's Reparation and Rehabilitation Committee, Dr Wendy Orr, was in the city this week to set up counselling centres to help victims of apartheid's crimes cope with their ordeals

Orr, the first to expose police torture of detainees in the 1980s, said the Rehabilitation Committee would make recommendations to President Nelson Mandela on long-term methods of helping people cope with their experiences

"But in the interim we need to support the victims that will be testifying at the hearings

"The hearings could be cathartic and healing but they will involve the reliving of traumatic and painful experiences," she said

"We can't just leave people to cope alone once the Commission has left town"

Orr said the counselling would take place mostly in

victim support groups run by volunteer lay counsellors and supervised academics and health department mental health workers

The lay counsellors, to come from churches and community and non-government organisations, would be trained for three days and work one day a week

She said the Commission team at the hearings would include "briefers" who would emotionally prepare those testifying and explain the hearing procedure

Afterwards, "debriefers" would provide whatever support and referrals were necessary

Orr said the Rehabilitation Committee would recommend that support was also available for the many people whose cases would not be heard because they fell outside the scope of the Commission

Commissioner Bongani Finca said, this week the Commission would only hear cases dealing with gross violation of human rights, torture, abductions, killings and "severe ill-treatment"

The Rehabilitation Committee would also establish "policy think-tanks" to guide the formation of long-term care centres for those traumatised by apartheid

Orr will meet with non-government and community organisations and churches to set up the counselling centres on April 26 in East London and on April 28 in Port Elizabeth - Ecna

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CP 24/3/96

Emotional (252) HRC launch

By WALLY MBHELE

ep 24/3/96

FEW PEOPLE could have suppressed a lump in their throats as solemn affirmations to protect fundamental human rights echoed in the Johannesburg civic centre as the Human Rights Commission (HRC) was inaugurated this week.

For it could not have been a more fitting tribute to 69 victims of the Sharpeville massacre who died during the violent history of South Africa's past.

The HRC launch, which coincided with March 21 – now known as Human Rights Day – became an attraction to an array of human rights activists, parliamentarians, cabinet and church ministers, ambassadors and judges.

Among them was Archbishop Desmond Tutu, deputy presidents Thabo Mbeki and F W de Klerk, Adelaide Tambo, senior advisor to the United Nations High Commissioner for Human Rights Brian Burdick and Mr Justice Albie Sachs, who lost an arm in "apartheid sponsored violence".

Taking an oath in their own languages before the Constitutional Court president, Mr Justice Arthur Chaskalson, nine commissioners swore to undertake their duties in "good faith, without fear, favour, bias or prejudice and subject only to the Constitution and the law".

In terms of the constitution, the HRC is mandated to help develop a culture of human rights in SA society.

Chairman Barney Pitso Moseneke said the HRC's task will include informing South Africans of their human rights and fundamental freedoms under the law, receiving and investigating complaints of violations of human rights and advising the government at all levels on the implementation of human rights.

Launching the event, Deputy President Thabo Mbeki told commissioners their work "cannot but be an effort to give concrete expression to the hopes and aspirations of all South Africans".

HRC tackles racism and 'witch' killings

By WALLY MBHELE

"STRUCTURAL racism" in South Africa and the increasing killings of alleged witches are two issues that will be given top priority by the newly formed Human Rights Commission (253)

At its inception on Thursday, commissioners expressed concern at racial incidents taking place in areas of the Northern Province - particularly in Potgietersrus

The commission's chairman, Dr Barney Pityana, said the Northern Province government had been contacted to find out what role the commission could play in reducing tension caused by racism

"We'll soon visit the

province to find out what our task could be in helping with reconciliation in that area," said Pityana

He said people had a need to be heard by the commission and mechanisms for complaints and investigation would be announced soon

■ Commissioner Pansy Tlakula said the increasing incidence of people - mostly women - being killed for alleged witchcraft was highly disturbing

CP 24/3/96
"Some of our traditions and customs do violate human rights," she said

"These are some of the general problems we are discussing with non-governmental organisations and the government"

Truth Commission seeks super-sleuths

By CHIARA CARTER

THE Truth and Reconciliation Commission is hunting for super-sleuths to join its investigating team

The political head of the commission's investigative unit, Commissioner Dumisa Buhle Ntsebeza, said the TRC had begun interviewing and screening local candidates to join the investigating team

However, the TRC fa-

ced a problem because some of the best SAPS detectives were already working on Third Force investigations in KwaZulu-Natal and Gauteng

"We don't have many high-calibre detectives in this country," Ntsebeza said

The commission intends operating teams of 12 investigators in each of its four regional TRC offices as well as a 12-strong national team

The TRC detectives

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will be drawn from the international community, the SAPS and the ranks of lawyers and retired investigators

The TRC also hopes to draw on the SAPS for technical assistance including specialised forensic detective work

Five international detectives have already joined the TRC

The five - Joop Pinackers, Jan Lueks, Cees Kooijmans, Erik Kjaergaard-Jensen and

Kaj Kristensen - have almost 150 years policing experience between them

Ntsebeza said the TRC investigators would not only verify claims made to the commission, but also initiate investigations

They would approach people named in submissions and give them the option of either making a full disclosure to the commission, or running the risk of later prosecution

Ntsebeza said the TRC would look at cases between March 1960 and December 1993 with a view to identifying themes of human rights abuse

It intended to work closely with the SAPS and meetings with SAPS management as well as the Ministry of Safety and Security had "gone well"

"Tensions were frankly debated and accepted," Ntsebeza said

Prying open the apartheid can

(252)

By CHIARA CARTER

TOP-SECRET information about cabinet and security council meetings during the apartheid era could soon be exposed - despite a 30-year embargo on public access to these records

The political head of the Truth and Reconciliation Commission (TRC), Dumisa Buhle Ntsebeza, confirmed this week that the TRC had asked the government for access to the country's top-secret files - including a range of sensitive documents presently protected from public scrutiny by the 30-year embargo

Ntsebeza said the commission wanted access to all files pertaining to its work, no matter how sensitive or secret these were

The TRC intended examining a variety of government documents - including files from the police, military intelligence and national intelligence, as well as presidential records and cabinet minutes for the period between 1960 and the end of 1993

"We want to see everything Archbishop Desmond Tutu has already approached the President's office about this," Ntsebeza said

"We know some of the security agencies' records were shredded - but we want to look at everything that remains"

■ Should the government agree to give the TRC unlimited access - as seems likely - the Commission would examine highly sensitive documents presently protected by the 30-year embargo

These include records of what went on at the highest tiers of government during the "Total Onslaught" era and the government of FW de Klerk - the very information De Klerk tried to keep from public view by slapping an additional 10-year embargo on cabinet minutes in April 1994

The embargo on state documents does not preclude their being made available for court cases - and embargoed State Security Council documents used in the Goniwe inquests and state documents being used in the Malan trial have already provided a peek into state secrets

But the TRC investigation is likely to go much further in unravelling the previous government's secrets - not least because the Commission aims to

CP 24/3/96
provide the public with as complete a picture as possible of human rights abuse between 1960 and 1993. Its findings will be made public

■ The commission is still to decide whether information it receives from submissions and its own investigations will be made available to the Attorney-General after the TRC completes its work

Ntsebeza said all people accused of human rights abuses would be approached by the TRC and advised that unless they made a full disclosure, they ran the risk of later prosecution

Informants would be guaranteed protection by the TRC, which intended linking up with the National Witness Protection Programme

... in which the press has expressed concern about the possibility of the TRC being used as a tool for political repression.

Hearings against attorneys 'opened'

Susan Russell

THE Transvaal Law Society council has decided to publish the findings of disciplinary hearings and the sentences imposed on attorneys within its jurisdiction found guilty of unprofessional conduct — despite a majority vote by its members against opening hearings to public scrutiny.

According to the April issue of the SA attorneys' journal *De Rebus*, an overwhelming majority of society members, who attended a special meeting in Pretoria in February to discuss the issue, voted against a council motion to open disciplinary proceedings to the public. The council motion was defeated by 103 votes to 40.

Despite this, however, the society council has opted to use its discretion to publish the results of disciplinary hearings, which it is empowered to do in terms of its own rules.

Society president Esme du Plessis told *De Rebus* that while the council accepted and respected its members' decision, it intended to disseminate more information regarding the present procedures for disciplinary investigations and hearings for the benefit of members and public alike.

At February's meeting the council took the view that anybody who had an

BD 28/3/96(252)
interest in attending a disciplinary hearing, including the Press, should be allowed to do so.

The views of a strong lobby against public hearings were articulated by Johannesburg attorney Allan Levin, who said that this would make attorneys vulnerable to abuse by the public and the media. Hearings should not be turned into what he called a "circus".

Supported by a number of colleagues, Levin also questioned the constitutionality of public hearings on a number of aspects, including infringement of a member's right not to incriminate himself.

Levin and his colleagues also claimed that other constitutional rights such as the right to privacy and economic activity could be infringed by public hearings.

However, Transvaal Law Society council member and Johannesburg attorney Ismail Ayob supported holding hearings in public, saying they should not be regarded any differently from civil or criminal hearings.

Ayob was supported by the new Association of Law Societies president Michael Pincock. He warned that the government might intervene and insist that lay members be appointed to disciplinary committees if the society did not open hearings to the public.

RETIRED LAW OFFICIAL APPEARS IN MALAN CASE

'Sick' Von Lieres' R12 000 pension outrageous — MP

CT 26/3/96 (252)

THE FORMER attorney-general of the Witwatersrand who retired on medical grounds is now appearing as a defence lawyer in the Magnus Malan trial **BARRY STREEK** reports.

THE payment of nearly R12 000 a month as a pension by taxpayers to one of the defence lawyers in the Magnus Malan murder trial, Mr Klaus von Lieres, was "outrageous", ANC MP Willie Hofmeyr said yesterday.

Von Lieres retired last year as attorney-general of the Witwatersrand on medical grounds yet he appeared well enough to take on an extremely long and difficult case, Hofmeyr said.

"I am gravely concerned that the early retirement of Von Lieres is estimated to cost the taxpayer nearly R750 000 in cash and R12 000 a month.

"Just about a year ago medical doctors found that he was unfit 'for his present occupation' and

that they 'advise immediate retirement due to permanent ill-health'.

Soon after his early retirement Von Lieres announced that he would be defence counsel for the alleged IFP hit-squad in the Magnus Malan case.

"I believe that Von Lieres owes the taxpayers of South Africa an explanation. How is it that he is now well enough to take on a long and difficult case? Was the medical finding correct or has he subsequently recovered from his ill-health?"

Hofmeyr said if Von Lieres was unable to give satisfactory answers, the Minister of Justice should investigate the matter and consider reversing the decision on Von Lieres' retirement if he was now



CONCERNED: Willie Hofmeyr wants satisfactory answers

able to resume his duties.

The state is also paying the defence costs in the Malan trial.

Justice Minister Dullah Omar gave details of the Von Lieres

retirement package in response to a question tabled in the National Assembly by Hofmeyr.

In the reply, Omar said no consideration had been given to reversing or amending the decision to allow Von Lieres to retire early as "the decision was taken on available medical evidence".

He also said the finance department had declined to give particulars about the retirement package on grounds of confidentiality, but as public moneys were involved he believed the public was entitled to the information.

His department had therefore calculated the amounts and estimated these to be about R219 291 for leave gratuity, R2 317 for pro rata service bonus, R520 798 for gratuity and a pro rata pension of R11 772 a month, Omar said.

Von Lieres said Hofmeyr should take up his concerns about his retirement with Omar.

Truth body agrees it has 'stumbled'

ET 26/3/96

(252)

THE Truth and Reconciliation Commission's deputy chairman, Dr Alex Boraine, saying the commission has "stumbled" in not launching a media campaign sooner, has acknowledged complaints about its failure to publicise its procedures

The Khulumani victims' support group in Gauteng has criticised the commission for failing to communicate effectively with human rights abuse victims

"There is increasing frustration among victims," Khulumani spokeswoman Ms Mag-

gie Friedman said "What is needed is a media campaign with advertisements that explain how the commission is working"

Friedman said the group was also pushing for more information on the commission's witness protection programme. Several Khulumani members had been intimidated

The South African Catholic Bishops Conference and Truth Commission nominee Father Michael Lapsley, who lost his hands and an eye in a letter-

bomb blast, came out in support of the Khulumani statement yesterday

"I as a victim don't know what process I must follow if I want to tell my story," said Lapsley, chaplain at a Cape Town trauma centre for victims of violence and torture

In response, Father Sean O'Leary of the SACBC's peace and justice department said "We have no materials with which we can educate the nation about the workings of the TRC. We need the material urgently"

Said Boraine "The criticism is justified and we are going to put it right"

He said the commission did not have funds for educational materials and was waiting for Justice Minister Dullah Omar to approve its 1996/97 budget

The launch of the media campaign had been delayed by problems in appointing a communications director. An appointment was to have been made last week, but the candidate withdrew at the last moment — Sapa

Leon warns ANC on property rights

David Greybe

HD 26/3/96 (252)

CAPE TOWN — DP leader Tony Leon warned yesterday that unless the ANC abandoned its hard-line position on a property clause in the new Bill of Rights, it was unlikely the new constitution would secure the necessary two-thirds approval in the Constitutional Assembly.

This comes after the ANC reneged on an agreement with the NP and DP three weeks ago to guarantee property ownership in the Bill of Rights.

The ANC about-turn was interpreted as reflecting serious divisions within the party leadership because of pressure from its constituency — notably Cosatu and the National Land Committee — to drop the property clause. The ANC and DP are to meet tomorrow to discuss the matter.

Leon told the DP's Gauteng council it was unnecessary for anyone to tamper with property rights in the interim constitution in order to achieve land reform or the restitution of rights.

However, sources at yesterday's talks depicted the latest round as "very constructive".

Technical experts attached to the parties and the assembly had been called in to try to resolve the issue of whether property would be "guaranteed", as proposed by the NP and DP, or "respected", as proposed by the ANC.

ANC and NP advisers were instructed to try to reach consensus on an exact formulation, which would then be put to experts. Technical advice was also being sought on other aspects.

Leon said the most contentious element was the ANC proposal that the protection of property "be held hostage" to land reform. "Property protection is further eroded by a range of factors which dilute the payment of compensation for expropriated property, including the ability of the state to pay and the need for land reform."

Leon said the ANC's proposals, if adopted, would allow a government to violate rights in respect of "the entire gamut of human ownership in property".

PAC split over Truth Commission approach

(252) Star 26/3/96

With Truth Commission hearings set to begin soon, the Pan Africanist Congress is divided over how it should approach the body.

The organisation says its political leadership and the high command of the former Azanian People's Liberation Army should make a joint submission to the commission.

However, Apla members serving prison sentences have indicated that they may want to go to the commission individually in order to secure amnesty for themselves.

"They feel that is the only way of securing their freedom," said a PAC member.

Other PAC members feel a submission by the PAC will not necessarily secure them amnesty and want to get legal opinion before they talk about their past.

This question is likely to be one of the hottest topics in the PAC's Bloemfontein congress next month when the party will have to decide on a common approach which will be binding on all members. Political Reporter

New Watchdogs

(252) AR 27/13/96

TYRONE SEALE of the Political Staff reports on the newest watchdog to snap at the heels of those who would violate human rights.

SOUTH Africa has two formidable instruments in the Supreme Court and the Constitutional Court when it comes to maintaining and protecting human rights.

However, it is still the duty of all South Africans to ensure that, where necessary, violations of their rights are brought to the attention of the courts.

Using this as a premise, the National Party has initiated the National Human Rights Trust, an autonomous institution the NP hopes will join the ranks of the Human Rights Commission, General Commission, Auditor-General and other protectors of newly won rights.

While the trust is an NP brainchild, party leader and Deputy President F W de Klerk has emphasised its autonomy and has pledged non-interference on the part of the NP.

The trust, comprising a seven-member board of accomplished lawyers, has undertaken to assist people with regard to the

protection and enforcement of their rights by, among other things, providing legal assistance in deserving cases.

*Promoting human rights and a rights culture in general through research, raising awareness on these issues, and participating in the human rights debate, and

*Monitoring the way in which the government protects and promotes human rights

Trustees are Johan Kruger SC, Francis Bosman SC, Jackie Kruger, Mmathoto Lephadi, Johann Marais, Romola Rapiiti and Danny Titus

In an address at the launch of the trust, Mr De Klerk said the new nation conceived by the founders of the new South Africa could not have been built on common culture, language and traditions, as were most other nations

"Our complex population and divergent histories and traditions made this impossible. Instead, it would be built on common values and aspirations in a new constitu-

tion that would be adopted by a process of negotiation, compromise and consensus

"The majority in a democratic system can always assure the protection of its interests through its control of parliament. This is not the case with minorities and individuals whose best or only recourse against majority domination will often be the entrenched rights that they enjoy in terms of the law and the constitution

"If they wish to preserve these rights, they will have to maintain great vigilance"

He said there was no room for complacency, now or after the adoption of the final constitution

It was essential that all those who were committed to the preservation of the constitution, regardless of their ethnic background or political affiliation, should join together in standing guard over the constitution, mobile public opinion in its defence and make use of the judicial and administrative mecha-

nisms provided for such protection

In this regard, the National Human Rights Trust had a critical role to play

Dr Kruger, chairperson of the board of trustees, said the trust could only play a meaningful role when and if it existed and functioned independently from pressure exerted by any organisation, political or otherwise

It was the task of the trust to keep the state to its obligations towards the citizenry in the protection and protection of human rights, and the trust offered its support to constitutional institutions supporting democracy, such as the Human Rights Commission, Public Protector and others that might evolve in terms of the forthcoming constitution

Much work still had to be done in the human rights arena, he said

This included research, education and creating opportunities for people to develop their understanding of human rights

and the provision of greater access to justice and the judicial system. "For a human rights system to obtain optimal effectiveness, the rights must be effectively enforceable, which presupposes that access to justice is indispensable"

He said the role mediation could play in resolving conflict should not be underestimated

Where formal litigation was unsuitable, impractical or impossible, mediation could still be an alternative course

*Any person or group suspecting violation of any of their rights, can approach the trust for assistance which will be lent if the trustees consider it suitable

Anyone wishing to approach the trust is requested to do so in writing

The address is The Secretary, National Human Rights Trust, PO Box 4265, Cape Town, 8000

Contact numbers are Telephone (021) 45 3613/5, fax (021) 461 7429

Leon sounds warning on Bill of Rights issue

Susan Russell

IF THE final constitution allowed for a horizontally enforceable Bill of Rights in private relationships between individual parties, it would open a legal Pandora's box with implications for business and the SA economy, lawyer and DP Gauteng leader Peter Leon said yesterday.

A horizontally applied Bill of Rights which allowed for legally enforceable actions between individuals would have a profound effect on the common law, on which most individual relationships were founded, said Leon. The law of contract would also be seriously affected, he said.

"Contractual performance will no longer be judged by tried and tested principles," he said, "but on whether or not the enforcement of such contract is discriminatory, arbitrary or contrary to the right of free association."

Leon was speaking at an SA Institute of Race Relations seminar which examined the implications for business if the current draft Bill of Rights was extended to apply horizontally; that is between private individuals, instead of limiting it to vertical application (protecting individual rights from state actions).

He described the 1993 constitution as liberal-democratic, as it was specific about the essentially vertical reach of the Bill of Rights.

"A Bill of Rights should essentially address the powers of government and not interfere

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with the rights of individuals in their sphere of private autonomy," he said.

"If the Bill of Rights were to be fully horizontal, no area of an individual's life would be free from its ministrations," Leon said.

He said constitutional democracies worldwide had recognised that fundamental rights should restrain the state, not enable it.

An example of how a horizontally applied Bill of Rights might impinge upon a relationship between private parties would be the case of an unsuccessful job applicant who might argue that in failing to give him the job the company concerned had infringed his right to equality.

The common law rules of contract enabling an employer to choose any applicant he considered the most suitable might no longer apply, and the disgruntled applicant would be able to sue for discrimination. It would be possible for the Human Rights Commission to pursue the case, using public funds, all the way to the Constitutional Court.

Leon said that as a lawyer he was strongly opposed to applying rights horizontally. If the state wished to interfere in private relations between individuals in an attempt, for example, to outlaw private discrimination, it should do so through legislation, he said.

Leon warned that the draft Bill of Rights in the hands of a "messianic and activist judiciary" would create a danger that SA would inherit a fully horizontal Bill of Rights.

Human rights database given to Truth Commission

ARC 28/3/96

(252)

JOHN YELD
Staff Reporter

A DATABASE containing details of more than 4 000 alleged human rights abuses - including murder, attempted murder, torture and abduction, together with the names of 4 800 victims and 1 300 perpetrators - has been handed to the Truth and Reconciliation Commission

The database, which took a year to assemble, is the work of a coalition of 13 non-government organisations, the Human Rights Documentation Project, commissioned by Justice in Tran-

sition head Alex Boraine, who is also deputy head of the Truth Commission

"The information was gathered from diverse and scattered records in the possession of human rights organisations and non-government organisations, previously kept in places like safes, bedrooms and outside the country," a commission spokesperson said

Four groups of researchers were contracted to compile the database and then work was co-ordinated by the Centre for the Study of Violence and Reconciliation at Wits University

Speaking at a ceremony during the handing over of the database to the commission, project spokesman Brandon Hamber said the groups' first task had been to locate relevant records

The second phase had been to develop a computer database, based on an international, standardised system

Mr Hamber said the issue of confidentiality was important and the commission had to recognise that the database was a source of information, not an official submission on behalf of victims

"Personal consent would have to be sought from each individual if the case was to be treated as a submission," he said

Commission chairman Desmond Tutu said he admired the "zeal and enthusiasm" with which the coalition had tackled the work

Decision on granting bail is up to the courts, says Dullah Omar

CLIVE SAWYER
Political Correspondent

(252)

ARG 28/3/96

A FINAL decision on whether those involved in taxi violence should get bail must be left to the courts, Justice Minister Dullah Omar said

He was responding to a call by Leonard Ramatlakane, Western Cape MEC for transport, for a tough approach to those allegedly involved in recent taxi violence

"The constitution does not allow me to give orders to the courts or to intervene in their work," he said

Mr Omar said the courts were independent and made their decisions on evidence before them

"With regard to bail applications, it is not possible for me or even the President to prescribe to the courts whether or not to grant bail," he said

Mr Omar said he was concerned

that in serious cases the courts should give consideration to the need of the community to be protected - and to refuse bail in appropriate cases

Recently-introduced legislation made it easier for courts to refuse bail. Where appropriate, the courts should use these powers

"Calling, in the media, for bail to be refused, without putting appropriate evidence before the court, does not help the court to exercise its discretion properly," he said

The Department of Justice would alert the Attorney-General to expect an approach from Mr Ramatlakane, he said

"I am opposed to bail being granted to people who commit serious crimes and who are likely to continue their violence

"The final decision is, however, at the discretion of the courts," Mr Omar said

Move to delay hearings

(252) BD 28/3/96

CAPE TOWN — The truth and reconciliation commission is to be asked to postpone its first public hearing on April 15 pending the outcome of a Constitutional Court challenge to the Promotion of National Unity and Reconciliation Act.

Attorneys acting on behalf of Azapo and the Biko, Mxenge and Ribeiro families said yesterday that if the commission ignored the request for the postponement, they would seek an urgent Supreme Court order to halt commission hearings.

Attorney Cyril Morolo said also he would ask the commission for a copy of former Vlakplaas commander Capt Dirk Coetzee's amnesty application in terms of the interim Constitution. — Sapa.

JUSTICE SYSTEM

W. L. S. R.

29/3/96

PROSECUTION IN THE DOCK

(252) FM 29/3/96
 The justice system faces a crisis. Intolerable working conditions, poor wages and resignations in the public prosecutor's office have forced the Department of Justice to re-employ staff on contract at R1 000 a day to complete prosecutions.

One attorney is being paid R1,3m to handle one case for the State — enough

FINANCIAL MAIL · MARCH 29 · 1996

to give each Deputy Attorney-General a salary increase of 25%.

These revelations are contained in a report by DP MP and justice spokesman Douglas Gibson. He says the average level of experience of public prosecutors in the Witwatersrand is about four months following a rash of resignations.

State Prosecutors' Association vice-chairman Rhyno Slabbert says prosecutors with little or no experience are trying complicated cases, often with catastrophic consequences. Even in simple cases, he alleges, criminals are freed.

Over the past 10 years, no more than half of all murders have resulted in prosecutions, let alone convictions. Gibson blames the underfunding of the police force and the inadequacies of the public prosecution system.

"If the Department of Justice's professed aim of 'establishing and expanding the legitimacy and integrity of the administration of justice' is to be realised, it is essential that the public prosecution system receives a massive injection of funds," he says.

"The future depends on the control of crime. The explosion of criminal activity and the effect this is having, and will continue to have, on confidence, investment and growth should place the funding of the police force and the public prosecution system on top of the list of priorities.

"Government has not yet shown a willingness to do this and its response to the crisis has been tepid."

The integrity of the system was dealt a further blow this week with the revelation that former Witwatersrand Attorney-General Klaus von Lieres, who retired last year due to "irreversible ill health" with a substantial payout and a monthly pension of almost R12 000, has miraculously reappeared in Durban as a defence lawyer in the Magnus Malan murder trial. The State is paying the defence costs.

Private lawyers can earn in one month close to what senior public prosecutors earn in a year. A senior advocate in the private sector can make as much as R90 000 in a month, senior State prosecutors earn R107 019 a year.

A Department of Justice survey has found that in the former Transkei and Ciskei, cattle stray into court houses, record rooms are used to store rubbish, safes have no keys or doors and there's no running water or electricity. Staff work in cramped conditions, with as many as three prosecutors to a desk, and

all courts need maintenance.

Public prosecutors work overtime for no extra remuneration and may be transferred to other parts of SA at any time.

It's hardly surprising, therefore, that affirmative action is failing to attract large numbers of black lawyers to the public prosecutor's office.

Justice Minister Dullah Omar was unable to respond to questions regarding Gibson's report at the time of going to press. He was still waiting for his department to supply him with information. The department received the FM's questions last week.

Responding to a DP question in the National Assembly on March 20, Omar acknowledged that there were staff shortages but only in the Witwatersrand and Pretoria AG offices.

"It's not a new problem," Omar replied, "which has arisen now. I do think that with salaries improving, as we hope they will in the course of this year, and as greater clarification is effected with regard to promotion prospects and also the application of our affirmative action policies, the position in those offices will be satisfactorily resolved." ■

commission to split into groups to attend hearings countrywide for the remaining 20 months. Extending it would require amending the Promotion of National Unity & Reconciliation Act.

The commission's main arm is the Committee on Human Rights Violations, comprising 10 commissioners and at least three other nominees. It will deal mostly with evidence from victims and co-ordinate probes by the investigative unit.

The five-member Committee on Amnesty will handle amnesty applications, the seven-member Committee on Reparation & Rehabilitation will consider applications for reparation and make recommendations to parliament for appropriate action.

The commission has received more than 2 700 amnesty applications, which could rise as new evidence of politically motivated human rights violations are unearthed.

The period under review covers March 1960 to December 1993. Already 15 000 files on alleged human rights violations have been opened by the Human Rights Documentation Project. The information is stored on a computer database.

The commission has drawn up a R70m budget for year one (which must come out of Justice's budget). This is R15m more than earmarked — which suggests yet another growing bureaucracy. ■

TRUTH COMMISSION

29/3/96

THE BURDEN OF TRUTH

(252) AM 29/3/96

Controversy over the ANC-NP compromise giving equal weight to crimes committed on both sides of the apartheid struggle is likely to hot up when the Truth & Reconciliation Commission starts public hearings in April (see *Leading Articles*).

The ANC's decision, meanwhile, to renounce temporary immunity from prosecution enjoyed by more than 70 of its leaders and to open its books to the commission is a shrewd shot across the bows of the NP, which had complained that its former leaders such as Magnus Malan were not protected from prosecution to the extent of ANC leaders.

Having used up three of its 24 months on administrative preparations, the commission is struggling to get going. There are doubts that it can complete its work by the statutory deadline of December 1997.

The first hearing, in East London, has had to be rescheduled several times and is now set for April 15-18. Thereafter, the commission will move to each of its three other centres: Cape Town from April 22, Johannesburg a week later and Durban from May 6.

Officials then expect the 17-member

Now Ribeiro family joins fight against truth Act

(252) *sowetan*
By Mzimasi Ngudle

29/3/96

THE Ribeiro family has joined the Mxenge and Biko families in challenging the constitutional validity of the Promotion of National Unity and Reconciliation Act

Mr Chris Ribeiro, son of the late Dr Fabian Ribeiro, who was killed together with his wife Florence in 1986, said he had instructed the lawyer representing the Mxenge and Biko families to add his family as co-applicants

The lawyer, Mr Cyril Morolo, yesterday confirmed that the Ribeiro family were the fourth applicants to challenge the Act

The others are the Azanian People's Organisation, Mr Mhleli Mxenge, brother of slain activist lawyer Griffiths Mxenge, and Mrs Ntsiki Biko, widow of the late Black Consciousness leader Steve Biko.

Application

Morolo said the application would be filed with the Constitutional Court early next week.

In a letter to Justice Minister Mr Dullah Omar, Morolo objected to the minister's suggestion that the Biko and Mxenge families should appear before the Truth Commission to contest amnesty applications by the killers of their next of kin

The applicants will ask the Constitutional Court to declare the Act invalid

Also they will seek an order that all activities in terms of the Act should cease forthwith.

Truth body gets

Special database

(252) Rowenhan 29/3/96

Names of perpetrators from many sources can be accessed



Archbishop Desmond Tutu ... the Truth Commission received a data base of 10 200 files.

By Wagheed Mlsbach
Political Reporter

A MASSIVE DATABASE OF 10 200 files - including entries on perpetrators of apartheid violations, victims and various political events - was handed to the Truth and Reconciliation Commission in Cape Town on Wednesday

The database was compiled last year by the Human Rights Documentation Project, which consists of various non-governmental organisations

The information was compiled from various sources, including advice offices, paralegal statements, compiled documents like United Nations records, newspaper clippings and other sources

The information was then compiled into a database according to an international system used by international human rights organisations, and modified for the South African context

The information was entered under three specific headings: the names of perpetrators (1 300 files), names of victims (4 800 files) and various political events (4 100 files)

The database can now be used as a reference system by the TRC. For example, if a victim or perpetrator comes forward, their names can be accessed immediately if they have been entered as part of the database

Confidential

The information, however, is confidential and permission would have to be sought from individuals if their files are to be presented as evidence in the TRC's hearings

The coalition will retain a copy of the database as part of its record to monitor how the TRC uses the information, and will also be used for

making submissions to the TRC on various issues, including violence against women

The organisations that helped to compile the information included the Independent Medical Legal Unit in KwaZulu-Natal, the Legal Resources Centre in Port Elizabeth, the Mayibuye Centre in Cape Town, the Institute for a Democratic South Africa in Pretoria and the Centre for the Study of Violence and Reconciliation in Johannesburg

Other organisations that participated are Centre for Applied Legal Studies, South African History Archives, South African NGO Network, Human Rights Committee, Independent Board of Inquiry into Informal Repression and Lawyers for Human Rights

In each of the regions the NGOs were assisted by seven other NGOs

INTREPID IMPARTIALITY VITAL FOR TOUGH CHALLENGE

Looking back without favour

The start of the Truth Commission's first hearings next month marks the launch of its immensely difficult task of establishing "the truth" about decades of divisive conflict and thereby promoting national unity and reconciliation. The commission is headed by Anglican Archbishop Desmond Tutu and its mission is premised on the biblical promise "The truth shall set you free."

Whether that religious aphorism applies in the political domain as distinct from the spiritual plane is debatable. There are those who contend that to dwell on the past merely opens up old wounds. As former Uruguay President Julio Sanguinette — who presided over that country's transition from military to civilian rule — has observed "The bottom line is that either we are going to look to the future or to the past."

Much will depend on whether the commission's search for, and application of, "the truth" is guided by impartiality.

The commission is charged by the enabling law, the Promotion of National Unity & Reconciliation Act, with fulfilling three interrelated objectives:

- Establishing the truth about "gross violations of human rights" with due observance of fair procedures,
- Granting amnesty for politically motivated crimes to people applying for it, provided the applicants fully disclose the facts surrounding the crime, and
- Hearing appeals for reparation from victims and making appropriate recommendations to a special parliamentary committee.

To fulfil these aims, the commission is empowered to establish three separate committees: one for human rights violations, another for amnesty and a third for reparations.

The commission faces colossal problems. It must establish "the truth" about human rights violations over nearly 35 years (from March 1 1960 to December 5 1993) within two years. As historians

know, discovering "the truth" about the past is a complex and protracted process. The truth varies according to the underlying assumptions of those seeking it, the questions they ask themselves, the date they undertake their odyssey and the evidence available to them at the time of their inquiries.

These logistical and philosophical questions aside, the commission's task is complicated by more mundane factors.

Justice Minister Dullah Omar's interventions constitute one of these.

He abhors the idea of equating the violations committed in the fight against apartheid with those perpetrated in defence of the system, noting that apartheid was declared a "crime against humanity" by the UN

General Assembly in 1973 and endorsed in a later UN convention in 1976.

Hermann Giliomee of the Institute of Race Relations has noted that the UN decisions were supported by countries under the sway of the former Soviet Union, only to be accused by Bishop Peter Storey of the Methodist Church of "hair-splitting." Leaving aside that debate, Omar's public interjections are inimical to the commission's mandate to proceed impartially in its quest for the truth.

Whether Omar means it or not, his opinion has been interpreted by many South Africans as an attempt to urge moral favouritism on the commission. His refrain has since been endorsed by ANC deputy secretary-general Cheryl Carolus.

Omar's view echoes an ANC statement, issued in August 1993 after the Motsuenyane Commission confirmed that detainees in ANC detention camps had been subjected to beatings and torture, detained incommunicado, denied medical treatment and perhaps even executed.

(252) FM 29/4/96 29/3/96
The ANC statement is noteworthy for two reasons: it propagated the establishment of a truth commission for the first time and partly exonerated its security department — *Imbokodo*, "the boulder that crushes."



Desmond Tutu truth as a path to reconciliation

After acknowledging the "outstanding work" of its security personnel in protecting the leadership and organisation, it says "They were defending not an evil system but a movement dedicated to democracy. The sad story unveiled (in the Motsuenyane report) represents just a fraction of their role in difficult years."

In his critique of Omar's stance, Giliomee commends a different yardstick with which to approach past brutalities that adopted by his

hero from SA's past, Andries Stockenström, the 19th Century magistrate who sought to adjudicate without fear or prejudice in the frontier wars.

Stockenström's declaration is worth quoting: "I am not called here to please either (white or black), I have the cause of truth to serve. I am to call *murder, murder* and *plunder, plunder*, whatever be the perpetrator's skin." It is a maxim which the FM commends to Tutu's commission.

Giliomee has expressed another reservation about the Truth Commission. He reckons that its 17 members are too heavily "pro-struggle." For that reason, he predicts the military commanders who fought against the ANC will be disinclined to appear before the commission or any of its subcommittees.

Bishop Storey, though, draws a distinction between "moral neutrality" and "impartiality," defining the first as a "suspension of conscience" and the second as a willingness to fairly "weigh the facts."

Moral neutrality is not a prerequisite

for membership of the commission, Storey says, apparently agreeing with Omar that it is "absurd to suggest that there is a moral equivalence between fighting to preserve white Afrikaner minority dominance and struggling to free South Africans of all races from oppression"

But, he adds, impartiality is indispensable to the success of the commission

Storey elaborates "Fighting for a just cause against an evil system does not lessen moral responsibility, if anything, it makes that responsibility more onerous"

Where (atrocities) occurred within the liberation movement, they, too, must be exposed because the use of such means was a denial of the ends for which they were fighting"

The Truth Commission must certainly probe the brutalities committed by the former regime's security forces But its composition — the chairman, deputy chairman (Alex Borrairie) and the majority of its members appear to incline to the ANC, politically speaking — means that the true test of its independence and impartiality will be its approach to the moral lapses of the ANC and its allies

The apparently inexplicable exclusion from the final list of commission members of the president of the Methodist Church, Stanley Mogoba, adds to the commission's burden, the more so because Mogoba, a former Robben Island prisoner has not been afraid to criticise the ANC

To prove its impartiality, the commission will have to examine ANC bomb attacks where civilians were the main victims The Pretoria car bomb of May 1983, in which 19 civilians were killed, comes to mind So, too, do the attacks on Wimpy bars frequented by men, women and children of all colours

The responsibility of top ANC men for these attacks, from former ANC president Oliver Tambo downward and certainly including former *Umkhonto we Sizwe* commander Joe Modise, will have to be seen to be scrutinised

Inquiry into torture and execution of prisoners in ANC detention camps in Angola cannot be excluded from the commission's investigations if its impartiality is to be established beyond doubt

The ANC-initiated inquiries, particularly the investigations headed by James Stuart and Louis Skweyiya, need to be reassessed in the light of the commission's mandate to promote unity among all South Africans

The Stuart Commission is important because it examined the events leading to mutiny in ANC military camps in Angola and concluded that *Imbokodo* excesses were a major cause It records "some of those punished have been maimed and scarred for life There have even been deaths The bitterness and hostility in the men is great Many identify our methods with that of the Boers and, in some cases, feel that we are worse"

On the question of whether the mutiny was the work of a few "enemy agents," the commission states that the "majority of comrades in every camp" were involved It is a damning judgment for the ANC leadership

The Skweyiya Commission findings are equally pertinent It speaks of an "extraordinary abuse of power and lack of accountability" and "staggering brutality" in the camps One of its recommendations bears repeating "No person who is guilty of committing atrocities should ever again be allowed to assume a position of power"

But the Marxist journal *Searchlight South Africa* notes "Such a cleansing of the stables has yet to begin"

Since release of the Skweyiya report, the ANC has stalled, first appointing the Motsuenyane Commission, then calling for the establishment of a truth commission Tutu's commission has a duty to spell out in detail who committed atrocities

It can start with the list of names submitted to President Nelson Mandela by the Skweyiya Commission

The Truth Commission must, moreover, fulfil a duty avoided by the ANC-appointed commissions determining who was politically responsible for the brutalities in the camps

Fear that the Truth Commission will focus disproportionately on violence com-

mitted by agents of successive National Party governments is matched by an almost diametrically opposite apprehension that it will be too lenient on the political masters and bullyboys of the apartheid State

In an article in *City Press* Azapo deputy president Pandelani Nefolovhodwe criticised Omar for his role in drafting the enabling law for the Truth Commission, contending that it provides "equal treatment of the 'perpetrators of evil' — a reference to those responsible for apartheid — and those who fought for 'equality, freedom and justice'"

Nefolovhodwe wants to see the "perpetrators of injustice and brutality against humanity" brought to court rather

than offered amnesty He denies if Azapo and the victims are seeking revenge, explaining "Those who seek revenge do not do so through the law and the courts They usually take the law into their own hands"

His attitude is shared by the families of some of the victims of apartheid agents They include those of Griffiths Mxenge, the human rights lawyer who was murdered by police assassins in 1981, Jeanette Schoon, who was killed with her daughter in a parcel bomb explosion in 1984, and Steve Biko, the black consciousness leader who died in detention in 1977 after "a scuffle" with his police interrogators

The clause in the Promotion of National Unity & Reconciliation Act which frees a person who has been granted amnesty from criminal and civil liability for his actions is a particular focus of opposition The Mxenge family plans to challenge, in the Constitutional Court, the validity of the clause, arguing that the clause denies it the constitutional right to legal redress

After reflecting on the situation from a German perspective (which includes the Nuremberg trials of the Nazis and later prosecution of communist leaders and officials of the defunct German Democratic Republic), Gerhard Werle, of Humboldt University, Berlin, offers a third view "(SA) has chosen a path between the extremes of heedless prosecution and blind amnesty"

That will require fine balance and mindful purpose, for truth, in all its complexities, is cardinal to morality ■



Pandelani Nefolovhodwe



Hermann Gilhovee

NGOs want to help TRC

Rowe 29/3/96

(252)

Political Staff

A COALITION of non-governmental organisations approached the Truth and Reconciliation Commission yesterday about setting up a formal partnership around training, psychological help and support for the commission.

Eighteen NGOs in Gauteng, including church, counselling and human rights groups, met in Johannesburg this week to develop a collective response to the TRC.

They decided to send TRC chairman Archbishop Desmond Tutu a letter requesting a workshop with the commission by the end of April to develop proposals on precise areas where the NGO coalition and TRC could work together.

"We are one of the major access points to people the commission wants to reach. They need us and we need them," said Mr Carl Stauffer of the Wilgespruit Fellowship Centre.

He said the NGO coalition hoped to see the resources of the commis-

sion being used in a way that will outlive the TRC, for example, by establishing resource centres for victims.

The NGO Coalition in Gauteng has many services to offer the commission, including psychological and legal skills. They have agreed the Centre for the Study of Violence and Reconciliation will liaise with the TRC in Johannesburg.

● The NGO TRC coalition meets every Monday. Contact Mofokeng at (011) 403-5650.

Women take the lead in the HRC

By Pamela Dube
Political Reporter

ADVOCATES of women's rights must be celebrating their victory in ensuring that women have taken the lead in shaping the human rights culture in South Africa.

When the Human Rights Commission (HRC) was officially launched last Thursday, six of the 10 commissioners who were sworn in by Constitutional Court president Mr Justice Arthur Chaskalson, were women.

More significantly, strategic posts at the HRC headquarters in Johannesburg have gone to women as well.

Critical positions are in the hands of chief executive officer Ms Louisa Zondi and Ms Sheila Hughes, who is the commission's communications officer.

And while some academics like Professor Dennis Davis might question the qualifications and credibility of the commissioners, the women - like their male colleagues - are no doubt people of reputable standing.

The only misgiving is that eight of the commissioners are known for their association with the African National Congress - a possible threat to the commission's apolitical image.

Below are brief backgrounds of the 10 commissioners who for the next seven years will be promoting and monitoring the observance of human rights as enshrined in the chapter on Fundamental Rights in the interim Constitution.

Dr Barney Pitso, chairman:

An advocate and theologian, Pitso was one of the founder members of the Black Consciousness Movement. He went into exile in 1978 after several years as a student leader while in exile - he spent 10 years in England and Switzerland - he was ordained an Anglican priest.

For nearly five years, he was the director of the World Council of Churches' Programme to Combat Racism in Switzerland. **Shirley Mabusele deputy chairman.**

A qualified social worker,

Mabusele worked as a children's rights activist for the Johannesburg Child Welfare Society for 16 years.

Mabusele joined the Children's Foundation as deputy director and was appointed executive director of the national Children's Rights Committee.

Dr Max Coleman:

Coleman obtained a B Sc in Chemical Engineering in 1948 from Witwatersrand University and two years later gained a doctorate from London University.

In 1981, he founded the Detainees Parents Support Committee. After it was banned in 1988, he helped to establish the Human Rights Committee for which he was national chairman until March 1994.

Anne Rouiter:

Rouiter is a National Party (NP) member and served in several structures of the previous government. From 1991 to 1992, she was an NP delegate to the Codesa negotiations, while also serving as the NP government spokeswoman on the Gender Advisory Committee.

Pansy Tlakula:

A former director of the Black Lawyers Association, Tlakula lectured in law at the University of Bophuthatswana from 1985 to 1993.

She is a graduate of the University of the North, Witwatersrand and Harvard University in the United States and is an advocate of the Supreme Court.

Brigalia Bam:

The general secretary of the South African Council of Churches is a qualified teacher and social worker.

A graduate of the University of Chicago in the United States, Bam worked for several years for the Young Women's Christian Association locally and had a stint in Switzerland at the World Council of Churches.

Helen Suzman:

A well-known figure in South Africa's white opposition politics since the 1950s until her retirement in 1994, Suzman began as an Economics History lecturer at Witwatersrand University. Her first award was the United

Nations Award for Human Rights in 1978. She has received 24 honorary degrees from universities in South Africa, United States, United Kingdom and Canada.

Rhoda Kadahle:

An academic in anthropology and women's studies, Kadahle lectured for 16 years at the University of Western Cape.

Boasting a BA Honours in Anthropology and a Masters in Women's Studies, which she obtained in the Czechoslovakia, she is a well-known writer on gender politics in South Africa. She has published papers nationally and internationally on the subject.

Kathy Govender:

An associate professor and acting head of the department of Public Law at the University of Natal, Govender comes to the HRC to cater for the troubled KwaZulu-Natal.

An associate member of the Durban bar, Govender also does mediation and arbitration for the Independent Media-



Brigalia Bam and Charles Dlamini ...

tion Services of South Africa

Charles Dlamini:

This Senior Counsel is an advocate of the Supreme Court of South Africa.



... promoting and monitoring human

PICOS ANTONIO MUCHAVE

He was Dean of the Faculty of Law at the University of Zululand and was appointed Registrar (Academic Administration) before becoming rector and vice-chancellor in 1993.

'Best bet is truth body'

(252) Sowetan
By Waghied Misbach 29/3/96
Political Reporter

THE "best bet" for the Biko family to uncover new information or to initiate further investigations into the death of Black Consciousness Movement leader Steve Biko would be to appear before the Truth and Reconciliation Commission (TRC)

This is the view of Dr Alex Boraine, the TRC's deputy chairman, who was speaking at a Press conference at the body's head office in Cape Town yesterday. Boraine was responding to recent reports that Biko's widow, Nontsikelelo, opposes the TRC

Biko also rejected suggestions from Justice Minister Mr Dullah Omar to oppose the amnesty applications by her husband's killers. Boraine said that there was no court case pending in terms of the matter and the family could reopen the case if it so wished

Civil claim

Commissioner Dumisa Ntsebeza said a civil claim was filed after Biko's death and that the matter was settled out of court and a "large sum" of money paid

"So it is not as if nothing has happened, but the Biko family could possibly seek criminal prosecution," Ntsebeza added

Archbishop Desmond Tutu said while there was high-profile opposition to the TRC, there were well known individuals who supported the commission

Apartheid victims rushing to tell of old injustices

By WILLIAM-MERVIN GUMEDE
(252)

The Gauteng office of the Truth and Reconciliation Commission has been inundated with applications for amnesty and requests from victims wanting to tell their stories, commissioner Dr Faizel Randerera said this week. The commission's first hearings in the province are planned for April 15.

Randerera, said the commission was now setting up the necessary infrastructure, and training its staff to handle the complex process of taking statements.

The commission's Gauteng office has a complement of six commissioners and has three basic divisions - human rights violations, amnesty and reparations. The staff includes investigators drawn from the South African Police Services, civilian detective units, and administrative and research staff.

Briefings

Its jurisdiction covers all the areas that used to fall under the old Transvaal province - Mpumalanga, North West Province and Northern Province.

"We are giving briefings throughout the province - talking to the public, community leaders, church structures, non-governmental organisations, trade unions and political parties to explain the commission's purpose and to draw them into the process as well," Randerera said.

A centre to support victims of human rights abuses has been set up in Johannesburg and will start operating on Monday. The Khulumani Support Group, based at the Centre for the Study of Violence in Montfontem, will help survivors and families of victims to prepare their submissions to the commission by collecting hospital reports, inquest reports, subpoenas and other documents to build their cases.

"Victims need to make their submissions with care, given that these could affect amnesty applications and also have a bearing on the reparations that may be granted to them," said Traggy Maepa, a representative of the support group.

R18m was 'set aside for Pact's inner circle'

By IVOR POWELL

PACT'S new brooms will sweep up about R20-million this week when an investigation into alleged irregularities in the old administration's affairs is released.

Auditors and investigators are scrutinising two special trust funds, from which senior staff were paid huge voluntary retirement packages — in addition to their normal pension payouts. The funds could involve up to R18-million in taxpayers' money.

The Sunday Times understands there is also a dispute about R2-million that "went missing" last year in the transition from the old board and management to the new order.

Pact's newly appointed chief executive officer, Alan Joseph, confirmed this week that the books of the arts council's previous management were being examined, but declined to comment further. He said all would be disclosed this week.

Pact's board set aside R14-million for a general employees fund — although many of the supposed beneficiaries were unaware of the fund until this week.

In addition, a separate fund was established for the benefit of Pact's 10 senior managers.

At the top end of the retrenchment deal, managers received a severance package amounting to 12 months on full pay, and pension contributions and medical aid for a year. Pact would also pay the balance on outstanding instalments on cars bought under its car-lease scheme.

As far as the first fund is concerned, documents show that in May last year the outgoing Pact board allocated R14-million to "arrange financial security" for employees who voluntarily resigned between April and September that year, or

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who were forced to leave through "intimidation, violence" or other potential hazards of new structures being set up.

These employees would be eligible for payouts calculated according to six months' full salary and Pact's pension contributions for that period.

But only the inner circle knew that the funds were available. Although scores of employees left Pact in the reshuffle, sources allege that only a handful benefited from the scheme.

Many learnt of the supposed benefits only this week at a meeting called by Mr Joseph to announce the investigation.

However, the Performing Arts Staff Association of SA had called a dispute in November when the funds came to light after a new committee headed by Monty Schippers, the present chairman, was formed.

Like many of his colleagues, Mr Schippers had previously been in the dark about the fund.

"We believed it constituted unfair labour practice, so we took action against management," Mr Schippers said, though he declined to comment further.

Although senior management was included in the general employees' fund, the second, turbo-charged, fund was established for 10 senior managers.

This was done on August 24, four months after the general employees fund, "on instruction from the council's board" — although only the 10 beneficiaries and the former chief executive, Louis Bezuidenhout, signed the relevant papers. Only five senior managers availed themselves of the packages; the others chose to stay on at Pact.

Mr Bezuidenhout's name is not included on the list of the 10 whose contracts were amended for the severance package.

Department/Organisational Component	Number of posts created during 1995	Number of posts abolished during 1995	Net result
Department of Agriculture	70	807	-737
Department of Arts, Culture, Science and Technology	14	3	11
Department of Constitutional Development	245	244	1
Department of Correctional Services	4 720	61	4 659
Department of Defence #	32 581	14 214	18 367
Department of Education @	5	0	5
Department of Environmental Affairs and Tourism	440	12	428
Department of Finance	12 320	12 303	17
Department of Foreign Affairs	35	16	19
Department of Health	2 539	7 988	-5 499
Department of Home Affairs	6 386	6 500	-114
Department of Housing	292	341	-49
Department of Justice	52	64	-12
Department of Labour	5 907	6 111	-204
Department of Land Affairs	1 165	742	423
Department of Mineral and Energy Affairs	177	3	174
Department of Public Works	22	19	3
Department of Safety and Security	108	0	108
Department of Sport and Recreation	7	2	5
Department of State Expenditure	1 150	1 218	-68
Department of Trade and Industry	69	50	19
Department of Transport	14	4	10
Department of Water Affairs and Forestry	144	17	127
Department of Welfare	28	45	-17
National Intelligence Agency *			
Office of the Minister for the Public Service and Administration	130	0	130
Office of the President	63	4	59
Office of the Public Service Commission	0	34	-34
Provincial Administration Eastern Cape	information not available in indicated time frame		
Provincial Administration Free State **	36 812	35 703	1 109
Provincial Administration Gauteng	12 813	13 203	-390
Provincial Administration KwaZulu-Natal	information not available in indicated time frame		
Provincial Administration Mpumalanga	178	6 601	-6 423

Department/Organisational Component	Number of posts created during 1995	Number of posts abolished during 1995	Net result
Provincial Administration Northern Cape			
Provincial Administration Northern Province			
Provincial Administration North-West			
Provincial Administration Western Cape			
South African Secret Service *			
Central Economic Advisory Service	0	0	0
Central Statistical Service	21	25	-4
Office of the Executive Deputy President	23	10	13
Office of the Executive Deputy President from the Largest Minority Party	11	2	9
Office for Public Enterprises	39	39	0
South African Communication Service	42	14	28

* The relevant information is classified and has not been made available

Includes 16 293 integration posts to accommodate the ex MK/Apla soldiers

** Includes the posts received from the previous dispensation—information could only be supplied for the period 1 July 1994 to 29 February 1996

@ 16 623 posts were abolished at the education and culture services of the ex-Administrators (House of Assembly, House of Representatives, House of Delegates) as well as the Department of Education and Training. On 1 July 1995 these posts were all added to the establishment of the national Department of Education—will in due course be allocated to the provinces

Truth and Reconciliation Commission amount budgeted

119 MR K M ANDREW asked the Minister of Justice

- (1) (a) What amount is to be budgeted for the Truth and Reconciliation Commission for the duration of its lifespan, (b) how many (i) members of the Commission and (ii) other specified staff members are employed by the Commission, (c) what annual salary is being paid to each of the (i) members of the Commission and (ii) staff members of the Commission and (d) from which premises is the Commission currently conducting its operations,
- (2) whether the members of the Commission and/or staff members are entitled to any (a) car, (b) travel, (c) subsistence and/or (d) other specified allowances, if so, what allowances in each case,

The MINISTER OF JUSTICE

(1) (a) The budget for the 1996/97 and 1997/98 financial years is R75 million each

(b) (i) Section 7(1) of the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995)

N2291E

ment been honoured to date, or has there already been a deviation?

The MINISTER FOR PUBLIC ENTERPRISES Madam Speaker, I think that a question arising from my answer will only be meaningful once the hon member has read my reply

Ministers

New questions

Generals, "third force" activities

*1 Mr D H M GIBSON asked the Minister of Justice

- (1) Whether an official investigation has been undertaken into the alleged involvement in "third force" activities of certain generals, whose names have been furnished to his Department for the purpose of his reply, if not, why not, if so, (a) what stage has the investigation reached and (b) when is it anticipated that the investigation will be completed.

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

N250E

The MINISTER OF JUSTICE

- (1) Yes The alleged involvement of persons, including certain generals, forms part of ongoing investigations conducted by a Special Investigation Team headed by the Attorney-General of the Transvaal

(a) and (b) The matter has been discussed with the relevant Attorney-General. Due to the difficulties inherent in investigating covert matters and to staff shortages (professional staff and police investigators), it is not possible to give a prognosis at this stage as to when the investigation will be completed

- (2) As the matter relates to certain pending prosecutions, no statement is envisaged at this stage

Mr D H M GIBSON Madam Speaker, arising out of the hon the Minister's reply, may I ask him whether he is satisfied about the fact that the allegations of the Goldstone Commission against Generals Basie Smit, Krappies Engelbrecht and Johan le Roux, which are now more than three years old, have still not been brought to court?

dence the Minister will no doubt confirm was based on a single witness who was then a junior officer

What steps is the hon the Minister taking to ensure that the three generals, or former generals, concerned are either brought to trial or have their names cleared, given that he has told us this afternoon in Parliament that every attorney-general's office outside the former Transvaal is running at more or less full capacity? Is it not in the interests of both the nation and, indeed, the persons concerned to second sufficient personnel to ensure that this matter, which arose in 1994 and generated a huge amount of international publicity three weeks before the general election, is brought to a conclusion one way or the other?

The MINISTER Madam Speaker, that is another example of DP opportunism

Mr A J LEON Oh, you would know! [Interjections]

The MINISTER I am not in a position to answer those questions because they have not been put to me

Mr A J LEON But they are consequential on what you have been asked

The MINISTER Now that the hon member has asked those questions, I will look into the matter and I will furnish him with a reply

Atomic Energy Corporation: dismantling

*2 Mr M VAN S HAMMAN asked the Minister of Mineral and Energy Affairs

- (1) (a) What agency is responsible for the dismantling of the Atomic Energy Corporation's uranium facility in Pelindaba, (b) when is it expected that the dismantling will be completed and (c) what are the plans concerning the building itself.

- (2) whether adequate steps are being taken to effect proper decontamination, if not, why not, if so, what steps,

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

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The MINISTER OF MINERAL AND ENERGY AFFAIRS

- (1) (a) The Atomic Energy Corporation established a project team, consisting mainly of personnel previously re-

sponsible for the operation and maintenance of the plant, for the dismantling of the AEC's uranium enrichment plants at Pelindaba. This was done for reasons of familiarity with the plant and with operating under a nuclear licence from the CNS and also for safeguarding the enrichment technology for reasons of non-proliferation

- (b) The bulk of the work will be completed by the end of March 1999 with possibly some continuation of decontamination of equipment over the next year or two. Decontamination of equipment is the critical path for the whole operation

- (c) There are no definite plans for utilisation of the building itself at this stage. It is envisaged that other projects within the AEC, currently in the development phase, could make use of the building

- (2) The whole question of dismantling and decontaminating of the uranium enrichment plant is performed under a special licence from the Council for Nuclear Safety. It is revision 1 (for dismantling) and revision 4 (for decontamination) of variation 17 of NL-27, the general nuclear site licence for Pelindaba

Licence conditions determine decontamination standards and also monitoring procedures and conditions for releasing decontaminated materials from Pelindaba

- (3) Apart from the dismantling and decontamination of the uranium enrichment plants the AEC has also been involved in commercial—I stress the word "commercial"—decontamination operations of sites where contaminated scrap from mines, for instance, was handled in the past and also the commercial decommissioning of uranium plants belonging to mining companies

These other activities are being carried out within Pelindaba Technology Products (PTP), the commercial group of the AEC. The dismantling of the AEC's own facilities will in future also be handled as a commercial operation within PTP in con-

Hansard
WEDNESDAY, 20 MARCH 1996

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