

PUBLIC SECTOR - GOVT. - JUSTICE
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APRIL - MAY

Prosecutors agree on 'historic' salary deal

(252) ET 1/4/99
CATHY POWERS
OWN CORRESPONDENT

STATE prosecutors will get a 9% salary increase and, if all goes well, there will be a smaller backlog of court cases and fewer awaiting trial prisoners as courts function more efficiently.

This was part of the "historic" final performance-linked salary deal reached between the government and public service unions yesterday.

The unions and government agreed in the Public Service Co-ordinating Bargaining Council on an immediate 6% increase, in addition to the 6% awarded in December last year.

The increase will be backdated to December last year. An additional 3% will be given on September 1 after the performance targets have been met.

If the targets are not met, the extra 3% will fall away, but external factors outside the control of prosecutors would be taken into account, said Success Matatsane, general secretary of the National Union of Public Service and Allied Workers (Nup-saw). Business Against Crime will mediate if any dispute arises over the targets.

The deal also means accelerated promotion for entry-level prosecutors to the next salary level.

Sipho Ngwema, spokesperson for the national director of Public Prosecutions, Bulelani Ngcuka, called the deal historic. "Never has any union signed an agreement with government that has been performance-linked."

The performance-linked salary hikes have been a contentious issue among

some unions in the past. Matatsane said dissatisfaction was settled when the targets were redefined.

Ngwema said, "The targets are not unreasonable, they are reachable. If you look at the justice system there are problems and they have to be addressed. This can only happen if people are committed."

He said performance-linked increases were the only option and a more efficient system would allow Ngcuka to implement his vision. This included training prosecutors in specialist fields such as human rights and gender issues.

Justice ministry spokesperson Paul Setsetse said the ministry welcomed the announcement and hoped that the courts would return to normality.

The National Public Prosecutions Authority and unions will also undertake a skills and service audit.

The targets are to

- Reduce by 10% the number of awaiting trial prisoners who were granted bail of R1 000 or less.

- Increase the time spent in court to an average of 4,5 hours. This will be reviewed after two months.

- Reduce the number of outstanding dockets and inquests to be assessed monthly.

- Reduce the number of cases on the court roll, to be assessed monthly.

- Increase the number of cases finalised with a verdict, to be assessed monthly.

- Reduce by three months the time from first appearance to when the case is disposed of for awaiting trial prisoners with bail of less than R1 000.

Prosecutors
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'historic'
salary deal

BY CATHY POWERS

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Sipho Ngwema, spokesperson for National Director of Public Prosecutions Bulelani Ngcuka, called the deal historic. "Never has any union signed an agreement with the Government that has been performance linked"

He added "The targets are not unreasonable - they are reachable. If you look at the justice system, there are problems and they have to be addressed. This can only happen if people are committed"

There are also plans to train prosecutors in specialist fields such as human rights and gender issues

Justice Ministry spokesperson Paul Setsetse said the ministry welcomed the announcement and hoped the courts would return to normality

Sten 1/4/99

Judge whacks lawyers, media


Charlene Smith

M+G 1-8/4/99

The law is being "cheapened" — not only by lawyers who charge extortionate rates, but by a public misled by poor journalistic understanding of legal debates, Judge Mohammed Navsa told a graduation ceremony at the University of the Witwatersrand on Tuesday night

Navsa, a Johannesburg High Court judge and head of the Legal Aid Board, hammered lawyers for poorly prepared cases and suggested they be disallowed from recovering costs where sloppiness and a lack of application in their client's defence were apparent

In a speech titled *Serve the Beloved Country*, Navsa referred to controversy around two recent judgements — the Nicholas Steyn case and the Allan Boesak case: "The public and the media in some instances do not always appreciate the complexities of legal technicalities and of the sentencing process. Judicial officers who fail to properly carry out their duties deserve censure"

He called on judges president to ensure that in cases of high public interest the running record of the proceedings be made available. "We should launch an offensive to ensure that the public understands that they own the courts of the land. At the same time we should be careful to appreciate our own fallibility and to fight our own prejudices. If exercising the judicial mind properly leads to an unpopular decision at any particular time, then so be it"

However, Navsa saved his most stinging attacks for "exorbitant and regularly increasing fees at the top end of the fee scale [from lawyers, which] will inevitably lead to increases further down the line with a greater number of people being excluded from the mainstream of litigation. The anti-lawyer jokes that proliferate reflect a growing public intolerance of those who practise law only for their own advancement"

He also said that judges were finding "a general decline in the standard of assistance from lawyers appearing before them. Courts should incline toward disallowing such practitioners from recovering costs from their clients when justice demands it"

Navsa added there needs to be far harder work to ensure access to the law for all — instead of a growing trend where access to the law is becoming too expensive for most

Public prosecutors sign up for a better salary, work deal

(252) Sowetan 1/4/99
By Gershwin Chuenyane

PUBLIC prosecutors yesterday signed a historic agreement giving them an across-the-board 12 percent salary increase with an additional three percent based on performance.

The agreement, signed in Pretoria, includes the promotion of prosecutors on levels six and seven to the next level. The hike will be backdated to December 1, and the three percent merit increase will be implemented on September 1.

However, soon after the signing of the agreement in Pretoria, prosecutors' representatives complained that prosecutors were still underpaid

and said they would continue to fight for increases that were in line with their qualifications.

But National Director of Public Prosecutions Bulelani Ngcuka described the agreement as "one of a kind the world over".

He said "The agreement is very unique in that there is nowhere in the world you find prosecutors saying pay us when we do well and don't pay us if we don't".

"I have no doubt that targets agreed upon will be met, because they are realistic. We are now going to roll up our sleeves and get the courts working effectively. We will do our part to fight crime."

If targets were not met because of circumstances beyond their control, Ngcuka said, prosecutors would still be paid the three percent increase based on job performance.

One of the prosecutors' representatives Mr Success Matatsane, said part of the agreement also stipulated that prosecutors on level six and seven, known as the entry level, would no longer take six years to reach level 8 as was previously the case.

Prosecutors would also no longer be paid overtime under normal circumstances. They would be paid overtime only when they were called upon to work at night.

Magistrates turn on Government

State slammed for 'dispensing justice like a sausage factory'

ART 3/4/99

(252)

JACKIE CAMERON

South Africa's justice system could be thrown into worse chaos by the country's magistrates, who say their courts are unconstitutional because they are not free of government influence.

The magistrates are going to the High Court this week to fight for greater independence from the Government. They argue that the Constitution guarantees impartial courts free of state interference.

Regional court magistrates throughout the country have taken the extraordinary step of joining three criminal accused who have gone to court on similar grounds to challenge the constitutionality of the Magistrate's Courts.

In a show of force, the magistrates have stepped in to help the three men, accused of crimes ranging from theft to murder, who are trying to have their cases thrown out of court. The men are arguing that the Magistrate's Courts are not independent of the Government, as is the case with the High Court.

The magistrates have accused the Government of "dispensing justice like a sausage factory", of violating their judicial independence in "public attacks" and pressurising magistrates to deny bail.

If the magistrates win their battle, the Government will have to prioritise restructuring the courts or risk hundreds of criminal accused and civil defendants being let off the hook temporarily. Trials would have to start afresh, giving accused people a second chance of defending the charges against them.

The Association of Regional Magistrates of South Africa has filed an application in the Pretoria High Court to intervene in a combined appeal and review request by the three men.

The men standing trial have argued that their cases should be set aside on the grounds that magistrates are part of the civil service and, therefore, neither independent nor impartial - and the magistrates' association agrees.

Its move to piggyback the court action is the latest attempt by magistrates to achieve autonomy similar to that of judges.

In 1997 a magistrate asked the South African Human Rights Commission to investigate allegations that the courts were working in contravention of the Constitution and that people accused of crimes were not being

given impartial, unprejudiced hearings.

The commission has put its investigation on hold as a result of the court challenge.

This week, the magistrates' association and Pretoria regional court magistrate Adriaan Bekker, in his personal capacity, filed an application to intervene in the combined applications by the three accused. The case has been set down for Tuesday.

Their requests include that the High Court grants an order to:

- Declare invalid certain sections of the Magistrates Act (1993), Magistrate's Court Act (1994) and regulations governing judicial officers

- Refer these orders to the Constitutional Court for confirmation.

- Compel the Minister of Justice and the Transvaal Director of Public Prosecutions to pay the costs of their application.

In their papers, the regional court magistrates say "the magistracy in South Africa does not enjoy the independence guaranteed by the Constitution".

People had a "right" to be tried before an independent, impartial court and magistrates had a "duty" to uphold this Constitutional guarantee.

The association had "over the past few years documented instances of unjustifiable infringements of the guarantee of judicial independence and impartiality and manipulation of the magistrates by the Magistrates' Commission, senior magistrates and the Department of Justice".

In one case in 1998, the chief magistrate of Pretoria allegedly transferred district magistrate Peet van Vuuren to a junior court after the magistrate refused to relax bail conditions for a couple accused of child abuse.

Chief magistrate Heinrich Moldenhauer allegedly summoned Mr Van Vuuren to his office where he told him to place the matter on the court's roll and "reconsider the application to amend the conditions".

Mr Van Vuuren was transferred after Mr Moldenhauer discovered he had "placed on record" the informal discussion in his office.

The regional court magistrates' argue that:

- Their appointments, salaries and promotions are decided upon by the Government;

- Their posts do not have to be advertised anywhere except the Department of Justice,

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P.T.O.

'Sausage factory' justice row

SAW 3/4/99

(252)

Chaos looms as magistrates join 3 criminals over independence status

South Africa's justice system could be thrown into even worse chaos by the country's magistrates, who say their own courts are unconstitutional because they are not free of government influence.

The magistrates are going to the High Court next week to fight for greater magistrates' court independence from the government because, they say, the constitution guarantees impartial courts free of state interference.

Regional Court magistrates throughout the country have taken the extraordinary step of joining three criminal accused who have gone to court on similar grounds to challenge the constitutionality of the magistrates' courts.

In a show of force, the magistrates have stepped in to help three men, accused of crimes ranging from theft to murder, who are trying to have their cases thrown out of court, arguing that the magistrates' courts are not independent of the government, as is the case with the High Court.

The magistrates have accused the government of "dispensing justice like a sausage factory", of violating their judicial independence in "public attacks" and of pressuring magistrates to deny bail.

If the magistrates win their battle, the government would have to prioritise the restructuring of the courts, or risk hundreds of criminal accused and civil defendants being let off the hook temporarily.

Trials would have to start afresh, giving accused people added advantage the second time around in defending charges against them.

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jackie CAMERON

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■ To Page 2

P. T. O.

'Sausage factory' justice angers magistrates

3/4/99 (2/12)

■ Compel the minister of justice and the Transvaal director of public prosecutions to pay the costs of their application.

In their papers, the Regional Court magistrates say "the magistracy in South Africa does not enjoy the independence guaranteed by the constitution". People had a right to be tried before an independent, impartial court, and magistrates had a duty to uphold this constitutional guarantee.

The association said it had, over the past few years, "documented instances of unjustifiable infringements of the guarantee of judicial independence and impartiality and manipulation of magistrates by the Magistrates Commission, senior magistrates and the Department of Justice".

In one case last year, the chief magistrate of Pretoria allegedly transferred district magistrate Peet van Vuuren to a junior court after the latter refused to relax bail conditions for a couple accused of child abuse.

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"reconsider the application to amend the conditions".

Van Vuuren was transferred after Moldenhauer discovered that he had "placed on record" the informal discussion in his office.

The Regional Court magistrates' arguments that they are not independent include that

- their appointments, salaries and promotions are decided upon by the government,
- their posts do not have to be advertised anywhere except the Department of Justice, which means the justice minister "has the ability to recruit candidates solely from the ranks of civil servants and thus manipulate and dilute the structure and content of the magistracy";

'Influenced by politicians'

■ magistrates can be removed or suspended without just cause or inquiry by a judicial commission,

■ not all magistrates receive state-subsidised vehicles and therefore sometimes have to share cars with the prosecutors who are presenting the State's cases to them;

■ the Justice Department's director-general, whose

has the authority to transfer magistrates.

Bekker said that magistrates were penalised if they did not "churn out decisions" and that justice was being "dispensed like a sausage factory".

He also lashed out at Minister of Justice Dullah Omar for attacking magistrates in radio broadcasts in which he allegedly said that, "during the apartheid years, magistrates found it easy to keep blacks in prison and to refuse bail to them on the slightest pretence, and the same magistrates today find it difficult to do the same thing when it comes to serious crimes".

Bekker said a reasonable, right-thinking person would "justifiably perceive such remarks as placing undue pressure on magistrates to refuse bail notwithstanding their own evaluation of the facts and law in a particular case".

■ Omar has challenged the court application by one of the three accused.

In papers, he said that to grant an award in favour of the man "could have far-reaching implications *vis-a-vis* the public interest and safety of all inhabitants of the Republic".

Security cops apply for amnesty for various murders in 1980s

CP CORRESPONDENT

TWENTY-FOUR former security policemen have applied to the Truth and Reconciliation Commission for amnesty for crimes ranging from the mass murder of young activists to the assassination of a fellow policeman

The commission's Amnesty Committee will hear the applications in Pretoria between April 6 and 30, TRC spokesman Mbulelo Sompetha said in a statement on Friday

All the incidents that will come under scrutiny at the hearings took place in 1986 and 1987

Policemen A J M Joubert, P J Verster, C Naude, N Robey, J J H van Jaarsveld and C Vlietstra have applied for amnesty in connection with the murder of Dr Fabian Ribeiro and his wife, Florence, in Mamelodi outside Pretoria in December 1986

Former Vlakplaas commander Jan Cronje was granted amnesty in

February for his role in planning the murders

Joubert, Verster and Naude, as well as W J Loots, D J Vorster and P R Crause, have also applied for amnesty in connection with the June 1986 murder of 10 youths in the former Bophuthatswana.

Van Jaarsveld, as well as D Gouws, A C Kendall and S A Oosthuizen, have applied for amnesty for the killing of nine ANC youths in Kwaggafontein in the former KwaNdebele in July 1986.

Verster, Joubert, Van Jaarsveld, Gouws, Kendall, Oosthuizen and T J Floyd have applied for amnesty for the killing of Piet Ntuli, a former KwaNdebele government minister, in July 1986

Jan Cronje, Willem Mentz, Paul van Vuuren, Roelof Venter and Jacques Hechter were granted amnesty for Ntuli's killing

The committee will also hear amnesty applications from J Hechter, P van Vuuren and D Crafford for two murders in Hammarsdale in

KwaZulu-Natal in 1987. Crafford has since died since submitting his application. The matter was heard in part last year, Sompetha said.

P J C Loots and M B Ras have applied for amnesty in connection with the death of a Hammanskraal policeman, Richard Motasi, and his wife Irene on December 1, 1987. It is alleged that Motasi was an informer for Zimbabwean Security Police.

The committee will also hear applications from Crause and W J Loots, J A Steyn, C J du Preez, C J D P Smith, W U C C Smit, G J van Zyl, J J Marais and D J Nieuwenhuis in connection with the killing of a group of Umkhonto we Sizwe members, who were smuggling weapons into South Africa when they were shot dead at a roadblock in Silent Valley near Thabazimbi.

P J C Loots has also applied for amnesty for the attempted murder of Congress of South African Trade Unions official Jerry Thibedi in Soshanguve in 1986.

500 victims of voracious lawyers ask Heath to help

By MAX MARX

MORE than 500 road accident victims, who were allegedly defrauded by greedy lawyers, have contacted the Heath Special Investigative Unit since President Nelson Mandela's proclamation on March 17 requiring the unit to investigate the matter

The unit is to investigate the defrauding of road crash victims by unscrupulous lawyers since 1990 and recover the money which has been stolen from them.

During an interpolation debate in the National Assembly on March 25, Transport Minister Mac Maharaj said the unit would help ensure road accident victims received the compensation they were entitled to.

He said the Road Accident Fund (RAF), of which he is the shareholding minister, had been aware of unethical and illegal behaviour by some members of the legal fraternity for some time

Maharaj said of the 143 cases involving 18 law firms investigated by the RAF and the Department of Transport (DOT), on average 56 percent of what was supposed to be paid to victims was kept by their lawyers

He said it appeared that in six instances 100 percent of the amount

the claimants were awarded, was kept by their lawyers, and in 42 percent of cases lawyers kept more than 65 percent of the awards

The 143 victims claimed they had only received R7,038 million of the R15,676 million paid out in settlements by the RAF.

"We know that of the Fund's annual claims budget of R1,386 billion, about 20,5 percent (R284 million last year) is spent on settlement costs.

"On top of this comes attorney/client costs which are not disclosed. We estimate these attorney/client costs further reduce the monies paid to the victims to less than 70 percent of the award, which means that 30 percent to 40 percent of that revenue goes on settlement and legal costs, and not to the victims."

Maharaj added that his office and the RAF had received countless complaints and queries from victims whose lawyers had not even informed them of the total settlement awarded by the Fund on their claim. He said these practices occurred after payment and settlement of the claims by the RAF, and the full extent of the problem was therefore not known.

"About 10 000 people die on our roads every year while 250 000 are injured, 50 000 of them seriously

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This is the potential scale of the problem.

"Our first priority must be to recover the money stolen from the victims, as all too often they are poor and disadvantaged with no other means of support."

Maharaj added that the challenge lay with the legal profession.

"Through three White Papers on the RAF, countless drafts, workshops, hearings and meetings, the legal fraternity has fought to maintain the status quo and block any change to the operation of the Fund to speed up the settlement of claims and bring early relief to victims.

"The status quo cannot continue to exist as it is a scam that involves lawyers and some medical practitioners and assessors in a R500 million-a-year business bankrolled by taxpayers"

He said the RAF had referred numerous claims to the Law Societies for investigation.

Maharaj said that since 1988, 84 cases had been referred by the Fund to the police for criminal investigation and charge sheets were currently being drawn up against three firms on 34 cases.

Law Society of South Africa spokesperson Anna Mkwena told City Press she could not comment until after the Law Society meets next week.

CP 4/4/99

Overtime impasse means agreement is not such a big deal for prosecutors

By CATHY POWERS

The Government got a good deal when it reached a settlement with unions on prosecutors' salaries last week

The bugbear of unions - overtime pay - remains relinquished under the agreement

Retha Meintjies, chairperson of the Society of State Advocates, said that when overtime work was paid for, prosecutors received an average of 30% over and above their normal salaries. This is way below the deal thrashed out last week

The Public Servants' Association, the National Union of Public Service and Allied Workers, and the National Education, Health and Allied Workers' Union signed an "historic" agreement which will also see prosecutors receive an immediate 6% salary increase and a further 3% based on performance targets

The signatories agreed to

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reduce the number of awaiting-trial prisoners who were granted bail of less than R1000 by 10%, increase the time spent in court to an average of four-and-a-half hours a day, reduce the number of outstanding dockets and inquests per month, reduce the number of cases on the court roll per

Snag is that two major players did not sign

month, increase the number of finalised cases per month, and reduce the time from an accused's first appearance to the disposition of the case to three months

These are reachable targets, all seemed to agree

If the targets are not met, the additional 3% salary rise falls away and Business Against Crime will mediate in any dispute over the targets

But the snag is that the Society of State Advocates and the National Union of State Prosecutors did not sign the agreement

Meintjies said the society had no mandate to sign the agreement and was not a party to the bargaining chamber, but its members were, nevertheless, bound by the agreement

"We have a principle problem with the agreement because they are looking at an increase in salary linked to a global picture of performance," Meintjies told *The Star* yesterday

"We've all worked hard and it has been acknowledged that we deserve to get paid better." How do you measure the achievement of the targets, for instance, if 10 prosecutors performed and six didn't, Meintjies asked

Truth body considers police applications

Twenty-four former security policemen have applied for amnesty

TWENTY-four former security policemen have applied to the truth commission for amnesty for crimes ranging from the mass murder of young activists to the assassination of a fellow policeman.

The commission's amnesty committee will hear the applications in Pretoria between today and April 30, truth commission spokesman Mbulelo Sompetha said on Friday.

All the incidents that will come under scrutiny at the hearings took place in 1986 and 1987.

Policemen AJM Joubert, PJ Verster, C Naude, N Robey, JJH van Jaarsveld and C Vlietstra have applied for amnesty in connection with the murder of Dr Fabian Ribeiro and his wife Florence in Mamelodi outside Pretoria in December 1986.

Former Vlakplaas commander Jan Cronje was granted amnesty for his role in planning the murders.

Joubert, Verster and Naude, WJ Loots, DJ Vorster and PR Crause have applied for amnesty in connection with the June 1986 murder of 10 youths at Nietverdiend in the former Bophuthatswana.

Former askari Joe Mamasela has admitted leading the youths into a

death trap by promising them they would be taken out of the country for training in the African National Congress's (ANC's) armed wing Umkhonto we Sizwe (MK).

Mamasela has not applied for amnesty in connection with this incident, Sompetha said.

Mamasela was granted indemnity from prosecution in return for helping the attorney-general track down the former security police involved in human rights abuses.

Van Jaarsveld, D Gouws, AC Kendall and SA Oosthuizen have applied for amnesty for the killing of nine ANC youths in Kwaggafontein in the former KwaNdebele in July 1986.

Verster, Joubert, Van Jaarsveld, Gouws, Kendall, Oosthuizen and TJ Floyd have applied for amnesty for the killing of Piet Ntuli, a former KwaNdebele government minister, in July 1986.

Jan Cronje, Willem Mentz, Paul van Vuuren, Roelof Venter and Jacques Hechter were granted amnesty for Ntuli's killing this year.

The committee will also hear amnesty applications from J Hechter, P van Vuuren and D Craford for two murders in Hammars-

dale in KwaZulu-Natal in 1987. Craford has died since submitting his application. The matter was heard in part last year, Sompetha said.

PJC Loots and MB Ras have applied for amnesty in connection with the death of a Hammanskraal policeman, Richard Motasi, and his wife Irene on December 1, 1987. It is alleged that Motasi was an informer for Zimbabwean Security Police.

The committee will also hear applications from Crause and WJ Loots, JA Steyn, Ebdur Préez, CJDP Smith, WUCC Smith, J van Zyl, JJ Marais and DJ Nieuwenhuis in connection with the killing of a group of MK members. The MK operatives, known as "Kruschev", "Karl Marx" and Andries Moatshe, were smuggling weapons into SA when they were shot dead at a roadblock in Silent Valley near Thabazimbi.

PJC Loots has also applied for amnesty for the attempted murder of Congress of South African Trade Unions official Jerry Thibedi in Soshanguve in 1986.

The hearings will be held at the Idasa Centre in Pretoria. Advocate Lynne Lockhart will lead evidence for the amnesty committee — Sapa

Second group of 79 ANC leaders refused amnesty

Kevin O'Grady

(252)

SEVENTY-nine African National Congress (ANC) leaders and members, including several ministers and deputy ministers, have been refused amnesty by the truth commission's amnesty committee

This follows the denial of amnesty to 27 ANC leaders last month on the same grounds — that they did not apply for amnesty for, or give details of, any specific act, omission or offence

The commission said yesterday National Assembly speaker Frene Ginwala, her deputy Baleka Mbete-Kgositsile, Welfare Minister Geraldine Fraser-Moleketi, Minerals and Energy Minister Penuel Maduna and Justice Minister Dullah Omar were among those refused amnesty

Others included KwaZulu-Natal ANC chairman S'bu Ndebele, his deputy Zweli Mkhize, Finance Minister Trevor Manuel, ANC chief whip Tony Yengeni, Public Service and Administration Minister Zola Skweyiya, Environmental Affairs Minister Pallo Jordan and Gauteng finance MEC Jabu Moleketi. The commission said the ANC members' applications were among

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several submitted by the ANC's truth and reconciliation desk in May 1997. "A declaration was submitted in support of the applications and (it) in turn formed the basis of the applications"

The declaration said the applicants "collectively took responsibility for policy decisions that led to cadres committing human rights violations", the commission said. "In a further exchange of communication it was made clear that none of the applicants had been involved in any individual action for which they would be required to seek amnesty"

The first group of 27 ANC leaders, which included ministers Alfred Nzo and Mac Maharaj and ANC chairman Jacob Zuma, was granted amnesty in November 1997 but this decision was overturned by the Cape High Court in May last year

After their application was turned down last month, Omar said he was considering an amendment to the Promotion of National Unity and Reconciliation Act — the commission's founding legislation — to prevent costly and endless litigation against government and the civil structures involved in the apartheid conflict

NATIONAL

Nietverdiend 10 killed as deterrent

Killing people was deemed 'run of the mill' for founding father of the Civil Co-operation Bureau

Stephané Bothma

PRETORIA — Within weeks of masterminding a plan for the SA Defence Force's special forces and the SA Police security branch in 1986 to identify and murder state enemies, Gen Joep Joubert approved an operation in which 10 youths were murdered, the truth commission's amnesty committee heard yesterday.

"There was direct special force involvement in the elimination of activists prior to the formation of the Civil Co-operation Bureau (CCB)," Joubert said. Joubert, who is the highest ranking military officer to apply for amnesty to date, admitted involvement in the murder of the "Nietverdiend 10" in June 1986, the murder of Manelodi doctor Fabian Riberto and his wife Florence five months later, and the killing of KwaNdebele cabinet minister Piet Ntshu that same year. Joubert was also one of the founding fa-

thers of the notorious and shadowy CCB while he was in charge of the special forces from November 1985 to November 1988.

Joubert is one of 24 ex-members of the former security forces applying for amnesty for the murders.

Other prominent military officers who will also confess their involvement in the crimes include CCB chief Col Joe Verster, Corn Charl Naude and ex-Selous Scout and CCB member Noel Robey.

Joubert said in his application that he was not applying for amnesty for operations outside SA, because the truth commission had no jurisdiction to grant amnesty for such actions.

He told the committee, chaired by Judge Hassan Mall, that he had devised a plan whereby the special forces and the security branch could work together to "identify and eliminate terrorists." During a social function, Joubert spent

about 10 minutes explaining the proposal to then Chief of SA Defence Force Gen Jan-rie Geldenhuys. He said Geldenhuys's response was "It sounds good."

Joubert believed this meant his plan was approved at the highest level.

Because the defence force did not have the ability to gather information on anti-apartheid activist domestically, the special forces relied on the police information network, Joubert said.

In the case of the Nietverdiend 10, 10 young men were "recruited" by undercover Vlakplas operative and self-confessed murderer Joe Mamasela who offered to take them to Botswana for military training.

In Bophuthatswana, the 10 men were injected with a fluid and the milibus they were travelling in was set alight — killing them all.

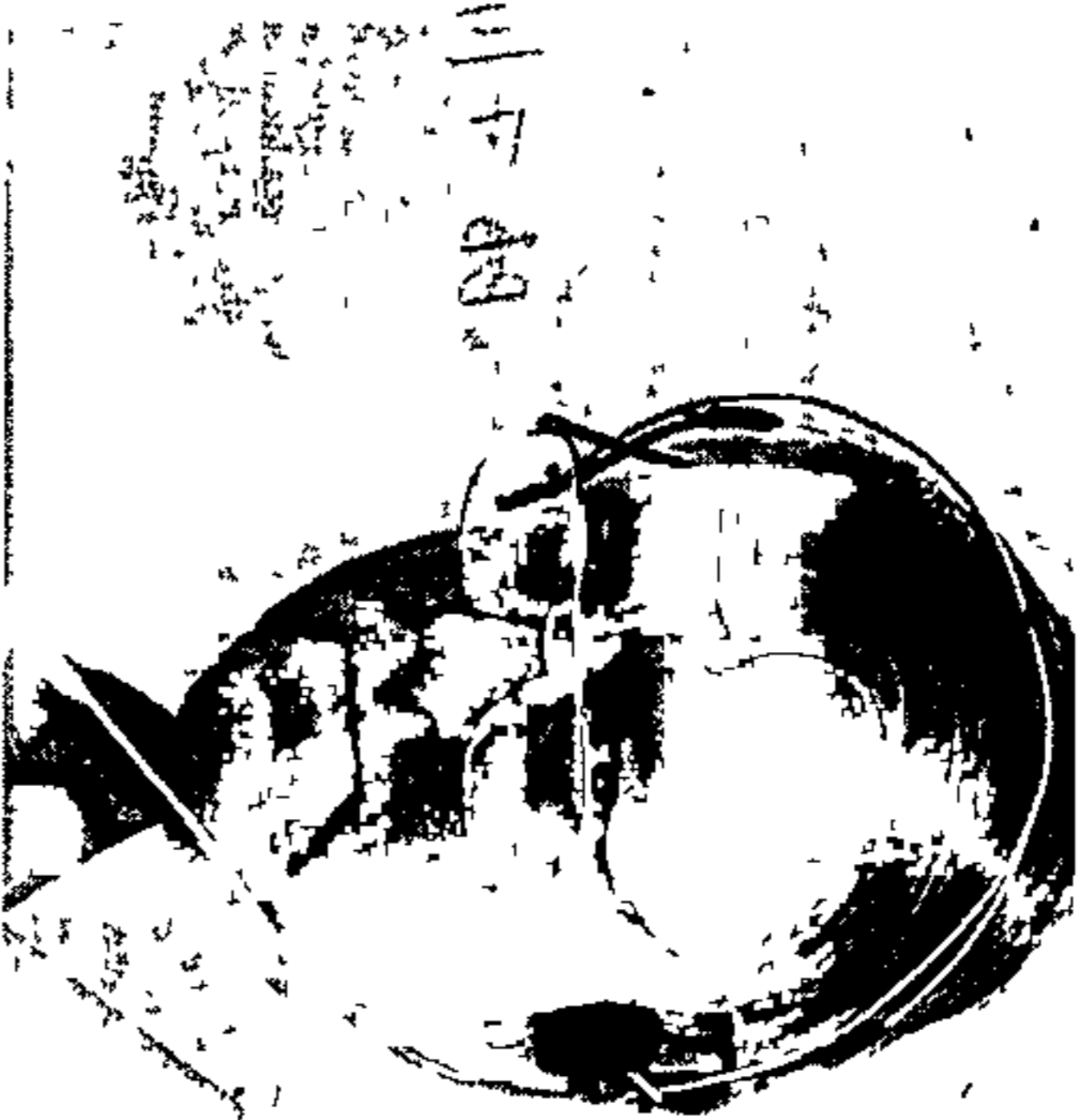
Joubert admitted that he had been involved in the planning of the operation

"These things — an order for elimination — was run of the mill," Joubert said when asked if the plan to kill the men did not surprise him.

"The idea did not shock me." He said the Nietverdiend 10 were killed as a deterrent to other young men who planned to cross the border for military training. He did not know their identities and was not present when they died.

He told the committee that although there had been co-operation between the police and the military for many years in areas such as border control, the acceptance of his co-operation plan marked the start of "a different co-operation."

"This new co-operation was extremely sensitive — it included the killing of selective targets," he said. Former Vlakplas commander Brig Jack Cronle and three other security policemen in February this year received amnesty for conspiring to kill Riberto.



Gen Joep Joubert admits to his involvement in the murder of the Nietverdiend 10 in June 1986 at an amnesty hearing in Pretoria yesterday

Picture: TREVOR SAMSON

Former general reveals his 'dirty' plan

SIMON ZWANE

AN apartheid era army general has revealed that he drew up a plan used to assassinate opponents of the former NP government, including Pretoria doctor Fabian Ribeiro and his wife Florence

General Johannes Joubert, a former member of the SADF's "dirty tricks unit", the Civil Cooperation Bureau (CCB), said that in 1986 he was instructed by then head of the army, General Jannie Geldenhuys, that the special forces had to provide support to the

police's security branch to combat ANC activities inside the country

Joubert then drew up a plan, approved by Geldenhuys, identifying three hotspots in the Northern Transvaal, the Witwatersrand and the Eastern Cape to be stabilised by joint CCB and police operations

Geldenhuys has previously denied involvement in this matter, but the TRC found that he and Lieutenant-General Ian Gleeson had acted in an obstructive manner "by wilfully withholding information pertinent to the identities of the perpetrators" from the police

CT 7/4/99

investigating team

Joubert and 22 other former army and police officers are seeking amnesty from the TRC's amnesty committee in connection with 10 human rights violations, including the murder of the Ribeiros, the assassination of Piet Ntuli and the attempted murder of Jerry Thibedi.

Yesterday Joubert also gave evidence on his involvement in the killing of 10 Mamelodi youths outside Nietverdiënt in 1986, but claimed the killing was not his plan. He told the committee that

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the idea to kill the youths was presented to him by fellow applicant, Commandant Charl Naude. He said he found nothing strange in the request as "this type of thing was the order of the day"

Some of the cases — such as the killing of the Ribeiros, the murder of the Nietverdiënt 10 and the murder of Piet Ntuli — have been heard by the amnesty committee in the past, when amnesty was granted to former policemen Jack Cronje, Jacobus Venter, Wouter Mentz, Jacques Hechter and Paul Jansen van Vuuren

Seven ANC

ministers

refused (2/2)

amnesty

Star 7/4/99

The Truth and Reconciliation Commission announced yesterday it had refused amnesty to 79 ANC members, including seven ministers and three deputy ministers in the current government.

The TRC's amnesty committee said the applicants did not qualify for amnesty because none of them had disclosed their individual involvement in human rights violations.

Instead, the committee said, the 79 had applied for amnesty on the basis that they were collectively responsible for policy decisions that led to human rights violations by ANC cadres.

Among those refused amnesty were Environmental Affairs and Tourism Minister Pallo Jordan, Finance Minister Trevor Manuel, Housing Minister Sankie Mthembu-Mahanyele, Justice Minister Dullah Omar, Minerals and Energy Minister Penuell Maduna, Public Service Minister Zola Skweyiya and Welfare and Population Development Minister Geraldine Fraser-Moleketi.

The deputy ministers refused amnesty were Joe Nhlanhla (Intelligence Service), Manto Tshabalala-Msimang (Justice) and Essop Pahad (Office of the Deputy President).

ANC spokesperson Thabo Masebe said the ruling was "not unexpected".

"The TRC is simply saying it understands they were applying in terms of collective moral and political responsibility, but that the law does not make provision for granting amnesty to institutions and organisations," he said. - Sapa

► General tells all

General tells commission of plan to assassinate opponents

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Char 7/4/99

Youths told they were going for military training, but were headed for their doom

By SIMON ZWANE

An apartheid-era army general has revealed that he drew up a plan used to assassinate opponents of the National Party government, including famed Pretoria doctor Fabian Ribeiro and his wife Florence.

General Johannes Joubert, an ex-member of the former SA Defence Force's dirty tricks unit, the Civil Co-operation Bureau, said that in 1988 he was instructed by the then head of the army, General Jannie Goldenhuys, that Special Forces had to provide support to the police's security branch to combat ANC activities in the country.

Following the order, Joubert

drew up a plan identifying three hotspots in the northern Transvaal, the Witwatersrand and the eastern Cape to be stabilised by joint Civil Co-operation Bureau and police operations. The plan was approved by Goldenhuys, he said.

Goldenhuys has previously denied involvement in this matter, but in its final report last year, the Truth and Reconciliation Commission found that he and Lieutenant-General Ian Gleeson had acted in an obstructive manner "by wilfully withholding information pertinent to the identities of the perpetrators" from the police investigating team.

Joubert admitted that the Ribeiro and former Kwa-

Ndebele homeland leader Piet Ntuli were murdered in accordance with this plan.

Joubert and 22 other former army and police officers are seeking amnesty from the TRC amnesty committee in connection with 10 human rights violations, including the murder of the Ribeiros, the assassination of Ntuli and the attempted murder of Jerry Thibedi.

Former police commissioner Johan van der Merwe is among the applicants.

Yesterday Joubert gave evidence on his involvement in the killing of 10 Mamelodi youths outside Nietverdiend in 1988. He said the killing was not his plan.

He told the committee that

the idea to kill the youths was presented to him by fellow applicant Commandant Charl Naudé.

He said he found nothing strange in the request as "this type of thing was the order of the day".

The 10 were recruited by police spy Joe Mamasela, who promised to take them to Botswana for military training.

Mamasela then drove the group to a trap near Nietverdiend where they were captured by Civil Co-operation Bureau members and drugged with a chemical substance.

They were then put into a vehicle that was driven over a cliff, where it exploded, killing the youths.

Challenge looms on amnesty decision

Gaye Derby-Lewis vows to fight 'inconsistencies' in ruling on Chris Hani's killers

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BD 8/4/99

Stephané Bothma

PRETORIA — The truth commission's decision to refuse Clive Derby-Lewis and Janus Walusz amnesty for the 1993 assassination of SA Communist Party leader Chris Hani would be challenged in court, Derby-Lewis's wife, Gaye, said last night.

"The spirit of the decision is not embodied in the current legislation, and our lawyers are already studying the records of the hearing to take the amnesty committee on review," she said. The constitution was being examined in an attempt to free her husband. "We will not give up," Derby-Lewis said, echoing the criticism of the Conservative Party (CP) and the Freedom Front (FF) that the decision was biased and politically motivated.

CP national executive member Derby-Lewis and Polish immigrant Walusz were sentenced to death on October 14 1993, six months after Walusz gunned down Hani in the driveway of his Boksburg home. Walusz fired two shots into Hani's head, execution style, and drove off.

Both men were on death row when the death penalty was declared unconstitutional. They are awaiting resentencing.

The committee said evidence produced during their amnesty applications failed to establish conclusively that there was a wider conspiracy to kill Hani. The committee was not required to make a finding on Gaye Derby-Lewis's role in the killing, but found that a list she drafted

before the assassination, containing the names and addresses of several African National Congress (ANC) and SACP members, including President Nelson Mandela, Joe Slovo and Hani, was a "hit list".

The committee rejected the amnesty applications on the grounds that the two men failed to meet two requirements of the Promotion of National Unity and Reconciliation Act, namely full disclosure of the facts and sufficiently proving political motivation for the killing. "It is common cause that the applicants were not acting on the express authority or orders of the CP, which they purported to represent in the assassination of Hani."

"The CP has never adopted, propagated or espoused a policy of violence. It is clear that the CP was never aware of the planning of the assassination, and only became aware thereof after the event."

The committee pointed out that Derby-Lewis and Walusz clearly subjectively believed they were acting against a political opponent, but this was not sufficient on its own to render their applications successful. They failed to make full disclosure by not telling the truth about Gaye Derby-Lewis's list, saying it was prepared for journalistic purposes, but it "fortuitously landed up with Derby-Lewis, who decided to use it for a totally different reason — executing a plan of assassinations."

Walusz's claim that he had acted on the orders of Derby-Lewis was also reject-

ed. "Walusz had a clear understanding of the political situation and was active in right-wing politics. He participated fully in political discussions and in hatching the plot to assassinate Hani."

The committee pointed out several other inconsistencies in the evidence of Walusz and Derby-Lewis, referring to the planning of the killing and how the firearm used for the murder was obtained.

Gaye Derby-Lewis said last night that although she was shocked by the decision, she had all along been slightly pessimistic about her husband's chances. "The political climate is against us," she said. The inconsistency of the committee's decisions was upsetting.

"There is no legal or moral consistency in the decision." She had seen her husband yesterday, soon after he learnt about the decision. "He is very upright, he has a very good mental attitude to life and his current position, and he never shows any self-pity. He is full of hope."

The CP and the FF also pointed to inconsistency in amnesty decisions, referring to the amnesty granted to members of the Azanian People's Liberation Army for the St James church massacre and the killing of US student Amy Biehl. Both parties said the decision confirmed that the truth commission was biased.

Experts on the commission act said last night that, although it did not provide for appeal against amnesty rulings, there could be appeals on procedural points.

Not a soldier's job, amnesty body told

Stephané Bothma

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PRETORIA — The elimination of people by first drugging them before setting them alight required no special skills and therefore was not the job for a highly trained Special Forces soldier, the truth commission's amnesty committee was told yesterday.

The June 1986 murder of 10 young men — the "Nietverdiend 10" — by members of the SA Defence Force and the SA Police's security branch went against the nature of a soldier, former Special Forces Maj Derick Vorster testified.

Vorster is one of six former security force members applying for amnesty for the murders. Others are Special Forces Gen Joep Joubert, Civil Co-operation Bureau chief Col Joe Verster, Com Charl Naude and security policemen Rudi Krause and WJ Loots.

The Nietverdiend killing, the December 1986 murder of Mamelodi doctor Fabian Ribeiro and his wife Florence and the murder of KwaNdebele cabinet minister Piet Ntuli were operations carried out jointly by the security branch and Special Forces.

The committee, under the chairmanship of judge Hassan Mall, heard that at the request of Naude to Special Forces head office, two "black Portuguese operatives", both former members of 32 Battalion, were flown in from Ovamboland to kill the Ribeiros.

The two unidentified operatives were put up in a Pretoria hotel, given details of where the Ribeiros lived and given two silenced pistols. After the killing they were dropped off at Special Forces headquarters from where they were presumably flown back to Namibia.

Naude told the committee the killing of the 10 men, African National Congress supporters on their way to Botswana for military training, was a "very unpleasant affair", "completely outside the nature of a soldier".

Naude, Vorster and Verster all expressed their appreciation yesterday to their commander, Joubert, for supporting them and for not shying away from his responsibilities as the man who gave the orders. "It is disgusting our direct chief, Gen Jannie Geldenhuys (then chief of the SA Defence Force) is not here to support us."

The hearing continues

BD 8/4/99

Hani killers must go back to court for re-sentencing

Amnesty committee rules pair did not make full disclosure

PARLIAMENTARY BUREAU AND SAPA

Chris Hani's killers' plea for amnesty is over. Now, they will return to court to plead for leniency.

Janusz Walus and Clive Derby-Lewis, who were refused amnesty yesterday for the 1993 assassination of the Communist Party leader, will have to return to court for a new sentence for the murder after the abolition of the death penalty in 1995.

The men were originally sentenced to death in 1993, but the sentence was never officially commuted, pending their amnesty application.

But, as with their bid for freedom, their push for leniency by the courts is likely to fall on deaf ears.

According to chief state law adviser Enver Daniels, the men must return to the court where they were originally sentenced to death for a new sentence to be passed in terms of the Criminal Law Amendment Act.

The same judge who presided in the criminal case must consider a new sentence on the basis of written and oral argument - including the evidence in mitigation and aggravation submitted at the first hearing.

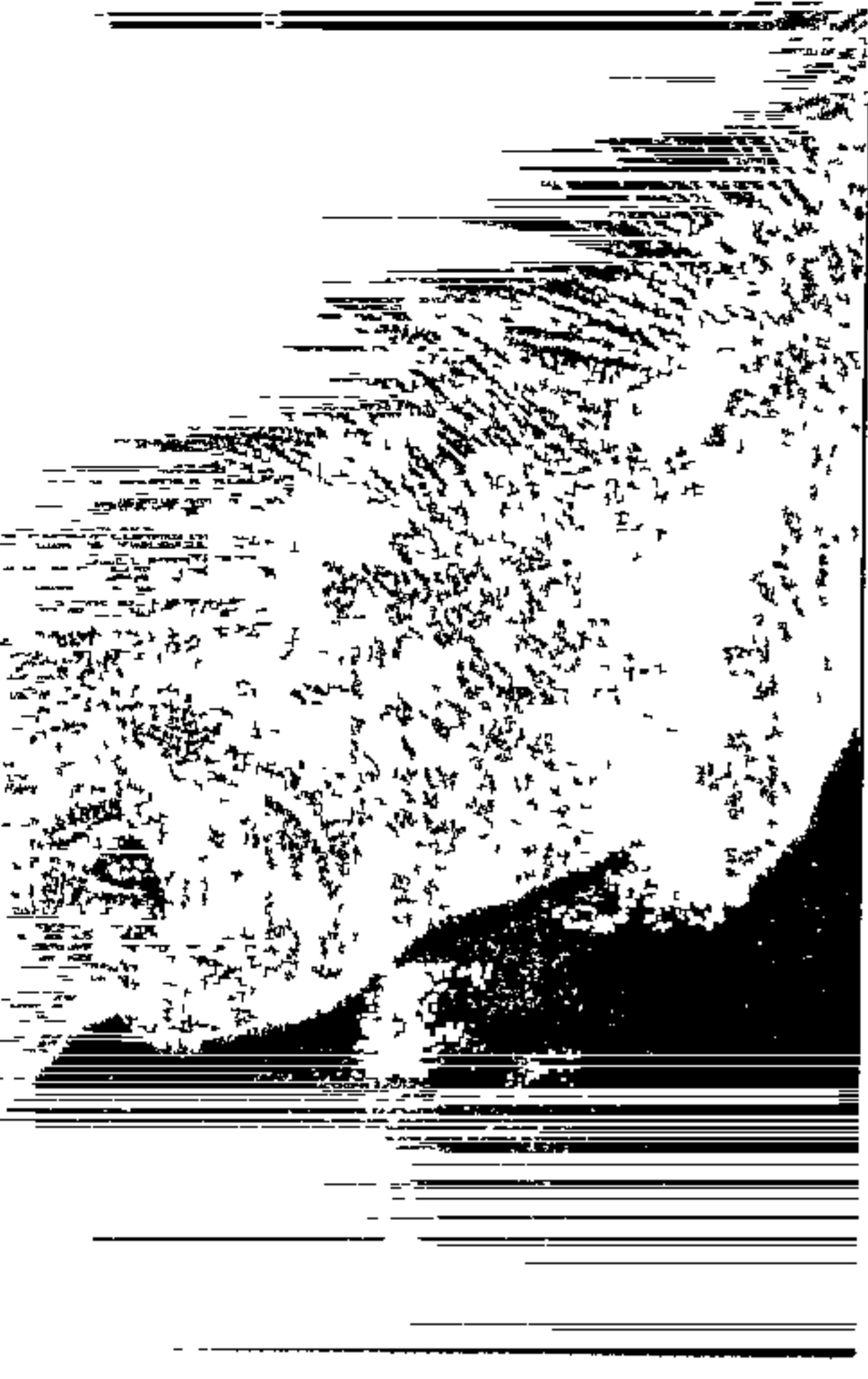
The act specifies mandatory life sentences for a schedule of serious crimes, including planned or premeditated murder. The slaying of Mr Hani would appear to fall into this category.

Mr Daniels said "One of the key things about this act is that the new sentence is final and no appeal can be lodged."

The Truth and Reconciliation



Clive Derby-Lewis did not adequately prove the motivation was political.



Victim: Chris Hani was gunned down outside his home in 1993

Derby-Lewis was part of the CP's national decision-making structures, so it was not reasonable for him to infer from his colleague's public utterances that they had given authority for political killing.

"It was clear the two were not acting within the course and scope of their duties or on express authority from the CP in assassinating Mr Hani," said the committee.

It also rejected Walus's claim that he had acted on Derby-Lewis's orders.

"Walus was under no duress or coercion and executed the plan as he deemed fit. We are satisfied that Walus was a co-conspirator," said the committee.

Political reaction to the decision was predictable with rightwing parties slamming it as "politically motivated" and leftwing parties heralding the move.

The African National Congress and the Communist Party both welcomed the decision.

"These people don't deserve any amnesty. They are killers who committed a barbaric act which deprived South Africa of a very good leader," said Smuts Nkonyama of the ANC.

SACP deputy secretary-general Jeremy Cronin said that, from the beginning, the party had joined Mr Hani's widow in opposing the amnesty applications of Walus and Derby-Lewis, and as the hearings proceeded, had become more and more convinced they were right in their approach.

He said the two men had been sparing with the truth, evasive and often arrogant, and the party was

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amnesty, and believed the decision lent legitimacy to the process.

Mr Cronin said both men could count themselves extremely lucky they were living under an ANC Government that had abolished the death penalty.

Describing the ruling as "incomprehensible", Mr Hartzenberg questioned the timing of the decision saying the ANC stood to benefit from the move. He said the decision, in the run-up to the election, could be used as election propaganda.

It also coincided with the commemoration of Mr Hani's death in three days time, he said.

Dr Hartzenberg described the TRCas "a ventriloquist" of the ANC, saying it was clear to all that Mr Hani's murder was politically motivated - a prerequisite for amnesty.

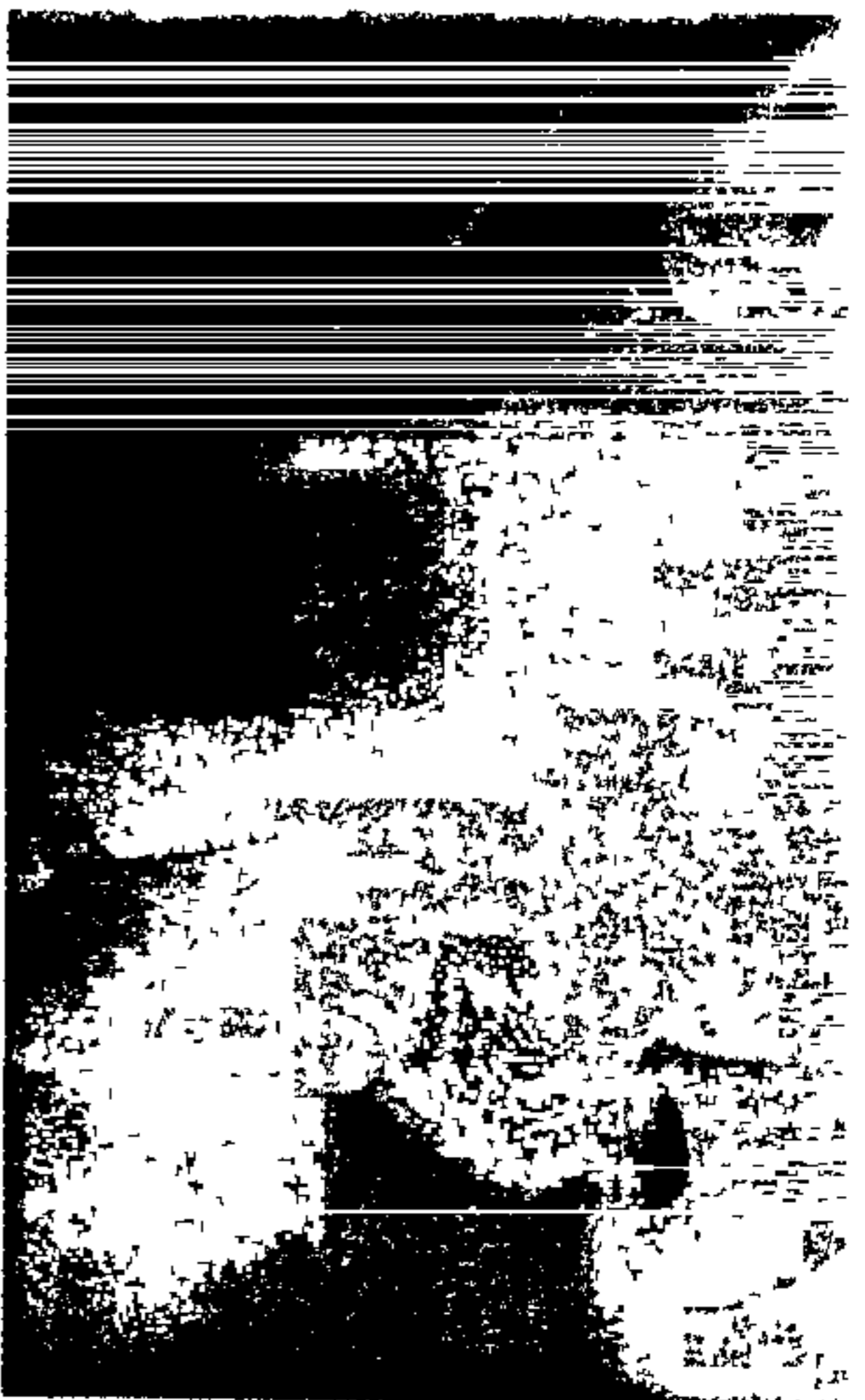
The Freedom Front said it was "a shame" that the men were not granted amnesty.

"The deed was wrong, but it must be taken into consideration that Hani was a high-profile political figure and a leader of the Communist Party. The political climate at the time of his death must also be taken into account," said Rosier de Ville.

"This was not just a plain murder," said Mr De Ville.

He personally felt that if amnesty was given to the Azanian People's Liberation Army operatives who killed innocent members of the congregation of St James Church in Cape Town, people who had no political connection, it should surely be given to Walus and Derby-Lewis.

In a carefully worded statement the New National Party questioned the amnesty committee's applica-



Clive Derby-Lewis did not adequately prove the motivation was political

return to court to plead for leniency.

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Mr Daniels said "One of the key things about this act is that the new sentence is final and no appeal can be lodged."

The Truth and Reconciliation Commission's amnesty committee yesterday refused to free the men on the grounds they had not made a full disclosure. They also failed to sufficiently prove political motivation for the murder.



Victim: Chris Hanu was gunned down outside his home in 1993

The committee said in a statement explaining its decision "It is common cause that the applicants were not acting on their express authority or orders from the Conservative Party which they purported to represent in assassinating Mr Hanu. The CP has never adopted, propagated or espoused a policy of violence or assassination of political opponents."

Evidence by CP leader Ferdi Hartzenberg that violence was not part of their policy "negated any claim that public utterances of the CP leadership constituted implied authority for the assassination".

Both men were active members of the party, the committee said (amnesty) hearing. The fear that this would happen has been there from the beginning. The fear they would change the rules and play politics. But it still hit me yesterday when the fear came true.

Mrs Derby-Lewis said that in spite of anticipating the outcome it still came as a shock.

"I was a bit pessimistic because the political climate was against us, but still you hope fairness will pre-

public utterances that they had given authority for political killing.

"It was clear the two were not acting within the course and scope of their duties or on express authority from the CP in assassinating Mr Hanu," said the committee.

It also rejected Walus's claim that he had acted on Derby-Lewis's orders.

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SACP deputy secretary-general Jeremy Cronin said that, from the beginning, the party had joined Mr Hanu's widow in opposing the amnesty applications of Walus and Derby-Lewis, and as the hearings proceeded, had become more and more convinced they were right in their approach.

He said the two men had been sparing with the truth, evasive and often arrogant, and the party was convinced they had failed to meet any of the criteria for amnesty.

"Clearly this decision today is a vindication of that approach."

The SACP had all along supported the TRC and the concept of

could. I tense, ves extremely lucky they were living under an ANC Government that had abolished the death penalty.

Describing the ruling as "incomprehensible", Mr Hartzenberg questioned the timing of the decision saying the ANC stood to benefit from the move. He said the decision, in the run-up to the election, could be used as election propaganda.

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"This was not just a plan murder," said Mr De Ville. He personally felt that if amnesty was given to the Azanian People's Liberation Army operatives who killed innocent members of the congregation of St James Church in Cape Town, people who had no political connection, it should surely be given to Walus and Derby-Lewis.

In a carefully worded statement the New National Party questioned the amnesty committee's applications of norms and standards.

Veteran human rights lawyer Advocate George Bizos, who represented the Hanu family during the amnesty hearing, welcomed the decision.

But her real anger is for former president F W de Klerk.

"He lied to us and sold us out. If he was not such a coward to agree to constitutional reform, those people would not have been in jail today."

She said she visited her husband in the morning after he received the news on his amnesty application.

"He is bearing up very well, and nothing will get him down. He is a brave man."

TRC changed amnesty rules - Derby-Lewis's wife

PARLIAMENTARY BUREAU

Gaye Derby-Lewis, the wife of Clive Derby-Lewis, says she did not cry when she heard her husband, Clive, would not be coming home. But she did feel anger - and fear.

"I could feel it in my stomach - fear," she said from her home in Pretoria last night. "I've had that feeling from the start of the



Janusz Walus, the killer of Chris Hanu failed to make full disclosure

DRUGGED THEN BURNT TO DEATH

The 'most humane way' to kill 10 young activists

PRETORIA: A TRC committee heard yesterday how young activists were lured to a fiery death by special forces members. **PATRICK HLAHLA** reports.

A FORMER special forces member has told a committee of the TRC that he thought the method used to kill 10 young Mamelodi activists in 1986 was "the most humane one"

Charl Naude, who resigned from the South African Defence Force in 1987, told the committee at the amnesty hearings at the Kutlwanong Democracy Centre yesterday that "no other method would have been acceptable"

The youths were held at gunpoint and later injected with a substance that made them unconscious.

The minibus in which they were travelling was driven down an embankment and later set alight. This was meant to create the impression that the youths were involved in an accident.

Naude told the commission that he obtained the drug from one of the medical doctors at special forces. "The idea was to calm them down as quickly as possible."

Naude said the youths were brought to a pre-determined spot by former Vlakplaas operative Joe Mamasela.

"When the minibus they were trav-

elling in arrived at the spot they were ordered out, injected with the drug and helped back into the minibus," Naude said.

Asked why they decided to drug the activists and then set their minibus alight, Naude said this was "the most humane way" and any other method was unacceptable.

He told the hearing "the youths did not offer any resistance", adding: "They did not have any choice, we were armed and wore balaclavas."

He said the minibus was set alight after it collided with a tree.

Naude said he went back to Pretoria where he briefed General "Joep" Joubert — who was head of special forces — about the incident.

"I informed General Joubert that I did not want to continue in such operations as it was not in the nature of our operations," he said.

Another member, Diederick Jacob Vorster, who held the rank of major, said he drove the minibus into a tree before setting it alight.

He said the activists had been asleep or unconscious when he drove the vehicle into the tree. "I poured petrol over the vehicle and set it alight."

Vorster said he had not known

there was a limpet mine or an AK-47 in the vehicle

After the incident, he had gone to Colonel Joe Vorster, the senior staff officer for covert operations and a founder member of the Civil Co-operation Bureau.

"I informed him that this was not an operation in which anybody needed special training to undertake," said Vorster.

Vorster confirmed that Vorster had discussed the incident with him.

Evidence was also led about events leading to the death of Fabian Ribeiro and his wife Florence.

Naude said Ribeiro was discussed at a number of meetings involving security force members and it was decided to eliminate him and his wife.

"The issue was discussed with, among others, Brigadier Jack Cronje and General Joubert, and we came to the conclusion that we should use people who had not been in Mamelodi to kill Dr Ribeiro and his wife."

Naude said they recruited two members of Portuguese origin from the operational area in Ovamboland to carry out the killings.

"The plan was that they (Ribeiro and his wife) would be shot at their surgery."

Naude said the members went back to the operational area after the incident.

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Hani amnesty denial: TRC rapped

ET 8/4/99 (252)

**SIMON ZWANE, RYAN CRESSWELL
and HOPEWELL RADEBE**

JOHANNESBURG: Right-wing political groups criticised the Truth and Reconciliation Commission yesterday for denying amnesty to the assassins of ANC and South African Communist Party leader Chris Hani

The Conservative Party, Freedom Front and New National Party lambasted the commission for its decision not to grant amnesty to Clive Derby-Lewis and Janusz Walus, saying it confirmed that the TRC was inconsistent and biased

But the ANC and the SACP welcomed the decision, saying the two men did not tell the truth and "deserved to stay in jail for the rest of their lives"

The amnesty committee, consisting of three judges — Hassan Mall, Andrew Wilson and Bernard

Ngoepe — as well as acting justice Sisi Khampepe and Denzil Potgieter, said the two men failed to satisfy any of the requirements for amnesty

They had not made a full disclosure, had failed to prove that the murder was done on behalf of a political party and had not proved that they had authority to carry out the act

The committee found that the two had not told the truth about the list of names found in Walus' possession shortly after Hani's murder on April 10, 1993

The two had told the committee that the list was to assist them to communicate confidentially, but the committee found this "wholly unconvincing" It said it

was satisfied that the list was "a hit list" for a series of assassinations

The committee also found that the assassination was not carried out on behalf of the CP as the party had not been aware of its planning until after it took place

N N P spokesperson Jacko Maree said the amnesty committee was under political pressure,

producing inconsistent decisions

He pointed out that the youths who killed American exchange student Amy Biehl were granted amnesty although the political motive in their case was even less clear than that in the Hani case

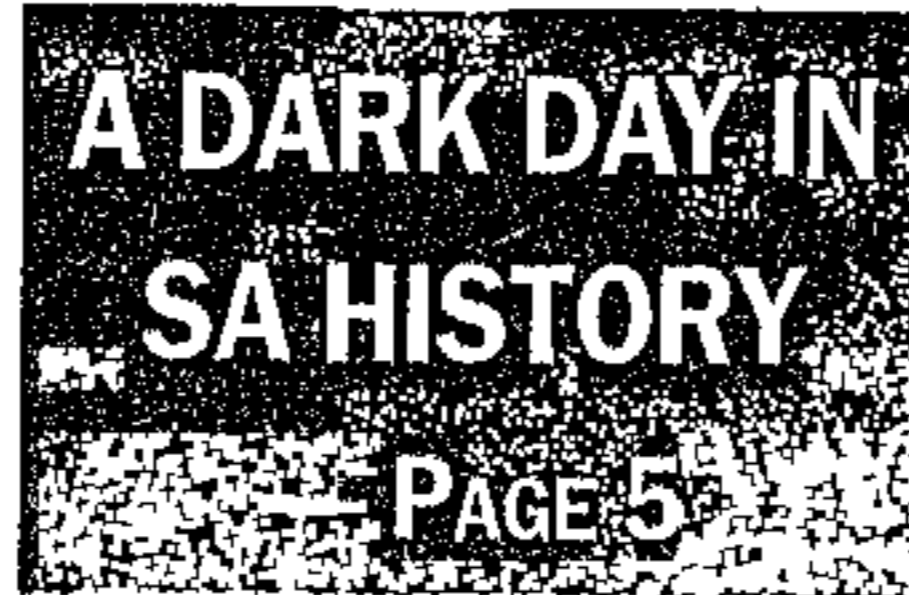
While accepting that Hani's murder was wrong, FF justice

spokesperson Rosier de Ville felt that Walus and Derby-Lewis should also have been granted amnesty on the same basis it was given to Azanian People's Liberation Army operatives who killed churchgoers at St James' Church in Kenilworth

But SACP general secretary Jeremy Cronin, whose party had opposed the application, said the two men had been "evasive, arrogant and sparing the truth" ANC spokesman Smuts Ngonyama said the men "deserved to stay in jail for, the rest of their lives"

"The leader that they killed was a leader who was preaching peace," Ngonyama said

He said the two men stood for a "totally barbaric and immoral" mindset The TRC was sending out a clear message that the "killing of people over political differences would not be tolerated"





HERO: The assassination of Chris Hanani plunged the country into shock at a politically sensitive time.

'FOOT SOLDIER': Janusz Walus' gamble has backfired. If he had told the truth, he may have received amnesty.

UNCONVINCING: Clive Derby-Lewis was a senior member of the CP.

Walus 'was under no duress'

Remembering a dark day in history

SIMON ZWANE

JOHANNESBURG: This week six years ago, the body of popular South African Communist Party and ANC leader Chris Hanani lay sprawled on the pavement of his Dawn Park, Boksburg, home

Yesterday, a mere three days before the anniversary of that dark day, his murderers — prominent Conservative Party member Clive Derby-Lewis and Janusz Walus — learnt that they were not going to receive amnesty for their actions

But of the two men convicted to life imprisonment, Janusz Walus must be kicking himself for not telling the whole truth when it could have set him free.

Although Walus fired the fatal shot on April 10, 1993, there was always a chance that he could receive amnesty.

It always seemed that the burden to prove the political motive, and identify the political leader and the party on whose behalf the killing was carried out, was easier on him than on Derby-Lewis

Derby-Lewis' case was doomed from the beginning. As the plot had not been

discussed with other senior CP members and because — by his own admission and according to party leader Ferdi Hartzenberg — the party never called on its members to commit acts of violence, it was difficult to prove that the murder was carried out on behalf of the party

Also, Derby-Lewis was the party's founder member, an MP and the party's representative in the President's Council. A man in his position would therefore have been able to distinguish empty war rhetoric from a genuine call to arms

Derby-Lewis' attempts to use talk of a "third Boer freedom struggle" to justify his action, while acknowledging that the party had not embraced violence as an option, was not convincing.

Walus' burden was less than the one carried by his co-conspirator. In his evidence, he presented himself as an ordinary foot soldier who relied heavily on Derby-Lewis for political guidance. As far as he was concerned, Derby-Lewis spoke on behalf of the CP and when he gave an order, that order had to be in keeping with CP policy

Walus' case, however, fell on two crucial factors. Firstly he took the decision to go ahead with the killing on his own, without approval from his leader

Derby-Lewis testified that he had "decided to delay the whole process as I was determined to give a matter as important and significant as this one further thought"

The committee then found that Walus "was under no duress or coercion and executed the plan as he deemed fit"

Secondly, Walus gave a detailed account of his political motive, indicating that he was bewildered when the CP lost the 1989 elections, and the NP unbanned the ANC and SACP in 1990.

He admitted his experience under communist rule in Poland had influenced his decision to assassinate Hanani

Based on this, it was clear to the committee that Walus had a clear understanding of the political situation and "was not acting as a mere functionary"

"He was clearly motivated by his personal desire to stop the communists from taking over the country," it concluded

THE secretary-general of the SA Communist Party has planned a quiet Saturday at home to read newspapers

He drives to the shops with his daughter, Nomakhwezi, and returns at 10 25am. He's wearing a track suit and running shoes and — this is unusual — he is not accompanied by his bodyguards

Hani and his daughter stop in the driveway, having noticed two cars — one white, one red — that have followed them

The red car pulls up behind them. A tall, thin, blond man gets out. Hani also gets out of his car. The blond man walks to the front of Hani's car and lifts a gun. He pulls the trigger twice and then walks over to where his victim has collapsed between the garage door and his car. Calmly lifting the gun, he again pulls the trigger — twice, at point-blank range. The assailant walks back to his car, gets in and starts to reverse. A witness makes a mental note of the number plate. Police arrive and the liberation hero is discovered lying in a pool of blood, having died instantly

A short while later, the assassin, Janusz Walus, is arrested on Trichardt's and Mark streets, Boksburg, driving the red Ford Laser

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ANALYSIS

Walus must be kicking himself; Derby-Lewis stood little chance

BY SIMON ZWANE

This week, six years ago, the body of popular South African Communist Party and ANC leader Chris Hanu lay sprawled on the pavement of his Dawn Park, Boksburg, home

Yesterday, a mere three days before the anniversary of that dark day, his murderers – Janusz Walus and Clive Derby-Lewis – learnt that they were not going to receive amnesty for their action, which could have plunged the country into a bloodbath

Of the two men convicted to life imprisonment for the assassination, Walus must be kicking himself for not telling the whole truth when it could have set him free

Although Walus was the one who fired the fatal shot that took Hanu's life on April 10 1993, there was always a chance that he could receive amnesty. He must also have realised this, because he planned to marry, hoping that, in time, he would be able to consummate the marriage

It always seemed, on the face of it, that the burden to prove the political motive and identify the political leader and the party on whose behalf the killing was carried out was easier on him than on Derby-Lewis

Derby-Lewis's case was doomed from the beginning. As the plot had not been discussed with other senior members within the CP and because – by his own admission and according to party leader Ferdn Hartzenberg – the party never called on its members to commit acts of violence, it was always going to be difficult for him to prove that the murder was carried out on behalf of the party

His case was further complicated by the fact that he was not just an ordinary member of the CP. He in fact was the party's founder member, an MP and the party's representative in the President's Council. A man in his position would therefore have been able to distinguish empty war rhetoric

from a genuine call to arms

His attempts then to use loose talk of a "third Boer freedom struggle" to justify his action, while at the same time acknowledging that the party had not embraced violence as an option, was never going to convince anyone

However, Walus's burden was less than the one carried by his co-conspirator. In his evidence, Walus presented himself as an ordinary foot soldier who relied heavily on Derby-Lewis for political guidance. As far as he was concerned, Derby-Lewis spoke on behalf of the CP, and when he gave an order, that order had to be in keeping with CP policy

His case failed because of two crucial factors. Firstly he took the decision to go ahead with the killing on his own, without approval from his leader

Derby-Lewis testified that he had "decided to delay the whole process as I was determined to give a matter as important and significant as this one further thought"

The amnesty committee then correctly found that Walus "was under no duress or coercion, and executed the plan as he deemed fit", and it accordingly decided that he was not merely acting on orders from Derby-Lewis

Secondly he gave a detailed account of his political motive, indicating that he was bewildered when the CP lost the 1989 general election and the National Party unbanned the ANC and SACP in 1990

He admitted that his experience under communist rule in Poland had influenced his decision to carry out the assassination

Based on this, it was clear to the committee that Walus had a clear understanding of the political situation and "was not acting as a mere functionary"

"He was clearly actuated by his personal desire to stop the communists from taking over the country," it concluded

Opposition parties deride TRC 'bias', while ANC and SACP welcome decision.

By SIMON ZWANE, HOPEWELL RADEBE AND RYAN CRESSWELL

The Truth and Reconciliation Commission yesterday said it had refused amnesty to the assassins of ANC and South African Communist Party leader Chris Hani because the two men failed to satisfy any of the requirements

The TRC's decision not to grant amnesty to Clive Derby-Lewis and Janusz Walus was last night slated by the Conservative Party, Freedom Front and New National Party. The decision was, however, welcomed by the ANC and the SA Communist Party, which said the two men had not told the truth

The amnesty committee, consisting of Justice Hassan Mall, Justice Andrew Wilson, Justice Bernard Ngoepe, Denzil Potgieter and Acting Justice Sisi Khampepe, said the men had not made a full disclosure, had failed to prove that the murder was done on behalf of a political party, and had not proved they had authority to carry out the act

The committee also found that the two had not told the truth about the list of names found in Walus's possession shortly after Hani's murder on April 10 1993. The two had told the committee that the list was to assist them to communicate confidentially, but the committee found this "wholly unconvincing". It said it was satisfied that it was "a hit list which was to be used for executing a plan of assassinations"

The committee also found that the assassination was not carried out on behalf of the CP. (CP leader) "Dr Ferdie Hartzenberg also denied that the objective which (the) applicants pursued, namely to cause chaos and revolution in the country, formed part of CP policy

"He further stated that it was not CP policy to eliminate opposition political leaders

"It never approved, ratified or condoned the assassina-

tion," the committee said.

Hartzenberg said yesterday the TRC had confirmed that it was a biased body set up to humiliate the Afrikaner

NNP spokesperson Jacko Maree said the amnesty committee was under political pressure, and as result was making inconsistent decisions

"The danger exists that the committee may be tempted to apply different norms and standards depending on who the applicants are and what the political pressures may be," he said

He pointed out that the youths who killed US exchange student Amy Biehl had been granted amnesty, although the political motive in their case was even less clear

While accepting that Hani's murder was wrong, FF justice spokesperson Rosier de Ville felt that Walus and Derby-Lewis should also have been granted amnesty. This should have been granted on the same basis as that given to African People's Liberation Army operatives who killed churchgoers at the St James Church in Cape Town

SACP general secretary Jeremy Cronin said the two men had been "evasive, arrogant and sparing of the truth". The SACP was convinced they had failed to meet any of the criteria for amnesty, and the committee's decision was "a vindication of that approach"

ANC spokesperson Smuts Nkonyama said the two men "deserved to stay in jail for the rest of their lives". He said the pair stood for a "totally barbaric and immoral mindset".

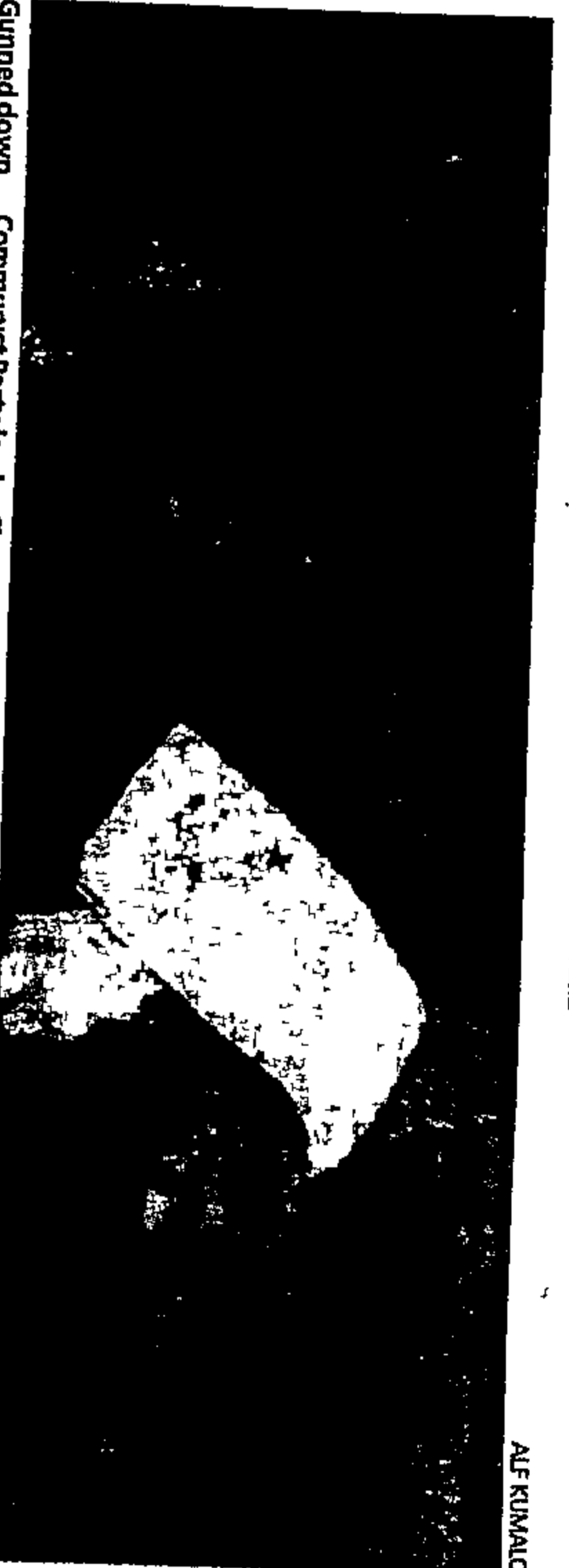
According to chief state law adviser Enver Daniels, the men must return to the court where they were originally sentenced for a new sentence to be passed in terms of the Criminal Law Amendment Act. The same judge who presided in the criminal case must consider a new sentence on the basis of written and oral argument.

▶ What the people say

Why Hani's killers were refused amnesty

(ANC) 8/11/99 Star

The hit list was to be used for executing a plan of assassinations - TRC



Gunned down Communist Party leader Chris Hani lies in his own blood after being shot by Walus on April 10 1993.



Clive Derby-Lewis

Conservative Party never approved, ratified or condoned the assassination - TRC

ALF KUMALO



Clive Derby-Lewis

The body of Chris Hani (Inset) lies in the driveway of his home. Polish Immigrant Janusz Walus

Rot in jail

(252)

Sowetan 8/4/99

By Claire Keeton

CHRIS HANI'S killers - Janusz Walus and Clive Derby-Lewis - were refused amnesty yesterday by the Truth and Reconciliation Commission (TRC)

The TRC's amnesty committee said both men had "failed to make full disclosure and political motivation in respect of any of the relevant and material issues" as required for amnesty

The decision was announced on the eve of the sixth anniversary of the April 10 assassination of Hani, a popular leader of the African National Congress and the South African Communist Party

Walus' shooting of Hani outside his Boksburg home during Easter in 1993 ignited a wave of anger across South Africa that threatened the peaceful transition to democracy.

Welcoming the TRC decision, ANC chief spokesman Mr Smuts Ngonyama said yesterday

"These killers were bent on sliding our country into a crisis so that the process of negotiation would not be attained."

"(The murder) was a highly immoral and barbaric act," he said

The amnesty committee found that the assassination was plotted by both Walus and Derby-Lewis without authority from the Conservative Party, although both were active CP members

"The committee found that it was clear the two were not acting within the course and scope of their duties or with express authority from the CP in assassinating Hani," said TRC spokesman Mr Phula Ngqumba.

"The clear evidence of (CP leader) Dr Ferdi Hartzenberg negated any claim that the public utterances of the CP leadership constituted implied authority for the assassination"

On Saturday morning, April 10 1993, Hani drove to the shops without his bodyguards and Walus followed him. When he saw Hani return home, Walus

drove ahead and waited for him.

"When Hani got out of his vehicle, Walus approached and fired several shots at him with a Z88 pistol," the committee said

"Hani, who was unarmed, was fatally wounded and collapsed on the driveway. Walus went up to him and shot him, execution-style, with two rounds behind the ear. Hani died at the scene"

Walus was arrested the same day and charged with Derby-Lewis and his wife Gaye Derby-Lewis

Walus and Derby-Lewis were convicted on October 14 1993 of murder and of charges relating to the unlawful possession of the murder weapon and ammunition. Mrs Derby-Lewis was acquitted

Both men received the death penalty and were awaiting execution before it was abolished by the Constitutional Court

They were waiting to be resentenced when their amnesty applications started in 1997

● More reactions on page 2.

POLITICS

Activists killed in a 'kind way', TRC told

By Claire Keeton

FORCING schoolboys out of a vehicle at gunpoint, injecting them with drugs, pouring petrol over them, crashing the vehicle and setting it alight, was seen as a "humanitarian way" of eliminating a group of activists in June 1986, according to former army commander Charl Naudé

Naudé is one of 24 former members of the security forces – the most senior of whom is General Joep Joubert – applying for amnesty for more than 30 murders from the Truth and Reconciliation Commission (TRC)

Naudé, Derek Vorster and Philip Rudolph Crause testified at the Truth Commission in Pretoria yesterday about the execution of 10

schoolboys from Mamelodi, known as the "Nietverdiend 10" – who believed they were on their way for training with the liberation movement in Botswana

"We felt this would be the most humanitarian way of executing the operation," Naudé said, referring to the decision to use drugs and fire "Any other method was unacceptable to us"

He said "The purpose behind the drugs was to calm the people as quickly as possible and secondly to ensure that the passengers remained seated and did not resist while the accident was staged"

Under cross-examination Naudé admitted the reason for the drugs was to render the group unconscious, not to calm them down

Vorster, who poured 25 litres of petrol over

the boys and crashed the vehicle to make it look like an accident, said he told Colonel Joe Verster that he did not want to be involved in such operations again He did not object to the killing of the activists but felt that he was too highly trained for such an operation

Joubert testified on Monday that he approved the plan to murder enemies of the state, including this group, and he believed that the then Chief of the South African Defence Force, General Jannie Geldenhuys, supported this proposal

The boys who were killed were Abraham Makolane (17), Samuel Masilela (16), Siphosibo Sibanyoni (15), Thomas Phiri (22), Jeremiah Magagula Ntuli (16), Morris Nkabinde (19), Stephen Makena (18) and Elliot Sathage (20)

(2/1/99)
recovered by Siphosibo Sibanyoni

Identities of 'skilled' Ribeiro killers revealed

The two assassins were flown in from former South West Africa

Stephané Bothma

PRETORIA — The identities of the two "Black Portuguese" Special Forces soldiers flown to Pretoria in a military aircraft to assassinate anti-apartheid activists Fabian Ribeiro and his wife Florence were revealed for the first time yesterday — almost 13 years after the killings

SA Defence Force Special Force operative and former Selous Scout Noel Robey told the truth commission's amnesty committee that he had fetched the two "skilled killers" at Special Forces headquarters in June 1986

"They introduced themselves as Jao Pinta and Ruiz da Silva," Robey testified. He did not know whether the men gave their real names.

After the "job" was carried out successfully, Robey returned the men to Special Forces headquarters. He never saw or heard of them again.

Robey is one of five former Special Force soldiers who applied for amnesty for the Ribeiro murders. The others are Special Forces commanding general Joep Joubert, Civil Co-operation Bureau chief Col Joe Verster, Comm Charl Naude and Coen Vlietstra.

Robey is the only applicant who could shed any light on the killers' identity and the only member of the special military unit involved in the planning and execution of the murders who saw the two men. The assassins were flown from Ondangwa in the

(2152)

BD 914199

former South West Africa in a military transport plane at the request of Naude to Special Forces headquarters, who said he required the services of "two of the very best operatives who have driver's licences".

Robey told the committee that at their arrival, the two were given R2 000, set up in a Pretoria hotel and repeatedly shown the route to the Ribeiro home in Mamelodi, a township east of the city, to ensure they would find their way out after the killings.

On the day of the killings — four days after their arrival in Pretoria — the assassins were each given a Colt 45 revolver fitted with a silencer.

"The two men arrived at the Ribeiro home, knocked on the door and gained access to the house. Dr Ribeiro and his wife started screaming when the two soldiers revealed their weapons and they started shooting. They saw them fall, and made their retreat," Robey testified.

The assassins "had a bit of difficulty" leaving the scene of the murder because people who heard the shots gathered and surrounded them, trying to prevent them from leaving. "They were forced to fire a few shots into the air to scare them away."

Robey was arrested for the murders a few days later because his Land Rover was spotted in the area. However, he told the committee, he was cleared of any blame or involvement in the murders at an inquest held later.

The hearings continue today

Nehawu suspends call for action over retrenchments

BD 914199
Primarashni Pillay

THE National Education Health and Allied Workers' Union (Nehawu) suspended its call yesterday for protest action over the retrenchment of members who work as cleaning and security staff at tertiary education institutions.

Nehawu met with representatives of the tertiary education sector and the education department at a meeting co-ordinated by the National Economic, Development and Labour Council (Nedlac). It was decided that a meeting should be held next month on staff retrenchments. The meeting will be co-ordinated by the Council on Higher Education.

Following the restructuring and rationalisation of technikon and universities, the services of workers including caterers, cleaners and security guards are being outsourced. This resulted in 4 000 jobs being lost last year, while another 30 000 workers could still lose their jobs.

At yesterday's meeting it was decided that Nedlac should co-ordinate the appointment of a task team of representatives from each sector. The task team has to formulate an agenda for the planned meeting by the end of April.

PORTUGUESE HITMEN USED

Why the Ribeiros were killed

PRETORIA: The TRC's amnesty committee was told here yesterday that the Ribeiro couple had been targeted for transporting ANC activists to Swaziland for military training.

FORMER commander of the SA Defence Force's special forces unit Abraham Joubert said yesterday he thought former police commissioner Johan Coetzee knew about the killings of Fabian Ribeiro and his wife Florence in 1986

He told the Truth and Reconciliation Commission's (TRC) amnesty committee here that Coetzee had asked him at a meeting why the two were eliminated. Coetzee's lawyer, Louis Visser, told Joubert that the police commissioner had denied asking Joubert about the killings

Joubert is seeking amnesty for his part in the murder of the Ribeiro couple who were shot dead by two unknown Portuguese-speaking special forces unit members from northern Namibia. They shot the Ribeiros at their home in Mamelodi in December 1986

Joubert told the amnesty committee that he gave authorisation for the two soldiers to come to South Africa

He said he could not remember who he had told to make the nec-

essary arrangements "I told somebody from Namibia to send them"

Joubert said he also told former Northern Transvaal special forces commander Charl Naude that the Ribeiros could be killed, as long as the security police knew about it

Naude, who is also applying for amnesty for the same incident, told the committee that the decision to finally murder the couple was made by security police members Brigadier Jack Cronje and Captain Jacques Hechter, and himself

Naude said the Ribeiros were targeted because they transported ANC activists to Swaziland for military training, allowed the training to happen in their home, and financed the activists

He said he instructed special forces member Noel Robey to pick up the Namibian soldiers and help familiarise them with the area where the Ribeiros lived

Robey said once the operatives knew the location, he phoned Naude and told him plans were in place to kill the couple

CT 9/4/99

Robey is also applying for amnesty for the deaths

He arranged to meet the men at Pretoria's central railway station, which was close to a hotel where they had been living, and gave them the murder weapons, two 45 Colt pistols

After the soldiers killed the Ribeiros, they met Robey at a predetermined place and he took them to the station

He said when he picked up the operatives they told him they shot the couple in the chest area, and that when they tried to flee a group of people had confronted them outside the house

"They had to fire shots in the air to escape"

The next morning Robey picked them up about 5am and dropped them off at special forces headquarters

He told the committee the soldiers called themselves John Pinta and Louis da Silva

Robey added that he never saw them again

Naude told the amnesty committee that members from the special forces unit used false names for secrecy

Secrecy was also the reason why he never met the soldiers

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Jacob van Jaarsveld, a security police member who also applied for amnesty for the murder, told the committee he was instructed by Hechter to act as a "sweeper" in the operation

"My function was to ensure that evidence pointing to police and defence force involvement should be removed"

Van Jaarsveld said that after the Ribeiros were murdered, Hechter phoned him and told him to go to the scene

"I entered the premises through the courtyard. There were a lot of 9 mm bullet shells and pools of blood," he said

Van Jaarsveld told the committee that he contacted the Murder and Robbery Unit, who arrived shortly afterwards

Judge Hassen Mall asked him if he removed any of the evidence. Van Jaarsveld replied "I did not perform my duties as a sweeper"

The amnesty committee will hear evidence today on the killing of former KwaNdebele government minister Piet Ntuli in July 1986

Joubert, Van Jaarsveld and five other former security force members are seeking amnesty for Ntuli's death — Sapa

What the Hani judgment said

Mail & Guardian reporters

The landmark Truth and Reconciliation Commission (TRC) decision to deny amnesty to the killers of Chris Hani was not a political fix but was instead entirely consistent with the legislation governing the truth body.

Opposition parties and relatives of the two killers, Clive Derby-Lewis and Janusz Walus, have slammed the decision, accusing the truth commission of being a mouthpiece of the African National Congress and of applying inconsistently the TRC's amnesty rules for politically motivated murders.

It has been argued that it is "common sense" that Hani's assassination was politically motivated, and that for that reason alone, the South African Communist Party chief's killers should be entitled to amnesty.

Gaye Derby-Lewis told the *Mail & Guardian* this week "To say the decision [by the amnesty committee] is not political is ludicrous. It seems there is lack of consistency between this case and with Apla [Azanian People's Liberation Army] leadership taking responsibility afterwards [for Pan Africanist Congress actions]."

Gaye Derby-Lewis, who is currently suing the police for allegedly tapping her visits to her husband in jail, said "the amnesty legislation seemed to embody a spirit which said you had a war here and that people who were part of that war deserved to be heard. We thought that was the spirit in which the TRC would be conducted but it seems the political climate was against us."

The New National Party's Jacko Marree complained that the TRC's amnesty committee "may be tempted to apply different norms and standards depending on who the amnesty applicants are and what the political pressures may be." He also told *The Citizen* that the amnesty committee had not always given the same ruling to similar applications.

Nevertheless, on Tim Modise's talk show on SABC on Thursday morning Marree admitted to the Hani family's counsel, George Bizos, that he had not read the judgment.



In order: The amnesty committee was playing by the rules when it denied Clive Derby-Lewis (left) and Janusz Walus amnesty for the murder of Chris Hani. PHOTO: AP

Had he read it, he would have discovered that the amnesty committee's decision had hinged on the killers' failure to satisfy very specific clauses in the act governing the TRC, the Promotion of National Unity and Reconciliation Act.

The Act methodically stipulates the exact criteria regulating who falls into the camp of the politically motivated. Derby-Lewis and Walus did not satisfy the TRC's amnesty committee that they had carried out the hit on behalf of the Conservative Party, which, in any case, did not espouse violence at the time.

The amnesty committee's judgment concluded: "In all the circumstances, we are not satisfied that the applications comply with the requirements of the Act, in particular the provisions of Section 20(2)(a)." That section of the Act opens the amnesty door to "any member or supporter of a pub-

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lically known political organisation or liberation movement on behalf of or in support of such organisation... There are other similar subsections which offer the chance of amnesty to, for example, employees of the former state or any person carrying out a coup d'état, but the Hani amnesty judgment hinged on Section 20(2)(a).

If Walus had been able to convince the committee that he had carried out the hit on the instructions of Derby-Lewis, and on the assumption that Derby-Lewis was merely relaying an order from the CP, the Polish immigrant might have stood a chance. He would then have been able to claim he had carried out the assassination on behalf of, or in support of, the CP.

Walus initially said in his amnesty application he had acted alone, but subsequently amended his application to say he had jointly planned the hit with Derby-Lewis. The TRC said in its judgment it was "abundantly clear Walus was not acting as a mere functionary. He was under no duress or coercion and executed the plan as he deemed fit." The committee said his testimony was contradictory on whether he was acting on orders, adding that as an active CP member, Walus "would have been aware that the party has constitutionally established decision-making structures and that Derby-Lewis had no power to order him to commit murder, particularly in view of the CP's policy of non-violence."

The amnesty committee said it appeared Walus's argument that he was acting on orders was an "afterthought" and "an attempt to enhance Walus's chances of receiving amnesty by curing deficiencies in the original application." According to the amnesty committee, the assassins were also blocked by Section 20(1)(c) of the Act, which requires a "full disclosure of all relevant facts."

The committee shot holes in the applicants' explanation of their notorious list of names, on which Hani was number three, saying it was a hit list "with the intended victims prioritised as indicated on the list." The judgment said: "In explaining the purpose of the numbering, applicants testified that Walus numbered the names on the list in priority of their enmity towards the CP. In another breath, Derby-Lewis explained that the numbering would serve as some kind of code reference to the person concerned for purposes of confidential telephonic conversations between applicants."

All of these explanations for the numbering were in line with applicants' strenuous denial that there was a plan to assassinate more persons than just Mr Hani. In our view the applicants' explanation in this regard is false." It continued: "The explanation that the numbers would serve as a code [for the two accomplices to communicate with one another] was equally absurd."

Lucky to be alive, PAGE 20

Lawyers praise Hani judgment

By Claire Keeton
Feature Writer

THE decision to refuse the killers of Chris Hani amnesty on Wednesday was based solidly on the Truth and Reconciliation Commission criteria for amnesty – central to which is whether the applicants made a full disclosure of all the relevant facts – notwithstanding political pressure

This is clear from the detailed decision released by the TRC's amnesty committee, contrary to the rightwing outcry that the refusal of amnesty to Janusz Walus and Clive Derby-Lewis was politically expedient and inconsistent

"Full disclosure is the essence (of amnesty requirements)," human rights lawyer and academic Cathy Jenkins said yesterday.

A member of the legal team representing Hani's family at the 1997 amnesty hearings, Gcina Malindi, said it was clear from studying the decision that Derby-Lewis and Walus intended to assassinate more people

"The likelihood is that many more people in the city were aware of the plot but the applicants did not disclose their names," said Malindi

In effect the applicants claimed to be part of a broader conspiracy to kill Hani but they did not reveal evidence to establish this conspiracy

The committee said they concentrated on three principal issues in their decision

- Did the applicants make full disclosure of all the relevant facts including the purpose of the hit list, the purpose for which names were prioritised on the list, the purpose for which the murder weapon was obtained and fitted with a silencer, whether Walus was acting on orders from Derby-Lewis, and the role played by Mrs Gaye Derby-Lewis in the killing

- Were the applicants acting "on behalf of or in support of" the Conservative Party?

- Did the applicants believe they were acting "in the course and scope of their duties" as CP members?

First, the committee found that "the applicants failed to make disclosure as set out (by the Promotion of National

Unity and Reconciliation Act)"

Next the amnesty committee found that the applicants were not acting on behalf of the CP or in the course of their duties as active party members

"The CP has never adopted, propagated or espoused a policy of violence or the assassination of political opponents," the committee said

"Reports immediately after the assassination evince the CP leadership's disapproval of the incident and their rejection of the murder as a political tool"

Another human rights lawyer, Heinz Klug, supported this, saying "the CP denied any involvement"

Jenkins agreed "The CP did not give those two any backing. They made it seem as if they were off on their own

"(Killing) was never a formal policy of the CP, unlike Apla whose policy was to kill any white people as the best way to get rid of the government," she said

This was emphasised by the amnesty committee in its judgment "The CP was never aware of the planning of the assassination and only became aware thereof after the event

"It never approved, ratified or condoned the assassination."

Malindi said the contradiction about whether the CP was involved or not could be explained this way. The CP had to deny any role in the killing so that its members did not expose themselves to arrest or prosecution

Veteran human rights lawyer and head of the family's legal team, Advocate George Bizos, welcomed the decision, saying there was ample evidence the applicants had not fulfilled the conditions required for amnesty

"They say they had a political motive but that was not enough," Bizos told Sapa

"There are half a dozen prerequisites and if you fall down on any of them, you don't get amnesty"

He said Derby-Lewis and Walus claimed they killed Hani because he was a political threat, but they failed to prove they were acting on behalf of the CP

"The committee, correctly in my view, found that Derby-Lewis was a highly placed person in the CP who could not have been confused about its policy and if he was, he only had to ask," Bizos said

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2/1/19
Keeton

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TRC grants amnesty to four ANC activists and AWB member

Cape Town - The Truth and Reconciliation Commission's amnesty committee yesterday granted amnesty to four ANC activists and a member of the Afrikaner Weerstandsbeweging.

Commission spokesperson Phila Ngqumba said the AWB's Johannes Christian Visser was

pardoned for placing a bomb in a Krugersdorp building in 1993. He stated in his application that his actions had been taken to stop blacks from taking over the country and to protect what whites had. ANC self-defence unit members Motumi Tsepe Edwin, Michael Bongani Xaba and Musa Buthe-

lezi received amnesty for possessing AK-47 rifles, firearms and ammunition in 1991.

The fourth amnesty recipient was former Congress of SA Students member Petrus Gcunumzi Malindi, for a public-violence offence he committed in Soweto in 1981 - Sapa

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(252)

Magistrates clash over challenge to Government

ARG 10/4/99

(2/72)

JERMAINE CRAIG

An extraordinary feud has broken out among South Africa's magistrates over alleged government control of their courts

Senior Western Cape magistrates lashed out this week at colleagues involved in a Pretoria High Court application that seeks, in effect, to have the Magistrate's Courts declared unconstitutional because they are not free of government influence

The Western Cape magistrates are calling their counterparts "reactionaries without vision"

The Association of Regional Magistrates of South Africa (Armsa) caused a rumpus when it announced it was going to court to fight for greater independence from the Government, saying the Constitution guaranteed impartial courts free of state interference

The association is joining three accused men, charged with crimes ranging from theft to murder, who are arguing that the Magistrate's Courts are not independent of the Government

The association has filed an application in the Pretoria High Court to intervene in a combined appeal and review request by the three men

The men are arguing that their cases should be set aside on the grounds that magistrates are part of the civil service and, therefore, neither independent nor impartial

In an exclusive interview with Saturday Argus, a group of Western Cape regional magistrates distanced themselves from Armsa's position

They are Cagney Musi from the Mitchell's Plain court, Robert Henne and Andre le Grange from the Wynberg court, Elizabeth Baartman

from the new Family Court in Cape Town and Robert Lewis from the Atlantis court

They said the association was a minority body comprising only about 150 of the country's 1 600 magistrates and its views did not reflect those of the magistracy

The magistrates said they publicly opposed the association's stance as individuals. They are all members of the Judicial Officers Association of South Africa, which, they said, represented about 90% of the country's magistrates

They said the Judicial Officers Association had been approached to support Armsa in its High Court application but had refused.

In a joint statement, the Western Cape magistrates said the court challenge was "ill-judged and disheartening" and that magistrates "can't be bedfellows with criminals"

"We agree that certain sections in the Magistrates Act of 1993 and some regulations promulgated in terms of the Act are offensive. We support any and all sensible efforts to revisit the Act and the regulations

"We are totally against using the courts, emotional and populist strategies to achieve that. We currently have a new Magistrates Commission. The commission was never approached with proposals for new legislation

"What we have instead is a bunch of magistrates who send murderers and rapists to jail and, after doing a good job, tell the world they acted illegally. Does this make sense? We say it doesn't!

"It must be remembered that the Association of Regional Magistrates has at least two members on the restructured Magistrates Commission. Their court action is therefore

a vote of no confidence in the commission."

Mr Musi said measures were in place to deal with issues that justice officials were unhappy with. He said he and his colleagues felt Armsa had gone about its objections in the wrong way

"We are saying the Magistrates Act of 1993 and the regulations therein need to be revisited. There are certain things that impact negatively on the independence of the magistracy, but the process these guys have taken is not the right way. There is a new Magistrates Commission and we have a new Law Commission. They could have approached this commission with sensitive proposals and not done it in the radical manner they have," Mr Musi said.

Mr Henne said the magistrates in their group had decided to go public on their own. He said they were not siding with the Government, but wanted to speak out on issues that affected their profession

"We feel it is necessary for people to understand why we are doing this. It is to protect the profession and the image of the office of the magistracy. We are not siding with the Government"

In a letter to the Saturday Argus this week, Justice Minister Dullah Omar says only a small number of the country's magistrates support Armsa's stance

The Western Cape head of the Department of Justice, Hishaam Mohamed, set up the meeting between the magistrates and the Saturday Argus. He insisted he had done so only after he was approached by the magistrates, who said they wanted to air their views on the issue

■ See page 21

Amnesty denial to Hanzi killers grounded on TRC guidelines

THE much applauded decision to deny amnesty to the killers of Chris Hanzi slams shut the cell doors on killers Janusz Walus and Clive Derby-Lewis, but suspicions about a wider conspiracy have not been put to rest.

Thus is not least because the TRC's Amnesty Committee found that the two had not made full disclosure and declined to comment on the role played by Derby-Lewis' wife, Gaye Controversy was inevitable, whichever way the committee ruled. Emotions would have run high if the committee had granted amnesty for the April 1993 murder which caused widespread revulsion and threatened the peace process in South Africa.

On the other hand, the decision made on the eve of the anniversary of Hanzi's death, to deny the pair amnesty evoked sharp criticism from relatives as well as from opposition parties. They argued that the judgment ran in the face of other decisions such as the granting of amnesty to Amy Bhehl's killers and the perpetrators of the St James massacre.

But, while Gaye Derby Lewis said the decision was a result of the cur-



Janusz Walus

rent "political climate" and placed ultimate blame on former President FW de Klerk - presumably for negotiating with the ANC - the committee's ruling was grounded not in political expediency, but in law.

The committee found that the pair had not acted on behalf of a pol-

THE decision of the TRC's amnesty committee to deny amnesty to Clive Derby-Lewis and Janusz Walus, the killers of ANC hero Chris Hanzi, is firmly based on the legal guidelines under which amnesty is granted. It also contradicts the accusation by right-wing political parties that the amnesty committee bowed to political pressure, writes senior political writer **Chikara Carter**.

[Data] CR 11/4/99

itical movement - in this case the Conservative Party - saying, "the CP never adopted, propagated or espoused a policy of violence or assassination of political opponents". Evidence by CP leader Bertel Hartzenberg indicated that his party's statements did not incite unlawful action, let alone violence and murder.

Moreover, there was no chance that Derby-Lewis could have misinterpreted the party's policy because he was part of the CP leadership. Furthermore, neither person had discussed their plans with anyone else in the CP.

During the hearing there was speculation that Walus, a Polish immigrant, might get amnesty on the basis that he had acted on orders from Derby-Lewis, but the committee did not see Walus' actions in

this light. Instead it said Walus clearly understood the political situation and had a "personal desire to stop the communists from taking over the country".

Walus had not been under duress, nor was he coerced. Instead, he carried out the plan independently and in fact took Derby-Lewis by surprise with the timing of the killing. The committee said Walus was a "co-conspirator" who was not just acting on orders.

The committee declined to rule on whether Gaye Derby-Lewis had played a role in the assassination, although it accused her indirectly of conspiracy, saying a list she drew up of 19 prominent public figures was in fact a "hit list".

Hanzi was third on the list - following Nelson Mandela and Joe Slovo. She had previously told the

committee that the list contained the names of politicians and prominent people she intended interviewing for an article about the "gray train" - a claim which failed to explain why security details about these people were included.

The addresses of those listed were supplied by a right-wing journalist, Arthur Kemp, who now lives abroad. Kemp, a former security policeman who was a state witness at the trial, has said he thought demonstrations would be held at these addresses.

It was subsequently alleged that Kemp had been an informer for the National Intelligence Service. After he moved abroad he reportedly claimed that there was a wider plot, but did not supply details to back this assertion. The SAC and members of the Hanzi family have always



Clive Derby-Lewis

claimed that there was indeed a wider conspiracy to kill Hanzi. However, the committee did not deal with these suspicions and the TRC report last year said its investigation could not find any conclusive evidence to back claims of a broader conspiracy by the ANC at

the time unearthed claims that there had been more than one car at the scene of the murder and that someone other than Walus had hid den behind a wall at Hanzi's home. Questions were also raised about the angle of the bullets that struck Hanzi.

It later emerged that a Military Intelligence agent, Eugene Riley, subsequently deceased, who had close links to members of the CCB, wrote two reports warning of the assassination. His girlfriend, who typed the reports, claimed that at least one of these reports was written prior to the murder and was handed to the National Intelligence Service via a front company.

Riley's reports, which accurately predicted when Hanzi would be killed, were apparently based on information supplied by a spy codenamed Ramon.

It turned out that Ramon was a double agent for MI and the ANC. At one stage he had close contact with several key ANC intelligence figures. Much of the information supplied about the ANC by Ramon was regarded as dubious and has been dismissed by investigators as "disinformation".

Xhosaland apartheid plot details revealed to TRC

By MKULULI BOLO and Sapa

BANTU Holomisa was to have been the fallback security chief in a bizarre Xhosaland planned by the apartheid-era military project called "Operation Katzen".

Those involved in the plot, first exposed three years ago by Holomisa himself at a TRC hearing, included top Transkei politicians, well-known public figures in the two homelands and the notorious Special Forces commander Joe Verser.

Former defence force intelligence head Lieutenant General Christoffel "Joffe" van der Westhuizen stunned the Truth and Reconciliation Commission's amnesty committee

earlier this week when he disclosed that if Giskei rebel Charles Sebe could not lead preparations for a puppet Xhosa Resistance Movement (XRM) to unite Transkei and Giskei, preparations were made by apartheid authorities for Holomisa, then a brigadier, to fill the role.

Katzen aimed to set up and train the XRM to topple the Transkei and Giskei homeland governments and then join the two homelands into a single "Xhosaland".

The plan, which was conceived in June 1988 and aborted in February the following year, aimed to counteract the use of the two homelands as safe bases by the liberation movements and to stabilise the Eastern Cape with a power bloc

against the African National Congress and United Democratic Front.

Van der Westhuizen said he was given wide powers by former president PW Botha and defence minister Magnus Malan, both of whom visited the region in August 1988.

Botha ordered the area to be stabilised, even if that meant the security forces had to release Charles Sebe, jailed in Middledrift Prison after he plotted with the Transkei regime to overthrow his half-brother, Lennox Sebe in 1983.

In November 1988 he agreed on Sebe's "permanent removal", but said this did not mean assassination.

He testified that President Sebe had been aware of the plot against him and had threatened to take steps against his enemies, including his brother Charles.

After the February raid the SADF ended its involvement in Katzen although financial support for Charles Sebe continued.

(ANS) OR 11/4/99

tended to head security, with Holomisa as an alternative head.

Others who backed the plan included chief Lent Magoma, Namba Sebe and Madantsane filmmaker Ben Nomoyi, who was to be the Xhosa minister of foreign affairs.

Giskei's self-declared President-for-life Lennox Sebe, who was seen as a major stumbling block to a united Xhosaland, was to be "permanently removed".

SAP colonel Jan Gribenauw told the TRC how Charles Sebe was sprung from Middledrift prison by SADF Special Forces.

He also outlined how Lennox Sebe's son, Kwane, head of the Giskei's "elite unit", and his second-in-command, "Buller" Ng

wanya, were abducted from the Amatola Hotel in King William's Town to keep them out of the way.

Gribenauw said Charles Sebe was released in order to lead the armed resistance movement, Iliso Lomzi, to overthrow his brother.

He said after initial intelligence gathering, he spoke to Joe Verser of Special Forces which was then under the command of General Joep Joubert.

Verser was the SADF's most secret man and one of South Africa's most powerful and decorated military leaders. A founder commander of the Reconnaissance Regiment, Verser went on to become managing director of the notorious CCB.

The amnesty committee heard that Katzen was finally ended by a botched attack on Lennox Sebe's home in February 1987.

The raid was led by former Rhodesian Selous Scout's Commander Major-General Ron Reid-Daly and included 23 Transkei Defence Force (TDF) troops, including ex-Rhodesian soldiers working for the TDF on a contract basis.

Van der Westhuizen said the attack was never part of the plan. Instead Sebe was supposed to have been first discredited and then overthrown by the TDF-backed XRM, led by his brother General Charles Sebe and trained by Reid-Daly at a camp near Fort St Johns.

Van der Westhuizen admitted that a meeting of Katzen's planners

in November 1988 had agreed on Sebe's "permanent removal", but said this did not mean assassination.

He testified that President Sebe had been aware of the plot against him and had threatened to take steps against his enemies, including his brother Charles.

After the February raid the SADF ended its involvement in Katzen although financial support for Charles Sebe continued.

The attack also led to a mutiny in the TDF led by Bantu Holomisa.

Defence Minister Magnus Malan later authorised spending R2 million to terminate Operation Katzen.

Reid-Daly and his men were paid R2.2m with money provided by Military Intelligence.

Hostel residents robbed for guns, truth body told

Nomavenda Mathiane (AP)

DUBE hostel residents took part in robberies to further the aims of the Inkatha Freedom Party (IFP) and not to enrich themselves, three amnesty applicants told the truth commission amnesty committee in Johannesburg yesterday

Thulani Sigudu, Samson Manqele and Thulane Mvelase, who claim to be members of the IFP Dube hostel wing, are serving long-term prison sentences at the Leeuwkop prison for the murder of Saronjee Govender in a robbery attempt on December 3 1993

In his evidence Manqele, who fired the shot that killed Govender, said there were incidents of violence at the Dube hostel in Soweto, and as members of the IFP they were exposed to danger

They did not have guns or the money to buy guns to defend themselves against the African National Congress

BB. 13/4/99
Manqele said when he pointed the gun at Govender the intention was to scare her, but things went wrong when she started screaming as he struggled to take her bag

He said the IFP leadership at the hostel was against them arming themselves but they had decided to go against the policies of their party because they, and not the leadership, were facing danger

He said they had to commit robberies because when IFP members died and had to be transported to the homelands there was often no money for that purpose

He said, the idea of committing robberies was suggested to them by IFP member Wiseman Khanyile, also a resident of Dube hostel

A member of the amnesty committee read to them a letter from IFP Gauteng leadership denying that the three men were IFP members

The hearing continues today

NATIONAL

Families oppose soldiers' amnesty bids

Stephané Bothma

Commission told that the slaying of 10 men was too brutal to forgive

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(257)

PRETORIA — The June 1986 murders of 10 young African National Congress (ANC) supporters on their way to Botswana for military training was too gruesome and the security force members responsible for them should not be granted amnesty, the truth commission heard yesterday.

The youths were first injected with a drug which rendered them unconscious. They were then doused with petrol and set alight, the commission's amnesty committee, chaired by Judge Hassen Mall, heard.

Six former members of the SA Defence Force Special Forces, including the secret unit's commanding general,

Joep Joubert, are applying for amnesty for the killings.

Their applications have been opposed by the families of the deceased. Eric van den Bergh, representing the families, did not dispute that the soldiers had acted in their official capacities when they killed the youths.

However, he said the men should not be given amnesty as their actions did not satisfy the principle of proportionality as laid out in the legislation governing the granting of amnesty.

Van der Bergh said there was also evidence that the youths, from Mamelodi, east of Pretoria, were

trapped into going for military training outside SA's borders.

The committee heard that former murder victim Joe Mamasele had "recruited" the youths to leave to country by pretending that he was a member of the ANC's armed wing.

Joubert, Civil Co-operation Bureau chief Col Joe Verster, Col Charl Naude, and three other members of the Special Forces unit, have also applied for amnesty for the murder of Mamelodi doctor Fabian Ribero and his wife Florence in December 1986. Van der Bergh, also appearing for

the Ribero family, said there were discrepancies in the applicants' testimony about why the Riberos were killed. It was also not clear whether the instruction had been to kill only Fabian Ribero or his wife as well.

In February, the amnesty committee granted amnesty to two security policemen, Brig Jack Cromie and Capt Jacques Hechter, for the murder of the 10 youths and the Riberos. The committee heard that the two operations were joint projects of the SA Police's security branch and the defence force's Special Forces. Van der Bergh argued that the

applicants should not be granted amnesty merely because Hechter and Cromie had been successful in their amnesty applications.

"There are contradictions in the testimony delivered in the two hearings," he said.

Lawyers representing the applicants argued that their clients should be given amnesty as they had complied with the amnesty act by making full disclosures.

"The security forces could no longer contain the (unrest) situation in the country by conventional methods. Murder is a difficult offence to forgive, but the times were different and values were distorted," advocate Cor Grobler, representing Joubert, said.

Forgive the 13 (252) killers, TRC told

THIRTEEN former security force members should receive amnesty for killings during the apartheid years because they had been honest about their crimes, the Truth and Reconciliation Commission heard yesterday

Lawyers for the applicants also contended in their closing arguments in Pretoria that none of the clients personally benefited from their offences

The amnesty committee of the commission has since last Tuesday been hearing evidence from the 13 men about acts committed in 1986

Six of the officers are seeking amnesty for their part in the killing of 10 youth activists at Nietverdiend in the former Bophuthatswana

The activists were murdered while on their way to Botswana to be trained as African National Congress cadres in June 1986

The "Nietverdiend 10" were killed after they were drugged and the minibus they were travelling in was set alight and exploded

The officers told the committee during their amnesty applications that

the activists were murdered to curtail terrorism

Three of the "Nietverdiend 10" applicants and three others have applied for amnesty for their roles in the murder of Dr Fabian Ribeiro and his wife Florence in Mamelodi, Pretoria, in December 1986

The couple were shot dead at their home by two SA Defence Force special forces operatives from Namibia

The officers told the amnesty committee that the Ribeiro couple were targeted because they transported activists to Swaziland for military training, allowed training to take place in their home, and gave financial support to the activists

Four of the men and three from the Nietverdiend and Ribeiro murders are also seeking amnesty for their part in the killing of Mr Piet Ntuli, a minister of the former KwaNdebele

Ntuli was killed in a car bomb that exploded when it was placed under his car seat at Siyabuswa Police Station in the homeland on July 29 1986

- Sapa

66/17/10/1/1999

SDU members given amnesty

(262)
Nomavenda Mathiane

THE truth commission's amnesty committee granted amnesty to four former Thokozani self-defence unit (SDU) members yesterday for illegal possession of arms and ammunition between 1990 and 1992.

The applications of Mahlomola Mabote, Sidney Nemaorani, Kali Letsopa and Joseph Gaelatse, who were not prosecuted for the offences, were considered in chambers.

Meanwhile, at the Johannesburg Methodist Church, evidence leader Thabile Thabete recommended that former SDU member Temba Nhlapho's amnesty application be refused as his killing of a police officer was not politically motivated.

She said Nhlapho had offered contradicting verbal and written evidence.

Thabete said when Nhlapho and a comrade approached the officer they had asked for his car keys and not for his gun, as recorded in his written statement. However, during questioning Nhlapho said his friend had seen the gun and he had not.

In his final statement, defence lawyer Michael Miller said Nhlapho had killed the officer because he saw him draw a gun.

Judge Ronald Pillay told Miller that he was "pushing it" if he believed that his client killed the officer to enhance the political position of his party.

BD 14/4/99

'Death penalty curbs crime'

Linda Ensor

CAPE TOWN — The fight for the return of capital punishment and the abolition of legalised abortion will be the central pillars of the African Christian Democratic Party's (ACDP) election campaign, the party's vice-president Louis Green said yesterday

The death penalty was vital to deal effectively with crime, he said

He was speaking at a media briefing to mark the public endorsement of the party by the Association for the Restoration of Capital Punishment

"Ordinary South Africans are tired of the horrific murder rate in this country and we believe they will throw their weight behind this alliance," Green said. He expected the party to gain more votes in the forthcoming election in the Northern Cape and the Free State — where it has had no public representatives — as well as in the Western Cape

The party has two members of parliament, having won 0,5% of the vote in the 1994 election

Founder and chairman of the association Simon Grindrod, who joined the ACDP yesterday, said the association was supporting the party to strengthen its national campaign for a return of the death sentence. He said the association had about 1 000 active members countrywide.

Grindrod said the ACDP was the only party which had consistently stuck to its principles on the issue. He said it was clear government was not interested in the appeals of millions of people for action on capital punishment.

Grindrod, who was responsible for organising a 75 000-strong petition for the restitution of the death penalty in 1996, said market research in that year showed that 75% of the population wanted the death penalty back.

He believed the figure had probably grown to 80%

BD 14/4/99

(252)

TRC hears how cops killed youths

By Gershwin Chuenyane

GRUESOME details of the killing of nine youngsters at Vlaklaagte in the former KwaNdebele were described at the Truth and Reconciliation Committee amnesty hearing in Pretoria yesterday

Mr Stefanus Oosthuizen, who at the time was attached to a police special investigative unit which dealt mainly with unrest-related incidents and murders, told the TRC that the nine youngsters were lined up and shot dead with AK-47 rifles on July 15 1986. The bodies were doused with petrol and set alight.

Oosthuizen said Wouter Mentz, a member of the murder and robbery unit in Pretoria, drove the getaway vehicle and he, Joe Mamasela and Deon Gouws had each carried AK-47 rifles and had opened fire on orders from Captain Jacques Hechter.

He also said Hechter had poured petrol over the bodies of the youths but could not remember exactly whether it was Gouws, Mamasela or Hechter who had struck the

match which set them alight. The committee also heard that Hechter chose Gouws and Oosthuizen because they were once stationed at Brooklyn police station, east of Pretoria.

Gouws corroborated much of Oosthuizen's evidence and clarified the question of who had actually struck the match when the bodies of the youths were set alight.

"I heard some children crying after the shooting and a black woman came out. I pushed her out because I did not want her to be part of those youths. Hechter, who carried the petrol container, poured it on to the bodies and I lit the match," Gouws said.

Gouws was adamant that he had only struck the match, although he was read an extract of Hechter's evidence that said he (Gouws) had poured the petrol and also struck the match. Gouws countered that he could not have carried an AK-47 and the petrol container at the same time.

The hearing continues.

ET 15/4/99

Slain informer was 'of no further use'

(252)

AMY MUSGRAVE

PRETORIA: A police informer was shot dead in 1983 because he would not be "worth anything in the future," the Truth and Reconciliation Commission heard yesterday.

Former Zeerust security police commander Philip Crause told the commission's amnesty committee in Pretoria that the informer, Andries Moatshe, was suspected of having been an African National Congress conspirator.

Crause is one of eight security police members applying for amnesty for their roles in the killings of Moatshe and two uMkhonto weSizwe cadres who were shot dead in Silent Valley, close to Thabazimbi, on May 4, 1983.

Moatshe and the cadres, known as Kruschev and Karl Marx, were shot dead during an ambush by about 10 security policemen.

Crause told the committee Moatshe contacted him on the day of the murders and asked to meet him at the Derdepoort border post between South Africa and Botswana.

Moatshe then told Crause he had arranged with the two cadres to be picked up after they had jumped a border fence.

It was decided that the cadres would be arrested in a staged roadblock close to the border.

A while later, police decided to kill the men instead of arresting them.

"We also decided to kill Moatshe," said Crause. "I did not trust him."

Former commander of the Western Transvaal branch of the security police, Johannes Steyn, told the amnesty committee he had decided the MK members should be arrested.

He said that after the details of the roadblock were sorted out, he left the scene and drove closer to the border so that he could warn the police when the vehicle was on its way.

He said he left former security member Wickus Loots in control of the arrests.

Steyn and Loots are both apply-

ing for amnesty for their roles.

Loots said that after the police members had practised how they would arrest the cadres, he decided the three should instead be eliminated.

"If shooting were to break out (between the cadres and the police) our members would have fired on one another.

"The police would have been on both sides of the road. During the killing they were all on one side."

Former security police member Daniel Nieuwenhuis, told the amnesty committee that he objected to arresting the men because his "life would have been in danger."

Nieuwenhuis is also seeking amnesty for shooting the men.

When it stopped at the roadblock, security police members opened fire on the red bakkie in which the men were travelling. All three occupants were killed.

Moatshe was not armed, Loots said. Steyn added it would have been impossible for the police to fire on the cadres, without shooting Moatshe.

Crause said he also fired shots that might have hit the victims.

Loots said he did not tell Steyn that the police had decided to kill the men because they were communicating on the "general channel" of a police radio and secrecy could not be compromised.

The shooting lasted less than a minute, and after the operation was completed, Loots counted 84 shots on the outside of the bakkie.

Loots told the commission he did not fire any shots.

When he went back to the bakkie, Loots said he found an AK-47 assault rifle in the vehicle. It had not previously been there.

Former police Colonel Roelf Venter, who received amnesty for the incident, testified during his application that the plan had been to plant weapons in the bakkie.

However, Loots said no such plan had been made.

After the incident, the bodies of the victims were taken to a mortuary in Thabazimbi and identified by their fingerprints.

Applicants William Smith and Christoffel Smit testified that they also shot at the men.

TRC told of police ambush

By PATRICK HLAHLA

An amnesty committee of the TRC heard yesterday how two Umkhonto weSizwe members and a double agent were shot dead after they were ambushed near the Botswana border in 1983.

Philip Rudolf "Rudi" Crause, a former commander of the security police in Zeerust, told the committee that the three men were intercepted on the road between Derdepoort and Dwaalboom in North West province after police had set up a makeshift roadblock.

Crause said he had earlier received information from police informer Andries Moatshe, who also acted as an ANC courier, that he would be transporting MK members Calvin "Karl Marx" Khakaza and Solomon "Khrushchev" Mlonzi from Botswana to South Africa in a red Toyota bakkie.

The committee heard that the original idea was to arrest the men and take them in for questioning, but it was later decided, among the senior policemen who included former security police chief Wikus Johannes Loots, that they should be eliminated.

"We decided that it would be dangerous to arrest the insurgents as they might elude us."

Crause said it was also decided that it would be too risky to arrest them as this might end up in a shootout.

"There was no shelter and we feared that our members might end up shooting each other," said Crause.

He told the committee it was consequently decided that a makeshift roadblock should be set up, and the policemen used an old farm gate, rocks and branches.

Crause said they received a signal from Major Jan Truter and General Johannes Albertus Steyn, who lay in wait near the border, that the men were approaching the roadblock.

"We opened fire on the vehicle with R-1 rifles as soon as it approached."

Crause said there was an AK-47, grenades and Makarov pistols in the bakkie.

Asked if the men had a chance to fire at the security force members, Crause said they were not given a chance.

The committee heard from Steyn it would have been impossible to shoot the two MK members and leave out Moatshe.

Star 15/14/99

First community courts launched

Star 15/4/99 (257)
BY HOPEWELL RADEBE

South Africa's first community courts, aimed at alleviating the burden placed by petty crimes and social disputes on the justice system, were launched at the Khayalami Metro Council chambers yesterday.

The pilot project will be guided by members of the South African Police Service, the Justice Department and non-governmental organisations. It will promote community participation in the administration of justice and policing, Gauteng Premier Mathole Motshekga said at the launch.

The courts will operate in metro townships, including Thembisa, Homolong, Ivory Park

and the surrounding informal settlements, as well as in the Johannesburg CBD.

Metro council mayor Isaac Mahlangu said the responsibility for addressing a host of minor offences often stretched the capacity of the SA Police Service, the courts and the Department of Correctional Services.

Various media, such as radio, newspapers and street committees, would be used to educate residents about the functions of these courts, he said, adding that there would be at least one presiding officer and an SAPS community officer for every 250 residents.

The officers will be responsible for arrest-

ing and bringing to court accused individuals for offences such as loud noise, littering, and urinating in public.

The officers will be trained from June.

Motshekga, who proposed the concept at his inauguration ceremony on February 19 last year, said the integrity of these courts had to be protected. Therefore, no office-bearers of political parties or people with a criminal record would be accepted for such a job.

He reiterated Deputy President Thabo Mbeki's sentiment that no amount of legislation could wipe out crime unless there was moral renewal or restoration of South Africa's moral fibre.

TRC told how cops killed 3 *Sowetan 15/4/99* 'terrorists' *(2/7/99)*

By Gershwin Chuenyane

FORMER senior police officers described at the Truth and Reconciliation Commission hearings in Pretoria yesterday how a double agent and two Umkhonto we Sizwe (MK) commanders from Soweto were shot dead after they were ambushed near the Botswana border.

Colonel Rudolf Crause, General Wikus Loots and General Johannes Steyn, who are among eight police officers applying for amnesty, told the TRC's amnesty committee that two MK commanders and a double agent, Mr Andries Moatshe, were shot and killed during an ambush at Silent Valley near Derdepoort border post in the former western Transvaal on May 4 1983.

According to an extract from the African National Congress' publication *Sechaba*, the two MK cadres, Calvin "Karl Marx" Khakasa and Solomon "Khrushchev" Mlonzi, did not use their real names. The publication goes on to give Karl Marx's name as Schoeman Skhwiri Ramokgopa of Diepkloof, Soweto.

Crause said he was part of an operation that arrested insurgents as they came into the country when he received a message on his radio that there was a person who wanted to speak to him at Derdepoort border post.

When he and Captain Roelf Venter arrived at Derdepoort, he recognised

the person as Moatshe, a suspected ANC courier.

Moatshe told them he would be transporting two armed MK commanders into South Africa. Crause said he told Moatshe that his (Moatshe's) activities for the ANC in Botswana were well known and that he could be wounded and arrested.

Crause then called Loots and Steyn who decided that there should be a roadblock where the "terrorists" were to be arrested. But after Steyn left, they decided to "eliminate" the "terrorists" as well as Moatshe. Crause said they had decided to kill Moatshe because he was of no value to them in the future and could not be trusted.

They said Moatshe and the two cadres were killed as their vehicle stopped at the roadblock. Steyn said the shooting lasted less than a minute, and 84 shots were fired from R1 rifles. All three said three to four handgrenades and two Makarov pistols were found on the cadres.

Loots said Moatshe was not armed. He said it would have been impossible for the police to have fired on the cadres, and not shoot Moatshe.

The three police officers said they did not know whether Moatshe's body and vehicle were handed over to Botswana authorities or to his next-of-kin.

The two cadres - Khakasa and Mlonzi - were given paupers' funerals. The hearing continues today.

Truck hijack doctor granted amnesty

(252)

Sowetan 16/4/99

By Monk Nkomo

A PRETORIA doctor who was involved in the hijacking of a truck transporting classified medicine valued at more than R2,6 million about five years ago has been granted amnesty.

This follows a disclosure in his amnesty application to the Truth and Reconciliation Commission that he had engaged in criminal activities to help the Pan Africanist Congress and its armed wing, the Azanian People's Liberation Army (Apla), in its struggle against apartheid.

Dr Peter Mabe of Atteridgeville, who held the position of lieutenant in Apla, was arrested with Apla operatives Frank Sithole and Solly Mdaweni on December 6 1993 in Midrand, near Johannesburg, in connection with an armed robbery of medical supplies and for being in possession of an unlicensed firearm.

He appeared in court several times. Charges against him were withdrawn but later reinstated. He is due to appear in court again on June 4 when the charges are expected to be permanently withdrawn.

Sithole and Mdaweni disappeared after being granted bail and their whereabouts are still unknown.

In his application for amnesty, which was granted last Thursday, Mabe admitted having been involved in the planning and execu-

tion of the armed robbery in 1993. He said he "directed Mdaweni and Sithole who performed it". But he denied he was in possession of a firearm at the time of the robbery.

Mabe said Sithole and Mdaweni had told him that their unit had been tasked with committing armed robberies on medical supplies which would be used to help Apla soldiers injured in underground military operations.

"They also told me that they were to raise funds for the internal day-to-day and logistical needs of infiltrated Apla soldiers."

Mabe said he played a major role in getting a place in Atteridgeville to store the stolen medical supplies.

He said "I did this in the furtherance of the political struggle aimed at freeing and democratising South Africa."

Supporting Mabe's application, former PAC president Mr Clarence Makwetu said Mabe had been a PAC member since 1979 and was head of the organisation's medical directorate in Gauteng and also their director of repatriation since 1990.

Makwetu said "Dr Mabe is facing criminal charges for offences committed in pursuance of the PAC's instructions in the fight against apartheid. He had express instructions from our head office to procure medical supplies for members of the PAC and Apla.

"He was instructed to procure the medical supplies with whatever means at his disposal, legal or not. I am advised that since Mabe was acting on behalf of the PAC and not for any personal reasons, he may qualify for amnesty."

Makwetu said Mabe was involved in the establishment of the first United Nations High Commission for Refugees office in South Africa and was on the PAC's negotiating team when the party's present position was negotiated with the previous apartheid government.

The SA Council of Churches also submitted to the TRC that Mabe had rendered outstanding service during the apartheid era by offering free medical treatment to the victims of violence. He did this through the "sanctuary programme" of the Witwatersrand Council of Churches.

"The unselfish support and service of physicians like Dr Mabe enabled the church to fulfil a vital component of his calling - compassion for the needy," Mr Eddie Makue, the SACC's head of justice ministries said.

Advocate Martin Coetzee, executive secretary of the TRC's amnesty committee, confirmed yesterday that they had granted Mabe amnesty. He said they had considered the nature of the offences and his application complied with the requirements set out in Section 20 of the Act.

TRC pardons PAC medico after party's evidence

By CHARLES MOGALE

(2/17)

A PRETORIA medical doctor arrested in connection with possession of large supplies of stolen medical supplies in 1993 has been granted amnesty by the Truth and Reconciliation Commission (TRC).

Dr Peter Mabe was granted amnesty after the PAC, of which he was a senior member, submitted

evidence that he was acting on orders from the organisation to procure medical supplies for Apla cadres through "whatever means at his disposal, legal or not."

The TRC received written submissions from former PAC president Clarence Makwetu, general secretary Khoslan X (then Benni Alexander), Apla commander Johnson Mlambo and the South African Council of Churches, lauding the work he had done for the struggle.

In his submission, Makwetu said Mabe was a "disciplined" member

of an Apla unit.

He said "He had express instructions from our head office to procure medical supplies for members of the PAC and Apla both inside and outside the country. I believe the charges he is facing arise from instructions he had from our head office."

Mabe, who has a string of science degrees, is also studying for an LL.B. degree with the University of South Africa.

The medical supplies were found at the Ateridgeville home of Klaas Mojapelo on December 15, 1993.

Mabe has admitted to planning the robbery that procured the supplies on December 6 the same year. He directed Apla members Solly Mdaweni and Frank Sithole to execute it.

"As soon as I was advised by my assistant Mdaweni and Sithole that the medical supplies were available, I authorised that they be delivered at Mojapelo's place. Mojapelo did not have anything to do with the supplies but to keep them in store for me."

In his service of Apla, he had treated numerous cadres at his

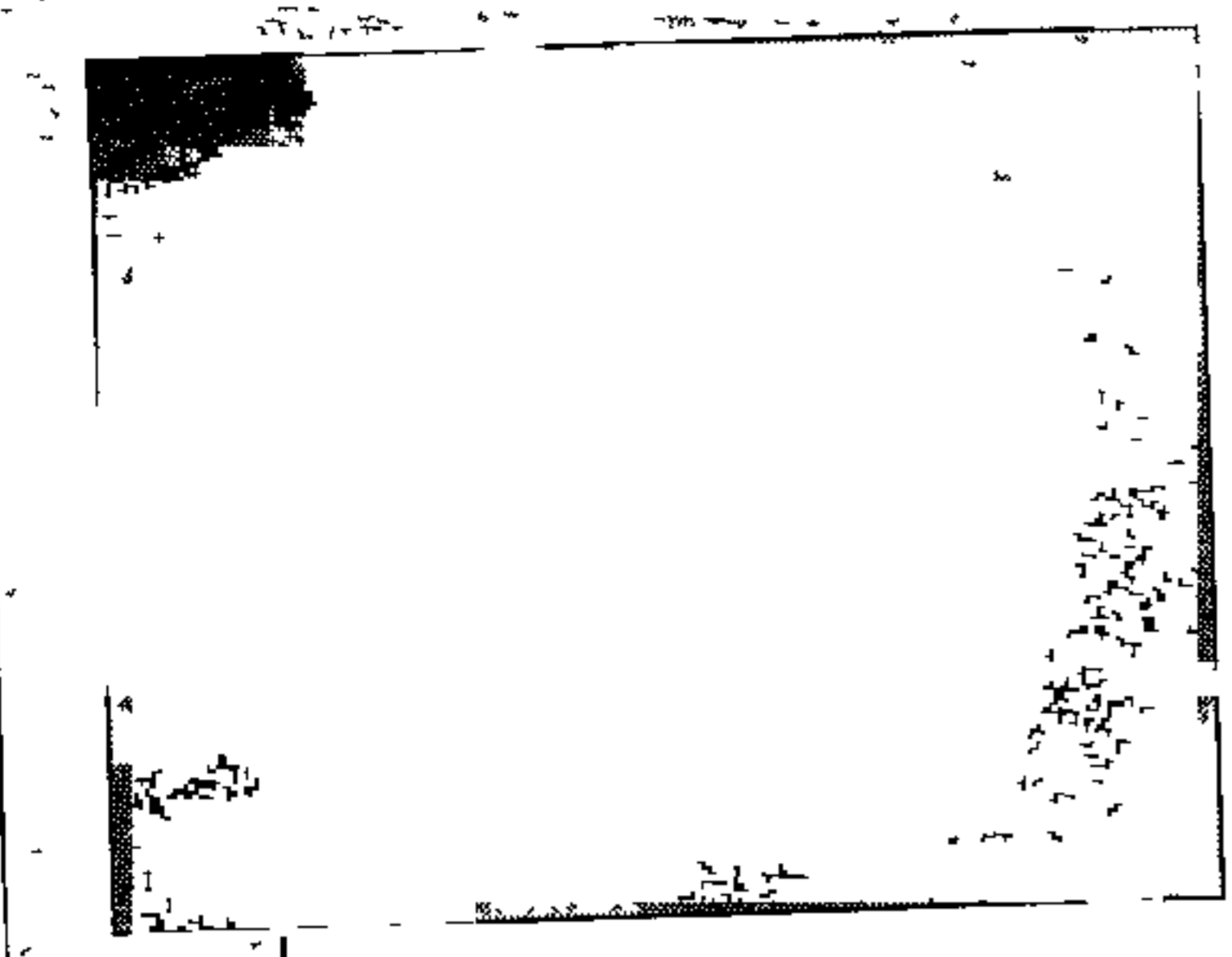
practice, some of his patients were Mlambo, Makwetu and Khoslan X.

"I did all in my efforts to assist the PAC, Apla activists, cadres and members in furtherance of the political struggle aimed at freeing and democratising South Africa."

Granting him amnesty, the TRC amnesty committee said it was satisfied that the requirements set out in the relevant act had been satisfied.

He was therefore pardoned for being in possession of stolen medical supplies and participating in an armed robbery.

CP 18/14/199



*THE death penalty has been seriously abused in South Africa's apartheid past. But that does not render the penalty intrinsically harmful to or irredeemably contrary to civilised standards of law enforcement, argues the Rev **LEBAMANG J. SEBIDI.***

Fight fire with fire when crime

GIVEN the high levels of violent crime in this country, it was to be expected that the debate surrounding the re-instatement or continued abolition of the death penalty would resurface as an extremely emotive election-eering platform in the country's second democratic elections

It will, however, be important for the electorate to understand what they will be agreeing or disagreeing about when faced with this highly emotive issue

The electorate should remember that in 1995 South Africa's Constitutional Court was asked to investigate whether the provision of the death sentence in Section 277 of the Criminal Procedure Act was consistent or inconsistent with the right-to-life clause in the then current interim constitution. In short, they were tasked with coming up with a simple factual judgement, not a value judgement

The court did not say whether or not the death sentence was compatible with civilised norms of culture, or whether it was an adequate deterrent to serious and violent crime. It left that debate to the people of this nation and their leaders

Admittedly, the death penalty, in South Africa, is unconstitutional. It is banned by law, by the Constitution of the country. But any democratic constitution is presumed to have come into being by the will and consensus of the people. The people shall govern.

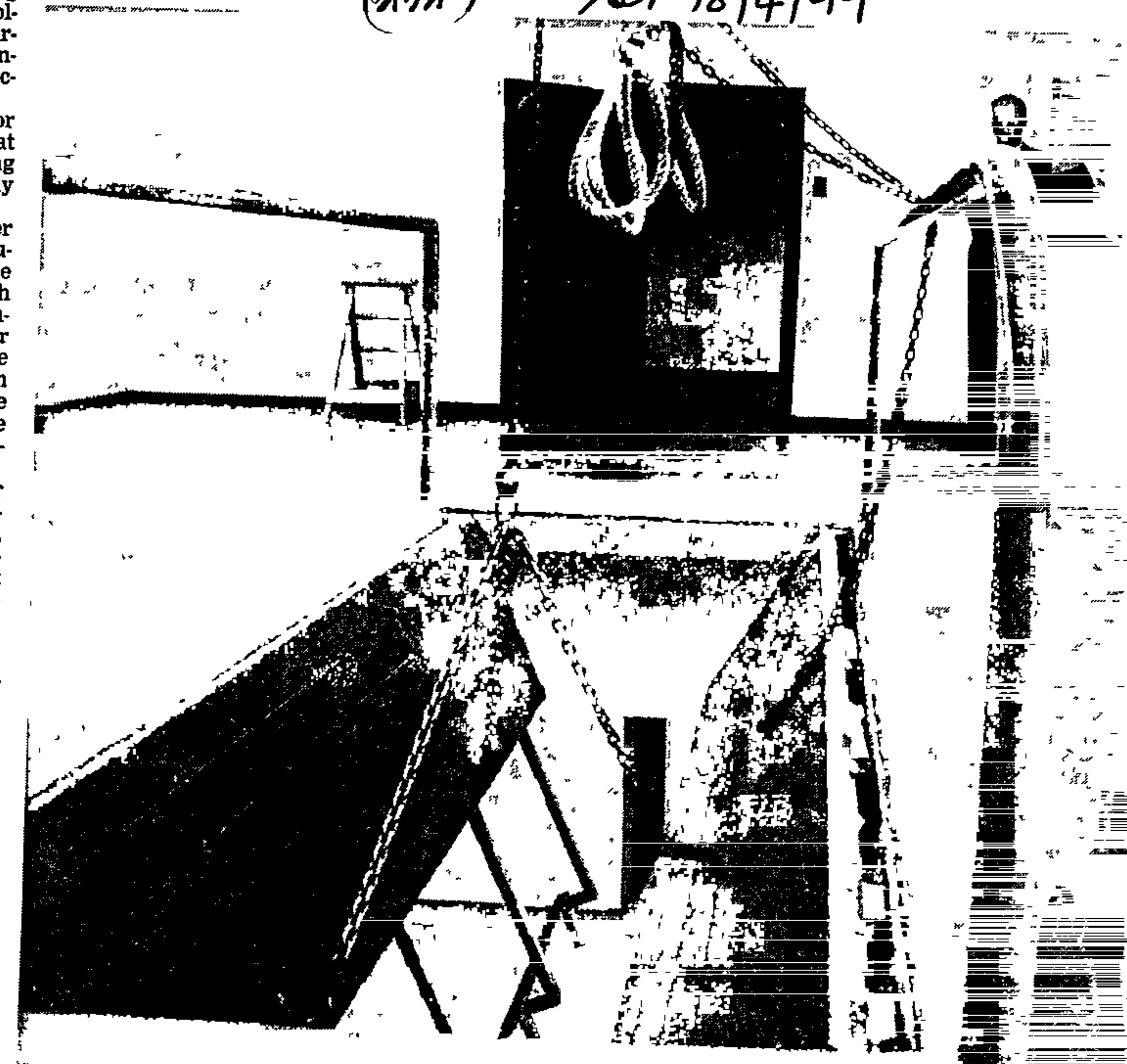
And if this is true, what is constitutional today can very well be unconstitutional tomorrow, depending on the will of the people. So to say that the death penalty is unconstitutional is not to say that its current unconstitutionality is unamendable

The people have the democratic right to amend the constitution, including the clause that out-laws the death sentence

We strongly suspect that this is what the majority of people in this country would love to do in the face of so much pain, fear and suffering, brought about by the impunity of criminals who have virtually taken over the streets of this country

It is crucial to realise that unemployment, crime and the ineffectiveness of the law-enforcement structures in this country form an inter-related triad that accounts for the economic woes that this nation is faced with. Poverty, ignorance and sickness are spawned by that triad

This vicious circle must be broken. There is an undeclared war in this country: the war of the criminal minority against the law-abiding majority. The criminals must be merciless-



BRING BACK THE ROPE... The gallows at Pretoria Central Prison. This apparatus was dismantled in 1995.

ly stopped and crushed. When the Constitution speaks about the right-to-life as being a fundamental right, the electorate should not understand that as meaning that the right-to-life is absolute

The right-to-life can be forfeited by the callous and cruel behaviour of individuals who go about raping defenceless women, butchering elderly people in their homes and generally causing mayhem and destruction

Such people have no right-to-life. The electorate must clearly understand that rights and obligations are

correlatives. If one enjoys the fundamental right-to-life, one also has a fundamental obligation to respect other people's right-to-life. And if one continually flouts one's obligation or duty to respect other people's right-to-life, one will end up forfeiting one's own right-to-life. It is that simple

To those who fervently pull statistics and argue that the death penalty is not a deterrent, the response to that should be quite simple: who cares if it is not a deterrent? What could act as a deterrent, in any case?

But it is quite true that in the cur-

rent South African socio-political situation, the reinstatement of the death penalty cannot be done without the possibility of creating other problems in respect of for whom and the death penalty will be dispensed

It is an open secret that our judiciary and law-enforcement structures are, by and large, still plagued by the racist bias of the past 50 years

The death penalty in such a situation could easily be used unproductively against the majority of South Africans. Be that as it may, the electorate must learn to distinguish

ight fire with fire when crime rules

(252)

SP 18/4/99



ACK THE ROPE ... The gallows at Pretoria Central Prison. This apparatus was dismantled in 1995.

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The death penalty in such people's
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productively against the majority of
South Africans. Be that as it may, the
electorate must learn to distinguish

logistical and strategic problems from
substantive problems of principle.

The electorate should therefore
elect a party that will be able to come
up with convincing strategies of law
enforcement, a party that goes far be-
yond mere verbal promises with re-
gard to our legitimate war against
criminals who want to govern this
country.

□ *Lebamang J. Sibidi is executive
director of the Trust for Educational
Advancement in South Africa. He is a
Roman Catholic theologian, ethicist
and educationist.*

Clamp on lawyers in legal aid fee scam

Attorneys and advocates 'are raping treasury'

(252) ARG 19/4/99

GLYNNIS UNDERHILL
SPECIAL CORRESPONDENT

The state is cracking down on attorneys and advocates who claim fees from the cash-strapped Legal Aid Board for days when they do not appear in court.

In one case, an attorney in KwaZulu Natal is to be charged with 90 counts of fraud. He will appear in court soon, the Legal Aid Board disclosed.

Peter Brits, head of the department of Constitutional Services at the Legal Aid Board, said "one or two" Cape Town legal practitioners - attorneys and advocates - were under investigation by the board for fraudulent claims.

Mr Brits said there had also been complaints of legal practitioners deliberately dragging out matters in the High Court.

However, he said he did not believe lawyers in general behaved unethically.

"There may be isolated instances where this is true," he said.

"The Legal Aid Board has no disciplinary control over the legal professions. This is vested in the professional structures of the legal professions and ultimately in the courts.

"The board must in large measure rely on judicial officers to ensure that legal practitioners do not unnecessarily drag out matters so as to increase their earnings,"

said Mr Brits.

A top legal source told the Cape Argus he believed attorneys and advocates were "raping the public treasury".

Mr Brits believed the statutory tariffs paid in criminal matters in the High Court and in criminal appeals were higher than necessary and the remedy would be for the Legal Aid Board to establish its own tariffs.

Lawyers are paid R550 a day to appear in the District Court and R725 for Regional Court appearances.

In the High Court, lawyers are paid according to their experience. Those with fewer than five years' experience earn R1 000 a day, excluding VAT, with five to 10 years' experience they earn R1 400 a day, and with more than 10 years' experience they earn R1 800 a day.

In criminal appeals, an attorney will earn R400 an hour, which can amount to R2 000 a day. An advocate with more than 10 years' experience can earn up to R4 000 a day. However, discounts have been negotiated with the Law Society and the General Council of the Bar.

The legal source said these fees were an exploitation of the public treasury.

"It is disgraceful what the bar is charging the public treasury. Some advocates are charging up to R20 000 for three days' criminal case work," the source said.

Mr Brits dismissed this claim but said that there were "very rare instances" in civil matters where the Director of the Legal Aid Board had personally authorised the briefing of senior counsel. It was then possible that a trial fee for three days might approach R20 000.

Such a fee would be taxed and would have to be certified as reasonable by the taxing secretary of the Bar Council.

Meanwhile, the Legal Aid Board - beset with financial woes and mismanagement problems - is restructuring to cope with the soaring demand for its services.

Applications for legal aid have risen from 35 410 in 1990/91 to a projected 206 896 for 1998/99. The demand for legal aid has increased since the new Constitution placed an obligation on the State to provide free legal services in cases where people would be unduly prejudiced and could face imprisonment.

But Cape Town attorney William Booth, chairman of the Cape Law Society's Legal Aid Committee, said he was not aware of any abuse of the Legal Aid system by any attorney.

He gave an undertaking to personally deal with any allegations.

Mr Booth said he believed attorneys and advocates should be reimbursed on the same scale.

The Cape Bar Council said it considered allegations of fraud and unethical conduct by its members in a very serious light.

'Moderate' tariffs cut trial abuse

GLYNNIS UNDERHILL
SPECIAL CORRESPONDENT

Before 1994, the Legal Aid Board paid lawyers a fixed fee for criminal cases heard in district and magistrates' courts.

The theory behind this arrangement was that a legal practitioner who took on a sufficient number of legal aid matters would, on average, receive a fair fee, said Peter Brits,

head of constitutional services at the Legal Aid Board.

"In practice, the flat-fee system resulted in widespread abuse. Unethical legal practitioners, knowing they would earn R450 in respect of a district court matter and R600 in respect of a regional court matter, irrespective of whether the matter lasted half an hour or 10 days, placed accused persons under undue pressure to either make admissions that

would reduce the duration of the trial or to plead guilty," he said.

Present fees for criminal cases in district and regional courts were "moderate", said Mr Brits.

"Any temptation to any legal practitioner to tell his or her clients not to plead guilty merely to drag out the matter is limited. I cannot, however, exclude the possibility that there may be isolated instances of such unethical behaviour."

High Court Bench 'still too pale and male'

MICHAEL MORRIS

SPECIAL WRITER

Transformation of the Cape Bench is too slow - and some acting judges are not up to the job.

These are some of the problems highlighted today at a hearing of the Judicial Services Commission.

The Commission has convened in the city to interview candidates for High Court and Constitutional Court posts.

A panel chaired by Chief Justice Ismail Mahomed - and including Justice Minister Dullah Omar, MPs from various parties and a representative of the country's legal fraternity - is interviewing various candidates.

Also present today was Mr Justice Edwin King, Judge President of the Cape.

Problems in the Cape division emerged in the first hearing of the day - when Mr Justice John Hlope was interviewed for the position of Deputy Judge President of the Cape.

He has been Acting Deputy Judge President since last November, after having been beaten to the Judge Presidency by Judge Hlope, 89, became South Africa's first black judge when he was appointed to the bench from the ranks of academia by President Mandela in 1994.

He believes transformation of the courts is too slow.

"We have only three black judges out of 26 on the Cape bench, and I am the only African."

He was also critical of the lack of consultation on certain cases.

"I feel there should be on-going co-operation between the Judge President and Deputy Judge President, but I have not seen this co-operation so far."

Undoubtedly, (Judge President King) has been doing these things single-handedly.

Judge King responded: "I do not think we have been unsuccessful in the appointment of women and blacks."

"There is a sensitivity in the Cape division to the need for transformation, and not simply something to which lip service is paid."

He expressed concern about judges who

were slow in delivering judgments.

In the case of one acting judge, an "intolerable" situation had arisen because of two reserved judgments, one of which had not been settled in eight or nine months.

"I am told that this individual is too busy to write his judgment. When the time comes, I will make a point of expressing serious misgivings about his appointment."

Judge King was also concerned about backlogs in criminal appeals.

"What we are going to be doing is that throughout the July recess, criminal appeal courts will be sitting, presided over by acting judges, and in that way we will almost certainly eliminate the backlogs," he said.

De Kock tells of arms ferrying

DD 20/4/99

(279)

EAST LONDON — Apartheid's assassin, former police colonel Eugene de Kock, told the truth commission amnesty committee on Monday that huge amounts of Eastern bloc weapons were brought into SA cities during a secret war against the ANC and its sympathisers.

He told of two coups which failed and one that succeeded which he had helped plan against the former Transkei and Ciskei.

He said that all his actions were sanctioned by former State President PW Botha and his police and army generals.

De Kock appeared amid tight security at the committee's amnesty hearing in Cambridge, East London.

He said he had supplied weapons for the coup attempts in the former Transkei and Ciskei in 1990.

There were more police than members of the public at the Catholic Hall in Cambridge, where De Kock, 50, and four other applicants were appearing before Transkei judge Selwyn Miller.

He is serving a sentence of 212 years plus two life sentences at Pretoria's C Max Prison for charges ranging from murder to fraud. His alleged accomplices were former se-

curity police warrant officers Willem Nortje, Marthinus Ras, Daniel Snyman and Nicolaas Vermeulen.

In a surprise move, former SA Defence Force commandant Jan Nieuwoudt withdrew his application for amnesty on the grounds that he "was not guilty of any misconduct or gross abuse of human rights".

The amnesty application of Pumelele Gumengu was postponed to a later date.

Two of De Kock's amnesty applications regarding the first 1990 attempted coup against Transkei's Gen Bantu Holomisa and a later attempt against Ciskei's Brig Oupa Gozo were heard in chambers and only a summary of events was provided in the open tribunal.

In both cases the former Vlakplaas commander admitted he had supplied weapons from his armouries to dissidents seeking to topple the bantustan military regimes.

The main thrust of yesterday's hearing was the 1990 November coup attempt against Holomisa in which Gen Charles Sebe and Col Craig Duli were killed by troops loyal to Holomisa.

De Kock admitted he had supplied the weapons, including AK-47

assault rifles, grenades, RPG rocket launchers and radios from the Vlakplaas armouries.

Grilled about cross-border operations in Swaziland in which a senior ANC military member was killed, De Kock said this "was sanctioned at the highest level". He said SAP generals knew about the raid.

He told the hearing he fetched the weapons from Namibia. "The quantities were phenomenal and we are talking in tons here."

"We brought in rifles, pistols, mortars, explosives, detonators, landmines, limpet mines, grenades, antitank guns, rocket launchers, missiles and even light artillery."

Meanwhile, in Johannesburg former police regional commissioner Gen Gerrit Erasmus denied yesterday ever ordering former "dirty tricks" policeman Michael Bellingan to eliminate his wife.

Testifying before an amnesty committee on Bellingan's amnesty application, Erasmus was reacting to Bellingan's claims that he murdered his first wife Janine on instructions from Erasmus.

Bellingan is serving a 25-year jail term at Johannesburg's Diepkloof Prison for the murder — ECN, Sapa

NEW disciplinary measures for judges

David Greybe

CAPE TOWN — The Judicial Service Commission is expected to give the go-ahead this week for the introduction of a public complaints mechanism against judges

The proposal is seen as part of government's drive to transform the judiciary, particularly the high courts, and make them more "public-friendly". The commission yesterday began three days of interviews for eight judicial appointments to the constitutional and high courts

Sources said the proposal for a complaints mechanism had the backing of the chairman of the commission, Chief Justice Ismail Mahomed, and fellow commissioners Constitutional Court president Arthur Chaskalson and Justice Minister Dullah Omar

"The public wants a mechanism to access complaints against judges whose attitudes are questionable," one source said. This mechanism would not be for appeals against judgments, but for complaints about judges' comments and be-

haviour during proceedings

"The kind of mechanism envisaged could be a separate disciplinary committee under the commission." The proposal was due to be discussed today or tomorrow, sources said. The commission, the only body currently allowed to discuss the behaviour of judges, would discuss complaints against four judges this week.

Once the commission gave the go-ahead for a complaints mechanism, the justice department would start drafting legislation, another source said. As the matter was urgent, it was expected to be enacted this year

Proceedings were dominated from the outset by the issue of transformation; there were complaints that it was too slow, and also that some acting judges were not up to their jobs

Judge John Hlope, the only candidate for Cape deputy judge president, said transformation, in particular racial and gender representivity, had been slow throughout SA. The Cape division, with only three black judges out of 26, was no

exception. Hlope, 39, called on the commission to lead the process. He has been acting deputy judge president since the end of last year, after Judge Edwin King beat him to the judge presidency.

Omar said the issue of greater racial and gender representivity in the judiciary was the dominant one — "everyone in the judiciary is grappling with how to speed up the process". Speaking during a break, Omar backed Hlope's call for more support from sitting judges for new and acting judges, and more judicial training. Hlope was critical of lack of consultation and said King acted on his own at times.

King said he was available to judges. He saw no reason to believe that if Hlope became his deputy, he would not enjoy the support of the rest of the bench. Expressing concern about certain acting judges who were slow in delivering judgments, King said there was a stage when slowness should disqualify a candidate

The commission will make its recommendations to President Nelson Mandela later this month.

BD 20/4/99

Experience 'must not be sacrificed on altar of change'

(ANA) ARG 20/4/99

Transformation of the Bench is essential, but will take time and should not come at the cost of experience, said Judge Van Dijkhorst.

He said he had not had much opportunity as a judge to advance transformation, but that, as chairman of the Magistrates' Commission, "we always indicated to (Justice Minister Dullah Omar) candidates who could be borne in mind and considered for appointment on the basis of affirmative action".

African National Congress MP Lindi Ngwane questioned him on the nature of his stated commitment to transformation.

He seemed nonplussed "I am a judge. I am not in an administrative position. As chairman of the Magistrates' Commission, we nominated affirmative action candidates in line with government policy. If that's transformation, I followed it. But as a judge, I sit in court listen to cases."

And in future, she asked? He would help the judge-president in this, "so you will have to ask him what's necessary in the line of transformation".

"You have no ideas on transformation?" she asked

"Yes, of course I do. If black people are appointed who do not have the experience that I have, I will help them to get the experience, and advise them."

He went on "My view is that the Bench has to be more representative and that in the process of (achieving that) we must not lose all our experience."

Ms Ngwane also questioned Judge Van Dijkhorst on his role in establishing the national bar examinations, of which she said, "It is commonly felt that that exam has been used to exclude African candidates."

He said "That's incorrect. If one holds that view, all exams are anathema, then that exam would block certain people. That's its purpose, to block people who do not have the qualifications."

Flower Gang court costs 'could have been halved'

SPECIAL CORRESPONDENT

The Flower Gang case involving David "Doggy Dog" Rutters lasted more than 90 days in the Cape High Court, with legal aid fees for the defence mounting daily - fees it now emerges could have been halved.

The five men were on trial for a crime rampage in Namaqualand during the spring flower season in 1986, accused of murdering Hendrina Louw, Julia Fairbanks Smith and her daughter, Emma, on a Nieuwoudtville farm.

The men pleaded not guilty to 14 charges, including murder, attempted murder, robbery, theft, house-breaking and contravening the Arms and Ammunition Act.

Mr Justice Braam Lategan sent the gang to prison indefinitely, using

the toughest law to put away the five men for as long as possible.

Peter Brits, head of the department of constitutional services at the Legal Aid Board, said the lawyers who appeared for the accused were paid at standard legal aid rates.

The Legal Aid Board paid R200 000 for the defence of the accused in the Flower Gang, but Mr Brits said that figure could have been halved by appointing salaried staff from one of the Legal Aid Board's new justice centres.

"I assume the major cause of the lengthy duration of the matter was the decision by the attorney-general of the Cape, now the deputy director of public prosecutions, to charge five accused simultaneously. I do not, however, thereby imply that the state acted improperly."

Legal Aid Board plans to make justice more accessible

The financial woes and past mismanagement of the Legal Aid Board have become a key focus in its restructuring plans.

Various pilot projects have established that the cost of providing legal aid could be reduced by around 50% if the Legal Aid Board employed lawyers at its own justice centres.

Gadlifa Khan, director of the Legal Aid Board Justice Centre in Cape Town, is setting up the first justice centre in the country.

The plan is to move from the judicial system that provides the bulk of legal aid, and involves employing private lawyers to represent those who can't afford to pay.

The justice centres, like the one Ms Khan heads, will provide a range of services, including defence in criminal trials and representation in civil matters, using salaried staff.

"Don't call it a pilot project," she said in an interview in her Church Street offices. "It is going to work."

GIYANIS UNDERHILL

SPECIAL CORRESPONDENT

Ms Khan said it was widely accepted the Legal Aid Board had to deal with its administration problems, which was why it was embarking on a restructuring process.

While the general Bar Council's vice-chairman Johann Gausch has said he is not convinced the justice centres will cost less than the judicial care system, Ms Khan is sure the Legal Aid Board is moving in the right direction.

"You cannot blame central management because the demand for legal aid has increased markedly since the introduction of Section 35 of the Constitution, which places an

obligation on the State to provide free legal services in cases where people would be unduly prejudiced.

"We have this problem where we sit with the same budget and obviously now there is an obligation to provide further legal services."

For many, access to legal aid will now be available for the first time.

Ms Khan said that in the past only the very wealthy could afford to go to court.

"Salaried staff were denied access to justice because they just couldn't afford it. All that has



Legal aid director Gadlifa Khan

changed now, placing more demands on us."

The Legal Aid Board currently has 24 legal aid clinics, two public defender offices and two rural projects. It is substantially expanding its network of salaried lawyers and the first phase in this project will be the establishment of Justice Centres.

Justice Centres are also planned for Mitchell's Plain, Port Elizabeth, Durban, Beaufort West and Ermedelo.

Peter Brits, head of the department of Constitutional Services at the Legal Aid Board, said an additional 10 salaried legal practitioners

and an additional 15 candidate attorneys will be employed.

In April last year a request was submitted to the Minister of Justice for the authorisation of an additional 900 posts, of which the vast majority will be salaried lawyers. It will obviously take several years to establish a comprehensive network of salaried lawyers.

While the board gets R200-million from the government, this budget is sorely stretched with the demand for legal aid services.

Mr Brits countered claims that the means test to determine whether a legal aid applicant was indigent was being largely ignored. It was strictly applied in civil matters.

But in criminal matters a wider test was now used to ensure the Constitution was adhered to.

Figures show that the demand for legal aid has soared from 35 410 in 1990/91 to a projected figure of 206 896 for the 1998/99 financial year.

(272)

FRS 20/4 99

Delmas judge comes out v.

Van Dijkhorst tells SA's top judicial figures why he thinks co

Outspoken judge Kees van Dijkhorst has left the Judicial Services Commission in no doubt about his interest in the state of justice in South Africa, or his anxiety.

He could almost have been said to have been recklessly candid in telling the principal custodians of the justice system - Justice Minister Dullah Omar, Constitutional Court president Arthur Chaskalson and Chief Justice Ismail Mahomed, among others - exactly what he thought was wrong, and what should be done, in plain terms.

Mr Justice Van Dijkhorst was being interviewed by the commission to assess his eligibility for higher appointment.

His nomination for the post of deputy judge-president of the Transvaal, as well as for a Constitutional Court post, cut to the heart of the new South Africa - with all the irony and surprise, and the harsh reality - that has characterised much of the change since 1994.

His allegedly dubious political inclinations of the past seemed contradicted, even expunged, by the support of 14 black advocates belonging to Advocates for Transformation at the Pretoria Bar.

His keenness to serve on the Constitutional Court - his preferred appointment - seemed, superficially at least, out of kilter with his conviction that the constitution itself was the root of a grave flaw in the criminal justice system.

For a publicity-shy judge who repeated several times that he "hates being in the newspapers", he spoke with almost impolitic bluntness on the state of the law, but insisted his purpose was sincere.

It seemed ironic that his chief questioners were, 10 years ago, key figures in the Delmas Trial defence team: the president of the Constitutional Court, Arthur Chaskalson, and feisty senior counsel George Bizos, who serves on the Judicial Services Commission.

To start with, at least, there was an almost chummy character to these exchanges.

Judge Chaskalson questioned him first, on the qualities required of a Constitutional Court judge. It was vital, Judge Van Dijkhorst said, that such a judge should be "accepted by the community, otherwise he should not be there".

He should also be capable, have integrity, a sense of judgment, an ability to study, and an interest in

MICHAEL MORRIS

SPECIAL WRITER

that field of law. He believed he had these attributes, but added: "If you feel I will not be accepted (by the community), then I am not interested in the job. That's it."

It was also essential that one should not live a "cloistered life in an ivory tower".

"You have to deliver judgments which are in line with what is to be nurtured in the community itself, a general feeling of what the law should be. You do not necessarily need a very legalistic sort of person."

Judge Chaskalson: "My understanding is that you put high up in the list of qualifications the concept of an understanding of the population and the implications of judgments?"

Judge Van Dijkhorst quipped: "I had a schooling for three years from Bizos and Chaskalson (referring to the Delmas Trial)." The trial, he said, had given him insights into black grievances and aspirations which he had not had before.

When Mr Bizos took up the questioning, the dominant theme of the hearing emerged: "Would you agree that a commitment to the constitution and the values enshrined in it is an absolute requirement for serving in the Constitutional Court?" he asked.

Yes, Judge Van Dijkhorst replied.

But Mr Bizos quoted an article by the judge in a legal journal last November in which he described the justice system being rendered powerless by the constitution. It read: "This is the perception of the general public of our criminal justice system. I share that view."



Van Dijkhorst: 'I share the view that the constitution at the moment ties the hands of the administration of justice'



Chaskalson: 'You put high up in the list of qualifications the concept of an understanding of the population?'

Black advocates 'pressed'

The Delmas Trial judge, often characterised as an "apartheid" judge, has the blessing of 14 black members of Advocates for Transformation, a grouping at the Pretoria Bar, in his bid for higher office.

But they had to twist his arm to persuade him to accept nomination for deputy judge president of the Transvaal and a Constitutional Court post.

This emerged during the judge's intensive interview by the Judicial Services Commission yesterday.

In fact, Judge Van Dijkhorst was initially opposed to standing for a more senior post because of the risk of having a black rival, and being party to creating in the public perception an unedifying racial contest.

"After the General Bar Council and the Advocates for Transformation (the 14 black Pretoria advo-

Unhesitatingly, Judge Van Dijkhorst responded. "Yes, I share that view. I share the view that the constitution at the moment ties the hands of the administration of justice. You will not like this, Mr Bizos, but things have to work. If they do not, it's no use."

"The point of that article is that one aspect of the constitution ties the hands of justice, and that is the requirement that a criminal can

keep quiet all along and not tell his side of the story and leave it to the State to prove throughout.

"In theory, that's fine. When I was at the Bar, I subscribed to it. But I have been thinking of late that it's Utopia, and it does not work."

It meant that months of court time were wasted in leading uncontested evidence. In contrast, in (parts of) Europe, an accused was brought before a magistrate for questioning

'Why I attended a rally hosted by the pr-



Molefe: invitation

It was widely thought that Judge Van Dijkhorst's handling of the Delmas "terrorism" trial 10 years ago - in which he jailed several activists who are now leading politicians - would dominate yesterday's hearing, and be the subject of a difficult grilling.

It was, instead, an almost benign factor - an instance on the one hand of the judge's own self-professed political reform and, on the other, the basis of a

later opportunity for him to contribute to reconciliation between blacks and whites.

The trial, he told the Judicial Services Commission, gave him "the background to the feelings of the black community".

"It opened my eyes to the grievances of the black community and their aspirations," he said.

Later, he was invited to a post-democracy rally hosted by one of the Delmas accused, Popo Molefe, now premier of the

North-West Province, other accused, now chairman of the Provinces.

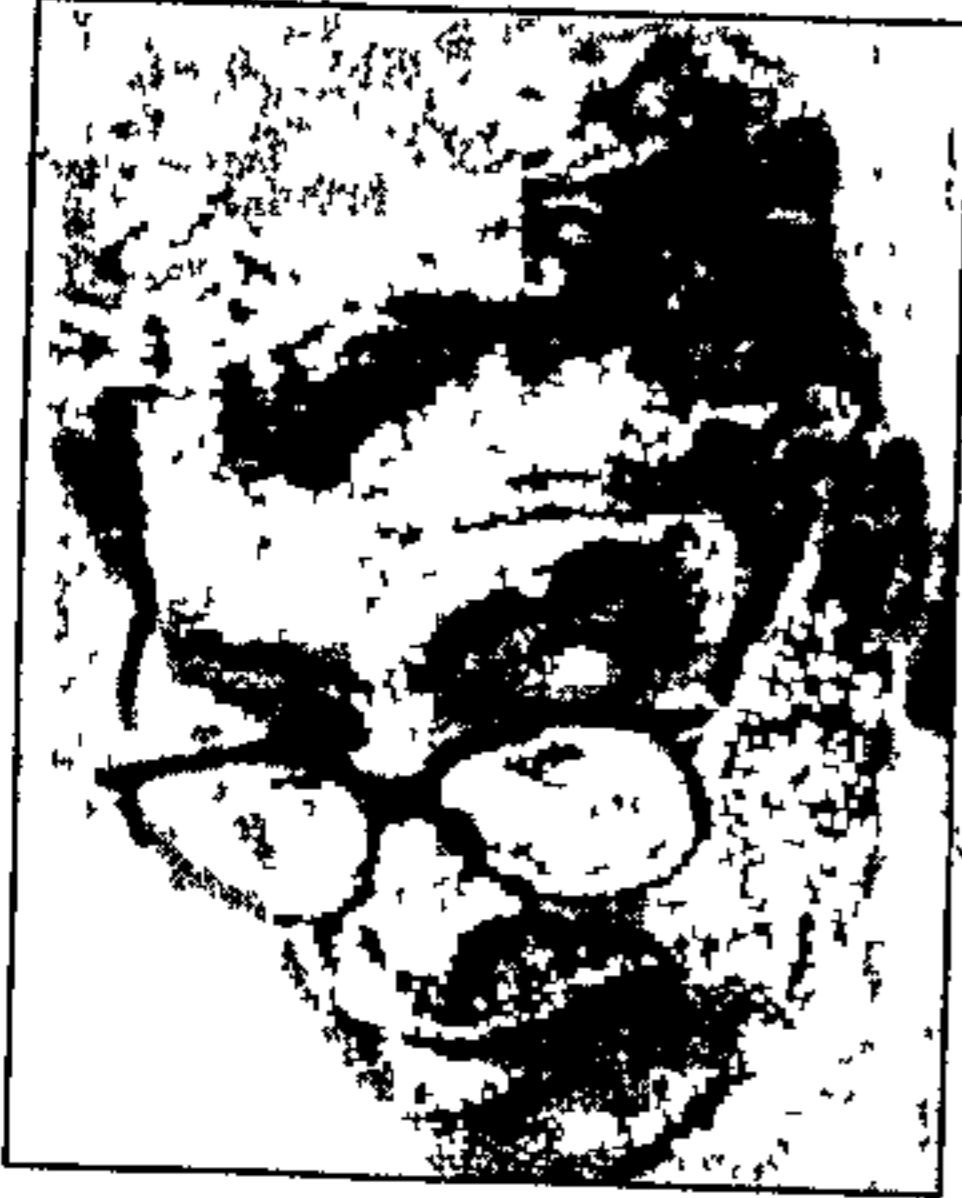
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why he thinks constitution is hamstringing the courts

ARG 20/4/99

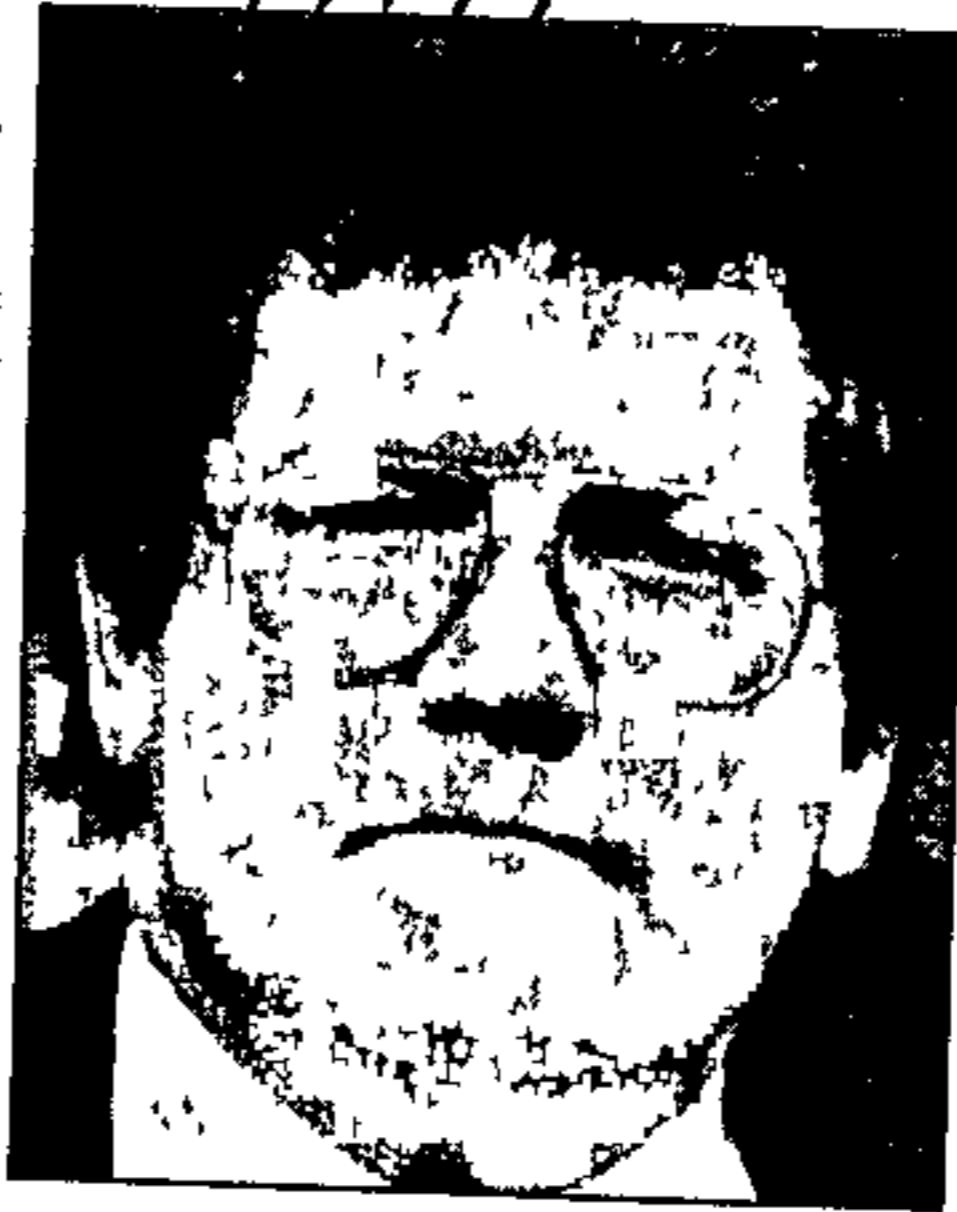
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Chaskalson: 'You put high up in the list of qualifications the concept of an understanding of the population?'



Bizos: 'The absence of the right to remain silent led to the detention without trial of tens of thousands of people'



De Lange: 'What impact might this criticism of the constitution have on efforts to consolidate the new order?'

Judge Van Dijkhorst stuck to his guns. "I say, if this is necessary, the constitution will have to be changed to provide for this"

He argued. "It is all very well that we debate these things in an idealistic way and never agree about practical matters, but there are instances where, to save the country from ruin, one has to deal with the criminal justice system"

"If our constitution stands in the way of justice, we must debate it and look at it. It is important. I am not afraid to say that if it has to be changed, it must be. It does not mean I do not support the constitution."

Mr Bizos stuck to his guns, too. "The absence of the right to remain silent, between 1962 and 1990, led to the detention without trial of tens of thousands of people ... I would not like to see a change in the constitution."

Judge Van Dijkhorst "Neither would I. I quite like it, but it's necessary with the provision that a magistrate can only question an accused where a legal representative is present. The law has to work and if not, you have to change it. It is there for the community, not the criminal."

"I have raised this issue because I am prepared to put my head on a block. It is important, because the magistrate's courts are going to fall down."

But, wondered Johnny de Lange, African National Congress MP and chairman of Parliament's justice committee, what impact might this criticism of the constitution have on efforts to consolidate the legitimacy of the new order in the country?

Judge Van Dijkhorst: "The article (in the journal) does not mean and cannot be read as an attack on any political way of thinking. It is not meant as an attack on the constitution"

"It is meant to show that in a certain practical instance, the constitution is a clog to the administration of justice."

Mr De Lange asked: "But what did you think would be the impact?"

The judge said "I thought a lot about whether I should write the article. But what emerged from an investigation into the state of magistrate's courts (made me feel) we have to debate this."

"And what I intended with the article is exactly what is happening here - I want this debate because I think it is necessary for the benefit of the country"

ates 'pressed me to go for high office'

This emerged during the judge's intensive interview by the Judicial Services Commission yesterday.

In fact, Judge Van Dijkhorst was initially opposed to standing for a more senior post because of the risk of having a black rival, and being party to creating in the public perception an unedifying racial contest.

"After the General Bar Council and the Advocates for Transformation (the 14 black Pretoria advo-

ates) came to see me, they twisted my arm. They assured me there was no black candidate."

Asked why he had had "fears" about a contest between a black and a white candidate, he said: "I think it is debilitating to the image of the administration of justice where black and white are played off against each other, and I was not prepared to have any part of that. I said, if that is so, I am out. Then

they came back to me and said it was not."

Transvaal Judge President Mr Justice B Ngope said he had been approached by the 14 advocates to nominate Judge Van Dijkhorst. He told them this would be "inappropriate" since he was already aware that fellow judge Mr Justice E H Stafford had been nominated, too. "I said they should go and see Judge Van Dijkhorst themselves."

keep quiet all along and not tell his side of the story and leave it to the State to prove throughout

"In theory, that's fine. When I was at the Bar, I subscribed to it. But I have been thinking of late that it's Utopia, and it does not work."

It meant that months of court time were wasted in leading uncontested evidence. In contrast, in (parts of) Europe, an accused was brought before a magistrate for questioning

to "narrow the issues so that a case lasts a day"

"You know, Mr Bizos, I wrote this not to be smart, but because it's worrying me... our criminal justice system is going down the drain, and we have to discuss this. I have even told the Minister (of Justice, Dullah Omar) about it."

Mr Bizos said "I am not unmindful of the defects of the system, but I ask, how can that be reconciled with

the provisions of the constitution?"

Judge Van Dijkhorst argued it could not be seen as an infringement of human rights if a legal representative was present when a magistrate questioned an accused at the outset.

Mr Bizos "But whatever the merits or demerits, it is contrary to the provisions of the constitution, and the Constitutional Court has spoken highly of the importance of the right to remain silent."

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- invited to a post-democ- l by one of the Delmas - e, now premier of the

North-West province, and attended by other accused, including Patrick Lekota, now chairman of the National Council of Provinces

The judge said: "It is unusual for a judge to attend a rally given by those who have been convicted by him, and I thought carefully about whether I should go. I held the view that Molefe, who I hold in high esteem, is a very bright man"

"I decided that I should go to support

the whole populace of North-West province and that if I go and show that I do not regard him (Mr Molefe) as a terrorist, the Afrikaners would more easily accept him, because we want reconciliation and, by my example, I could in a way further the cause of reconciliation"

"I think it was a great success. Everyone was very friendly - I'm talking about the Delmas trialists - and as an exercise in reconciliation, it was a success."

Porter escapes gallo

Justice system fails scores of accused

In the second article in the series on the death penalty, Washington correspondent **RICH MKHONDO** reports on the scores of Americans on death row who have been freed at the last minute



After 17 years on death row he was measured for a coffin, his family was asked what should be done with his remains and he was asked to order his last meal before he would be injected with lethal fluids – and then Anthony Porter, found guilty of two murders, was released and sent home, 24 hours before his scheduled execution

Why? Because an investigation by journalism students and that of a private investigator had led to the real killer. Confronted with new evidence, he confessed on videotape and a principal witness for the prosecution at Mr Porter's trial recanted his testimony

Mr Porter became the 76th death row inmate in the United States since 1976 to be freed on appeal or as a result of exculpatory evidence

Seldom has the death penalty looked more hazardous to America's national sense of decency than it does today – and Mr Porter's release only added urgency to the debate over whether it is evenly administered and whether it is an appropriate punishment

The unevenness of its application, which prompted the US Supreme Court in 1972 to declare the death penalty unconstitutional – it was reinstated in 1977 – is creeping back, say legal experts and defence attorneys

"There need to be much narrower and stringent guidelines on what kinds of murder cases are death penalty eligible," said Randolph Stone, a professor at the University of Chicago Law School

"We are rapidly approaching the same place we were in 1972."

Executing someone is society's most awesome sanction, and is irreversible. With good reason, Americans, particularly Illinoisans, have begun to wonder whether state judicial systems provide the safeguards necessary to ensure, to the greatest extent humanly possible, that a state does not put to death a person about whose guilt there is any substantial doubt

Seldom have Americans seen so much evidence of close calls – and the case of Anthony Porter is one such example

He was convicted of the shooting of a man and a woman in Chicago's Washington Park in 1983 and was shipped off to death row

It took more than 17 years for the witness responsible for Mr Porter's conviction to admit that he had not seen who committed the double murder but had testified

against Mr Porter because the public convinced him that the man was guilty.

Even exonerations such as Mr Porter's have their supporters and opponents

Those in favour of the death penalty say Americans should look at the cases of those innocent inmates snatched from the jaws of the death chamber and conclude that the system works

But what saved Mr Porter was not "the system", but a spit-and-chewing gum network of volunteers, enterprising Northwestern University journalism students and an 11th-hour mental competency hearing which provided enough of a delay for his supporters to dig up new evidence

Opponents of capital punishment say America has a duty to learn from such cases and halt all executions until the lessons from them can be applied to those that the state is still planning to execute

Others go even further, suggesting that it is pretty clear that the only way to avoid future mistakes is to abolish the death penalty outright.

Legal experts have made many recommendations for discussions nationally. Some say there should be minimum experience standards for attorneys handling capi-

'Winning a case in the United States has become more important than doing justice'

tal cases, as well as significant increases in state funding so poor defendants can mount proper defences

Other experts say videotaping would protect both police and suspects, and ought to be adopted as standard, as in too many wrongful convictions, dubious confessions – forced or sometimes the only piece of evidence – were the decisive factor.

Others say that stricter rules ought to be placed on the use of testimony by accomplices or cellmates who seem to turn up conveniently to say that the accused confided in them – and then get charges against them reduced or thrown out.

Capital cases must also be thoroughly scrutinised and state attorneys must make comprehensive reviews of each death penalty case after all appeals have been exhausted

Other academics say the problems of wrongful conviction go far beyond death penalty cases – they impact on the entire judicial system

The errors are not unique to the sentencing process. They involve errors in the trial itself – the process for deciding guilt or innocence, which is the same in all criminal cases whether the death penalty is imposed or not

The issue is complicated further when

the desire to win fame or solve a crime drives prosecutors and detectives to deliberately put innocent people on death row.

This is the case in the trial of seven Chicago prosecutors and detectives who allegedly conspired to send innocent men to death row. If convicted they will be the first in the US to be found guilty of knowingly using false evidence to send innocent men to death row.

The case against the three was born of a horrendous crime – the rape and murder of 10-year-old Jeanine Nicarico.

But the prosecutors and detectives were influenced by a number of factors, including politics, guile, fear, ambition, public pressure to solve the crime – and, most importantly, to win at all costs

"Winning has become more important than doing justice," says Harvard University law professor Alan Dershowitz, a long-time critic of prosecutors

Opponents of the death penalty point at the desire to win, please the public and provide some sort of relief and justice for victims or their survivors as another example of how innocent suspects end up on death row for crimes they did not commit. Some were exonerated only hours before they were to be executed

Prosecutors, judges and the public tolerate some horrible crimes because of the sex, the wealth or the popularity of one felon while quickly snuffing out the lives of social outcasts, sometimes in horrible error. Then there is the knowledge that prosecutors rarely get punished, even if their conduct is outrageous

Legal experts say there is no doubt that the majority of American prosecutors follow the rules and honour their obligations.

"I believe the great majority of prosecutors in this country are truly dedicated to doing their jobs in the proper fashion," said John Justice, president of the National District Attorneys' Association.

But many American prosecutors have violated their oaths and the law, committing the worst kinds of deception

Experts say catching them can be very difficult.

Bennett Gershman is a law professor at Pace University in New York who has written extensively about misconduct by prosecutors and calls it a "serious cancer in our system of justice"

"There is no check on prosecutorial misconduct except for the prosecutor's own attitudes and beliefs and inner morality," he said

Prosecutors are the criminal justice system's gatekeepers. They must protect society from criminals while upholding the integrity of the judicial system.

But the administration of justice is a human process and, like all things human, is subject to error

That makes it critical that prosecutors, judges and legislators should abide by the most elaborate safeguards and, when there is doubt, to err on the side of caution and restraint – Foreign Service

No more hangings: the

ARGUS ISSUES

gallows by 24 hours

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ARG 20/4/99



No more hangings: the gallows serve as a gruesome reminder of the days before the death penalty was abolished in South Africa

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'THEY MUST CO-OPERATE'

Transformation in the judiciary too slow

IN THE TIME that he has served as Acting Deputy Judge President of the Cape, Judge Hlope says he has seen very little transformation. **PRISCILLA SINGH** reports.

TRANSFORMATION within the South African judiciary is very slow and the Cape Division is no exception, Justice John Hlope said yesterday.

Commenting on the transformation, or lack of it, of the Cape bench, Hlope said that in the months that he has been Acting Deputy Judge President of the Cape, he has seen very little transformation taking place, with the Judge President of the Cape, Justice Edwin King "undoubtedly acting in a singular capacity" on transformation issues.

Hlope stepped into the deputy presidency after he lost to King, who was appointed Judge President of the Cape last year.

He was the only candidate interviewed by the Judiciary Services Commission (JSC), chaired by Chief Justice Ismail Mahomed, for the job of Deputy Judge President of the Cape. King was also present

at the interview.

"The judge president and his deputy must work together and co-operate with each other to ensure that the Bench is a racially balanced one. So far, Justice King has been handling the transformation single-handedly and I think it would go much quicker if he was assisted by his deputy," Hlope said.

During the interview, King said he did not think that they were unsuccessful in appointing blacks and women.

"I have worked in close co-operation with the Justice Minister (Dullah Omar) on the recruitment of judges and we have not been unsuccessful with these recruitments," King said, adding later that some of the (black) acting judges have not been up to scratch.

Hlope's was the first interview and set the pace for the panel, which included Omar, advocate George Bizos and Justice Arthur

Chaskalson of the Constitutional Court

Also up for grabs are two vacancies for judges in the Cape High Court, for which five candidates were nominated. They are advocates Michael Donen, Gerald Josman, SC, Jolyon Knoll, Derek Mitchell, SC, and Essa Moosa. Each was grilled on aspects of the legal system and cases they adjudicated on the bench whenever they sat as acting judges.

The JSC panel, representing Benches throughout the country, also interviewed Justice E Stafford and Justice Kees van Dijkhorst for the position of Deputy Judge President of the Transvaal.

Van Dijkhorst's interview was closely watched by the media because of his role as judge in the Delmas Trial in which he jailed Patrick Lekota, now chairperson of the National Council of Provinces, and Popo Molefe, now North West province premier. Van Dijkhorst has also been nominated for a Constitutional Court post.

The interviews continue today.

CT 20/4/99

(2/5/99)

Hearing told of torture and grisly death of coup leader

OWN CORRESPONDENT

East London - Wounded coup leader Colonel Craig Duli, hours after the November 1990 coup attempt ended with his capture after an Umhata gun-fight, was tortured and then shot dead in the presence of Transkei military leader Bantu Holomisa.

In no-holds-barred evidence before the Truth and Reconciliation Commission's amnesty committee here yesterday, former Vlakplaas commander Eugene de Kock said former Transkei Defence Force chief Brigadier T J Matanzima and General Holomisa's bodyguard, known by the suspected ANC codename White Boy, had been present during Duli's execution

"by one of the aforementioned persons". De Kock said he had been informed of this two to three weeks, after the abortive coup by then Commandant Jan Anton Nieuwoudt, a senior staff officer in the former SADF's secret Military Intelligence Directorate of Covert Collection, which had a written operational co-operation agreement with the Vlakplaas police counter-insurgency unit, and who had asked De Kock to provide the weapons for the coup.

De Kock told the committee he was also informed that Duli, to whom he had personally handed over the weapons, was tortured before he was killed. De Kock also revealed that a large Eastern Cape Vlakplaas type unit, which he supplied with weapons, had been based in East London.

At similar units based in Bloemfontein and Durban, askaris (turned ANC cadres) were trained in the use of Soviet-bloc weapons for covert and clandestine actions. Weapons were also delivered from the massive armoury at Vlakplaas - which, De Kock revealed for the first time yesterday, was disbanded in 1993 to security police intelligence units in Soweto, Johannesburg, Natal, the western Cape and eastern Cape.

De Kock, who is serving a double life sentence for apartheid-era atrocities, appeared amid tight security to apply for amnesty for his role in the coup attempt along with former Vlakplaas subordinates Willie Nortje, Martinus Ras, Lionel Snyman and Snor Vermeulen.

Nieuwoudt had also applied for amnesty, but his lawyer said in a surprise turn that it had been decided after consultation with senior counsel at the weekend that he had not committed any criminal offence or gross human rights violations, and that to have applied for amnesty would be a waste of time and money for the TRC.

But, in his day-long testimony, De Kock linked Nieuwoudt, who has applied for amnesty relating to a poisoning in Mozambique that has surfaced in the Wouter "Doctor Death" Basson chemical and biological warfare case, to a number of criminal activities. De Kock's testimony included fraudulent activities and three illegal weapon drops for coup attempts Nieuwoudt had even once fetched the weapons from Vlakplaas.

The seventh applicant, Pumelele Gumengu, will testify in a later hearing on the murders of Charles Sebe and Onward Guzana.

After the failed coup in which Sebe and Guzana were killed, De Kock said Nieuwoudt put in a false claim to Ciskei leader Oupa Gqozo and bought a Gonubie house, fishing boat and Land Rover, and gave R160 000 to De Kock, with which he bought a house for one of his men.

Star 20/4/99 (252)

Don't base criticism of courts on skin colour, urges Cameron

(2577) APR 21/4/99



Cameron: AIDS is not an unmentionable pre-death condition

Judge Edwin Cameron, a former human rights lawyer, has challenged perceptions of the judiciary away from ill-informed criticism based on the colour of judges' skins.

He told the Judicial Services Commission "I believe the judiciary, with all its faults and limitations is a priceless legacy (which) should be nurtured rather than knocked"

He was being interviewed for a Constitutional Court post

"For the foreseeable future, it's the only judiciary we have, and I believe the leadership from the political executive will affect the tone of the debate, and criticism which is partly ill-informed will be raised

"I am not disputing the fact that the judiciary is vulnerable because of the underlying white dominance, but there are reserves of expertise and capacity and goodwill that can be better recognised and utilised"

Judge Cameron, a judge in the Witwatersrand division, was responding to

questions from Justice Minister Dullah Omar

The exchanges focused on public perceptions of the courts based on a comparison of the five-year suspended jail sentence for farmer Nicholas Steyn, found guilty of culpable homicide after the death by gunshot of Angelina Zwane and the six-year jail term handed down in the same week to Allan Boesak

Mr Omar put it to him: "Is there not a bigger problem? It's the old problem of a country in transition where we have inherited institutions of the old order, in which there are many good individuals rendering outstanding service, but where there has not been significant change

"Is it not that people assess the judgments when they take place in that, very different, kind of context?"

Judge Cameron "I think that is right, but I also think that criticism sometimes derives legitimacy from the intellectual and vocal leadership that people like ourselves can give.

"There is no doubt people feel anger,

but the question is whether criticism of the judgment as having been a product of white justice is countenanced in the national discourse"

On transformation, he said "Most of my colleagues are white males, as I am But what matters is what commitment to transformation you have, and I can say judges are receptive to it.

"We are fallible and incomplete, but I believe the incipient commitment is there

"You know, the Steyn case judge was the same man who intervened when Potgietersrus school tried to stay for whites only"

Judge Cameron said he remembered "groaning" when he realised the sentencing of Boesak and Steyn would occur in the same week

"While I realised there would be good grounds for discussing the propriety of the sentences in each case, I knew there would be a measure of destructiveness in the criticism (and that) some people would take the opportunity to knock the judiciary and use racial themes"

(252)

How top judge revealed his AIDS plight to court president

'Make treatment affordable to all'

About a week ago, Judge Edwin Cameron paid a visit to his friend and fellow jurist, Judge Arthur Chaskalson, president of the all-powerful Constitutional Court

There was something important he wished to discuss, and settle in his own mind, before this week's Judicial Services Commission hearings

Mr Justice Cameron, a judge in the Witwatersrand division and nominated for a Constitutional Court post, was to submit to an interview and declare his eligibility for it

When he met Judge Chaskalson, there was no favour he was hoping to extract from his fellow jurist. It was a sort of concurrence he sought, but not of a typical juridical kind. He wanted to say, and say openly, that he had AIDS

Not just that. He also wanted to make it clear it was not "an unmentionable pre-death condition"

In a country of about 3 to 4 million AIDS and HIV victims - yet with scant record of courageous disclosures by prominent figures in society - Judge Cameron was very conscious of the import, and likely impact, of what he intended doing

His disclosure yesterday earned compassionate responses from several of the leading members of the commission, among them Justice Minister Dullah Omar, senior advocate George Bizos and Judge Chaskalson.

Mr Omar asked him, though, whether fellow judges had shown sensitivity to his disease

"In the judiciary, I am sure not (much sensitivity)," said Judge Cameron

"Among a handful of colleagues

MORRIS

SPECIAL WRITER

over the past year-and-a-half, I have had enormous understanding, but I am sure many people will be shocked at what we have discussed today"

He described how, having contracted HIV, he developed AIDS - "the symptomatic indication that the system is breaking down" - in late 1997

"But if it is properly treated, the virus can be contained. This vital development is expensive

"A judge's medical aid pays for half of the treatment, and I can pay for the other half. But most South Africans cannot afford that treatment.

"We have to find creative ways to make the treatment affordable and accessible, because there is hope and that's why it is important to assume that one is living with AIDS, and end the notion that it's an unmentionable pre-death condition."

Openly confronting the disease was a necessary step. AIDS, he said, "like so many other features of our national life, is like the paradox of race"

"In order to reach a position of non-racialism, you must give attention to race as long as you bear in mind the cost of the paradox. AIDS is the same"

He said he fully respected the constitutionally entrenched right to confidentiality of AIDS patients, but he believed a "culture of openness will be beneficial to the national debate"

Policemen

'were not

paid for

failed coup

Star 21/4/99

Former Vlakplaas operatives closed ranks behind their jailed commander Eugene de Kock in their Truth and Reconciliation Commission amnesty applications in East London yesterday, stating they had never been rewarded or compensated for supplying weapons in the failed 1990 Transkei coup.

De Kock's former right-hand man, Willem Nortje, also testified that captured coup leader Craig Duli was killed in the presence of the then Transkei military leader, Bantu Holomisa.

Nortje, who joined the National Intelligence Agency after revealing his Vlakplaas activities to Judge Richard Goldstone, said that before the 1990 coup attempt, the Vlakplaas men had driven two police bakkies with the weapons on Duli's "shopping list" to East London.

There they were packed in black refuse bags and sealed with plastic and masking tape.

That afternoon they met Duli, Ciskei intelligence officers Jan Anton Nieuwoudt and Clive Brink, and others at the Osner Hotel to arrange the handover of the weapons to Duli and his rebel force at Ugie or Indwe.

Nortje confirmed De Kock's evidence before the committee on Monday that Vlakplaas had been asked by the former SADF's secret Directorate of Covert Collection (DCC) to supply the weapons for the coup attempt.

Nortje said Nieuwoudt and Van der Westhuizen, of the DCC, were the main role-players in the

**Vlakplaas
operatives
asked to
supply
weapons**

operation, and that they and De Kock had benefited greatly from it.

De Kock testified on Monday that R160 000 in cash pressed on him by Nieuwoudt after the operation was used to buy a plot as an engagement gift for Nortje and his fiancée. The remainder went on a house given to another Vlakplaas confidant, Chappies Klopper.

Nortje said the weapons, which had had their serial numbers removed by the Vlakplaas operatives, comprised 40 AK-47 assault rifles, four RPG-7 launchers and rockets, a few 60mm mortars, M26 handgrenades, one or two light machineguns, and a large quantity of ammunition.

Radios from the Police College were also supplied. At the Osner Hotel meeting, Duli also asked for 16 more AK-47s, apparently for a "surprise" team of rebels, that would be taken to Umtata by a different route.

Nortje said that the next morning he and De Kock hired a combi at East London airport under a false name before meeting fellow amnesty applicants Marthinus Ras, Snor Vermeulen and Lionel Snyman, who had driven the bakkies carrying Duli's arsenal.

The weapons were loaded into the combi in the bush outside the motor-racing track.

They then left for Maclear, meeting Duli in either Ugie or Indwe at 11pm that night, and handed the weapons over to the rebels on a gravel road about 20km from the Transkei border, before returning to East London.

"According to information we later received from a source, Duli was shot dead by one of Holomisa's bodyguards in Holomisa's presence," Nortje said.

Ras, Snyman and Vermeulen, who also testified yesterday, denied receiving any monetary reward from De Kock. - Sapa

Amplats interdict orders 18 000 strikers back to work

BD 22/4/99 (252)

Reneé Grawitzky

ANGLO American Platinum Mines (Amplats), the world's largest platinum producer, obtained an urgent interdict late yesterday to force 18 000 striking employees to return to work

Amplats management said last night staff had begun to return to work for the night shift after Mouthpeace Workers' Union leaders called on strikers to do so

At the same time the National Union of Mineworkers (NUM) warned of rising violence on the platinum mines in the build-up to the elections as various political parties lobbied for support

Mouthpeace claimed the strike was sparked by workers' demand for the granting of facilities for microloans from Unibank. The bank would grant loans only if Amplats agreed to the automatic deduction of premiums from workers' salaries

Mouthpeace said Amplats had initially refused to this, but had subsequently agreed

Amplats agreed in principle to discuss workers' grievances once they had returned to work. Amplats was concerned that it would be liable for any debt incurred by employees. This issue would be discussed with the relevant parties

Inter-union rivalry could also be an underlying cause of the strike. NUM support

on Amplats mines dropped sharply after the formation of Mouthpeace in 1997

However, in recent months and especially since the wage strike in December, support for the NUM has risen and if current trends continue, the union could regain its power base.

Sources close to the process said Mouthpeace was losing its power base at the Rustenburg and Union sections, while the NUM had almost gained majority support at Amandelbult.

The strike had affected only the Rustenburg and Union sections despite fears of it spreading to Amandelbult

It eventually emerged that Mouthpeace was demanding that the NUM be removed from a task team set up after last year's wage negotiations. The team was established to discuss substantive issues not addressed during the negotiations

The union also demanded that workers dismissed during the major 1996 strike be reinstated. Old demands about pension funds also resurfaced

NUM deputy general secretary Archie Palane said the union's members were unable to report for work as Mouthpeace members and outsiders (allegedly members of the United Democratic Movement) had blocked the gates to the mine.

Amplats management was unable to confirm this but said there had been high

levels of intimidation since the strike started on Tuesday night.

The strike affected 50% of Amplats' overall production. However, it would not affect output as the mine had stockpiles and the smelter and refineries were working normally.

Since conflict emerged between the NUM and Mouthpeace in 1997, more than 20 NUM members have been killed on mines in surrounding areas.

Some of these deaths could, however, be linked to the violence which erupted in the Eastern Cape's Tsolo-Qumbu area more than five years ago.

Unrest in this area, linked to the anti-stock theft organisation Mfelandawonye, had led to the death of hundreds of people during this period. The SA Police Service indicated last year that some of the mine deaths — on both Amplats and Impala Platinum mines — could have been linked to this conflict. A number of migrant workers were arrested on mines last year in this connection

Conflict between the NUM and Mouthpeace began when the latter union was formed out of the 1996 strike.

Mouthpeace included a number of workers who formed part of the grouping called the "Five Madoda", which led the strike. Some of these people were former NUM members

English to become courts' language of record

BD 22/4/99 (252)

David Greybe

CAPE TOWN — The demise of Afrikaans as a language of record in SA's courts is a step closer with the news that the influential Judicial Service Commission is to act on the matter

In another development, it was reliably learnt yesterday that the commission backed Judge Edwin Cameron to fill the vacant Constitutional Court post

According to one source, the commission is to issue a directive to the country's high courts that English should be the only language of record, but that the courts "should encourage people to use any one of the 11 official languages"

The Magistrates' Commission is expected to follow suit. It received a similar

recommendation following a workshop on language policy last year.

The issue came to a head at the Judicial Service Commission this week, the source said, following the grilling of an applicant for a vacancy in the Free State High Court by its Judge President, Ernst Lichtenberg, on whether he was sufficiently conversant in Afrikaans.

"That was unacceptable, and will have to change," another source said. "It could have been construed as an insult to non-Afrikaans-speaking people." To continue to have two languages of record could "undermine other languages"

On the issue of the Constitutional Court vacancy, the constitution says the president appoints judges, after consulting the president of the Constitutional

Court and opposition leaders

However, the commission must submit to the president the names of three nominees more than the number of appointments to be made. As only four were interviewed, all four will be sent to President Nelson Mandela

However, sources said, the majority view in favour of Cameron, who this week disclosed that he had AIDS, "will also be communicated to the president"

Meanwhile, Judge John Hlope was endorsed for the post of Cape deputy judge president. Hlope, currently the acting deputy, was the only candidate

Judge Edward Stafford won the backing as the new deputy judge president of the Transvaal division, above Judge Kees van Dijkhorst

The black face of death row

Star 22/4/99

In the United States, justice is not colour-blind. A study has found that black defendants are consistently more likely to be sentenced to die than others

When a team of researchers analysed a decade of Philadelphia murders to compare the sentences blacks and whites received for the same or similar crimes, they found what Americans had long suspected the law may be colourblind as it is written, but not as it is enforced.

Race and poverty still play too large a role in death penalty cases. Capital punishment more often is sought for black suspects, especially in cases where the victims are white.

David Baldus and George Woodworth of the University of Iowa Law School looked at 667 murders that occurred in Philadelphia from 1983 to 1993.

Of the 520 cases involving black defendants, 95 were sentenced to die, while 19 of the 147 non black defendants received the death penalty.

Even today, about 80% of the death row inmates sentenced in Philadelphia are black.

"Race is more likely to affect death sentencing than smoking affects the likelihood of dying from heart disease," the researchers said.

Their view is supported by national figures. The US Bureau of Justice said between 1977 and 1993, only 52% of executions were of white prisoners, making the other 49% minorities who are only 12% of the population.

Although supporters of the death penalty dispute the findings, such statistics have intensi-



In the second article in his series on capital punishment in the United States, Rich Mkhondo looks at the "unevenness" and "unfair application" of the death penalty against minorities, particularly African-Americans and Hispanics. He says the lopsidedness of the execution system puts a particularly tragic burden on those who are too poor to afford an adequate defence.

fied the heated debate over how fairly capital punishment is administered in the United States.

Opponents of the death penalty have used the figures to demand legislation which would limit the kinds of crimes that can be punished by death.

Critics have generally argued that studies are invalid because the research relies so heavily on the attempt to compare one murder case with another.

Each jury, opponents argue, has to judge the case in front of it, and one jury's decision cannot fairly be compared with another's.

However, many Americans believe that such statistics illustrate that the death penalty is applied whimsically, capriciously and arbitrarily, particularly against minorities, that is African Americans and Hispanics.

In a larger context such figures have been used to explain why the US criminal justice system has so much less credibility among African Americans.

The Philadelphia study also

examined the outcome of capital cases by race of victims and found some correlations. Black defendants, regardless of their victims' race, were consistently more likely to be sentenced to die than others.

"The race of the defendant is a much stronger predictor that a case will result in a death sentence," the report concluded.

White juries were also found to be biased against blacks. For example, in the mid range of crimes in which jurors and prosecutors had the most discretion, blacks were four times more likely than whites to be condemned to death.

In Pennsylvania, the jury determines sentencing in capital cases. In other states jurors recommend and judges impose capital punishment sentences. Judges may do so at their own discretion.

"Juries are treating black offenders more punitively, and that is most likely based on a perception of dangerousness associated with being African American," Baldus said in an interview.

"It has been demonstrated in this research and in others," he added, "that when cases are close, the racial factors have a greater impact."

Baldus added that the study compared only similar crimes and took into account differences in the defendants' backgrounds and their lawyers.

Richard Dieter, of the Death Penalty Information Centre, a Washington based group against the death penalty which commissioned the Baldus study, says the death penalty more often is sought for black defendants, especially in cases where the victims are white.

In addition, blacks are "systematically barred from jury service", he claims.

Also, it depends on whom they kill (those who murder white people are four times more likely to get a death sentence than those

who murder blacks, according to a Stanford University study); where they kill them (those who kill in small towns get death far more often than urban killers under otherwise similar circumstances, according to a recent analysis in New York State), and how much money they have to pay for their defence.

The lopsidedness of the system puts a particularly tragic burden on those who are too poor to afford an adequate defence, much less the blue-ribbon lawyers hired by suspects as wealthy as, say, OJ Simpson.

While having money may not always guarantee justice for defendants, it does give minorities a legitimate, fighting chance. After all there are very few rich men on Death Row.

Other studies found that 80% of death row inmates are poor and from minorities. The discrepancy is that the poor and minorities don't commit 80% of capital crimes.

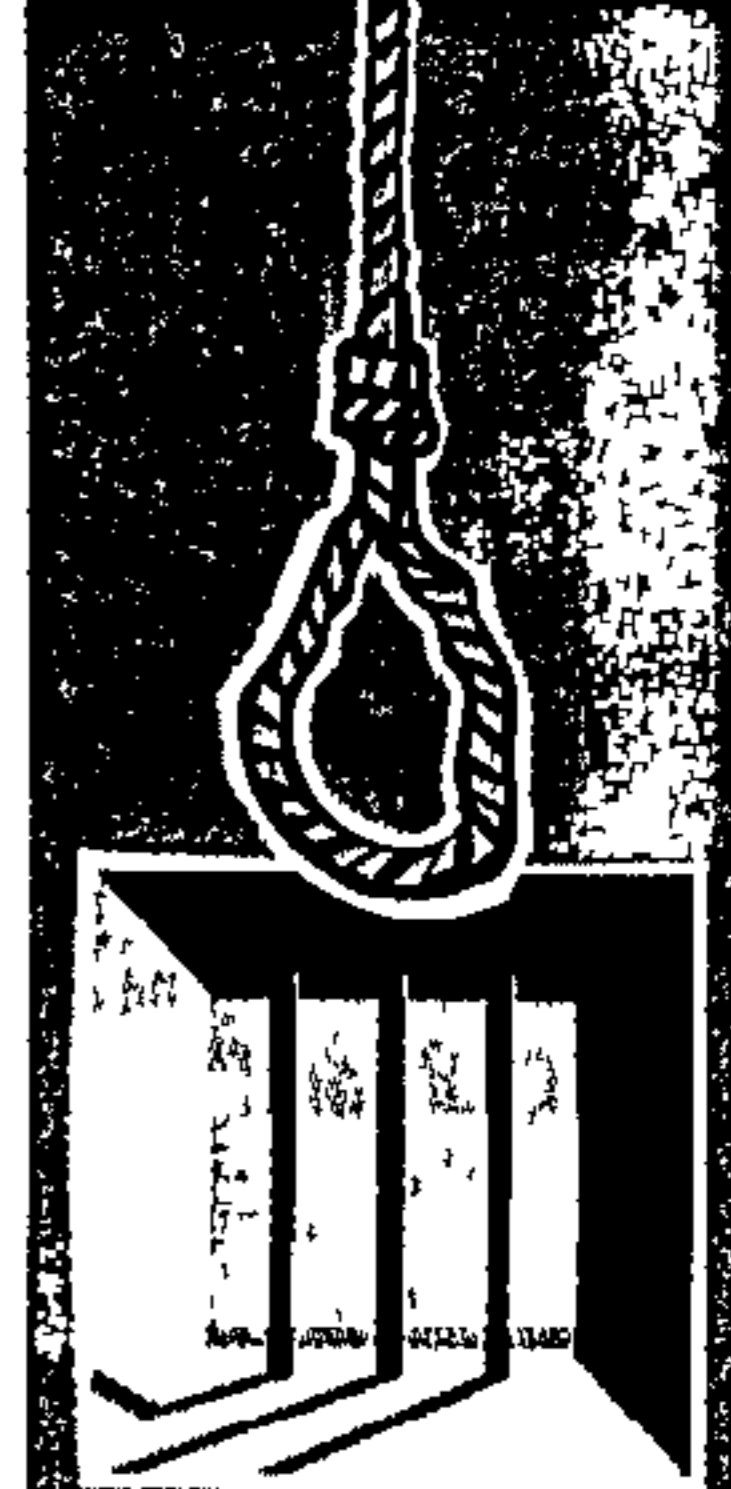
Other studies have also shown that 85% of the men and women on Death Row in this country are there for killing whites, despite the fact that half of all murder victims are black.

Baldus, for example, conducted a similar study in the mid 1980s that showed the killers of whites were far more likely to receive the death penalty than the killers of blacks.

Another study in Texas, the state carrying most executions, found that 98% of district attorneys who decide which cases to prosecute as capital offences are white.

Another concern is around state laws. What is punishable by death in California might not be punishable by death in Arkansas.

Surprisingly, while there is no doubt that the execution process is systematically biased against black Americans, the issue of racism and the death penalty has



There is an alarmingly lopsided picture in the US of death penalty enforcement, with the heaviest weight falling on black suspects. The application of the death penalty is tainted by racism, economic discrimination, political and an excessive deference to victims' rights. Race clouds death penalty fairness. There is a resentment for law enforcement. There is also a resentment for authority.

remained on the back burner of civil rights issues.

Capital punishment has never gained parity on the civil rights agenda with items like affirmative action protection and economic equity in the workplace. Instead, polls show substantial support in the black community for capital punishment. - The Star Foreign Service

NEXT IN THE SERIES

The near execution of more than 70 innocent Americans who spent decades on death row

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ICE

NO POLITE REFUSAL. NO RUDE REJECTION. JUST A SIMPLE

Judges show their mettle under fire

Mar 22/4/99

Nominees for senior posts have highlighted the tension between the hard-won culture of human rights in post-apartheid South Africa and the demands of a workable system for the courts (2/77)

TJ LEMON

By MICHAEL MORRIS
Cape Town

Critical judicial issues - and the state of the criminal justice system itself - have been at the core of public hearings this week by the Judicial Services Commission

Interviews with nominees for senior posts on the bench and on the Constitutional Court have highlighted the tension between the hard-won human rights culture of post-apartheid South Africa and the demands of a workable system of courts, and the challenges and risks of transforming the system to serve the ideals of democracy



Kees van Dijkhorst ... 'down the drain'

Senior Gauteng judge Kees van Dijkhorst's interview on Monday generated intense debate, with a lengthy exchange on his candid views about the state of the criminal justice system

Judge Van Dijkhorst is best known in the public as the presiding judge in the controversial Delmas "treason" trial of the late 1980s

He jailed prominent activists - later freed on appeal - who have since risen to high office, including Patrick "Terror" Lekota, now chairperson of the National Council of Provinces, and Popo Molefe, Premier of the

North-West province

This trial, the judge told the commission, "opened my eyes" to the grievances and aspirations of the black community

The commission heard that he was subsequently invited to a Delmas Trial reunion rally, and decided to go to contribute to racial reconciliation in the country

In the 1980s, Van Dijkhorst was regarded as an "apartheid" judge.

Today, his nomination to higher office has the support of 14 black lawyers from the Advocates for Transformation grouping in Pretoria

But the greater part of his interview on Monday focused on his view that the justice system was "going down the drain" because of what he regarded as a flaw in the constitution itself

He ascribed inordinate delays and waste of time in trials to the "right to remain silent" rule, and suggested an amendment to provide for preliminary questioning of accused people before a magistrate, and in the presence of a legal representative

This would narrow the substance of dispute in court cases, and shorten them

Van Dijkhorst said his comments should not be seen "as an attack on the consti-



Plight of millions ... Edwin Cameron has highlighted society's attitude towards HIV/Aids.

It is meant to show that in a certain practical instance, the constitution is a clog to the administration of justice"

It was clear not all senior jurists agreed, but another top candidate for a Constitutional Court post, Mr Justice Edwin Cameron, welcomed the debate and the direct manner in which his colleague had expressed his concerns

"I welcome the fact that (Judge Van Dijkhorst) has triggered this debate with such characteristic acerbity and directness we often

tend to pussy-foot I do not know what the outcome will be, but we must think about it radically and decisively"

Judge Cameron - whose dramatic and courageous disclosure of "living with Aids" highlighted the plight of millions of South Africans suffering from the disease, and society's attitude to it - also touched on key features of the debate on transforming the courts

Cameron acknowledged that more change was needed, but cautioned against racialising the debate, and merely "knocking" the judicial

system on that basis

"I am not disputing the fact that the judiciary is vulnerable because of the underlying white dominance, but there are reserves of expertise and capacity and goodwill that can be better recognised and utilised," Cameron told the commission

The commission concluded its hearings for appointments to the bench yesterday.

Its recommendations will be presented to President Nelson Mandela, who will make announcements in due course

Govt not told truth about deaths in ⁽²⁵²⁾ Botswana

B0 23 14 1991

Former police chief says he could not tell minister about role of security branch

PRETORIA — Former police commissioner Gen Johan van der Merwe conceded yesterday that he did not give government all the facts about a car bomb that killed three people in Botswana in 1987.

"I didn't give the full story. I couldn't let him (former foreign affairs minister Pik Botha) know that a police informer and the security branch were involved," he told the truth commission in Pretoria.

Van der Merwe is seeking amnesty for his role in the deaths of three people, a woman and two children, who died when a special forces operative detonated a car bomb in a residential area in Gaborone on April 9, 1987. The bomb was intended to kill three Umkhonto we Sizwe members targeted by

security police because of their involvement in smuggling weapons and terrorists into SA.

Van der Merwe, who was the commander of the security police at the time, told the truth commission's amnesty committee that he authorised the operation to kill the African National Congress cadres.

"After I had all the information I gave permission that the operation could continue, with an understanding that the SA Defence Force would be involved in the operation in Botswana." He said former security police brigadier Wikus Loots, who furnished him with the details about the incident, told

him the chance of innocent people being injured in the bomb explosion was very slim.

Van der Merwe said he received information about the cadres from former security police lieutenant Willem Mombeng Loots, Mombeng and former security branch members Eric Goosen and Philip Crause testified on Wednesday in pleading for amnesty for their roles in the incident.

Mombeng said police tapped the telephone of Keith McKenzie, a former police informer who became a police informer in Umkhonto we Sizwe. A conversation was overheard in which the cadres told McKenzie to meet

them in Gaborone. He said McKenzie had gone to Botswana 23 times previously, and on seven of those occasions he had smuggled weapons into SA.

Police decided to place a bomb in a secret compartment in McKenzie's minibus where the Umkhonto we Sizwe members stored the smuggled weapons. McKenzie did not know about the bomb.

Mckenzie said in an affidavit that he was kidnapped by Umkhonto we Sizwe cadres because of the plot, and taken to Uganda where he was held for about four years. Meanwhile, United Democratic Move-

ment leader Bantu Holomisa demanded R5m from the truth commission yesterday. He said he was not given prior warning of former Vlakplaas commander Eugene de Kock's testimony, fingering him as an accessory to the murder of Col Craig Dull, although the commission was legally required to so.

Dull was shot dead in mysterious circumstances after leading an abortive coup against Holomisa's military government in the Transkei in 1991.

In a letter addressed to the amnesty committee and sent to the media, Holomisa said he suspected the hearings of the truth commission's amnesty committee were state-managed sensationalism designed to "besmurch" his good name — Sapa

PREMIER-IN-WAITING... Union leader Mhazizima Shilowa is ready to roll up his sleeves to tackle crime and unemployment when he becomes premier of Gauteng after the election

PICTURE MIKE MZILENI

people to accept the differences in culture, language, needs, fears and aspirations of different communities. — Sana

TRC loses chance to study vital documents

BY CHIARA CARTER

Caprivi Strip, worked for Ciskei intelligence and was also involved in covert SADF activities at the time of the Duli coup.

THE eleventh hour withdrawal of an amnesty application by a key, former military intelligence agent has robbed the TRC's amnesty committee of an opportunity to probe covert military operations in the Eastern Cape

Documents they were to consider include court records where the former agent, Jan Anton Nieuwoudt, outlines an abortive project to recruit a top ANC official

Nieuwoudt did not tell the TRC why he withdrew his application related to events surrounding the 1991 attempted coup in the Transkei by Craig Duli.

The TRC intended hearing the application this week. Nieuwoudt, who was previously granted amnesty for his role in training Inkatha recruits in the

Documents the TRC would have considered had Nieuwoudt not withdrawn his application also included evidence he gave five years ago about a covert military intelligence operation to recruit a "very senior member" of the ANC intelligence department.

The operation was detailed in court records of a case brought by Nieuwoudt against the Minister of Defence.

Nieuwoudt's evidence about his SADF special forces and covert operations work included questioning liberation army cadres and recruiting a network of well-placed spies.

He told the court that a "large covert operation" in 1992 included an attempt to turn an ANC intelligence chief into an agent for the apartheid government

According to Nieuwoudt, the ANC official was involved in "1-

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CP 25/14/99

legal transactions", but attempts to turn him were not completed as former President FW de Klerk closed down several covert military operations.

Nieuwoudt told the court that some of his sources later became destined for high office in the country's defence force.

He described how potential sources were identified and recruitment undertaken. In Botswana, such people were held for several days at an isolated farm.

Nieuwoudt said some of these spies remained hostile to him.

"The fact of the matter is that there were many (agents) who did not work for us because they wanted to 'They worked under duress because I had something on them...'" Nieuwoudt said.

"There are among (my agents) militant people who give information for money."

City Press reported in 1996 that documents from the court case in the possession of the TRC included an outline of a bizarre plan to split MK and hold talks with so-called "moderates" such as Joe Mbitse, who is now the Minister of Defence.

There was no evidence that such talks were ever held.

□ Meanwhile General Bantu Holomisa intends suing the TRC for R5 million over claims made by de Kock at the hearing into weapons smuggled to Duli.

The TRC said they did not have to notify Holomisa as they did not think he would be implicated. This was because De Kock's claim that Holomisa was present when a badly injured Duli was executed had no relevance to the application about weapons smuggling.

De Kock's evidence was in any event untested hearsay, TRC spokesperson Phala Ngqumba said.

CARMEL RICKARD

Judges agree criminal justice system

(272) ST 25/11/99

JUDGES from opposite ends of the judicial spectrum have agreed that the criminal justice system is in trouble and that debate is needed on whether the Constitution was shacking the fight against crime.

During hearings of the Judicial Service Commission in Cape Town this week, controversial Pretoria High Court judge Kees van Dykhorst defended an article he had written for the advocates' journal, *Consultis*, in which he said the criminal justice system had broken down and the Constitution was partly to blame through its enshrining of an accused person's right to silence.

Commissioners suggested his views undermined the Constitution, something particularly un-

acceptable in a candidate for the Constitutional Court, but Judge Van Dykhorst stuck to his position, saying "I wrote this article not to be smart, but because [the situation] worries me. Our criminal justice system is going down the drain and we have to do something about it. It is all very well debating these things on an idealistic plain, but to save

the country from ruin you have to deal with the system. That does not mean I do not subject myself to the Constitution." Widely acknowledged for his intellectual brilliance, Judge Van Dykhorst is, however, regarded as judicially conservative. But his right to air these views and to "do" so in strong terms was supported by the next candidate, Judge Edwin Cameron, a leading human rights lawyer strongly committed to free speech.

While not commenting on Judge van Dykhorst's conclusions, he said the issues raised were crucially important, and a vigorous discussion was needed. He said he found the judge's views "enormously" refreshing and challenging" and the "direct

ness of the debate" in the article welcome, particularly since "we tend to pussyfoot" about the issues involved. "We must think about it radically and decisively," said Judge Cameron.

The right to silence is described by legal experts as the most contentious issue in the criminal courts at the moment and is widely debated in acad-

emically and practising legal circles in South Africa and overseas. Johannesburg High Court judge Bob Nugent, who recently spent his long vacation in England researching the right to silence issue, has written a lengthy article on the subject to be published in the SA Law Journal later this year. It, too, takes as its starting point that the

criminal justice system is under severe threat and that, in this context, the origins and application of the right to silence should be re-examined. Legal commentators said that in supporting Judge Van Dykhorst's right to canvass the issues he had raised, to propose contentious solutions and to use the language he did, Judge Cameron had shown great moral courage, risking the displeasure of key members of the Judicial Service Commission.

'is in trouble'

HIV TO BE NOTIFIABLE DISEASE

Applause for Aids decision

et 26/4/99 (2/2)

THE decision to make Aids a notifiable disease was praised yesterday by political parties, but Aids activists said the ruling will drive HIV-positive people underground.

HEALTH Minister Nkosazana Zuma's decision to make HIV/Aids a notifiable disease — announced and published in the *Government Gazette* on Friday — was met yesterday with praise from political parties

The new amendment to health regulations, to be passed in three months, will compel health workers to disclose the status of Aids patients to government officials, the patient's immediate family and those providing care to the patient

Aids activists, however, believe the amendment will drive the epidemic underground and dramatically increase the country's already spiralling infection rate, the *Sunday Independent* reported

The activists said the new regulations also contravene the principles of confidentiality and anti-dis-

crimination set out in the 1994 national Aids plan, which was accepted by the cabinet

New National Party spokesperson Juli Killian said the move was a step in the right direction, as there was a need to balance the rights of HIV-positive people against those who are HIV-free.

She said HIV-negative people had a right to information about the disease, which has the potential to give them a death sentence

For example, health workers who knew a patient's HIV status could take precautions in protecting themselves from infection

Killian said it was also the responsibility of the government to make the anti-Aids drug AZT freely available to rape victims

She said rapists should be forced to undergo HIV tests and

their victims should be informed of the results

"HIV-positive people who are aware of their status and who are involved in rape should also be charged for attempted murder," Killian said. Inkatha Freedom Party health spokesperson, Dr Ruth Rabinowitz, said the regulations were meant to encourage openness and responsibility regarding Aids

HIV-positive people are not going to be publicly exposed "The laws are going to be strict on non-disclosure. Health workers must understand that they will be prosecuted if they divulge confidentiality to their community," Rabinowitz said. She added that it was important for the government to have a confidential record, as this would also help with ethical drug tests

Responding to criticism from Aids activists that the notification clause would drive HIV-positive people underground, Rabinowitz said people with Aids were not

opposed to notification

"With notification and going public, it is intended that HIV-positive people will get more support from others and we believe this is a responsible step," she said

The more people who were open about their status, the less stigma would be associated with the illness

Freedom Front health spokesperson, Ben van der Walt, said notification was to society's advantage as knowledge would better assist in curbing the spread of the virus

Pan Africanist Congress spokesperson, Dr Costa Gazi, said notification would convey the seriousness of the disease to the people. Gazi, who is planning to have Zuma charged for negligence for refusing to give protective AZT treatment to pregnant women carrying the virus, said a country which could afford to pay R80 billion a year servicing apartheid debt could afford to provide the drug free of charge. — Sapa

Remarks were a fabrication, black advocates are assured

RONALD MORRIS

(252)

JUDGE-PRESIDENT of the Cape, Justice Edwin King, has assured three black advocates that he did not make remarks attributed to him at a Judicial Services Commission hearing last week.

King told the advocates, Anwar Albertus, SC, Norman Arendse, SC, and Ashton Schippers — who have all held acting judge positions — that he did not say that certain acting judges "have not come up to scratch", nor did he refer to black acting judges.

This followed a joint letter to him by the three in which they expressed concern that the remarks referred to one or all of them.

"If the remarks are aimed at any of us, then we have to take exception to them. If they do not refer to any one of us, then we require you to clarify this and say so publicly, or at the very least to say so to the Judicial

CT 26/4/99
Services Commission," the advocates wrote.

The advocates also expressed fears that if the remarks went unchallenged, they might prejudice one or more of them should they at some future date seek nomination to sit on the Bench.

"All three of us enjoyed our respective acting appointments on the Bench and by all accounts (from the Bar and those on the Bench) we had acquitted ourselves in a competent manner. Indeed, all of us have had judgments reported arising from our tenure as acting judges."

In his reply, Judge King said the remarks attributed to him were "a complete and absolute fabrication".

He had confirmed this to the commission at its public hearing last Tuesday and the Chief Justice, Judge Ismail Mahomed, had publicly stated he had not made those remarks, Judge King said.

Justice made more affordable

MOTSHIDISI MOKWENA

THE Contingency Fees Act, which became effective on Friday, is aimed at providing easier access to justice

According to Heinrich Augustine of the Justice Department, the act provides for a contingency fees agreement between legal practitioners and their clients, except in criminal and family related matters.

In terms of the agreement, a specified fee will be paid only if the

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case is won. The practitioner is also obliged to furnish all relevant information before entering into any agreement

The practitioner should inform the client of other ways of paying for litigation and possible costs payable to opponents should the litigation fail. The client has the right to withdraw from any agreement within 14 days

The client can also refer the contingency fees agreement to the Provincial Law Society or the Bar Council concerned

ET 26/4/99

Bring back death penalty,

■ SA has second-highest murder rate in world (252) ■ We're

The New National Party has always been, and continues to be, in favour of the death penalty for heinous and brutal crimes, says SHEILA CAMERER, New NP spokesperson on justice



The former mayor of New York City, Democrat Ed Koch, said at the time New York State reintroduced the death penalty in the early '90s "It is by exacting the highest penalty for the taking of human life that we affirm the highest value of human life"

This sums up the New NP's approach to the death penalty

In South Africa today, there is no death penalty and life is cheap. There is no respect for women's dignity either.

Police statistics issued last week show that 24 857 murders were committed in 1998 (up from 24 588 in 1997). This gives South Africa the second highest murder rate in the world, after Columbia.

We are also the rape capital of the world with 120 reported rapes per 100 000 of the population. To add insult to injury, we have one of the lowest conviction rates for murder internationally: only one in seven accused of murder is convicted.

The New NP says reinstate the death penalty. This is a major plank of our blueprint to combat crime which we are putting to the electorate as part of our campaign. We have also petitioned President Mandela, by way of a countrywide postcard campaign, to reinstate the death penalty.

The New NP has always been for the death penalty for the most heinous and brutal murders and rapes. The New NP agitated for an appropriate qualification to the right to life in our Bill of Rights throughout the Codesa constitutional negotiations in Kempton Park.

In the end, it was agreed, when the ANC negotiators refused to budge, to let the Constitutional Court decide whether executions could take place under the interim constitution, as it was worded.

In 1995, the Constitutional Court decided that the interim constitution barred the death penalty.

Accordingly, for the two year



Tense moment: a policeman at the ready at the scene of a crime. South Africa needs an extreme deterrent to stop the spiralling crime rate, says the New NP.

period of negotiations in the Constitutional Assembly, the New NP negotiators argued for the modification of the constitution so that South Africa's final one would allow the death penalty.

We also called for a referendum at the time, in order to gauge public opinion on the issue and in this we were supported by ANC academic and researcher at the Human Sciences Research Council, Mandla Seleane.

Although the ANC majority in

the Constitutional Assembly authorised the spending of a vast amount of taxpayers' money consulting the people of South Africa on virtually every other issue, they turned our suggestion down flat.

However, the people spoke for themselves. In response to the Constitutional Assembly's call to the public for representations, they sent in about 186 376 petitions in support of the constitutionalisation of the death penalty and only a couple of hundred against.

Among organisations supporting it were the South African Chamber of Business, the South African Agricultural Union, the National Council of Women, a large number of churches and individual chambers of commerce.

In consistently refusing to acknowledge that the vast majority of South Africa's black and white population want the return of the death penalty, the ANC is displaying arrogance and its undemocratic slip is showing.

At the time, Professor Hennie Kotze's research showed that nearly 80% of the public supported the death penalty. It also showed that ANC leaders (27% support) were out of touch with their own supporters (65% support).

Nevertheless, the ANC leadership elite refuses to reconsider capital punishment.

Prominent ANC leaders like Winnie Madikizela-Mandela, Tokyo Sexwale and Peter Mokaba, who have publicly suggested the issue

But the ruling ANC says: Defi

■ Everyone has the right to life

■ We do not need to resc

The African National Congress believes the death penalty is unconstitutional and will continue to oppose it, says LINDIWE NGWANE, ANC Member of Parliament

The ANC is opposed to the death penalty and has always been - based on several reasons

The first is that we have respect for the constitution and we seek to promote constitutionalism which is the cornerstone of our democracy.

The Constitutional Court found in the case of the State vs Makwanyane and Another that the death penalty was unconstitutional and therefore invalid.

Section 11 of the constitution provides that every person shall have the right to life.

Besides Section 11, the constitution excludes any cruel, inhumane and degrading punishment

- therefore also capital punishment.

Executions brutalise those involved in the process and, therefore, encourage a culture of violence.

Nowhere in the world has it been shown that the death penalty has a deterrent effect. In fact, police statistics show that the murder rate has

The murder rate has gone down since the death penalty was abolished.

gone down since the death penalty was abolished.

The history of the death penalty in our country should not be forgotten.

It is by no mistake of history that, by and large, criminals are black, poor and from the disadvantaged.

If we look at the composition of our judiciary, and its legitimacy in the eyes of the majority of the population, the debate on the death penalty is a non starter.

The judiciary is generally over-

whelmingly white and male.

The call for the death penalty is not based on principle, but on a perception of what it can do to address crime.

The opposition parties are raising the issue for political expediency and not on principle.

The New National Party, in particular, realises the ship has sunk and is trying to resurrect itself with this debate.

It is manipulating voters' emotions for a few extra votes.

The call for a referendum, in reality, undermines the Bill of Rights entrenched in our constitution.

When we made a transition from minority apartheid rule to a democ-

cratic state we made some deliberate choices. We decided we wanted to have a constitution incorporating fundamental rights.

In addition, we decided that the upper guardian of this constitution and of the values of the rights enshrined within it would be the Constitutional Court.

Having made these choices we cannot allow the will of the transient majority to replace the constitution.

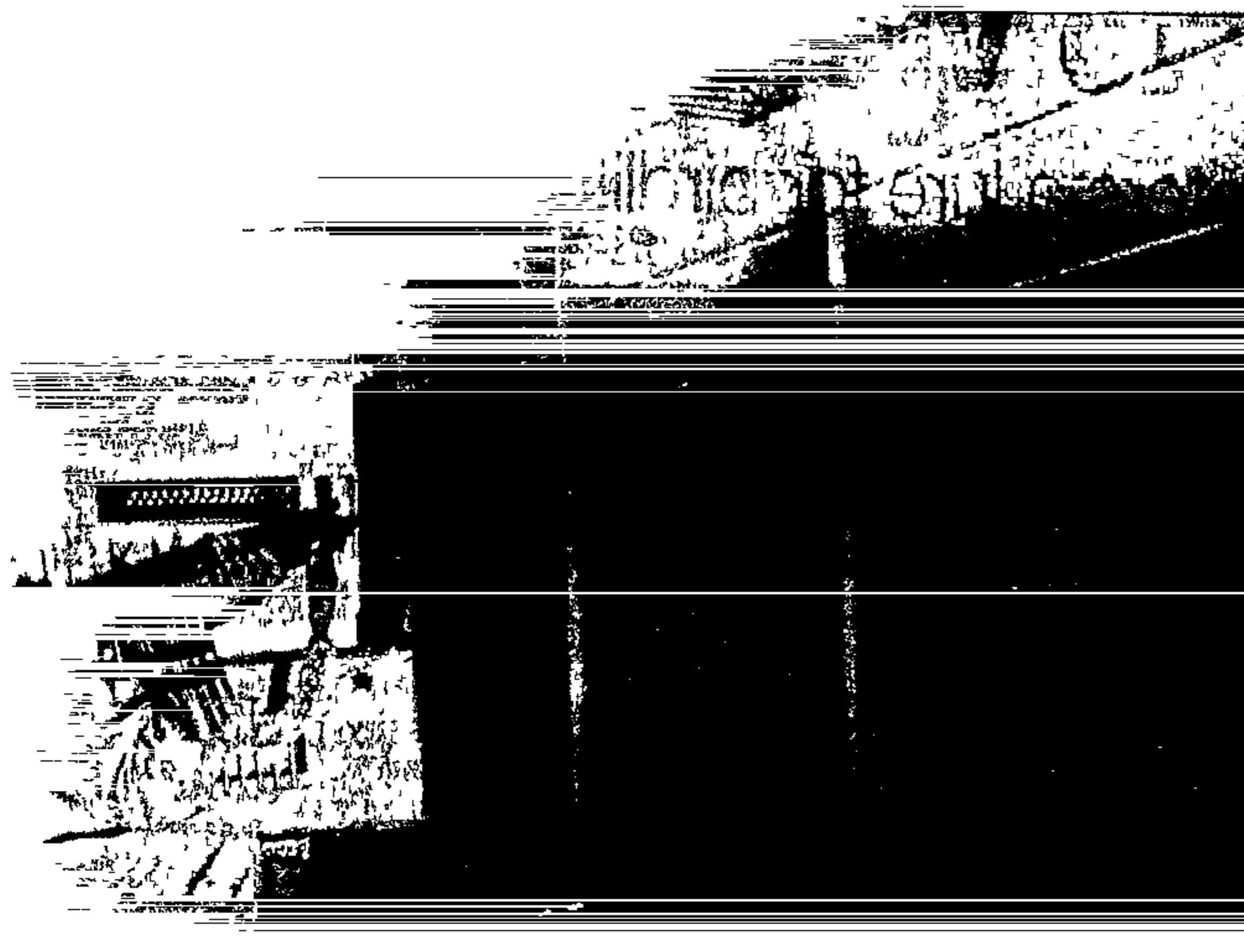
Once again the New NP, and the

"The con. referendum undermines of Rights in the con."

Death penalty, says NNP

(252) ARG 26/4/99

highest rate in world ■ We're top of the list for rape



except by execution of a court sentence following conviction for a crime for which the death penalty is prescribed by an Act of Parliament."

Our option appeared in all the constitutional drafts until the end when it was voted down. We got no support on this issue from either the DP or the IFP (who were not participating)

The New NP has an official party position on the death penalty which overwhelmingly (90%) reflects the views of our members

However, we recognise that this (as with abortion), as an issue of life and death, touches on people's innermost religious convictions and so we allow a free vote

The last time the issue came up in Parliament (June 17 1993) I, together with all the DP members present, voted against a motion calling for the suspension of the moratorium on the death penalty, in place because of the negotiations

Today, six years on, the situation has become so bad that I would not vote against the reintroduction of the death penalty. Something drastic needs to be done to curb this scourge. We need to make a statement in support of the victims of this terrible wave of criminal violence

Opponents of capital punishment say there is no empirical evidence to support the claim that capital punishment deters criminals, but there is certainly also no empirical evidence to support the claim that it does not.

The American experience since 1976 (when capital punishment was again allowed) is persuasive

In 1960, when 56 executions occurred, there were 9 140 murders. By 1969 there were no executions and the figure had risen to 14 590

By 1975, after six more years of no executions, the figure has risen to 20 510

Since executions were reintroduced in 1976, there was an annual decrease, by 1995, of 12% a year. For instance, in the state of Texas the highest murder rate occurred in Houston in 1981 with 701 murders

The death penalty was introduced in 1982. By 1996 murders had dropped to 261

The great American Judge Oliver Wendell Holmes said "Sentence to the gallows is the incomparably utter extreme of punishment and as such is qualitatively different from all other penalties"

We need an extreme deterrent to stop the carnage

needs an extreme deterrent to stop the spiralling crime rate, says the New NP

JOHAN SCHROENEN

Among organisations supporting it were the South African Chamber of Business, the South African Agricultural Union, the National Council of Women, a large number of churches and individual chambers of commerce

In consistently refusing to acknowledge that the vast majority of South Africa's black and white population want the return of the death penalty, the ANC is displaying arrogance and its undemocratic slip is showing

At the time, Professor Henne Kotze's research showed that nearly 80% of the public supported the death penalty. It also showed that ANC leaders (27% support) were out of touch with their own supporters (65% support)

Nevertheless, the ANC leadership elite refuses to reconsider capital punishment.

Prominent ANC leaders like Winnie Madikizela-Mandela, Tokyo Sexwale and Peter Mokaba, who have publicly suggested the issue

should be reopened, have been made to retract. Only last weekend ANC leader Thabo Mbeki again ruled out a referendum on the death penalty

The New NP's proposal at the Constitutional Assembly was very democratic: an enabling clause to be added to the right to life to the effect that Parliament would be entitled to enact a provision introducing the death penalty

Our proposal read as follows: "Everyone has the right to life and the right not to be deprived of life

ANC says: Definitely not

■ We do not need to resort to desperate measures

wholly white and male. The call for the death penalty is not based on principle, but on a perception of what it can do to address crime

The opposition parties are raising the issue for political expediency and not on principle

The New National Party, in particular, realises the ship has sunk and is trying to resurrect itself with this debate

It is manipulating voters' emotions for a few extra votes

The call for a referendum, in reality, undermines the Bill of Rights entrenched in our constitution

When we made a transition from minority apartheid rule to a democ

cratic state we made some deliberate choices. We decided we wanted to have a constitution incorporating fundamental rights

In addition, we decided that the upper guardian of this constitution and of the values of the rights enshrined within it would be the Constitutional Court

Having made these choices we cannot allow the will of the transient majority to replace the constitution

Once again the New NP, and the

'The call for a referendum undermines the Bill of Rights entrenched in the constitution'

human rights

What is the best deterrent to crime?

It is

■ Addressing the causes of crime - ending poverty and degradation,

■ Encourage co-operation between state and communities,

Democratic Party for that matter, have proved themselves as parties without principles, parties of political expediency that cannot be trusted with upholding our

Effective combating of crime. This means an effective criminal justice system, making sure perpetrators are arrested, their cases properly investigated, prosecutions effectively and professionally conducted and that courts adjudicate matters in a way which is fair, but also protects the public.

There should be no easy bail, sentences should fit the crime and sentenced people must serve their full sentences

Over the past five years, many steps have been taken by the ANC to develop an effective criminal justice system

We need not resort to desperate measures

(272)

TRC urges that scores be charged

Star 28/4/99
OWN CORRESPONDENT

Durban - The Truth and Reconciliation Commission has handed to the office of National Director of Public Prosecutions Bulelani Ngcuka a list of more than 100 names of people it recommends should be prosecuted.

The list names alleged perpetrators, all included in the TRC's final report, who either didn't apply for amnesty or have been fingered by amnesty applicants.

It is believed that a number of possible cases are extremely politically sensitive, but it is now up to Ngcuka's office to decide which cases, if any, should proceed.

Ngcuka promised last year that the TRC's evidence would be scrutinised to build possible cases against those not prosecuted in the past.

The bulk of people named from KwaZulu Natal allegedly committed crimes during the province's low-scale war, which claimed more than 10 000 lives between 1984 and 1994.

It is believed that among the cases referred to Ngcuka's office are some which the Independent Task Unit, which brought the case against former defence minister Magnus Malan, recommended for prosecution but which the then attorney-general, Tim McNally, declined to act on.

Ngcuka last year established a working group to examine the TRC's report and follow up on its findings and recommendations.

Simultaneously, the TRC began identifying possible cases from around the country, including who potential witnesses were and where Ngcuka's investigators should look for evidence. The process is continuing.

Commissioner Yasmin Sooka, acting chairperson of what remains of the TRC, said yesterday that "preliminary lists of matters and potential cases, that we think can be followed up" had been submitted.

Still to be added to the list were people who may yet be implicated in amnesty applications, waiting to be heard, or who have had their applications turned down.

Ngcuka's spokesperson Siphon Ngwema confirmed yesterday that the list had been received. In some cases, investigations had already been completed and "just needed to be consolidated".

Included from KwaZulu Natal are a number of senior former SA Police security branch officers and IFP leaders.

Everyone implicated in amnesty applications was warned in advance, after which a number of people were able to exonerate themselves.

TRC sends names to prosecutor

STAFF REPORTER AND ARGUS CORRESPONDENT

Prominent South Africans from across the political spectrum could be in the dock later this year to answer charges of being involved in gross human rights abuses reported to the Truth and Reconciliation Commission.

The TRC has submitted to national director of prosecutions Bulelani Ngcuka a list of more than 100 names of alleged perpetrators whom it recommends should be prosecuted. They were all named in the TRC's Final Report.

The alleged perpetrators are people who were either named during cases heard by the TRC and who did not apply for amnesty, or whose amnesty applications failed.

The list could include people like ANC Women's League president Winnie Madikizela-Mandela, former state president PW Botha, former Defence Minister Magnus Malan, Inkatha Freedom Party leader Mangosuthu Buthelezi, and AWB leader Eugene Terre'blanche.

They are all named in the TRC's Final Report as being accountable for gross human rights violations.

Last year, Mr Ngcuka established a working group to examine the TRC's report and follow up on its findings and recommendations.

Simultaneously, the TRC began identifying possible cases from around the country and potential witnesses, and where Mr Ngcuka's investigators should look for evidence. The process is continuing.

Mr Ngcuka's spokesman, Siphiso Ngwema, confirmed yesterday that the list had been received. In some cases, investigations had already been completed and "just needed to be consolidated", he said.

Yasmin Sooka, acting chairwoman of what remains of the TRC, confirmed that "preliminary lists" of matters and potential cases that could be followed up, had been submitted.

ARG 28/4/99

(257)

Amnesty for 5 killers refused

(252)
Johannesburg - The Truth and Reconciliation Commission's amnesty committee has refused amnesty to three Inkatha Freedom Party and two African National Congress members serving lengthy prison terms for incidents ranging from murder to robbery.

Thulani Sigudu, Thulani Mvelase and Samson Mangele, all claiming to be IFP members, were refused amnesty on Monday for the murder of Sarojinee Govender at the Parktown North shopping centre in Johannesburg in December 1993, said a TRC spokesman.

Mrs Govender, from Woodstock, Cape Town, was shot dead leaving a bank. Her assailants escaped with an undisclosed sum of money.

The men, who are serving prison terms ranging from 25 to 30 years, told the amnesty committee the money was used to procure weapons for IFP members at Dube hostel in Soweto. The committee said they were not prepared to admit that they wanted to kill Mrs Govender. Serious doubts were raised as to whether the murder was politically motivated.

Also refused amnesty were ANC members Stephen Moeketsi Monyake and Gift Sekitla Mohase. Monyake stabbed dead Tebo Molele of the "Three Million Gang" in Kroonstad in May 1992. The committee said it was not satisfied the killing had a political motive. Mohase, serving 26 years, was refused amnesty for killing Esrom Hapane and injuring Casium David Gwele in 1990 - Sapa

ARG 28/4/99

TRC hands list of names to public prosecutor for action

CT 28/4/99 (252)

MURRAY WILLIAMS
OWN CORRESPONDENT

DURBAN THE Truth and Reconciliation Commission has handed a list of more than 100 names of people it recommends be prosecuted to the national director of public prosecutions, Bulelani Ngcuka

The list names alleged perpetrators of abuses, all included in the TRC's final report, who either did not apply for amnesty or have been fingered by amnesty applicants

It is believed that a number of possible cases are extremely politically sensitive. It is now up to Ngcuka's office to decide which, if any, cases should proceed

Ngcuka last year publicly promised that the TRC's evidence would be scrutinised to build possible cases against those not prosecuted in the past

It is believed that among the cases referred to Ngcuka's office are some which the Independent Task Unit, which brought the case against former defence minister Magnus Malan, recommended for prosecution but which the then attorney-general, Tim McNally, declined to act on

Ngcuka established a working group to examine the TRC's report and follow up on its findings and recommendations last year. Simultaneously, the TRC began identifying possible cases from around the country, including who potential



CONSIDERING ACTION: Public prosecutor Bulelani Ngcuka

witnesses are and where investigators should look for evidence. The process is continuing

The acting chairperson of what remains of the TRC, commissioner Yasmin Sooka, said yesterday that "preliminary lists of matters and potential cases that we think can be followed up" had been submitted

Still to be added to the list are people who may yet be implicated in amnesty applications waiting to be heard, or who have had their applications turned down

"We're getting there," Sooka said, "but there's still a lot of work

to be done

Ngcuka's spokesperson, Siphon Ngwema, yesterday confirmed that the list had been received. In some cases, investigations had already been completed and "just need to be consolidated"

Included from KwaZulu-Natal are a number of senior former SAP security branch officers and IFP leaders. The bulk of people named from KwaZulu-Natal allegedly committed their crimes during the province's low-scale war, which claimed more than 10 000 lives between 1984 and 1994

Everyone implicated in amnesty applications was warned in advance, after which a number of people were able to exonerate themselves in official responses or submit alibis

However, a number of alleged perpetrators have been implicated repeatedly

Sooka said officials are still discussing how Ngcuka's team will access the TRC's evidence. All charges will have to be reinvestigated from scratch, after which dockets will be sent back to the various provincial directors of public prosecutions for prosecution

IFP spokesperson Philip Powell said last year the TRC's allegations would be dismissed, as its criteria for making findings is "far less rigorous" than would be used by attorneys-general when evaluating possible prosecutions

TRC grants Wild Coast casino killers amnesty

'On-the-spot' decision a first for commission

(252)

ART 29/4/99

ARGUS CORRESPONDENT

East London - The Truth and Reconciliation Commission has granted amnesty to two former Umkhonto weSizwe (MK) members for the April 1986 bombing of the Wild Coast Sun casino that left two dead and three injured.

Ian Ndibulele Ndzamela and Pumzile Mayaphi, who were convicted of murder and sabotage and given the death sentence in the Umtata Supreme Court a decade ago, were granted amnesty immediately for full disclosure and proven political motive with no personal gain.

TRC spokesman Phila Ngqumba said the "on the spot" decision by amnesty committee

Judge Denzil Potgieter was a first.

The hearing, held in the city hall here, also provided rare insight into the emotive issue of the bomber's war in the anti-apartheid struggle

Mayaphi, whose sworn affidavit was corroborated by Ndzamela, said the bombing was "within the ambit of the political objectives of the African National Congress" and followed "a senseless massacre of our people by the SADF (South African Defence force) enemy forces" in Lesotho at the beginning of 1986

Both men had been sent to African and East European countries for military training focused on tactics and handling explosives, as well as for political instruction

Mayaphi said the order to bomb the casino and the two limpet mines used in the operation came from MK's late Eastern Pondoland regional commander, Atwell Maqhekeza, codenamed China

Mayaphi borrowed a car on April 18 1986 and, armed with pistols and the limpet mines, drove to Mzamba with Ndzamela and Maqhekeza

Maqhekeza and Mayaphi stayed in the car while Ndzamela entered the casino gambling area and placed one of the limpet mines under a pipe in the men's toilets

Ndzamela returned to the car and "told me where he had placed the mine, and I entered and placed my limpet mine on top of his", said Mayaphi

The time was 7pm, and the

mines were set to explode three hours later, as the men headed back to their Ngcingo hideout.

The explosion rocked the resort and seriously damaged the building, killing Bhekinkosi Ntakana and Thomas Hudson and severely injuring Martha Boshoff and Thamsanqa Dlamini, who have died since, and Wieslaw Stefan Nowak.

Mayaphi said. "To the families of the deceased and to all those who might have been affected or inconvenienced in one way or another by our actions, we sincerely apologise and ask for forgiveness. We plead with them for their understanding"

Mayaphi and Ndzamela were sentenced to death, commuted to 18 years' imprisonment on appeal

Move to separate the 'legs of law'

(252)

ZELDA VENTER
OWN CORRESPONDENT

ET 30/4/99

PRETORIA: A proposal to separate criminal and civil procedures, accommodating them in different court buildings and giving them status as specialised entities, was raised yesterday by Justice Minister Dullah Omar.

Speaking at the first meeting of the newly elected Rules Board for Courts of Law, the watchdog over civil proceedings, Omar said civil and criminal courts should be divided. When new courts were built, consideration should be given to accommodating these two legs of the law separately.

Civil and criminal law were very important parts of the judicial service to the community, he said, adding that although it might take time to implement this, he could see it happening in the future.

Omar further pointed out that the absence of a proper civil justice system would create a situation where people took the law into their own hands.

Referring to the problem of crime in the country, Omar said many of the problems stemmed from civil grievances. If these grievances were not tackled, they would spill over into criminal deeds. He stressed that it was vital that civil justice be made accessible and affordable.

Omar said his department also felt very strongly about the establishment of community courts — a matter on which the South African Law Society will soon make recommendations.

Referring to the recent beating of alleged rapists in Gugulethu by the Eyona Taxi Association, Omar said one of the problems the justice system faced was the lack of a mechanism with which people could resolve problems.

People were forced to take the law into their own hands and this resulted in violence. Community courts would provide the mechanism to resolve these matters.

In tribal areas a local chief could be expected to deal with such issues. Serious crimes would, however, still have to be resolved by the criminal courts, Omar said.

"We are in the process of transforming the civil and criminal justice system to make sure it works effectively. In the meantime, people must not take the law into their own hands," he said.

Welcoming the new 12-member Rules Board, chaired by Judge Sandile Ngcobo, Omar said they had a great task ahead of them to see that the wheels of civil justice were turning effectively. One of the board's main aims was to look at outdated civil law, which in many cases dated back to the 1960s, he said.

Lawyers act to halt probe into road-accident ripoffs

CARMEL RICKARD

A NEW organisation of specialist lawyers is trying to stop Judge Willem Heath and his unit from investigating whether their members have been ripping off the Road Accident Fund by grossly overcharging

The South African Association

of Personal Injury Lawyers this week launched High Court action which would effectively declare their members off-limits to investigators. Among their most significant claims is one that says Judge Heath's appointment to head the special investigation unit is unconstitutional, and should be declared invalid

They also say the proclamation recently issued by Deputy

President Thabo Mbeki, which refers the problem of Road Accident Fund ripoffs to the Heath commission for investigation, is invalid and should be scrapped

They ask the Pretoria High Court to bar Judge Heath and his investigators from conducting any investigations into the activities of their members, and to bar members of the unit from entering or searching the premises of

any of their members while carrying out the investigation authorised by Mbeki.

In an affidavit forming part of the application, the vice-president of the organisation, Monique Woods, says the Minister of Transport, Mac Maharaj, is waging a campaign against the legal profession, even though only a small number of lawyers have been acting improperly in relation to Road Accident Fund payouts.

She says the provincial law societies are well equipped to deal with such problems.

Fraudulent attorneys, says Woods, make up a tiny minority of the profession, and the number of claims involving fraud do not justify an investigation by the Heath Commission, let alone an investigation as wide-ranging as that authorised by Mbeki.

Her organisation recognises the need to expose the fraud committed "by the handful of attorneys responsible" and to deal decisively with the practitioners involved.

However, the actions of Maharaj and his department have been aimed indiscriminately at all personal injury lawyers, thus tainting "the vast majority of honourable and professional practitioners"

Her organisation complains that when the investigation was set up, none of the parties involved was given any opportunity to make representations beforehand

She says Judge Heath and his unit have wide powers which they may now exercise against members of the organisation. If members of the Heath unit investigate any members of the organisation, news of this would leak out and cause "irreparable damage" to that member's professional reputation.

The organisation says this is a breach of privacy and potentially violates their members' common-law personal freedom

They could find themselves subjected to searches and in the process their clients' privileged documents could be inspected, attached and removed

ST 2/11/99

Impatience with policing 'has led to kangaroo courts'

Restoring confidence in rule of law the answer, say lawyers

(ATA) ARU 3/5/99

South Africa's judicial fabric is under threat from savage, arbitrary "justice" meted out by illegal kangaroo courts.

But the key to removing the threat lies in initiatives aimed at restoring public confidence in the rule of law.

This is the challenge raised by shocking television footage of a kangaroo court in Guguletu, say lawyers and analysts.

They join the Government in condemning the untested "verdicts" and violent punishments of self-styled "courts", though they acknowledge rough justice stems from community impatience with protracted or apparently ineffective police and legal procedure.

But there is hope that new, properly regulated "community courts", and other initiatives could restore faith in the law and the right to a fair trial.

It is argued that kangaroo courts are a symptom of deficiency a crisis of confidence in policing and the courts in communities for whom the concept of *audi alteram partem*, for instance, is regarded as a proud necessity against the more urgent desire to end criminal tyranny. *Audi alteram partem* - Latin for "hear the other side" - is one of several tenets of civilised law that is glaringly absent from kangaroo courts.

Last week's television expose showed the punishment of five suspected rapists who were caught by members of a local taxi organisation, stripped and tied to a pole, and whipped with shamboks until they lost consciousness.

It has caused grave disquiet in legal circles.



MICHAEL MORRIS
SPECIAL WRITER

For some, it raises the spectre of Hitler's Brown Shirts, whose callous street justice presaged the extra-judicial brutality that defined Nazi Germany's infancy.

But where the kangaroo courts of 1990s South Africa differ is in the support they often have from otherwise peaceable men and women who are tired of crime going unchecked.

Under such circumstances, catching and punishing "criminals" without ado is appealing, and the high level of impatience is taken as licence by self-appointed "judges".

Steven Friedmann, director of the Centre for Policy Studies, notes "It's an interesting grass roots demonstration of the bigger debates in the country. "Guguletu is not the only

place where a lot of people feel that if the rules have to be thrown out of the window to tackle crime, let's do it. The problem is, it inevitably degenerates."

Lawyers and analysts believe the antidote is having more community involvement in justice, and especially community courts. As it happens, there is already a successful community court of a very different kind operating in Guguletu which, like some street committee forums and traditional courts elsewhere, is nothing like notorious vigilante courts run by taxi drivers.

What are the risks, and what is to be done?

Cape Law Society director Susan Aldred said the risk of kangaroo courts lies in their being "favoured by community sentiment" and conducted under emotive conditions which reduce the likelihood of a "fair and appropriate result".

While community forums could be helpful in assessing and controlling conduct, the imposition of brutal punishment is to be avoided.

The National Association of Democratic Lawyers (Nadel) agrees.

Bringing the gap between a dispassionate and professional justice system and impatient, poor and crime-ridden communities is vital, it argues.

Lawyer Roshem Allie, public defender for Nadel, noted "While we appreciate the community's disillusionment and impatience, the risks of

making an appointment and discuss your problems. This in itself will be a deterrent to crime, because criminals will know communities are working together with the system."

He added that while the main "recognition of the frustrations of communities is about apparent failures in policing, it is unacceptable that people take the law into their own hands under the pretext of dealing with crime."

But there was no easy way to stop kangaroo courts.

"These courts exist because they are generated by the community, and address a community need. The problem is that they have gone too far."

Educating people about their right not to submit to these structures was the answer, and making legal advice more accessible was a step towards making justice more accessible.

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Spell out your objections - Omar

Aggrieved communities dissatisfied with the handling of serious criminal cases should take up their complaints directly with the Ministry of Justice.

"There are practical things people can do, and we are encouraging that to happen," said Justice Minister Dullah Omar's spokesman, Paul Setsetse.

Going to court to oppose bail

in serious criminal cases was the avenue for action.

"But we are also saying that if communities are not happy with any element of the judicial process, they are welcome to meet the local director of public prosecutions, or the chief magistrate, to discuss their problems.

"The courts are open now and it is up to communities to take part more actively in the administration of justice.

"Group yourselves together,

make an appointment and discuss your problems. This in itself will be a deterrent to crime, because criminals will know communities are working together with the system."

He added that while the main "recognition of the frustrations of communities is about apparent failures in policing, it is unacceptable that people take the law into their own hands under the pretext of dealing with crime."

kangaroo court justice are great.

"There is no provision for *audi alteram partem*, and instead of a presumption of innocence, there's an implication of guilt."

Nadel is anxious to help the Department of Justice make courts "more accessible."

Establishing a magistrate's court in Nyanga - it is expected to be operating within the next few months - and reorganising the Legal Aid system are among such initiatives.

There was also scope for people involved in kangaroo courts to "come into the system and get involved."

Boosting trust in the system would also require an improvement in policing skills and techniques training, and re-training, was vital.

Significantly, the most recent survey of attitudes shows confidence in the police in the Western Cape is, along with Gauteng and North-West Province, lowest nationally at 27%.

Comte Erasmus of the Organised Crime Unit in the Attorney-General's office played a ground breaking role in the 80s as the public prosecutor in Mitchell's Plan in forging links with community structures.

One of these was the forum in Guguletu whose members were trained to "adjudicate petty offences".

This was later extended to Nyanga and Khayelitsha.

This, experience convinced Mr Erasmus that "street committees and other structures have a vital role to play in developing our own system of justice" tailored to South African



Face of street justice: this man was beaten after several women told Guguletu taxi drivers that he had raped them

circumstances, and accessible to all communities.

Researcher Geraldine-Maureen Meoli of the Law Commission recently delivered to Justice Minister Dullah Omar a draft report setting out the basis of what could be a new tier of community courts in future.

The new structures would not be courts in the conventional sense, but would rather be "dispute resolution forums", established and regulated by legislation.

Participation would be voluntary, without restricting participants' rights in any other formal court. Importantly, the outcome of an adjudication would "not be a 'judgment' needing to be enforced, but an agreement or settlement."

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Momberg admits assaulting guard (277)

PRETORIA — Former security policeman Willem Momberg admitted yesterday that he helped assault and interrogate an unknown security guard in 1987

He told the truth commission's amnesty committee in Pretoria that the guard was assaulted because police had information that his brother was an Umkhonto we Sizwe (MK) member. Momberg is seeking amnesty for his role in the incident.

Momberg and former security police Sgt Eric Goosen told the amnesty committee that they were approached by former Capt Jaap van Jaarsveld to help with the guard's interrogation.

This was after former police askari Joe Mamasela had told Van Jaarsveld that the guard's brother was an MK member operating in SA.

Goosen is also applying for amnesty for the incident. Momberg, Goosen, Mamasela, Van Jaarsveld and former security police Capt Jacques Hechter took the guard to a township outside Warmbaths where Momberg, Van Jaarsveld and Mamasela assaulted the guard.

The guard denied that his brother was in MK and after about an hour of interrogation Van Jaarsveld ordered Goosen and Momberg to kill the man.

Momberg, however, persuaded the guard to become a police informer and the man was then told he could leave after Momberg arranged to meet him the next day in Pretoria. But the man did not show up for the meeting and was never seen again, Momberg said.

Van Jaarsveld has not applied for amnesty because he said that he could not remember the incident.

Hechter and former security police Brig Jack Cronje told the committee they could also not remember the kidnapping and assault.

"Post-traumatic stress has caused me not to remember many incidents," Hechter said.

He said he accepted Goosen and Momberg's version of the incident, while Cronje said he accepted responsibility for the operation because if it had taken place he would have authorised it and the policemen would have acted under his orders. The hearing continues — Sapa

BD 4/7/99

Apla men seek amnesty for farm murder (277)

TZANEEN — Three former members of the Azanian People's Liberation Army who have applied for amnesty for killing a farmer's wife in Tzaneen in 1993 will appear before the amnesty committee of the Truth and Reconciliation Commission today.

Thomas Ngobeni, Clifford Thobejane and Donald Mukhawana wounded Johannes Swanepoel and shot dead his wife, Sandra, at their farm near Tzaneen on March 27 that year.

The men said the Pan Africanist Congress and its armed wing, Apla, had declared 1993 "the year of the Great Storm" and they were instructed to attack white farmers and government buildings with the intention of overthrowing government.

Five former policemen will also appear before the committee this week seeking amnesty for the assault and torture of six people.

Gabriel Ramushwana, Phumula Manga, Ledwick Ramahgela and Carlson Netshivela were interrogating suspects after an attack on Sibasa police station in Venda in October 1981 — Sapa

BD 4/7/99

Former captain 'can't recall past events'

CT 4/5/99
FANA PEETE

PRETORIA: A former police captain, implicated by his former colleagues in the kidnapping and assault of an unidentified security guard, yesterday told the TRC amnesty committee that he could not remember his involvement, but could not deny it.

Former captain Jacques Hechter, who is among the 13 former security police applying for amnesty in connection with a series of incidents ranging from kidnapping to assault and murder of political activists, has been implicated by captain Eric Goosen and colonel Willem Johannes Momberg in their applications for the part they played in assaulting the guard near Warmbaths in 1987.

Hechter said that because of the post-traumatic stress disorder he suffered after leaving the force, his memory had been affected, and he had a poor recollection of past events. He said he may not be able to dispute the evidence of the two applicants.

Both Goosen and Momberg had earlier told the committee that in 1987, they received a request from captain Jaap van Jaarsveld to help him interrogate a security guard, whose brother was a trained member of a liberation movement and was back in the country.

They said that the information came from former Vlakplaas operative Joe Mamasela.

The applicants told the committee that they had assaulted and interrogated the security guard for about an hour, when Van Jaarsveld ordered both Goosen and Momberg to kill him.

They said Momberg refused, and concentrated on convincing the guard to work for the police. The guard was then released and they returned to Pretoria.

Hechter said he was involved in many similar operations and that the two applicants' version was reasonably correct. He said their normal way of operating was to kidnap their victims, and then intimidate them before interrogation.

He said it was very easy to obtain information from a kidnapped person, and that was why they always preferred to kidnap their victims and take them to a well-hidden place.

Hechter said it was normal for the police to assault their victims if they thought they were not giving them the right information. He said the strategy was meant to turn their victims into police informers.

Buthelezi glad at massacre, TRC told

(2/2)
BY RAPULE TABANE
Star 4/5/99

An amnesty applicant yesterday maintained that Inkatha Freedom Party president Mangosuthu Buthelezi had expressed his happiness about the Boipatong massacre, in which 45 people were killed and 18 injured when a group of hostel dwellers attacked the Boipatong community in 1992.

Andries Nosenga (26), who says he is an IFP member, claimed that after the massacre, Buthelezi had told an IFP rally in Ulundi that he was very happy about what had happened at Boipatong, in the Vaal Triangle.

Nosenga is one of 16 IFP members who are applying to the Truth and Reconciliation Commission for amnesty in connection with the massacre.

But the IFP yesterday moved quickly to deny his story, saying Nosenga's allegations were untested.

The IFP's spokesperson on legal matters, Koos van der Merwe, said "We suspect that Nosenga has been planted by people hostile to the IFP. His allegations have been refuted by all the other applicants. I predict that during cross-examination his credibility will be destroyed."

Nosenga is the only one of the 16 who has implicated the police and maintained that there was high authority from the IFP which approved of the attack. He is currently serving time in jail for drive-by shootings in Evaton and Sebokeng.

"We attacked Boipatong because it was an order from the IFP leadership. We were told to destroy everything - women, children and any property that we came across."

The hearing continues today at the Iscor Club, Vanderbijlpark, when Nosenga is expected to be cross-examined by counsel for the IFP, police and victims.

TRC told how young activists were blown up

By RYAN CRESSWELL

Three teenagers were killed and another injured after security police lured them to an old pump-house at an abandoned mine near Krugersdorp in 1982 and then blew it up, a TRC amnesty hearing heard yesterday

Former security policemen Brigadier Willem Schoon and colonels Abraham Grobbelaar, Jan Coetzee and Christiaan Rorich are seeking amnesty for the murders of Bumbo Madikela, Ntshingo Matabane and Fanyana Nhlapo and the attempted murder of Zandisile Musi

Ex-Vlakplaas camp commander Coetzee, not to be confused with another Vlakplaas commander Dirk Coetzee, said that askari Epharaim Malapitsa told him a Cosas member and his friends wanted weapons and training to kill security policeman Warrant Officer Mkosi and a councillor

Coetzee said he decided it best to kill the activists instead of arresting them, to protect Mkosi and his family, and to hide the fact that Malapitsa had turned and was now an askari "Askaris played a valuable role in identifying ANC cadres"

Rorich said Malapitsa and the

activists went into the pump house and, when Malapitsa came out, he "turned the detonator"

Three of the teenagers were killed, but Musi, younger brother of Gauteng housing department spokesperson Mbalala Musi, survived

Commissioners and lawyers repeatedly asked the four applicants if they knew how old the teenagers were and if they knew for a fact they were "terrorists?"

Judge Potgieter said when the youths met Malapitsa they were just "four kids with a plan".

Grobbelaar apologised to the families of the teenagers.

8/10/99 4/5/99 (2/5/2)

Trio blown up in mineshaft had planned murders, TRC hears

By EDDIE JAVIYA

(252)

Star 5/5/99

Former Umkhonto weSizwe operative and askari Thomedu Ephraim Mfalapitsa told the Truth and Reconciliation Commission's amnesty committee yesterday that three Congress of SA Students members who died in a disused mine on the West Rand had planned to assassinate a policeman and a councillor

Giving evidence in support of his amnesty application for the murder of Bingo Madikela, Ntshingo Mmatabane and Fanyana Nhlapo and the attempted murder of Zandisile Musi, Mfalapitsa said the four had to be eliminated because they wanted to kill a Warrant-Officer Nkosi and a man named Matshidiso, a local councillor in Kagiso in the 1980s

Mfalapitsa, who is now a pastor with the New Life Christian Church, told the committee hearing at Johannesburg's Central Methodist Church that he was approached by Musi, shortly after his return from exile, where he underwent military training with Musi's brother Mbulelo

The youth was not aware at the time that Mfalapitsa was no longer an MK operative, but was working for the South African Police as an informer. He had visited

the Musi family, whom he knew well

"I told Musi that the ANC was establishing internal structures and it was therefore unwise for them to leave the country. I told him to convey the message to his friends, and he later met me at the Industria station on a Saturday to conclude the arrangements for the training. Musi was alone because I had told him that I did not trust anybody," he said

On the next Monday, the four young activists met Mfalapitsa, who was accompanied by an unknown man with a scarred face. They were driven to the mineshaft and Mfalapitsa led them inside

"They showed me a sketch of the plan to kill Nkosi and Matshidiso. I was then convinced that they were serious about their intention. I told them to lock the door as I went outside to fetch material. Then there was a huge explosion. I was paid R1 000 after the explosion but I was not commended," he said

Musi, who survived the explosion, disputed Mfalapitsa's version on the sketch and the meeting that took place at the station

"Mfalapitsa showed us how the handgrenade works and he hurriedly left," Musi said

The hearing continues today

TRC hears of 'blowing up' of MK operative

(259) *South African 5/5/99*
AN Umkhonto we Sizwe (MK) cadre was "throttled until he went limp" before his body was blown up with a landmine in 1986, former security police lieutenant Willem Momberg said yesterday.

He told the Truth and Reconciliation Commission's amnesty committee in Pretoria that he had assumed the MK man was dead when he detonated the landmine.

Momberg is seeking amnesty for his role in the death of the unknown operative who was killed in the Pienaars River area of the former Bophuthatswana between January and April 1986.

He and former security police sergeant Eric Goosen said the cadre was beaten and throttled while being interrogated about information he had about MK safe houses in Mamelodi, Pretoria. Goosen is also applying for amnesty for the killing.

Momberg told the committee that he and former security police captain Hendrik Prinsloo had earlier in the day hit the cadre in the face and on the chest in Mamelodi after he had refused to identify safe houses.

He said about eight security policemen, including himself, then drove the cadre to the Pienaars River area in a minibus so that the man could

be interrogated further.

Momberg and Goosen said Prinsloo assaulted the man again when they arrived at their destination. "Prinsloo continued with the interrogation. He hit and pushed the man into the boot of the bus and throttled him," Momberg said.

He said nobody stopped Prinsloo from throttling the cadre, and it was not the plan to kill him.

Goosen and Momberg said former security police brigadier Jack Cronje ordered them to set up the landmine to blow up the operative so that "all identification would be destroyed".

Cronje has already received amnesty for the incident.

Goosen and Momberg picked up the cadre's body and placed his hands and head on the landmine. Momberg said he then detonated the mine. Goosen and Momberg are among six security policemen seeking amnesty for the killing. The hearing continues today.

● A 43-year-old police sergeant was arrested in Vosloorus on the East Rand yesterday following the death of a suspect who had allegedly been assaulted in a police cell.

Spokesman Captain Andy Pieke said the sergeant appeared in the Boksburg Magistrate's Court yesterday and was granted R1 000 bail. — Sapa

Killers not sure if man was MK

By Gershwin Chuenyane

A SUSPECTED Umkhonto we Sizwe cadre was killed before his killers could fully determine whether he was in fact a member of the African National Congress armed wing

Former security police captain Hendrik Prinsloo told the Truth and Reconciliation Commission's amnesty committee hearing in Pretoria yesterday that soon after the suspected MK operative was killed, a debate on whether he was indeed a "terrorist" ensued between him and the other security policemen who were involved in the killing. The man was killed and his body blown up in the Pienaars River area in the former Bophuthatswana between January and April in 1986.

Prinsloo, who is seeking amnesty for his involvement in the death of the unknown MK operative, was asked by committee chairperson Judge Andrew Wilson "not to tell the committee fairy-tales" after stating that the reason he had not mentioned that he had throttled the man was because he had confused the incident with another.

The committee also heard that the suspected MK operative was driven around Mamelodi, Pretoria, to identify MK "safe houses" and activists. The man could not identify houses or activists, and told the security policemen who were with him that he did not know the area well.

Prinsloo said he had believed that the man was indeed an MK operative, and he was aware that MK cadres had been trained to employ delaying tactics.

Sowetan 6/5/99

Trio blown up in mine posed no threat, TRC told

BY EDDIE JAVIYA

The Cosas four, all members of the Congress of South African Students, posed no threat to the state when they were blown up in a disused mine between Randfontein and Krugersdorp, a Truth and Reconciliation Commission amnesty committee was told yesterday.

In opposing amnesty applications by four security policemen and an askari, Themba Tshabalala, the lawyer for the families of the four - Bingo Madikela, Ntshingo Matabane, Fanyana Nhlapo and Zandisile Musi - said they were lured to the mine and blown up after learning how to use a grenade.

The five amnesty applicants are police generals Jan Coetzee, Chris Rorich and

Abraham Grobbelaar, Brigadier Willem Schoon and Thomed Ephraim Mfalapitsa.

Tshabalala said the policemen should have used other methods, like detention without trial, to dissuade the four from undergoing training.

"There was no evidence at the time linking the four to any disruptive political acts, and claims by Mfalapitsa that they showed him a sketch or a plan aimed at killing a Warrant Officer Nkosi are not true."

Tshabalala said the applicants had given different versions about the events leading to the tragic night.

He said it was impossible to know who was telling the truth, and therefore their applications should be rejected.

The hearing continues today.

MAY 9, 1999 ★

CITY PRESS

Boipatong witness 'coerced by ANC'

(257)

By MAX MARX

AN urgent application has been brought by lawyers representing 14 amnesty applicants challenging the Truth and Reconciliation Commission (TRC) to disclose the alleged involvement of the ANC in aiding Andries Nosenga's application for amnesty for his participation in the 1992 Boipatong massacre

The controversial Nosenga, a member of the Inkatha Freedom Party, is seeking amnesty for his role in the Boipatong Massacre with 16 others

However, only the lawyers for 14 of the applicants have questioned the ANC's alleged role in Nosenga's testimony, in which he claims the police and senior IFP leaders supplied them with guns and helped in the killings

One of the lawyers, Hanro Friedrich, told City Press it was believed Nosenga had been coerced into making a false application for amnesty so as to implicate senior IFP leaders in the massacre, but that this could not as yet be proved

Nosenga, who is serving a 14-year sentence for his involvement in drive-by shootings in Sebokeng and Evaton, applied for amnesty at the very last minute

Nosenga and Victor Mthembu are the only two applicants of 17 to have implicated the police and IFP leaders in the June 17, 1992 massacre. The attack in Boipatong township, in which a group numbering more than 300 went from door to door and shot, hacked and stabbed residents indiscriminately, left 46 people dead including women and children

All the other IFP applicants, who were convicted for the massacre, have denied police and IFP leadership involvement

Nosenga claimed in his testimony to the TRC early this week that former IFP youth leader and current IFP national election candidate, Themba Khoza, had told the hostel dwellers to destroy the goods they had stolen from the township during the massacre and that Khoza fetched the

weapons they used in the massacre the next day

This was backed by another amnesty applicant, Victor Mthembu, who is serving 20 years for murder. Mthembu testified earlier that Khoza allegedly ordered them to burn the stolen goods

Nosenga said former policeman, Sergeant Gerhardus Peens, was also involved in the attack

He said he had travelled to Boipatong in the same Casspir as Peens and that Peens had also shot at people from the Casspir

Both Peens and Khoza have denied involvement in the massacre

But Khoza was arrested in Sebokeng following the attack after firearms and ammunition were found in his car. He was acquitted at his trial after the magistrate accepted the weapons could have been planted

On Thursday Nosenga changed his testimony denying Khoza had fetched the weapons after the attack



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QUESTIONABLE WITNESS

Boipatong Massacre amnesty applicant Andries Nosenga, who was grilled this week about his role after implicating the police and IFP leaders in the killings

Pic: MAX MARX

Terre 'Blanche to beg for pardon

By DAN DHEAMINI

(Part 2) 29/15/1999

AWB leader Eugene Terre-Blanche (ETB) will go to the Truth and Reconciliation Commission's amnesty committee tomorrow to beg for forgiveness for some of his deeds.

The TRC amnesty hearing of Terre-Blanche and his AWB former comrades-in-arms, Piet "Skriet" Rudolph, will be held at the Rhema Education Centre in Klerksdorp tomorrow.

The two rightwingers have applied for amnesty for violent acts they committed during the so-called 'Battle of Venters-

dorp" on August 9, 1991, when carnage prevailed and two AWB members were killed in clashes with the police.

On that day, AWB members ran berserk in a bid to prevent former president FW de Klerk addressing a public meeting of National Party members in the then "verkrampste" Ventersdorp.

This writer, who was the only black journalist assigned to cover this all-white event, was included in the indiscriminate attack by AWB members armed with a variety of weapons ranging from machetes, knives and knob-knives to sophisticated missile launch-

ers and firearms.

Thus was after Ventersdorp town engineer Terblanche had switched off the town lights.

Terblanche, no relative of Terre-Blanche, was also found guilty and fined but is still employed by the town council as chief town engineer.

Eugene Terre-Blanche, a former policeman and body guard of former South African Prime Minister John Voster, has also applied for amnesty for his involvement in the tarring and feathering of the late Professor Floors van Jaarsveld sometime in 1979.

Too many courts spoil judicial broth

Bramfontein versus Bloemfontein: Alan Fine and Jonny Steinberg examine a passionate debate that is taking place over the future relationship between SA's highest courts, the Constitutional and Appeal courts

Oft of the public eye, in the corridors of the highest courts of the land, judges and other members of the legal fraternity are conducting a passionate debate about the future relationship between the Constitutional Court and the Appeal Court. In short, any justification for the continued separation of the two?

Some argue that the luxury of a specialist constitutional court in a relatively poor country is offensive and unhelpful. While the rest of the judiciary is underfunded and overworked, the Constitutional Court's resources are comparatively lavish, its workload light.

A high court judge will often have one week and a typewriter to compose a difficult judgment. His Constitutional Court colleague has full-time researchers, nine peers and all the time in the world.

Does it make sense then to have a luxurious court at the apex of a judiciary that hobbles around on rickety old legs?

Another disadvantage of the system is the absence of a cross-pollination of ideas between the judges of the two courts.

Those who defend the structure argue that without it SA would be a constitutional democracy in name only. Put bluntly, we developed a constitutional, democratic legal code in the mid-1990s, but were left with a judiciary without the will or the inclination to enforce it.

Until the Appeal Court is peopled by jurists who believe in the document they guard over, the argument goes, SA should not allow the old guard in Bloemfontein to get its hands anywhere near the constitution.

Rather create an artificial divide, build a separate court which deals exclusively in constitutional matters and staff it with judges who take pride in the constitution.

There is a more subtle variant on this position. SA's constitution is a social democratic document, so the argument goes, and it is right that its guardians be social democrats. The constitution does not debate whether there should be affirmative action, it commands that it happen. It does not question the advisability of socioeconomic

rights, it spells them out.

Those who believe in neither affirmative action nor socioeconomic rights have no business interpreting a document with which they are in principled disagreement. Once again, a merger between Bloemfontein and Johannesburg becomes thinkable only when the old guard is happily ensconced in the arm chairs of its retirement.

There is also a gentler argument for the status quo. The Constitutional Court, the argument goes, is building up a new jurisprudence from scratch. The judgments it hands down will shape constitutional law for the next century. By contrast, the appellate division is merely nibbling away at the edges of a mountain of case law.

Those developing the country's constitutional law, the argument goes, require the space to do their work properly.

Give them a separate court, a small case load and all the resources they need. Make sure they have the time and space to get it right. This is, in essence, the argument of Constitutional Court president Arthur Chaskalson.

"There was a long debate during the constitutional negotiations about whether the existing courts should be vested with constitutional jurisdiction or whether a specialist constitutional court should be established," Chaskalson says.

"In the end it was decided that we were dealing with a new and difficult jurisdiction which called for specialist work. We came from a long period of parliamentary sovereignty. This country had no background in constitutionalism. We needed specialist judges to set the new law and to determine how it is applied."

Chaskalson shrugs off the complaint that the Constitutional Court siphons valuable resources away from an underfunded justice system.

"All courts should be well resourced. As the highest court, the Constitutional Court should have the best resources. It deals with the newest and most complex law."

Ironically, most judges of the old school also support the separation of the courts — but for very different reasons.



Constitutional Court president Arthur Chaskalson needing time and space

It is an open secret that many old guard high court judges, including Appeal Court judges, despise the Constitutional Court.

If it is, they say, too close to government, it is packed with people who did not make the traditional journey up the judicial hierarchy. Its judgments are pretentious and verbose.

Many, including those at the Appeal Court, are pleased that their new peers are kept at arm's length. Let them have their constitution to play with, just keep them away from the common law — the real law.

That, however, is not the unanimous view in Bloemfontein. In the forefront of those in favour of merging the two courts is Chief Justice Ismail Mahomed — who stands out as a newcomer in Bloemfontein. Mahomed refuses to discuss the matter but his preference is well known in legal circles.

Cynics say Mahomed's rationale is, in part, personal. Constitutional law is his part,

(2572) BD 10/5/99

If a merged court heard cases in select panels, new generation judges would get a hearing in both constitutional and common law cases. The present anomaly, whereby new law has new guardians, and old law has old order guardians, would dissolve.

The judge also says there is a case to be made that, in future, Constitutional Court judges should come up through the high court system. Otherwise they become totally isolated from and ignorant of the problems of the rest of the judicial system.

Most Anglophone constitutional democracies, including the US, Canada, Australia and New Zealand, have a single supreme court dealing with both constitutional and common law.

In European constitutional democracies, a specialist constitutional court is the rule. A possible compromise is to go the German route — both courts are based in the same city, Karlsruhe.

Judges and lawyers favouring a merger of the two courts agree it is inconceivable that it can happen without a significant restructuring of personnel and that it would take years. For one thing, it would be quite unwieldy to have all 17 Appeal Court judges and 11 Constitutional Court judges serving a new, combined court.

One observer says there is a window of opportunity. Judges Chaskalson, Johann Kriegler, Toile Madala and Laurie Ackerman reach the retirement age of 70 at about the same time — in three to four years.

At the same time, Mahomed is said to want to rationalise the Appeal Court, reducing it to 11 judges to make it a more specialised and streamlined institution.

The trouble with this idea is that it would be difficult enough transforming the Appeal Court's racial and gender character even if it stayed at 17 judges.

Apart from the chief justice, it is "the least transformed" of all the courts. Bringing in new blood at the same time as cutting back would be tough.

Some of those arguing for a merger say opponents predicate their arguments on vested interests which have little to do with the quality of the system.

For now, most opinion is against a merger. In government, both Justice Minister Dullah Omar and justice portfolio committee chairman Johnny de Lange say it is nowhere on the agenda.

Some find the issue so sensitive as to be opposed to its airing in public at all. At most, as one judge puts it, "there should not be closed minds on the issue of merging the two courts, but it would be a long, long process."

(252) ~~BB~~ CT 10/5/99

AWB chief to plead for amnesty

JOHANNESBURG: Afrikaner Weerstandsbeweging leader Eugene Terre'Blanche is to plead for amnesty today for his part in clashes between right-wingers and police in Ventersdorp on August 9, 1991

Three AWB supporters died and 55 people, some of them innocent bystanders, were injured in the violence, sparked by the AWB's opposition to then-president F W de Klerk's addressing National Party supporters in the Kommando Hall

Appearing with Terre'Blanche before the Truth and Reconciliation Commission's amnesty committee in Klerksdorp

will be Johannes Piet "Skiet" Rudolph, who was secretary-general of the AWB at the time of the "Battle of Ventersdorp". The pair were convicted and fined for public violence

Terre'Blanche is also seeking amnesty for possessing illegal weapons and ammunition in 1982 and for the tarring and feathering of a professor at the University of South Africa in Pretoria in 1997

The TRC's report named Terre'Blanche as one of several political leaders who had been responsible for human rights abuses — Own Correspondent

ANC man under fire at Boipatong TRC hearing

Star 11/9/99 (257)

Lawyers for applicants suspect massacre witness is a plant

BY RAPHAEL BANDA

Lawyers for 14 amnesty applicants who were jailed for their role in the Boipatong massacre have applied to the Truth and Reconciliation Committee's amnesty committee for a probe of how the 15th man came to apply for amnesty, and whether a TRC staff member was involved in the suspected scam.

The application to investigate Andries Nosenga, who approached the ANC to help him make his amnesty application, will be launched today at the Iscor Recreation Club in Vanderbijlpark, where the hearings are taking place.

Nosenga has told the committee that he contacted the ANC after the Inkatha Freedom Party, of which he claims he is a member, failed to assist him.

Nosenga (23), ended six days of cross-examination yesterday during which IFP legal counsel sought to discredit him as a liar and an ANC spy planted to

weaken the amnesty applications of the other 14, jailed for the 1992 rampage in which 48 people died.

Lawyers for the 14 will launch an application today asking the committee to investigate the manner in which Nosenga's application was lodged.

They also want the committee to probe whether his documents are forged or not, and to establish whether they were filed timeously or not.

They also want an investigation into whether Nosenga had been encouraged or coerced to submit his application, and whether any TRC staff member had been involved in helping him lodge an application for amnesty "in an unlawful manner".

The 14 contend that Nosenga came to live in Kwa-Madala hostel, from where the attack was launched on Boipatong township, after the massacre. They argue that he did not take part in the killings.

Meanwhile, in reply to a question yesterday, Nosenga told the amnesty committee that the IFP leadership had forgotten about him in jail, and because he knew that his version of events would be different from the others he had contacted the ANC.

"Even now they (the IFP) have not come to visit me," he told the committee.

Nosenga said yesterday that the IFP leadership had distanced itself from the killings and this had forced him to seek amnesty for the Boipatong incident, for which he had not been arrested. He was jailed for 16 years in connection with drive-by shootings in Sebokeng and Evaton.

The IFP has rejected Nosenga's claim that its leader, Mangosuthu Buthelezi, had congratulated the Boipatong attackers.

Survivors of the massacre and policemen implicated by Nosenga are expected to testify this week.

Innocent woman's death haunts policeman

By Eddie JAYIYA

The killing of an innocent woman during a cross-border raid into Botswana on New Year's Eve of 1986 was something he could not erase from his mind, retired security policeman Brigadier Wilkus Loots told the Truth and Reconciliation Commission's amnesty committee yesterday.

The woman was killed when SADF Special Forces under Commandant Charl Naudé threw hand-grenades and fired

shots at a safe house in Ramoutswa township in Botswana, after being informed that high-ranking MK operatives Aaron Mkwanazi - whose nom-de-guerre was "Take Five" - and Sadi Pule were staying there.

Loots said: "Personally I am disappointed and shocked that a wrong person was killed during the attack on the house. I wish I could erase this matter from my mind."

"It was not our intention to kill a wrong person. We were convinced that Take Five and

Pule would be at the house during the attack," he said.

Loots, Brigadier Willem Schoon, Colonel Du Preez Smit, Captain Frik Crause and Inspector Moses Modise are applying for amnesty for the murder of the unknown woman.

Loots said police had received information on December 31 1986, that the two high-ranking MK members were staying at the house.

"I only learnt later that these were the most wanted people in South Africa."

FW liable for Ventersdorp deaths, lyrical ET tells TRC

After 11/5/99

STAFF REPORTER (A17)

It was a day of eloquent speeches but no apologies or excuses as Afrikaner Weerstandsbeweging leader Eugene TerreBlanche appeared before a Truth and Reconciliation Commission amnesty hearing in Klerksdorp yesterday for his part in the 1991 "Battle of Ventersdorp".

TerreBlanche maintained that he was not responsible for any human rights abuses at Ventersdorp, and blamed the uprising and subsequent death of three people on the security forces and then president F W de Klerk.

TerreBlanche and former AWB secretary-general Petrus "Piet Skiet" Rudolph, who is also applying for amnesty for the Ventersdorp events, asked for the hearing to be postponed so that De Klerk could be brought in to answer questions.

The battle happened after a meeting addressed by De Klerk in the town on August 9 1991. The hearing heard how De

Klerk had flown into the town by helicopter and "fell from the sky like manna", only to leave later in a police Caspimir "with his tail between his legs".

The AWB leader said he believed he had to be present at the De Klerk meeting to ask about a squatter invasion in the town, as well as negotiations between the NP government and black political leaders.

He was later found guilty of charges of public violence but yesterday said it was unfair that he be branded a criminal while De Klerk had been responsible for the uprising.

TerreBlanche is also applying for amnesty for the barring and feathering of academic Professor Floris van Jaarsveld at Unisa in Pretoria in 1979.

Van Jaarsveld was delivering a paper calling for the abolition of the Day of the Covenant on December 16.

TRC amnesty committee chairperson Judge Selwyn Miller will rule today on the application to call De Klerk to the hearing.

Indifference as Leon takes roadshow into the mealie belt

By ROBERT BRAND
Political Correspondent

DP leader Tony Leon and his election "battle bus" yesterday steamed into Ventersdorp, the lair of Afrikaner Weerstandsbeweging leader Eugene TerreBlanche, and met with something more dangerous than belligerent rightwingers almost no interest.

While Leon addressed a handful of black and white supporters - some bused in from Fochville on the West Rand - in a public park near the Ventersdorp town centre, TerreBlanche was testifying in his amnesty hearing before the Truth and Reconciliation Commission in nearby Klerksdorp.

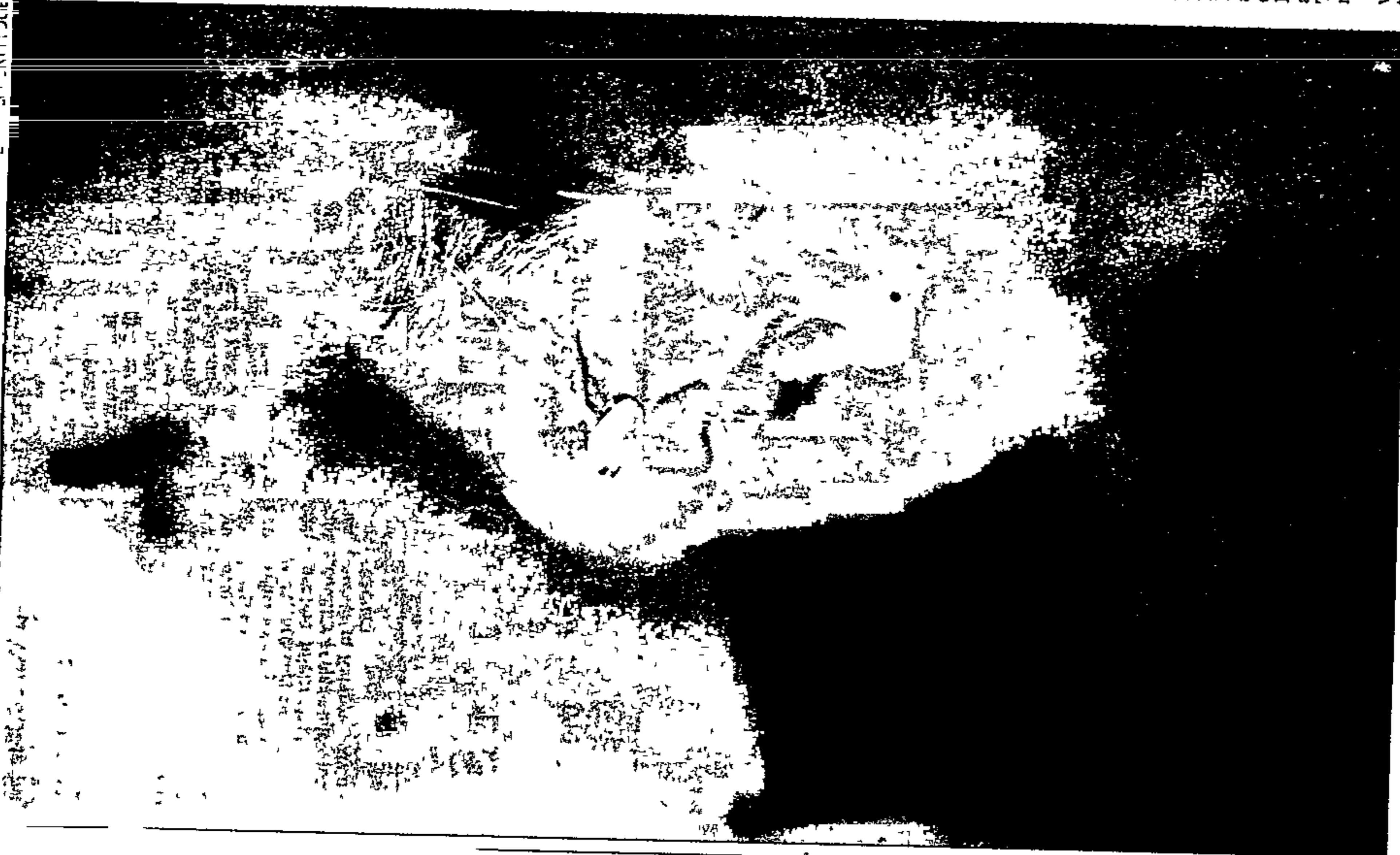
The obvious question is what was Leon, whose party is traditionally to the left of the NNP and therefore, presumably even more objectionable to the AWB, doing in

Ventersdorp? The obvious answer is that the DP is courting the votes of the very people who, eight years ago, were apparently prepared to shed blood to prevent political change.

The chairperson of the party's Ventersdorp branch, Alan Jones, confirmed this when he said many of the town's rightwingers now regarded the DP as their political home.

Leon referred once to TerreBlanche, calling him a *bullebak* (bully) who no longer held sway over Ventersdorp. Mention of the AWB leader's name was greeted with shouts of derision from blacks in the audience, who grew more and more raucous as Leon went on.

They shouted "*Slaan terug, Tony, slaan terug!*" (Hit back, Tony, hit back!) when Leon said ANC stood for "Another National Crisis" and promised to check its "lust for power".



Pausing for thought ... Eugene TerreBlanche, who is seeking amnesty for his part in the 1991 "Battle of Ventersdorp", seen at the first day of the TRC's hearing in Klerksdorp yesterday.

AWB demands De Klerk at hearing

Terre'Blanche is applying to the truth commission amnesty committee regarding a fight in Ventersdorpjie

BD 11/5/99 (ATA)

VENTERSDORP — Afrikaner Weerstandsbeweging (AWB) leader Eugene Terre'Blanche yesterday called on former state president FW de Klerk to answer questions before a truth commission amnesty committee hearing, at which Terre'Blanche is seeking amnesty.

Terre'Blanche wants amnesty for his participation in the "Battle of Ventersdorp" in which a row involving AWB supporters erupted following an August 1991 Ventersdorp meeting addressed by De Klerk. Originally scheduled to be a public meeting, it was later announced that it would be a National Party meeting that only party supporters would be allowed to attend.

Terre'Blanche told the amnesty committee yesterday that at the time he felt he had to attend the meeting to ask De Klerk some questions about a squatter invasion at Ventersdorp and about negotiations then taking place between the NP government and anti-apartheid leaders.

De Klerk had abused his powers by using the machinery of the state to defend himself at a private political meeting, Terre'Blanche said. De Klerk had called in a large contingent of troops and policemen to secure his own safety.

Terre'Blanche was later found guilty of public violence for his part in the battle. "At a time of reconciliation I feel I should no longer be branded as a criminal just because I wanted to exercise my democratic rights as a member of the electorate to be at the meeting," he said.

Rather than instigating violence, he had actually tried to stop the fighting, Terre'Blanche said.

Afrikanerweerstandsbeweging leader Eugene Terre'Blanche speaks at a truth commission hearing in Klerksdorp yesterday. Picture AP

Terre'Blanche is also applying for amnesty for the 1979 tarring and leathering of University of Pretoria academic Fleuris van Jaarsveld and for a 1995 attack on a black man that left the victim brain damaged.

Terre'Blanche admitted he had given instructions to about 40 men to attack Van Jaarsveld at the University of SA after Van Jaarsveld had delivered a paper calling for the abolition of the Day of the Covenant on December 16.

The late professor's son told the committee the family was not opposing the amnesty application but wished it to be known that the attack had a devastating effect on his father's life.

Certain publishers would no longer print his books and his popular history textbooks were discontinued.

Terre'Blanche was simply trying to save his own skin. "The pain which he has inflicted will stick to him as the tar stuck to Professor Van Jaarsveld. There is no place for Terre'Blanche in the new SA and the community must be protected from people such as him," he said.

Amnesty commission chairman Selwyn Miller said he would rule today on the application to have De Klerk called before the commission.

Also speaking about the Ventersdorp events, former AWB secretary-general Piet Rudolph said De Klerk had deployed his forces in an unbridled manner with the intention of destroying the AWB.

It was the security forces that shot people in the streets and were guilty of gross abuses of human rights at Ventersdorp, and not the AWB, he said. — Sapa

Boipatong witness saw police

DD 12/5/99

(252)

VANDERBIJLPARK — A Boipatong resident yesterday told the truth commission's amnesty committee he saw police vehicles escorting armed hostel dwellers on the night of the 1992 massacre which left 45 people dead in the Vaal triangle township

Wilson Baloyi said an armoured police vehicle led a group of Inkatha-aligned men past his house shortly before the attack. He later saw another police vehicle shepherding the attackers away from the township into the veld.

Baloyi is one of several witnesses being brought, on behalf of the victims of the massacre, before the amnesty com-

mittee to testify that there was police and security force involvement

Lawyers for the victims are trying to prove that police colluded with Inkatha-aligned residents of KwaMadala hostel in planning and executing the attack on Boipatong on June 17, 1992

Fourteen Inkatha Freedom Party members, who have applied for amnesty for their role in the massacre, told the committee hostel dwellers attacked the township as part of a feud with African National Congress members and no police were involved

Only Andries Nosenga, a 15th amnesty applicant, has claimed that the

police and high-profile IFP members assisted in the attack.

Baloyi, 79, told the committee police entered the township in the afternoon and began removing barricades

"I realised the police were going to attack when the tractors came to fill up the trenches the closing up of the trenches and the removing of the barricades was unusual," he said

Pressed by lawyers, he could not explain why he thought the police action was necessarily linked to an attack. He said the police were deeply mistrusted in Boipatong and were suspected of collaborating with the IFP — Sapa

Priest warned of Boipatong attack

Survivor of 1992 massacre describes how he saw a police vehicle stop to pick up the corpse of

By RAPHAEL BANDA

A survivor of the Boipatong massacre told the Truth and Reconciliation Commission's amnesty committee yesterday he had been warned of the imminent attack by a priest and that he had seen police in the township on the day of the attack.

This evidence by Wilson Baloyi (79) is part of testimony that lawyers for the victims are presenting before the commit-

tee at Vanderbijlpark's Iscor recreation club in a bid to weaken amnesty applications by 14 people jailed for their part in the 1992 killings.

At least 22 survivors are expected to give evidence.

Baloyi said a Sharpeville Catholic Church minister, whom he named as Father Patriek, had phoned him to say an attack was imminent on either Boipatong or Bophelong.

During a day of clashes between police and comrades

(ANC-supporting youth), Baloyi had seen a tractor escorted by a police vehicle filling up trenches dug by residents. Police had fired teargas at fleeing comrades, Baloyi told the committee, adding he still had the teargas canisters.

Early in the evening of June 17 1992, he saw an armoured police vehicle park outside his house and later a mob swept into the township, breaking down gates and doors, killing occupants and looting homes.

Baloyi said the attackers smashed windows of his house, and three armed men stormed inside, one of whom tried twice to hack him with an axe. He had remained exposed to danger while his wife and children barricaded themselves in a toilet.

After the attack, he had seen an armoured police vehicle driving near his home and stopping to pick up the corpse of a slain resident.

Baloyi was grilled by lawyers for the 14 applicants on his

evidence in a statement under 1992 was that his evidence rially.

Baloyi had ment that he of more than white people, whites wore day he told the when he saw a officer picking the street, he opinion that

CHRIS

ANC man lured to SA by security policemen

By NODIN JAVIYA

Security police used a suspect in both the Voortrekkerhoogte rocket attack and the bombing of the Impala electrical substation outside Pretoria, to lure an ANC member to South Africa, the Truth and Reconciliation Commission's amnesty committee heard yesterday.

Brigadier Frederick Nel, who was in charge of investigations regarding terrorism and internal security, was one of the investigating officers of the two incidents.

After arresting Philemon Molefe, whose car fitted the description of a "suspicious" vehicle seen around Laudium, Pretoria, before the attack, Nel was told that ANC member Johannes Mntsi had been involved in the two incidents.

"It was decided that Molefe should telephone Mntsi in Swaziland and ask him (Mntsi) to meet him inside South Africa. The meeting took place near the Oshoek border post, where Mntsi was arrested in 1971. He told the police that he carried out the attacks. He said his immediate seniors were Umkhonto we Sizwe commanders, known only as 'George' and 'Brown'," said Nel.

He said police wanted to smash the team, and arresting George and Brown would cripple the ANC's operations in Swaziland. Mntsi was asked to contact them for a meeting inside Swaziland, just a few kilometres from the Oshoek border post.

Nel, Commissioner Marthi-



Revelations ... Sadl Pule and the Rev Aaron Mkwanzal listen to the TRC proceedings in Johannesburg yesterday.

nus Strydom, Brigadier Schalk Visser, Inspector Albertus Derksen, General Johannes Viktor, Superintendent Gert Visser, Sergeant Dougle Hope, Superintendent Daan le Roux, Daan Steenberg and General Bert Wandrag are applying for amnesty for the murders of "George" and "Brown".

Strydom said it was decided that the pair should be abducted on either December 7 or 8 1981 and be brought to South Africa for interrogation.

"We wanted more information from them regarding their operations and we knew that they reported to senior ANC members, including Sipiwe Nyanda," he said.

A specially trained task team under Strydom was asked to carry out the operation inside Swaziland.

Strydom told the committee that the team carried Eastern Bloc weapons for the operation as it was standard practice not to use South African weapons during cross-border raids.

On December 7 1981 the car described by Mntsi was driven towards the border, but was parked in the wrong place.

The car drove off and Nel withdrew his team, but they were requested to return.

"A new plan had been devised and we crossed the border again. The car drove to another spot, but this time we were

ready. We approached it and one occupant shouted something in a black language.

"I heard the machineguns being cocked and I gave orders to shoot. I used an AK-47 to fire

Killings were bid to cripple MK operations

at the car and within minutes the car caught fire.

"We tried to approach but the heat drove us back. I ordered my men to cross back into South Africa," he said.

The hearing - Former security Brigadier Willem applied for amnesty of violence against tion movements, ted to include the two Umkhonto manders who Swaziland.

It means that be prosecuted for killing "George"

In his lawyer told the could not explain dent was not general application Schoon had not tried his involvement, forgotten to tell his

of Boipatong attack, TRC told

(252) Star 12/5/99

How he saw a police vehicle stop to pick up the corpse of a slain resident

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After the attack, he had seen an armoured police vehicle driving near his home and stopping to pick up the corpse of a slain resident.

Baloyi was grilled by lawyers for the 14 applicants on his

evidence-in-chief, in which his statement under oath taken in 1992 was produced to show that his evidence differed materially.

Baloyi had said in his statement that he had seen a group of more than 500 black and white people, and that the whites were balaclavas. Yesterday he told the committee that when he saw a white police officer picking up a corpse in the street, he had formed the opinion that whites had been

involved in the attack.

He also told the committee that he had seen whites, who got out of a police vehicle, shooting at residents. But lawyers for the 14 pointed out that some of the evidence he gave yesterday differed from what his wife had told a criminal trial.

Cross-examination will continue today.

An application challenging the manner in which a 15th applicant lodged his application will also be heard today.

CHRIS COLLINGRIDGE

No subpoena for De Klerk in AWB hearing

STAFF REPORTER

Former state president F W de Klerk will not be subpoenaed to give evidence in the amnesty application of Afrikaner Weerstandsbeweging leader Eugene TerreBlanche and former AWB secretary-general Petrus "Piet Skiet" Rudolph for their role in the so called 1991 Battle of Ventersdorp.

Both men have accused De Klerk of being responsible for the clash on August 9 1991 between the AWB and police and defence force members. Three people were killed and scores injured.

De Klerk, also the then leader of the National Party, was in the town to address a public meeting when the battle occurred.

Truth and Reconciliation Commission amnesty committee chairperson Judge Selwyn Miller ruled at the hearing in Klerksdorp yesterday that it was not the commission's function to determine who was responsible for the violence at Ventersdorp, but to ascertain whether TerreBlanche and Rudolph had been acting in the pursuit of political objectives.

Miller said his decision would not prejudice the cases of TerreBlanche or Rudolph in any way.

TerreBlanche has also applied for amnesty for tarring and feathering Professor Floris van Jaarsveld in 1979 because the latter had called for the abolition of the Day of the Covenant, which celebrated the Boer victory at Blood River.

TerreBlanche also applied for amnesty for the illegal possession of AK 47 parts, pistols and ammunition



the Rev Aaron Mkwana listen to the TRC proceedings in Johannesburg yesterday.

A specially trained task team under Strydom was asked to carry out the operation inside Swaziland.

Strydom told the committee that the team carried Eastern Bloc weapons for the operation as it was standard practice not to use South African weapons during cross-border raids.

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The car drove off and Nel withdrew his team, but they were requested to return.

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ready. We approached it and one occupant shouted something in a black language.

"I heard the machineguns being cocked and I gave orders to shoot. I used an AK-47 to fire

Killings were bid to cripple MK operations

at the car and within minutes the car caught fire.

"We tried to approach but the heat drove us back. I ordered my men to cross back into South Africa," he said

The hearing continues.

Former security policeman Brigadier Willem Schoon has applied for amnesty for 18 acts of violence against the liberation movements, but has omitted to include the murder of two Umkhonto weSizwe commanders who were based in Swaziland.

It means that Schoon could be prosecuted for his role in the killing "George" and "Brown".

In his submission, Schoon's lawyer told the TRC his client could not explain why the incident was not included in his general application. He added Schoon had not tried to conceal his involvement, but might have forgotten to tell his attorney

Commission dismisses IFP Boipatong challenge

VANDERBIJLPARK — The truth commission yesterday dismissed an application by lawyers for 14 Inkatha Freedom Party (IFP) men challenging the fairness of the amnesty hearing into the 1992 Boipatong massacre

Amnesty committee chairman Sandile Ngcobo refused to issue an order, as requested by the lawyers, declaring whether the committee was bound by the findings on the massacre contained in the commission's final report handed to President Nelson Mandela last year

Advocate Kobus Lowies told the committee his clients feared they would not get amnesty

for their role in the killings because their version of events on June 17 1992 differed sharply with the findings of the commission's human rights violations committee

The commission found that police were involved in the attack on the Vaal Triangle township by between 100 and 500 KwaMadala hostel dwellers which left 45 people dead

The 14 IFP men, however, disputed this, saying security forces did not help hostel residents carry out the attack

Lowies said he feared the men's amnesty applications had been prejudged and their

right to a fair hearing undermined by the commission's earlier findings. Full disclosure is a requirement for amnesty

Ngcobo, however, said the committee did not have the power to issue an order stating its position in relation to the commission's findings. He also said the Promotion of National Unity and Reconciliation Act gave the amnesty committee the power to hear its own evidence and make its own judgments

The application was opposed by the victims' lawyers, who testified about police collusion with the attackers — Sapa

BD 13/5/99

Challenge to fairness of amnesty hearing dismissed

Star 13/5/99

252

The Truth and Reconciliation Commission yesterday dismissed an application by lawyers for 14 IFP men challenging the fairness of the amnesty hearing into the 1992 Boipatong massacre.

Amnesty committee chairperson, Sandile Ngcobo refused to issue an order, as requested by the lawyers, declaring whether the committee was bound by the findings on the massacre contained in the TRC's

final report handed to President Nelson Mandela last year. Advocate Kobus Lowies told the committee his clients feared they would not get amnesty for their role in the killings because their version of events on June 17 1992 differed sharply with the findings of the TRC's human rights violations committee.

The TRC found that police were involved when between 100 and 500 KwaMadaqa hostel dwellers attacked the Vaal Triangle township, leaving 45 people dead.

The 14 IFP men, however, disputed this, saying security forces did not help hostel residents to carry out the attack.

Lowies said he feared the men's amnesty applications had been prejudged and their right to a fair hearing undermined by the TRC's earlier findings. "Full disclosure" is a requirement for amnesty.

Ngcobo, however, said the committee did not have the power to issue an order stating its position in relation to the TRC's findings.

"There is nothing in the act governing the TRC which manifestly gives the committee the power to grant this order. This committee is a creature of statute and has no other powers than those set out in the act," Ngcobo said.

He also said the Promotion of National Unity and Reconciliation Act gave the amnesty committee the power to hear its own evidence and make its own judgments. For this reason, such an order was unnecessary.

The application was opposed by lawyers for the victims.

The victims' lawyers have drafted a list of 24 witnesses through whom they intend to prove police involvement. Sapa

Municipal courts to be set up in Cape Town

Privatisation being planned

ARG 14/5/99

(257)

NORMAN JOSEPH
METRO REPORTER

Municipal courts are on the cards for Cape Town, to take pressure off law-enforcement agencies and speed up prosecutions.

And the issuing of summonses and warrants of arrests for municipal matters to be farmed out to sheriffs of the court, also known as peace officers.

The city council's protective services director, Alan Dolby, said this was a measure to privatise the handling of summonses and warrants.

"We can't cope with existing workloads, such as the issuing of summonses."

Executive committee chairman Saleem Mowzer said the council would soon introduce several new by-laws to facilitate the enforcement of law in the municipal area.

He said plans would include clamping down on dangerous driving and dealing firmly with informal parking attendants. Nor would illegal hawking, littering or dumping be tolerated.

Mr Dolby said more speed cameras and "robot" cameras to catch light-jumpers would be set up across the city.

The special municipal courts would speed up prosecutions for traffic violations and transgressions of by-laws.

Mr Dolby said successful prosecutions in municipal courts would bring in plenty of revenue.

The council was negotiating with the justice ministry and the director of prosecutions for the formation of the municipal courts.

Mr Dolby said the council would fund the cost of magistrates, prosecutors and support staff. Municipal courts would be situated in Cape Town's magistrate's courts.

The council would provide a budget in July to pay sheriffs and the justice personnel.

Johan Fourie, chairman of the South African Institute for Sheriffs, said: "We have the capacity and infrastructure to do the job."

He said a sheriff would be assigned to each magisterial district, and that they were familiar with the new Road Transportation Act.

Mr Fourie said sheriffs would be able to deal with the new tasks on a professional level, and that they would be effective.

"Motorists will not get away with traffic violations as they have been. We are going to clamp down in the interests of the community."

Verster names IFP to TRC

CP 16/5/99
By CHIARA CARTER

ARMSCOR subsidiary Mechem was not only the source of Philip Powell's massive arms cache but, according to a key amnesty application, was linked to a range of shady activities from Ulster to Angola.

The application by Mechem employee, Johann Verster, outlines a close relationship between Mechem and the notorious Vlakplaas.

Verster first met Eugene de Kock and Marthinus Ras in 1983, and at Mechem had dealings with members of Vlakplaas, particularly Lionel Snyman and Snor Vermeulen.

In 1989, Verster helped Snyman and Vermeulen make pipe shot guns known as "Zip guns" for the IFP.

On another occasion, they were given material and equipment to make pipe-bombs and handgrenades for the IFP.

In 1990, Verster and one Philip Askalant were told to make a machine gun mounting for an aircraft. The purpose is unknown.

Manager Theo van Dyk told Verster in 1991 to help Vermeulen and Snyman to move weapons from containers to the stores after hours.

A week later Verster was given an order to hand these weapons, as well as weapons from Angola to Snyman and Vermeulen. The weapons were intended to be used in a coup attempt in the Transkei.

Verster said weapons handed to De Kock in 1992 with Van Dyk's approval included

- 7 62 x 39mm ammunition for AK47 assault rifles
- 7 62 x 51 ammunition for R1rifles
- 9 x 19mm ammunition 9mm hand guns
- M26 handgrenades
- Claymore mines
- Mortor bombs
- RPG7 rockets
- TNT and
- PE4 plastic explosives

These were the weapons destined for Philip Powell's projects in KwaZulu-Natal.

Verster also helped de Kock provide Philip Powell with military uniforms that were handed to IFP members during their training in the Umfolozi Reserve in Natal.

In his application, Verster said that Mechem worked closely with KwaZulu police commissioner Jac Buchner.

He also claims that together with one Dave Roos he had trained three members of the Ulster Defence Union in the late 1980s, at the instruction of Colonel Pansegrouw of the Directorate of Special Tasks.

The training included the use of RPG7 rocket launchers. Verster said that arms were also provided to Unita.

Woman cadre was 'only suffocated'

FORMER Umkhonto we Sizwe (MK) cadre Nokuthula Simelane, who went missing 15 years ago, might have been killed by her comrades in Swaziland when she returned there as an SA police agent, the truth commission heard yesterday.

Former police superintendent Willem Coetzee told the commission's amnesty committee that after her arrest and assault at a Thabazimbi farm in September 1983, Simelane agreed to work for police, and her assistance led to the arrest of 18 MK operatives in Swaziland.

He said the police were informed by double agent Norman Mkhonza that Simelane was to enter SA to distribute information. She was lured into a trap in a restaurant at the Carlton Centre.

She was arrested at the restaurant, put in the boot of one of the policemen's vehicles and taken to the Norwood police residential quarters. She was interrogated before being taken to Thabazimbi.

"While we questioned her about her

network of arms, she appeared to be nervous and made certain admissions, and I had an impression that she would cooperate," Coetzee said.

Questioned by his legal representative, Louis Visser, Coetzee denied Simelane was tortured with electric shocks. He said she was only chained, slapped and suffocated with a wet bag.

"The assaults were serious and could be regarded as torture. The assaults were meant to ensure that she was sincere in her confessions."

During interrogation Simelane was asked to identify certain ANC operatives who were based in Swaziland.

"The information received from her, directly or indirectly, led to the arrest of 18 people when she returned to Swaziland," he said.

Coetzee said Simelane, by then a police agent, was sent to Swaziland for infiltrations. "We never saw her again" and believed her comrades killed her. — Sapa

(2/2)

DD 18/5/99

TRC hears of torture of MK cadre

(252) Shaw 18/5/99

By EDDIE JAVIYA

Police abducted, tortured and "turned" Umkhonto weSizwe operative Nokuthula Simelane in 1983 - but had nothing to do with her subsequent disappearance, a retired security policeman told the Truth and Reconciliation Commission yesterday.

Testifying at an amnesty committee hearing at the Central Methodist Church in Pritchard Street, Johannesburg, Superintendent Willem Coetzee said Simelane was lured to a meeting at the Carlton Centre in September 1983 by double agent Sergeant Norma Mkhonza.

Coetzee, Inspector Jakobus Ross, Mkhonza, Warrant Officer Frederick Mong, Superintendent Anton Pretorius, Inspector Mohapi Selamolela, Sergeant Nimrod Veyi and Superintendent James Williams are applying for amnesty for Simelane's abduction and torture.

Coetzee, who was commander of the police's Soweto intelligence unit, said he discussed the pending abduction with a Brigadier H Muller. Coetzee was instructed to "turn", or recruit, the person - who turned out to be Simelane.

On the day of the planned meeting, Coetzee was accompanied by Williams, Ross, Mong, Veyi, Pretorius, Selamolela, Peter Lengene and Joseph Mathibane.

Simelane was then arrested, handcuffed and taken to the police flats in Norwood.

"After the operation, I briefed Muller, and Pretorius was in charge of the interrogation. I instructed him to handcuff Simelane. She gave the impression that she was prepared to work for the security police. She was then taken to the Northam farm near Thabazimbi, where she was chained to a bed," he said.

Coetzee told the committee that Simelane was slapped across the face with an open hand, punched on the back and the side of the body, and a wet bag was pulled over her face.

"We assaulted her because we wanted more detailed information about MK operations, commanders and explosives in Swaziland. It was agreed that she should be brainwashed so that she could become our informer."

"We thought about prosecuting her, but we dropped this option because our undercover agent would have been exposed. She gave us valuable information and we were convinced that she had been turned into an informer."

Coetzee denied allegations that Simelane was killed. "I don't know what happened to her and maybe she was killed by the ANC. In its submission to the TRC, the ANC admitted to killing its own members," he said.

State denies victim's R7 claim

PRISCILLA SINGH

THE Department of Justice has denied media reports that it spent R7 a person on a victim and her family in the department's witness protection programme

The department's response is in reply to a programme aired on SABC television on Monday evening and a radio insert on Radio Sonder Grense that morning.

The department said yesterday that it supplied this particular family with an allowance of R2 070 per month, in addition to a fully furnished house with all amenities paid for by the state

The family also received R1 605 for school fees, R300 for school registration, a R2 500 advance for school uniforms, a R1 500 advance for school books and R216 for bus fares

Department spokesperson Heinrich Augustyn said that in addition to this, the state assumed liability for the outstanding rent due on property the family had rented before admission to the programme

at 19/5/99
Augustyn said the family failed to submit "acceptable" proof of any income and that all documents submitted were prepared by themselves or their "company".

"As soon as they submit acceptable proof of income, the allowance will be reconsidered. This has been explained to them on a number of occasions, both in writing and verbally.

"In an effort to expedite the final determination of the allowance, they were asked to submit a copy of their latest tax return. They furnished a return for 1995, more than four years old," Augustyn said

The department also moved the family to another province at their request

Augustyn said although people were not kept in luxury on the programme, every effort was made to provide them with basic amenities, and their proven income was taken into account when an allowance was determined

"In this particular case, no income has been proved and it transpired that the information supplied to date claiming a

(252)
significant income is suspect"

The witness protection programme came into operation on July 31, 1992. Up until October 1995, no more than 40 people were protected

Since 1996, with more publicity, more people have applied for protection. There are now 700 people in the programme

Because of an unforeseen increase in the number of protected people, the amount budgeted by the department was inadequate. Protection of witnesses is one of the key areas identified by the National Crime Prevention Strategy in combating crime, so R2,4-million was made available from government funds

Parliament last year approved the Witness Protection and Services Act, and a Directorate for Witness Protection was created to manage the programme

Augustyn said the programme boasts a "100% safety" record. No one on the programme has been killed, intimidated or threatened by defendants against whom they were being protected, he said

TRC hears of bombings by security police

Blasts carried out to convince MK its agent hadn't been turned

BY EDDIE JAYIVA

Star 19/5/99

Security police bombed two Johannesburg power stations and a railway line between Durban and Johannesburg in 1983 to convince Umkhonto weSizwe that its operatives had carried out the attacks, the Truth and Reconciliation Commission's amnesty committee heard yesterday.

Superintendent Anton Pretorius said the bombings of Fairlands and Bryanston North power stations were carried out after a captured MK underground member, Nokuthula Simelane, had told other MK members Norman Mkhonza and Frank Langa to continue with the orders from commanders in Swaziland.

Simelane had been abducted at the basement of Johannesburg's Carlton Centre car park in September 1983 after she came to Johannesburg to meet Mkhonza, who was a double agent.

Simelane was under intensive interrogation at the Northam farm near Thabazimbi at the time when she told Pretorius and his commander, Superintendent Willem Coetzee, about the operations of the Transvaal Military Machinery, an MK unit.

Pretorius told the committee - chaired by Judge Denzil Potgieter, assisted by advocates Leah Gcabashe and Chris de Jager - that the bombings were carried out to convince MK that its operatives, including Simelane, had executed the orders.

Pretorius, Coetzee, Inspector Jakobus Ross, Sergeant Mkhonza, Warrant Officer Frederick Mong, Inspector Mohapi Selamolela, Sergeant Nimrod Veyi and Superintendent James Williams are applying for amnesty for the abduction and torture of Simelane.

"Simelane gave us immeasurable information. She was co-operating with us and was part of the group that took part in blowing up power stations. I submit that she was in good physical condition when she left the farm on her way to Swaziland," Pretorius said.

He denied that Simelane was killed by the security police and was buried somewhere in Rustenburg. Pretorius said Simelane was told during the interrogation that Duma Nkosi, an MK member, was a police spy. "We fabricated the story to convince her to work for us. In fact, 18 MK operatives were arrested after she gave us the information," he said.

The hearing continues.

De Klerk awaits his fate from TRC revelations

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By Jimmy Seepe
Political Reporter

FORMER apartheid state president and National Party leader Mr FW de Klerk is to know his fate next week when the Cape High Court sits to decide whether the Truth and Reconciliation Commission should publish sections in its final report about him.

The Cape High Court sitting comes almost seven months after De Klerk succeeded in forcing the commission to remove sections which alleged he had knowledge about various atrocities and bombings committed by the apartheid security forces.

TRC chairman Mr Phila Nqgumba told *Sowetan* yesterday that the commission was looking forward to the conclusion of the matter.

"It is our wish to complete the whole matter so that the full TRC report, which includes a section dealing with De Klerk, can be published," he said.

The report is understood to link De Klerk to gross human rights violations.

There is now fear that the Cape High Court hearing on May 25, less than seven days before the country's national elections, could further dent the image of the New National Party's election campaign.

Last year speculation was rife that the report made references to De Klerk's knowledge of the involvement

of former law and order minister Adriaan Vlok and police commissioner Johan van der Merwe in the bombing of Khotso House, the headquarters of the SA Council of Churches and Cosatu House, the headquarters of the Congress of SA Trade Unions, in the 1980s.

The TRC claimed that De Klerk had failed to disclose the matter to the police as head of state.

Vlok, who appeared before the TRC early last year, told the commission that De Klerk knew about the previous government's activities, including the bombings of Khotso House and Cosatu House.

Police involvement

Vlok claimed to have continuously discussed with De Klerk the role played by the police in covert activities.

Van der Merwe, who also applied for amnesty, told the commission that he had informed De Klerk in 1991 about police involvement in the bombing of Khotso House and Cosatu House.

In his party's submission to the TRC, De Klerk repeatedly denied any knowledge of the activities of the security forces and the South African Defence Force against opponents of apartheid.

There are also fears that De Klerk, who did not apply for amnesty like other apartheid generals, could face prosecution.

FOCUS

SA's truth commission sets an example

Cambodia's approach to its terrible past holds some important lessons for SA, and vice versa, writes James Alexander

BD 20/5/99
(AFA)

The truth commission's final report is essentially a catalogue of the injuries inflicted on the South African people and psyche during the apartheid era.

However, the worth of the contribution of the commission's final report towards nation building is already a heatedly debated subject and will continue to be so as the legacy of its work — its triumphs and shortcomings — is fully realised in the coming years.

Beyond SA's borders, however, the verdict on the truth commission is out loud and courageous bid to take the first, and arguably most difficult, step towards reconciliation.

The Human Rights Commission in Northern Ireland and the former Yugoslavia have turned their attention to the commission's methods as useful markers for their own reconciliation.

In Cambodia Prime Minister Hun Sen earlier this year he was interested in meeting commission chairman Archbishop Desmond Tutu to consider the model and its use for examining Cambodia's tortured past.

There will be many South Africans who will object to the notion that

lessons learned from the commission's analysis of the apartheid past have any relevance for Cambodia. After all, they would argue, Cambodia has a past at the centre of which was Pol Pot and his brutal Khmer Rouge. It is a nation that, between 1975-79, was ruled by a regime which inflicted the most misguided of social experiments, and in the process devoured an estimated one million of its own.

The argument would conclude that the apartheid regime was nothing like that and therefore SA has nothing to teach or learn from Cambodia.

Wrong. The SA that emerged from apartheid has important lessons to teach Cambodia as it struggles to count and then acknowledge the skeletons in its own closet. Perhaps even more importantly, there are also lessons for SA as Cambodia starts down its own path of reconciliation and truth.

Like SA, Cambodians are attempting to unravel the sins of their fathers. It is exactly within the context of reconciliation between elements of the Khmer Rouge and the Vietnamese Cambodians that King Norodom Sihanouk has already suggested that

some museums should be closed down because they are divisive and serve merely to reopen old wounds.

One such museum is Tuol Sleng — or Security Building S 21 in Phnom Penh. It was a high school before the Khmer Rouge turned it into a monument of terror. It still contains the torture chambers and rusted instruments of agony as they were found with the arrival of the Vietnamese forces and the capture of Phnom Penh in 1979.

Tuol Sleng is now Cambodia's Genocide Museum and serves as a reminder to the non-Cambodians who visit the haunted city of Phnom Penh that the cruelty of the human mind can run amok. And that when it does, entire societies can fall victim.

This lesson is equally relevant to South Africans. Arguments may be offered in SA for the systematic demolition of apartheid-era monuments, or at the least for their renaming or remodeling to be less offensive to the majority of South Africans. Some think that such actions would assist in the reconciliation process.

As an outsider who has visited Tuol Sleng and spent days sitting in truth

commission hearings, may I warn SA against following this revisionist path? In any consideration given to this highly emotive issue, it is necessary first to consider whether those monuments that remain are a glorification of the apartheid era or signposts to a road best observed through a rear-view mirror.

It is one of the tragic ironies of modern history that the locales of the most overwhelming suffering have been ordained with innocuous sounding names. Auschwitz, Hiroshima, Changi. Maybe Vlakkplaas could be added to this list.

And with this apparent ordinariness — other than for those who endured these places — societies will find it easier to move beyond these often grotesque monuments and engage themselves with the living rather than the remembering.

Tuol Sleng, Auschwitz, Dachau and Robben Island all serve as guide posts for social scientists who may one day be able to map the human mind. It must surely be the hope of civilisation that when the cerebral circuitry of the human mind is finally mastered, social experiments like that of the Khmer

commission hearings, may I warn SA against following this revisionist path?

Rouge will be marked for all time as "Dead End".

And what then of Vlakkplaas? As Sir Seretse Khama, the first President of Botswana rightly said "A nation without a past is a lost nation. And a people without a past is a people without a soul."

SA has an extraordinary past that once served as a source of repulsion and now is a clarion call for those who celebrate the triumph of the human spirit over adversity.

However, just as the South African government has a constitutional responsibility to redress the cultural and historical imbalances of the past, so too it has a responsibility to civilisation to ensure that apartheid's monuments survive.

SA's history is important to mankind. Only when this history is written in the light of close scrutiny of all its monuments, cultures and institutions, will the most detailed of road maps be produced for SA's future.

And SA's past, like Cambodia's, will serve as an important signpost for the future of our world.

□ Alexander is a freelance writer

SAW 5

TRC witness objects to manner of questioning

By Raphael Banda

The Truth and Reconciliation Commission amnesty hearing on the 1992 Botopong massacre was thrown into disarray yesterday when a woman who was brutally and sexually assaulted during the attack objected to the manner of her cross-examination and refused to answer questions.

The Vanderbijlpark hearing was twice delayed as the committee discussed cross-examination procedure.

The chaos began after Danny Berger, counsel for the victims, submitted that his client, Florence Molete, was not being treated with compassion and respect while under cross-

examination by counsel for 15 amnesty applicants jailed for the massacre.

Attorney Rian Strydom fell foul of the committee as he questioned Molete about her sister's daughter, who was paralysed and is confined to a wheelchair after an attacker - alleged to be a white man - hacked her on the head.

The relentless probing caused Molete to break down, and she told the committee she would not answer further questions relating to her niece.

Before this, amnesty committee member Ian Lax queried Strydom's inquiry about injuries Molete had suffered during the attack. Molete told the committee on Tuesday that an

assailant had stabbed her in her private parts and then laughed about it.

"Is it necessary to put her through this?" Lax asked Strydom, who said it was relevant to his inquiry - that the most serious injuries Molete suffered be recounted.

Berger later halted the proceedings again when he complained about the intensity with which Molete was being cross-examined.

"There must be a limit to such cross-examination. If she is going to be cross-examined at such length and intensity it's going to result in other women not coming forward," he said. Molete's cross-examination was due to resume today.

MK commander ordered attacks on whites

By Eddie Janwa

(Data) / Straw 20/15/99

A police undercover agent who infiltrated ANC structures in Swaziland in 1983 had been instructed by the present mayor of Sandton, Justice Ngidi, to throw handgrenades at buses ferrying white children, a Truth and Reconciliation Commission amnesty hearing heard yesterday.

Sergeant Norman "Scotch" Mkhonza told the committee that MK commander "Cheche" - identified as Ngidi - also ordered him to attack policemen, a military passing-out parade at Wits Command and municipal offices in Soweto.

He denied he was given orders by the ANC to blow up

power stations and railway lines. Instead, he said, Superintendent Willem Coetzee, who was the commanding officer of the Soweto police intelligence unit, had given orders to bomb the power stations.

Mkhonza is applying for amnesty for his involvement in the abduction of MK operative Nokuthula Simelane in September 1988.

Simelane, who was tortured by the security police at the Norwood police apartments and later at Northam farm near Thabazimbi, disappeared and has not been seen since.

Mkhonza told the committee how he had lured Simelane to the Carlton Centre, where she was arrested.

"I submit to this committee that I last saw Simelane when she was arrested. About two weeks after this arrest, I asked Coetzee where this lady was. He told me: 'Moenie baie urze ura nie' (Don't ask too many questions)." Mkhonza apologised to Simelane's family and asked for their forgiveness.

A security policeman and amnesty applicant, Nurod Vey, told the committee that Simelane was tortured, kicked, suffocated with a wet bag and submerged in a dam to force her to talk.

He admitted that he took part in Simelane's torture, adding that MK members were severely beaten because they were regarded as terrorists.

'Prime Evil' at the TRC again

(2/12) Sowetan 21/5/99
 By Jimmy Seepe
 Political Reporter

FORMER Vlakplaas commander and apartheid assassin Eugene de Kock, who was called on this week by the Office of Public Prosecutions to help uncover hidden arms caches in kwaZulu-Natal, is to appear once again before the Truth and Reconciliation Commission on Monday.

He is expected to shed more light on apartheid atrocities that could prove embarrassing to a number of prominent political players.

The TRC has already sent notices to various people telling them that they could be named by De Kock at his appearance before the commission.

TRC spokesman Mr Phila Nggumba confirmed that the commission "had sent notices to people, as required by law, that they could be named by De Kock".

De Kock, who had earlier told the TRC that he had delivered seven truckloads of weapons to Inkatha Freedom Party member Mr Philip Powell, is expected to make revelations about

other atrocities in which he was involved. De Kock seems determined to break with his past and reveal all.

He is expected to shed light on the murder of Mr Zwela Nyanda, brother to the Chief of Staff of the South African National Defence Force, General Sphiwe Nyanda, who was murdered in Swaziland.

The hearing is also expected to hear how askari Mr Johannes Mabothe was killed by the Soweto special branch, which claimed to have been monitoring him. He was allegedly killed after being seen talking to Winnie Madikizela-Mandela.

Next week's hearing will focus on the killing of former policeman and Vlakplaas operative Mr Brian Nggulunga who was murdered a few days before he was to testify to the Harms Commission.

Earlier in the week De Kock went to kwaZulu-Natal to assist detectives with their probe into the two arms caches found in the province. It was believed De Kock could assist in verifying that the weaponry found was part of a consignment he shipped to Powell.

Amnesty for 13 who murdered Ribeiro and wife

(2572)

Arrest 20/5/99

Johannesburg - The amnesty committee of the Truth and Reconciliation Commission has granted amnesty to 13 former security force members who murdered Mamelodi doctor Fabian Ribeiro, his wife Florence and former KwaNdebele cabinet minister Piet Ntuli in 1986.

Jacob Hendrik van Jaarsveld, General Abraham Joubert, Colonel Charl Naude, Noel Robey, Coentraad Vlietstra, Deon Gouws, Stephanus Oosthuizen, Brigadier Wikus Loots, Colonel Philip Crause, Trevor Floyd, Civil Co-operation Bureau chief Pieter Vorster, Major Diederick Vorster and Abraham Kendall all got amnesty for the murders.

The Ribeiros were gunned down at their home in Mamelodi, Pretoria

Ntuli died after an explosive was planted under the seat of his car in Siyabuswa in the former homeland of Joubert, Naude, Loots, Crause, Vorster and Vorster were also granted amnesty for their role in the murder of 10 African National Congress activists who were on their way to Botswana for military training in June 1986.

The youths, Abraham Mokolane, Samuel Masilela, Sepo Sibanyoni, Jeremia Mfundu, Thomas Phiri, Jeremia Mkabula, Morris Nkabinde, Matthew Kekutle, Stephen Makenna and Elliot Sasage were first injected with a drug which rendered them unconscious and then doused with petrol before they were set alight in a pambus in

which they were travelling

The youths were allegedly lured by former Vlakplaas operative Joe Mamasela

He pretended he was a member of the ANC's armed wing

The amnesty committee said it was satisfied that the offences were committed with a political objective and that the applicants had made full disclosure of the relevant facts as was required by the TRC Act

Meanwhile, the amnesty committee has welcomed a Pretoria High Court ruling upholding its decision to refuse amnesty to two members of the National Socialist Partisans

The committee last year denied Johannes van Wyk and Jean du Plessis amnesty for motor vehicle

theft, three murders, attempted robbery, housebreaking, robbery and the illegal possession of weapons, the TRC said in a statement

Their lawyer took the matter to the high court for review on grounds that there were factors the TRC committee had not taken into consideration

But Judge P J van der Walt on Wednesday refused the first review proceedings

He said the amnesty committee had taken account of all facts, the TRC said

The committee, he ruled, had correctly found that the offences committed by Van Wyk and Du Plessis were not politically motivated - Sapa

Mbeki wants changes to TRC rules on amnesty

RAY HARTLEY

DEPUTY President Thabo Mbeki has asked for a review of the truth commission legislation to allow soldiers of the old SADF, those involved in violence in KwaZulu-Natal and members of political parties to get amnesty without having to apply as individuals, as is now required. Mbeki said, although the deadline for amnesty applications had passed, he had asked Justice Minister Dullah Omar to look into

allowing "organisations and bodies" to be granted amnesty in cases where no perpetrators had come forward to seek indemnity. Smuts Nkonyama, Mbeki's ANC communications chief, said a group of former SADF generals had told Mbeki that they would "come clean" and hand over the full details of all abuses sanctioned by the military, but only if they were assured they would qualify for amnesty. He said the proposal had been sympathetically received by Mbeki, who was one of 37 ANC leaders whose amnesty application was turned down by the truth commission because

it did not list what transgressions individuals had committed. Mbeki said "Though the Act recognises that amnesty can be and needs to be granted to institutions, to bodies, it doesn't make provision for bodies themselves to apply for [it]. It's a matter that needs to be addressed. "Quite a lot of people in KwaZulu-Natal did not apply [for amnesty] and with the level of violence that did take place in that province, if you dig and dig and dig, you are going to have to arrest a lot of people. That can't be right. "A number of the generals in the SADF are

● Mbeki interview — page 2

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(252)

known that this matter be dealt with, that we find some formula, because their own sense too is that there may well be significant numbers of people who were in the former SADF who didn't apply, and again, with regards to them, it would not be right week after week to charge people with something that happened in 1987. Mbeki said Omar would have to find a solution while remaining sensitive to the fact that those who had failed to apply for amnesty by the cut-off deadline had ignored the law

Blanket amnesty law on drawing board

David Greybe

PORT ELIZABETH — The justice department was drafting legislation to allow former soldiers, those involved in KwaZulu-Natal violence and political party members, to get amnesty without applying as individuals, Justice Minister Dullah Omar said yesterday

This follows reports in the Sunday Times yesterday that Deputy President Thabo Mbeki asked Omar for a review of the truth commission legislation, which did not allow "organisations and bodies" to be granted amnesty in cases where no perpetrators sought amnesty

Mbeki's request to Omar was made despite the fact that the deadline for amnesty applications had passed

(272) BD 24/5/99
Omar confirmed yesterday that Mbeki "approached" him with the request for a review, and said he had acceded to it "We (the justice department) are now busy drafting new legislation to allow for this"

Mbeki said Omar would have to find a solution while remaining sensitive to the fact that those who failed to apply for amnesty by the deadline ignored the law

The Sunday Times reported that Smuts Ngonyama, Mbeki's African National Congress (ANC) communications chief, said a group of former defence force generals had told Mbeki they would hand over the details of all abuses sanctioned by the military, but only if they were assured they would qualify for amnesty

Ngonyama said the proposal had been sympathetically received by Mbeki, one

of 37 ANC leaders whose amnesty application was turned down by the truth commission as it did not list what transgressions individuals had committed

While the act recognised that amnesty could and needed to be granted to bodies, Mbeki said, it did not make provision for such bodies to apply for amnesty "Quite a lot of people in KwaZulu-Natal did not apply (for amnesty) and with the level of violence in that province you are going to have to arrest a lot of people That cannot be right" In addition, "a number of generals in the SA Defence Force" felt there might be significant numbers of soldiers who had not applied for amnesty

Similarly, Mbeki said, "it would not be right week after week to charge people with something that happened in 1987"

Justice under fire over unofficial

R157-m

ARGUS 24/5/99
ARGUS CORRESPONDENT

Durban - An audit ordered by the Auditor-General into the finances of the Department of Justice has revealed unauthorised expenditure of more than R157-million in the year ended March 1998.

Auditor-General Henri Kluever, said, however, that this did not necessarily imply that corruption or misappropriation of funds had occurred.

The audit put the blame on poor checking and financial control, and non-compliance with directives on personnel expenditure.

Details of incomplete or incorrect information, shortcomings in internal checking and control, overpayments and unrealistically high claims were brought to the attention of the department.

In spite of this over-expenditure, according to the audit, more than R404-million for agency services was due to the Department of Justice by other government departments.

This amount indicates an increase of 191% over the past four years.

The audit indicated that the amalgamation of 11 departments of justice of the former TBVC (Transkei, Bophutatswana, Venda and Ciskei) states and self-governing territories contributed.

The audit also highlighted shortcomings in the witness protection programme, subsistence and travelling allowances.

Mr Kluever said, "A matter of great concern is the fact that financial management in the department seems to have deteriorated."

The department has indicated it accepts that there is a lack of training and skills in financial management and has set up measures to rectify the situation.

De Kock tells how Vlakplaas functioned

Team would not hesitate to commit crimes in defence of state, TRC hears

BY FANA PERTE
Pretoria Correspondent

Former Vlakplaas commander and confessed killer Eugene de Kock yesterday told a TRC amnesty committee that even while the Harms Commission was investigating unlawful actions by the police, instructions were still being issued at Vlakplaas for the murder of activists.

Giving the committee an insight into what happened at the farm south-west of Pretoria, De Kock said Vlakplaas was used to accommodate "contaminated" witnesses, or "terrorists" who had been tamed and made askaris.

He said they were employed to help the police to trace "terrorists" and also give evidence against them during trials. De Kock said those who were prepared to join Vlakplaas were not prosecuted after their arrest as they provided the police with valuable information about the ANC and PAC.

He said that before his transfer to Vlakplaas in 1986, he had only heard rumours about what was happening at the farm. It was only after his arrival that he heard of the murders of the Mxenge couple and abducted Renamo soldiers. He then realised what the farm was used for, and while it was not his choice to work there, he

took the job like a loyal National Party supporter.

The applicant said he must have been transferred to Vlakplaas because of his experience in covert operation and cross-border raids. He found that members of Vlakplaas were loyal men who would not hesitate to commit an illegal act in the interest of their country.

"It was not used to accommodate askaris. That was just a cover-up. We assembled weapons - mostly of Eastern origin - and we collected them from Orymboland."

He said the weapons were kept in two large rooms at Vlakplaas and in a 5sq m shipping container. "Anything you could think of, it was there."

De Kock said that when the media wanted to visit Vlakplaas during the Harms Commission, a senior police officer working with the commission advised him to relocate the weapons.

He said he supplied other units with weapons in their struggle against liberation movements. He also supplied Renamo and later the IFP. De Kock said that after the discovery of Operation Vula, he realised that the political war against the ANC was not over. He said he thought Codessa had failed, and then looked at Inkatha as the party that could be used in the fight against the ANC.



JUDA NGWENYA / REUTERS

Apartheid assassin ... Eugene de Kock (right), nicknamed "Prime Evil", speaks to his lawyer Schaik Hugo at the Truth and Reconciliation Commission amnesty hearing yesterday. De Kock is currently serving two life sentences and 212 years for his crimes while leading the state-sponsored Vlakplaas death squad. He is seeking amnesty for more than 100 incidents of murder, torture and fraud at a hearing expected to last several months.

The 'chilling and calculating' self-confessed state assassin

BY NORMAN CHAMBLER

Who is this man called Eugene de Kock?

His colleagues in the old South African Police's most notorious counter-insurgency unit knew him as "Prime Evil", while the ANC, perceived by him to be an enemy of the state, nicknamed him "The Scourge of God". Even the judge at his trial in 1985/86 referred to De Kock as "chilling and calculating".

De Kock, in a fit of bravado that chilled the air in a stifling Pretoria courtroom in September 1986, described himself as "the State's Assassin".

Assassin he was. He was found guilty of seven murders and various attempted murders, as well as fraud and illegal possession of arms and ammunition, during a reign of terror which he alleged was sanctioned by the government of the day. The terror campaign was committed in South Africa, Swaziland, Lesotho and Botswana.

De Kock was commander of C-10, a counter-insurgency unit based at Vlakplaas farm outside Pretoria, and from where were hatched diabolical acts of terrorism and destabilisation, according to evidence led during his trial.

Mr Justice Willem van der Merwe, delivering sentence, said this of De Kock: "The actions leave one with a chilling feeling. It fills a person with revulsion. With this sentencing, a warning must be given that such action cannot be tolerated."

He added, when discussing the political milieu in which De Kock operated: "It appeared the idea (of actions against alleged apartheid enemies) was to open a schism between members of the community."

"I must find that members of the community who were affected have a different outlook

towards these actions than others may have.

"The accused had believed he was fighting an enemy - a communist enemy of the Volk - and fatherland. The enemy, he believed, was already inside the country."

De Kock, now 50, went to jail in October 1986 for the rest of his natural life - he was given two life sentences and 212 years.

The TRC yesterday began hearing the first of his amnesty applications, a process which is expected to take at least seven months.

De Kock was given life sentences for the murder of

Winnie Madikizela Mandela's bodyguard/driver, Tlsetso Leballa, and for conspiring to murder a Krugersdorp bank security guard, Japie Mamponya.

He was also given 20 years each for the murders of Khona Gabela, Lawrence Nyalande, Glenack Mama and Oscar Nshato, who were all shot dead in a minibus ambushed near Nelspruit, and for the murder of Goodwill Sikhakhane.

These are in addition to numerous charges of fraud and of illegal possession of arms and ammunition, which brought sentences running from two years to 10 years each.

WEDNESDAY
JULY 3

TRC hears De Kock's scathing putdown of PW, FW and Coetsee

Row 25/5/99 (252)

PRETORIA CORRESPONDENT

Eugene de Kock, the man dubbed "Prime Evil" for his numerous killings, yesterday told a Truth and Reconciliation Commission amnesty committee that if what happened in the early 1980s had happened a century ago, former state president P W Botha and his justice minister Kobie Coetsee would have faced charges of high treason and execution.

"They are cowards. I don't think God will ever punish them because he does not even want to see them."

De Kock, who is applying for amnesty for his actions while he was head of Vlakplaas, said the two men had no reason to order the killings of the country's young men.

"It was during the mid-80s when these men made us believe we were in a just war. They incited the security forces and made us believe we were the last blue line between anarchy and peace. None of them

told the security forces that they were negotiating a peaceful settlement with the people we were fighting," he said.

De Kock said this applied to former state president

“
**God won't
punish them
- he doesn't
even want
to see them**
”

FW de Klerk as well.

He said that during an attack on Transkei in 1993, De Klerk was president and head of security, and must have known everything about the attack.

"How could he not be informed? Instructions always came from above, and he knew. Today he is nowhere.

"Murder is a global crime. We had no right to cross the border to kill people. I am sorry because we benefited nothing from such cruel action," said De Kock.

Even when he realised that his career as a policeman was over, after revelations by Dirk Coetzee and Almond Nofomela, politicians had created an impression that there was nothing wrong, he added.

De Kock said his senior, a General Engelbrecht, put pressure on him to resign in 1993, and suggested he should keep their activities a secret.

He said none of the senior officials, including the ministers and the president, could claim ignorance regarding operations at Vlakplaas because they had visited the place to decorate the men for a job well done.

"Vlakplaas's main duty was to track the enemies of the state, and the ANC was one."

The hearing continues.

► More reports

De Kock accepts responsibility for Vlakplaas crimes

PRETORIA — Former Vlakplaas commander Eugene de Kock yesterday accepted full responsibility for human rights violations committed without his knowledge by members of his unit

He told the truth commission in Pretoria the aim of the unit had been to curb terrorism. It also covered up illegal acts by other security police units to maintain secrecy

De Kock, who is serving a 260-year prison term for human rights violations, is seeking amnesty for over 100 incidents of torture, murder and fraud

His amnesty hearings are expected to last several months

The truth commission's amnesty committee will for the first two days hear general background evidence about Vlakplaas operations

De Kock's first application relates to five incidents during his time as Vlakplaas commander since June 1985

They include the April 1990 attack on the house of the Chand family, who were accused of assisting former liberation fighters

Other incidents include the murder of Vlakplaas askari Brian Ngqulunga in Bophuthatswana in July 1990, and the killing of African National Congress members Keith Mcladden and Zwelakhe Nyanda during a cross-border raid into Swaziland. Vlakplaas commanders also made covert forays into Lesotho

Coming on the eve of SA's second all-race election, the De Kock hearings may shed more light on the recent discovery of arms caches that have raised fears of violence ahead of the June 2 poll, analysts say. Vlakplaas gave truckloads of weapons to the Zulu-based Inkatha Freedom Party in a bid to destabilise the 1994 elections

SA's chief prosecutor last week enlisted De Kock's aid to help police trace the weapons after a 7-ton weapons stockpile was found earlier this month

"It will be a very interesting amnesty case. There may be some revelations on arms caches," said Brandon Hamber of the Centre for the Study of Violence and Reconciliation. He said De Kock's case is a difficult test for the truth commission as it has granted partial amnesties to other Vlakplaas members — Sapa

(252) BD 25/5/99



Former Vlakplaas commander Eugene de Kock accused former National Party leaders of cowardice yesterday because they denied knowing about the existence of the unit and its operations. De Kock appeared before the truth commission in Pretoria yesterday, where he is seeking amnesty for more than 100 incidents of torture, fraud and murder

Picture: TREVOR SAMSON

Blanket amnesty 'will lead to impunity'

Drew Forrest

(252) BD 25/5/99

FORMER truth commission deputy chairman Alex Boraine has criticised Deputy President Thabo Mbeki's proposal of a law providing for collective amnesty, saying both Mbeki and President Nelson Mandela had assured him blanket pardons of this type were not under consideration.

Mbeki and Mandela had assured him also that any change of policy would be discussed with the commission. This had not happened.

Boraine said he was "very distressed" by Mbeki's proposal of blanket amnesty for groups. This contradicted the underlying idea of the commission, that of individual disclosure and accountability.

"It will be very hard for the 8 000 people who applied for amnesty to accept, particularly if they had to appear in public

It will be slap in the face for those who came forward and told the truth."

Boraine said blanket amnesty would be an insult also to victims of human rights abuses, whose right to fair treatment was heavily underscored in the truth commission legislation.

"Over and over again, families said they wanted to know what happened to their loved ones," Boraine said. "Collective amnesty will lead to impunity, to disregard for the acts people have committed."

He said the reasons behind the proposed revision of the law had to be clearly stated, and the legislation made widely available, so that commission staff, amnesty applicants and victims could comment on it.

"The process must be as transparent as the initial one," he said.

Comment: Page 19

'Prime Evil' apologises for deaths

Botha and De Klerk 'cowards' for abandoning us - Eugene de Kock

ARL 25/1/99 (2/2)

Pretoria - Apartheid assassin Eugene de Kock, known as "Prime Evil" during a secret, dirty war to maintain white rule, apologised yesterday for the gruesome crimes committed by his Vlakplaas death squad.

"We wasted the most precious gift, which is life. I would like to tell those families that I am very sorry about it," the 49-year-old ex-colonel told the Truth and Reconciliation Commission (TRC) on the first day of his amnesty hearing.

In a desperate bid to avoid dying in prison, De Kock is seeking amnesty for over 100 crimes of murder, torture and fraud while he was leader of the notorious anti-terrorist unit.

He is serving a 262 year sentence in a tiny, windowless cell in Pretoria's top security C-Max prison.

Earlier yesterday, De Kock accepted full responsibility for the brutal crimes committed by the death squad he commanded from 1985 until it was disbanded in the early 1990s.

"For my actions and the actions of Vlakplaas and members of Vlakplaas, I take responsibility," said De Kock.

The TRC has the power to grant amnesty to human rights violators whose crimes are linked to a political motive and who make a full confession.

The justice ministry said yesterday that the ruling African National Congress (ANC), defying the advice of the TRC, had called for legislation to offer group amnesties for crimes committed under apartheid.

The law restricts amnesty to individuals who admit specific human rights crimes.

De Kock's case is a difficult test for the TRC. While amnesty would revert most South Africans who insist the lives out his days in prison, the commission has granted partial amnesties to other Vlakplaas members.

"We want the truth, but he should not receive amnesty," said Rahema



Assassin Eugene de Kock, with his lawyer Schalk Hugo, at the TRC hearing where De Kock is applying for amnesty for over 100 incidents, including murder, torture and fraud.

REUTERS

Kawa, whose uncle, Justice Ngwenjuna, was killed by Vlakplaas operatives under De Kock's command.

In his opening testimony, De Kock - dressed in a denim shirt and jeans - described how the unit used unconventional techniques to kill its targets. Pens and grenades were booby-trapped to explode in the hands of anti-apartheid cadres.

Vlakplaas covered up the illegal activities of other security forces, used false passports and a web of bank accounts to finance its activi-

ties within and outside South Africa.

De Kock also listed bloody covert operations in Botswana, Swaziland and Lesotho which he said had been approved by his superiors and, in some cases, by senior politicians.

Since his imprisonment in 1996, De Kock has been a star witness for the TRC, implicated his superiors and condemned former presidents PW Botha and FW de Klerk as "cowards" for abandoning the men who kept them in power.

"If FW de Klerk's actions took

place (a hundred years ago) he would have been executed for treason," he told the hearing.

Mr De Klerk began dismantling apartheid in the early 1990s and has claimed he had no knowledge of covert police actions.

On the eve of the second all-race election, analysts say the De Kock hearings may shed more light on the recent discovery of arms caches which have raised fears of violence before the June 2 poll.

Last week, South Africa's chief

prosecutor enlisted De Kock's aid to help police trace the weapons after a seven-ton arms stockpile was found earlier this month.

De Kock said he was a strong Inkatha Freedom Party supporter and had provided them with weapons and ammunition.

"I didn't have a problem with the IFP because they weren't communists," he said. More than 20 000 ANC and IFP supporters died in faction fighting in the 1990s before an uneasy truce in 1996 - Reuters

Amnesty for Ribeiro's killers 'disgusting'

By **McKeed Kotlolo**

THE granting of amnesty to 13 former security policemen who admitted having killed Pretoria physician Dr Fabian Ribeiro and his wife Florence was "absolutely disgusting", the deceased's family said yesterday

The couple were gunned down in Mamelodi on December 1 1986. Their killers were granted amnesty by the Truth and Reconciliation Commission (TRC) on Friday

The couple's son, Mr Andy Ribeiro, described the TRC's decision as "absolutely disgusting and shows how cheap black life is"

"This has caused my family a lot of pain," he said

"We feel that we should leave no stone unturned. We will do everything in our power to try and have the deci-

sion reversed" Ribeiro said the murderers of his parents had failed to reveal all the information necessary to satisfy the requirements for amnesty

"They have not revealed the person who gave the instructions to kill our parents as well as those who pulled the trigger

"If the decision was based on remorse, what kind of remorse did they show? One of them went on to say my mother was killed because she was at the wrong place at the wrong time," Ribeiro said

"The killers themselves were in the wrong place and did a terribly wrong thing"

Turning to the TRC itself, Ribeiro said "It is a Government-appointed body and it is getting orders from somewhere in order to come with such conclusions. This is a political decision

since we are preparing for our next general election

"It is a clear electioneering ploy. Our rights as ordinary people are overridden by the TRC

"How do you build the new South Africa on such injustice?" Ribeiro asked

The 13 were granted amnesty for the Ribeiro murders and for the killing of the former KwaNdebele minister of interior Mr Piet Ntuli, whose car was bombed in Siyabuswa in 1986

The killers are Noel Robey, Coenraad Vlietstra, Jacob van Jaarsveld, Abraham Joubert, Charl Naude, Deon Gouws, Stephanus Oosthuizen, Wikus Loots, Philip Crause, Trevor Floyd, Diederik Vorster, Abraham Kendall and Pieter Verster, who was at the time the chief of the Civil Cooperation Bureau

(252)

25/5/99
D. Verster

Prosecutors and advocates take minister to court

(252)

Taryn Lamberti
and Sapa

BD 26/5/99

UNIONS representing public prosecutors and state advocates took the ministers of finance, justice and public service to court yesterday, to force them to implement a pay agreement signed last March.

In terms of the agreement, the prosecutors would receive a 9% increase in addition to the 6% they received in January, in return for improved service. Of the 9%, they were supposed to receive 6% on acceptance of the offer in March and the remaining 3% would be paid to them in September if they met certain goals and targets.

All the payments would be backdated to January this year.

The Society of State Advocates, the National Union of Prosecutors of SA and the Public Servants' Association, asked the Pretoria High Court to order the ministers to implement the agreement because they had still not received their increases.

The government's lawyers requested extra time to respond to the application. The court gave them until June 1 to reply. The case will be argued on June 7.

Public service and administration deputy director-general Neva Seidman-Makgetla said the delay was caused by red tape and different interpretations on which pay scale should be used.

It had been a "very complex agreement" which could not have been treated lightly.

She said the delay was regrettable because she assumed people had made an effort to reach the targets laid out in the agreement, although they had not received their increases.

She said the paperwork had been completed and payments would be made soon.

The National Union of Public Service and Allied Workers, the National Education, Health and Allied Workers Union and the Public Servants' Association signed the March agreement on behalf of prosecutors and state advocates. National director of public prosecutions Bulelani Ngcuka, who was also cited as a respondent in the application, did not oppose the order.

De Kock admits to death toll of '40 plus'

Stephané Botha

(252) PD. 26/5/99

PRETORIA — Former Vlakplaas commander Col Eugene de Kock was personally involved in the murder of at least 40 people, the truth commission's amnesty committee heard yesterday.

De Kock, who is serving a 210-year prison sentence for the crimes he committed during his years as the commander of the security police's notorious Vlakplaas C10 unit, said he was not sure about all the murders he had been involved in. "It must be 40 plus but I will have to check," he told the amnesty committee under the chairmanship of Judge Andrew Wilson.

De Kock started a five-week amnesty application process on Monday. He will confess to a host of cross-border and local murders and police actions during the late 1980s.

He had received medals for his involvement in murders committed in Lesotho, Swaziland and a bomb placed at the African National Congress (ANC) head office in London, De Kock testified.

Top National Party (NP) government ministers must have been aware of these operations," he told the committee, and only the president of the country could have decided to award him some of the medals he had received during his time in the police force.

"Surely the president must have asked what the medals were for," De Kock said. The former security policeman said he believed he had an important role to play in the new SA and in the truth commission's role in reconciliation and nation-building.

De Kock, who had named several top NP politicians and former SA Police officers as having known about the atrocities committed by his unit and other policemen during the 1980s, denied spilling the beans out of revenge for being the only senior policeman in jail. Those he implicated included former president PW Botha, former president FW de Klerk, former Vlakplaas commander Brig Willem Schoon and former SA Defence Force army chief Gen Kat Liebenberg.

Meanwhile, Inkatha Freedom Party (IFP) members who received weapons from De Kock and other policemen in the early 1990s were acting on their own, and not on behalf of the party, IFP chief whip Koos van der Merwe said yesterday at a media conference at De Kock's hearing. Van der Merwe said De Kock's testimony on Monday, outlining details about arms being supplied by his unit to the IFP, was nothing more than an election plot by the ANC.

Ngcuka adamant Powell will be prosecuted

Jonny Steinberg

SUPER attorney-general Bulelani Ngcuka is adamant he will prosecute Inkatha Freedom Party MP Philip Powell, but is facing resistance from his staff, who are divided over the matter, sources close to Ngcuka's office say

Powell's lawyers insisted yesterday that KwaZulu-Natal attorney-general Mokotedi Mpshe had given Powell written assurance of indemnity against prosecution in exchange for Powell leading them to hidden arms caches

"I decline to prosecute Philip Powell. I regard the matter as final," read a letter signed by Mpshe on an official letterhead and dated May 12 1999. The letter is in the possession of Powell's lawyers.

Mpshe could not be reached for comment yesterday

However, Ngcuka's spokesman, Siphon Ngwema, said yesterday that although Ngcuka wanted to prosecute no decision had been taken

"It is too early in the investigation to decide," Ngwema said

"There are a number of outstanding issues relating to how much Powell has in fact disclosed. A decision will be made about prosecution in due course."

However, a source close to Ngcuka's office said yesterday that the super attorney-general was adamant that Powell would be prosecuted, but that he had encountered resistance from members of his office

"Powell's arrest was imminent when he came forward to volunteer information," the source said

"If you are about to arrest somebody for murder and he confesses you do not

give him indemnity."

The source denied that Ngcuka authorised Mpshe to grant Powell indemnity. "Mpshe's office wrote a standard letter saying that if Powell gave full disclosure, including the names of people implicated in handling the arms caches, he would consider using Powell as a state witness

"The letter is academic really, because Powell did not give full disclosure. Weapons are missing from the cache and he has not led prosecutors to them."

The source said that members of the unit established in Ngcuka's office to probe crimes committed under apartheid wanted Ngcuka to give Powell indemnity.

However, Ngwema said he was not aware of any disagreement about the issue in Ngcuka's office

BD 26/5/99

Government needs to intervene in the

IFP slates timing of De Kock hearing

(752) ARG 26/5/99

Pretoria - Apartheid assassin Eugene de Kock's amnesty bid has become an issue in South Africa's election fray, with the Inkatha Freedom Party accusing the Truth and Reconciliation Commission of smearing it.

De Kock, nicknamed "Prime Evil" by the men who killed alongside him, is seeking amnesty for more than 100 human rights crimes while leading a notorious death squad

The ex-police colonel, who was personally involved in more than 40 deaths, told the TRC on Monday he was a card-carrying member of

the Zulu-dominated IFP and supplied tons of weapons to the movement as it battled the African National Congress in the 1990s

His testimony follows the discovery earlier this month of a seven-ton arms cache surrendered by senior IFP figure Phillip Powell five years after it was buried IFP leaders have denied any knowledge of the weapons

"An ANC election plot was exposed this morning," IFP legal counsel Kops van der Merwe told reporters after lodging a formal complaint with the TRC yesterday He argued the party had not been informed that it would be

implicated in the hearing

"It was very conveniently arranged that the De Kock hearing would take place just before the election," he said, adding that the IFP was portrayed as a party of criminals that "deals in arms".

TRC spokesman Mbulelo Sompeteta said De Kock's hearing had been scheduled months in advance, adding "Our work has not been influenced in any way by the ANC It's absolute nonsense".

De Kock, who is serving a 262-year sentence, said his Vlakplaas anti-terrorist unit supplied truckloads of arms to help the IFP fight the ANC in the 1990s - Reuters

De Klerk's TRC battle put off in High Court

The court battle between former president F W de Klerk and the Truth and Reconciliation Commission has been postponed to a date to be decided by both parties

Mr De Klerk took legal action

to block the TRC from implicating him in state-sponsored terrorism in its final report on apartheid-era human rights abuses

Both parties appeared in chambers before Mr Justice

Immelman in the Cape High Court yesterday As there were still outstanding matters, the case was postponed

No date had been set for a new hearing - Sapa

Amnesty battle looms

Anger as Mbeki urges deal for parties and security forces

ARG 26/5/99 (AFA)

CLIVE SAWYER AND ROBERT BRAND
POLITICAL STAFF

Battle lines are being drawn over Deputy President Thabo Mbeki's call for a special amnesty deal for political parties and former security forces.

Freedom Front leader Constand Viljoen leads former generals in welcoming the call, but former Truth and Reconciliation Commission staff are incensed at the plan - while Minister of Justice Dullah Omar has denied a blanket amnesty is in the works.

Mr Omar moved to damp down the flaring controversy by saying that while three issues related to further amnesties were being explored, it was a misinterpretation to say there would be blanket amnesty.

The Democratic Party has challenged President Mandela to clarify the African

National Congress's intentions on blanket amnesty after Mr Mbeki's statements last weekend apparently contradicted Mr Mandela's earlier statement to Parliament that there would be no collective one.

Mr Omar told an ANC election meeting in Claremont last night that three amnesty issues were being considered.

These related to Kwazulu Natal, where a peace process was under way but many people, mostly from the Inkatha Freedom Party, had not applied for amnesty.

"While we - and that does not just mean the ANC but everybody in Kwazulu Natal - succeeded in establishing relative peace, the environment and the deep-seated problems remain."

Mr Omar reaffirmed his confidence in the principles of TRC legislation on amnesty, which required individual



At odds? Thabo Mbeki and Dullah Omar

some senior members having told Mr Omar and Mr Mbeki in separate meetings that they felt the previous government had left them out in the cold.

The third issue was the "anomalous" situation that the new democratic state was liable for civil actions against it on the grounds of "evil deeds" that had been done by the then defence force and police to prevent its birth.

However, the same was not true for the liberation movement, and legislation was being considered to change this.

Mr Omar said it was a misinterpretation that the fact the Government was dealing with these issues meant there would be blanket amnesty.

"We do not have the final answers"

The issue of civil liability for the deeds of former liberation fighters would be the

easiest to address, because it would require a straightforward change to the law by Parliament.

But the Government was grappling to find the correct formula for dealing with the question of the generals and Kwazulu Natal.

Yesterday General Viljoen, a former defence force chief, cautiously welcomed a reported request by Mr Mbeki for a review of amnesty legislation.

He told senior former defence force officers in Pretoria that Mr Mbeki's proposals appeared to be closely aligned to similar ones made recently by a group representing former SA Defence Force members.

But in a statement issued just before Mr Omar's speech, the Democratic Party

To page 3

Row over Mbeki's amnesty deal call

From page (252)

challenged Mr Mandela to clarify the ANC's stance on collective amnesty. ARG 26/5/99

DP spokesman Douglas Gibson quoted Mr Mandela as having told Parliament that "we are not contemplating a general amnesty under any guise".

Mr Gibson said Mr Mbeki was one of those who had attempted to secure collective amnesty and had failed. "His objection to the TRC legislation seems somewhat too personal and immediate".

"The ANC either supports or rejects the notion of collective amnesty. Which one is it, Mr Mandela?" asked Mr Gibson.

Former members of the TRC and lawyers involved in the process have come out strongly against Mr Mbeki's proposal.

Collective amnesty would be unconstitutional, unworkable and unfair to victims and perpetrators who were refused amnesty under TRC legislation, they said.

Brian Currin, an attorney who represented families of victims at several amnesty hearings, said their proposal was "fraught with conflict" and would probably fall foul of their constitutionally entrenched right to equality before the law.

In TRC amnesty hearings, victims and their families were represented and given the opportunity to argue why an applicant should not be granted amnesty.

Amnesty applicants had to comply with stringent criteria to qualify. Under a collective amnesty, those criteria could not be applied.

Archbishop Desmond Tutu, while chairman of the TRC, publicly threatened to resign when the idea of a collective amnesty was first mooted by the ANC, two years ago.

The TRC's former deputy chairman, Alex Boraine, was reported as saying he was "very distressed" by the proposal.

R10 bail for theft suspect

CT 26/7/99

(7th)

A PROBE is under way after suspects held in Mitchells Plain, which has the country's second highest crime rate, were released on bail as low as R10. **JUDY DAMON** reports.



A LLEN HENDRICKS, charged with possessing heroin valued at R1 million, was released on bail of R950 last week-end, just hours after his arrest.

In another case this month, Patricia Lulu — who allegedly stole goods worth R3 300 — went home after being granted R10 bail.

This system, which is applied late at night in the holding cells of the Mitchells Plain police station, has resulted in 41 suspects being released on unusually low bail between April 18 and May 13.

Some cases processed during that period included non-violent crimes such as possession of drugs, housebreaking and theft — all regarded as schedule seven offences by the Criminal Procedures Act.

But more serious cases, such as possession of hard drugs, abduction, grievous body harm, theft of firearms and credit card fraud, have also filtered through to the "night court system".

Under normal circumstances, people in schedule seven cases and juvenile offenders are allowed an impromptu bail hearing during which the prosecutor, lawyer and the investigating officer agree on a bail amount at the holding cells. The presence of a magistrate is not required.

The senior prosecutor at the Mitchells Plain Magistrate's Court,

Terence Swart, said he was unaware of the system.

He said he was not prepared to speculate about its workings since he did not know the nature of the cases and the circumstances under which low bail had been granted. However, he agreed that the system sounds "unusual".

"We must investigate all the cases and, of course, obtain comment from the person responsible for doing this. If it is true, then obviously it is serious," he said.

Last week, copies of cases involving particularly low bail were sent to Director of Public Prosecutions Frank Kahn's office for investigation. The regional Justice Department has also requested an investigation after the matter was brought to its attention by the *Cape Times* yesterday.

Numerous prosecutors in courts around the city and senior advocates approached by the *Cape Times* described the Mitchells Plain system as being "laughable, absurd and unhealthy".

They said it casts doubt over promises made by Justice Minister Dullah Omar that bail would be made more difficult for suspects.

The amended Bail Application Act states that a suspect must prove to the courts why he or she should receive bail.

Previously the onus was on the courts to show why a suspect

□ Turn to Page 3

THESE are some of the bail amounts that have been paid since April 18:

- All cases of grievous bodily harm (GBH) — R50 bail
- Abduction and GBH — R50
- Drug dealing — R20
- Having an illegal firearm — R50
- Housebreaking — R50
- Credit card fraud — R50
- Possession of drugs — R20
- Firearm theft and GBH — R50
- Theft of goods — R10

Probe into low-bail system

□ From Page 1

should not be granted bail.

Suspects must convince the court that they

- Will return to court to stand trial
- Will not pose a threat to the community once they have been released
- Will not intimidate or influence witnesses

Yesterday Cassiem Gamiet of the Mitchells Plain Community

Police Forum said the low-bail system serves to demoralise police officers.

"What is the use of going through all that trouble and making an arrest just for them to get easy bail? It is a waste of time."

"When the community sees them (the released suspects) out, they don't see that sometimes it is the justice side that is creating the problems and yet they blame the police," he said.

(252)

De Kock: Ministers knew

OWN CORRESPONDENT

PRETORIA. Former Vlakplaas commander and self-confessed killer Eugene de Kock yesterday told a TRC amnesty committee that he hated no one and would never implicate a person unnecessarily

De Kock — who was sentenced to 216 years in jail for various crimes including fraud and murder — has applied for amnesty for his actions while head of Vlakplaas

De Kock told the amnesty committee, chaired by Judge Andrew Wilson at the Kopanong Democracy Centre in Pretoria, that it would be wrong for him to say there were no moments when he was bitter

"Life is not easy in prison and I now realise what some of the ANC and PAC members went through"

De Kock said he was there to tell the committee what he knew "I do not hate anyone and I am not here to buy any favours"

He told the committee that some former cabinet ministers had known about the type of opera-



LIFE NOT EASY: Eugene de Kock

tions his unit was involved in

"Why, if they did not know about these operations, did they hand out medals to me and my unit members?"

De Kock said former president F W de Klerk knew about an operation in Umtata in which eight youths died

The attack was conducted by Special Forces members and happened soon after De Klerk was awarded the Nobel Peace Prize

"There were also attacks in Botswana and Lesotho in which people were killed and I believe the cabinet ministers knew about these operations," he said

CT 26/5/99

I am not here to buy favours, says De Kock

(ATA)

Cabinet ministers knew of Vlakplaas activities, TRC amnesty committee told

PRETORIA CORRESPONDENT

Former Vlakplaas commander and self-confessed killer Eugene de Kock yesterday told a TRC amnesty committee that he hated no one and would never implicate a person unnecessarily

De Kock - who was sentenced to 216 years in jail for various crimes, including fraud and murder - has applied for amnesty for his actions while head of Vlakplaas

De Kock told the amnesty committee, chaired by Judge Andrew Wilson at the Kopanong Democracy Centre in Pretoria yesterday, that it would be wrong for him to say there were not times when he was bitter

"Life is not easy in prison and I now realise what some of the ANC and PAC members went through when they were in prison"

De Kock said he was attending the hearing to tell the committee what he knew

"I do not hate anyone and I am not here to buy any favours."

He told the committee that some former cabinet ministers knew about the type of operations his unit was involved in

"Why, if they did not know about these operations, did

they hand out medals to me and my unit members?" he asked

De Kock said former state president F W de Klerk knew about an operation in Umtata in which eight youths died

The attack was conducted by Special Forces members and happened soon after De Klerk was awarded the Nobel Peace Prize

"There were also attacks in Botswana and Lesotho in which people were killed, and I believe the cabinet ministers knew about these operations," De Kock said.

He said the security forces had helped the previous cabinet ministers to keep their seats in Parliament

Asked if he could play a role in nation-building and reconciliation, De Kock - who has admitted to killing more than 40 people - answered in the affirmative

"I could tell the youths about what had happened in the past and warn them about people with evil intentions

"There are instances where people need guidance," said De Kock.

He told the committee that he no longer regarded the ANC as an enemy

"They fought for what they wanted and they got it," said De Kock

Evidence used as poll ploy, claims IFP

The IFP has accused the ANC of using former Vlakplaas commander and self-confessed killer Eugene de Kock as part of its election plot to discredit the party

Koos van der Merwe, the party's chief whip in Parliament, said at an impromptu press conference at the TRC amnesty hearings in Pretoria yesterday that the ANC had "conveniently arranged that De Kock give evidence a few days before the elections"

He accused the ANC of trying to discredit the IFP on the eve of the election

Van der Merwe - an attorney representing the IFP at the hearings - said there was a

negative perception that the IFP was dealing in arms

He had earlier told the committee that the party was not informed that it would be implicated during De Kock's evidence

"The IFP does not have any knowledge of the arms and vehicles, and does not admit that it committed any crime."

He said those IFP members who allegedly received arms from De Kock were "on a frolic of their own"

Van der Merwe described the TRC as "a lackey of the ANC"

"The IFP does not accept the TRC as a credible organisation," he said - Pretoria Correspondent

Span 26/5/99

Proposed blanket amnesty worries lawyers and former TRC staff

BY ROBERT BRAND

Political Correspondent

26/5/99

Former members of the Truth and Reconciliation Commission and lawyers involved in the TRC process have come out strongly against Deputy President Thabo Mbeki's proposal of a collective amnesty for political organisations.

A law providing for collective amnesty would be unconstitutional, unworkable and grossly unfair to victims of human rights violations and perpetrators who were refused amnesty under TRC legislation, they said.

Mbeki made his proposal in an interview last week, saying a number of apartheid-era generals had offered to come forward with information about gross human rights violation in return for amnesty.

Justice Minister Dullah Omar confirmed this week that Mbeki had asked him to draft legislation that would allow groups of former soldiers and freedom fighters and members of political parties to apply for amnesty without specifying individual acts of human rights violations.

Brian Currin, an attorney who represented families of victims at several amnesty hearings, said he had a "real problem" with the proposal. He said the proposal was "fraught

Can't have

different rules

for different

people

with conflict" and would probably fall foul of the constitutionally entrenched right to equality before the law.

"You really can't have different rules for different people," Currin said.

In TRC amnesty hearings, victims and their families were represented and given the opportunity to argue why an applicant should not be granted amnesty. Applicants had to comply with a set of stringent criteria to qualify for amnesty. Under a collective amnesty, those criteria would not be applied.

Currin said perpetrators who were refused amnesty would be able to approach the courts on the basis that their right to equality before the law had been infringed.

Harry Prinsloo, who represented Clive Derby-Lewis, the Conservative Party member who was refused amnesty for the murder of Chris Hanu, said

the law would be unfair to perpetrators who had applied for amnesty under the TRC legislation. He said Derby-Lewis would consider going to court to have his amnesty verdict overturned if others who had committed similar acts were granted amnesty without having to make full disclosure.

Archbishop Desmond Tutu, former chairperson of the TRC, publicly threatened to resign when the idea of a collective amnesty was first mooted by the ANC two years ago.

And the TRC's former deputy chairperson, Dr Alex Boraine, was reported yesterday as saying he was "very distressed by the proposal

Omar defends amnesty review

Star 27/5/99

(252)

Justice minister promises transparency in drafting collective accountability proposals

By Robert Brand
Political Correspondent

Proposals for a collective amnesty were principally aimed at unlocking the political violence in KwaZulu Natal and indemnifying liberation movements from liability for actions by their followers, Justice Minister Dullah Omar said yesterday.

Responding to criticism of the proposal, made by Deputy President Thabo Mbeki last week, Omar promised no legislation would be passed without a transparent process and discussion, and care would be taken not to undermine the work of the Truth and Reconciliation Commission (TRC).

Mbeki asked Omar this week to draft legislation which

would provide for collective amnesty for members of political parties or groups without individual accountability being a condition.

Mbeki was one of 37 ANC members denied amnesty by the TRC because their collective amnesty application did not contain individual disclosures.

The proposal has unleashed a storm of protest from former members of the TRC and lawyers involved in the TRC process, who said such a law would be an insult to victims of human rights violations and would probably not pass Constitutional muster.

Omar said the collective amnesty proposals were aimed at "the special problem in KwaZulu Natal", former security force members who did not

come forward to the TRC because their leaders "failed to accept political responsibility", and ensuring political organisations were treated on an equal basis with the apartheid state.

"The new democratic state is held legally liable for the action of the apartheid police and security forces. On the other hand, the liberation movements are not similarly covered," Omar said.

A special amnesty deal was mooted for KwaZulu Natal some time ago. Few IFP members applied for amnesty because IFP leaders rejected the TRC process.

Omar said the process of drafting legislation would not be secret and any proposals would be made public. The law would be drafted within the

framework of the Constitution and with due regard to the work of the TRC, he said.

Lawyers have expressed doubt that a collective amnesty law would be constitutionally sound. The Constitution entrenches equality before the law, and perpetrators whose amnesty applications had been turned down by the TRC could argue that a collective amnesty law puts those who did not apply for amnesty from the TRC in a better position than those who did.

The Constitutional Court, in its judgment in favour of the TRC's amnesty provisions, also said amnesty would not be legal without full disclosure and compensation for the victims.

Omar said Mbeki had asked him to draft a law which would take these problems into account.

De Kock linked to smuggler killings

PRETORIA: Former Vlakplaas police commander and convicted killer Eugene de Kock was yesterday implicated in the murder of four unidentified arms smugglers shot in Komatipoort in 1991.

Ex-Vlakplaas member Kobus "Chappie" Klopper told the Truth and Reconciliation Commission he had informed De Kock about the fatal shootings.

De Kock's lawyer, Schalk Hugo, said his client was not applying for amnesty for the smuggler killings because he was told about them only after they had taken place on April 21, 1991, and had not been involved in the operation.

Klopper, who turned state witness against De Kock for a trial in which he was sentenced to 212 years' imprisonment for human rights violations, is seeking amnesty for his role in the smuggler killings.

Klopper told the amnesty committee he heard rumours after the incident that former security police member Wouter Mentz had shot dead one or more of the smugglers. Mentz was granted amnesty last year for his involvement in the affair.

Klopper said that when he arrived at the scene with police photographers, Mentz had taken the bodies to a Komatipoort mortuary and had cleared the area of evidence.

When Mentz testified at his amnesty hearing, he told the TRC he shot one of the men, but at that stage he was sure all of them were dead.

"The shot I fired did not cause injury or death. I was under the influence of liquor," he said.

Mentz's legal representative, Roelof du Plessis, yesterday accused Klopper of having a grudge against De Kock and Mentz. Klopper admitted to having a problem with De Kock.

Sapa



Justice Minister Dullah Omar examining three issues

Omar promises transparency in the drafting of new amnesty law

(ana) 27/5/99
Business Day Reporter

THE drafting of a new amnesty law would be an open process and all proposals emanating from discussions in government would be made public, Justice Minister Dullah Omar said yesterday.

This week former truth commission deputy chairman Alex Borame attacked government proposals for a blanket amnesty for organisations and called for any legislative process to be transparent. Omar said that on the request of Deputy President Thabo Mbeki, he was examining three issues. These were the question of amnesty in KwaZulu-Natal, the fact that the former security forces had not given evidence to the truth commission and the possibility of amnesty "on an equal basis for political organisations involved in the struggle".

"The current position is that the new democratic state is held legally liable for the actions of the apartheid security forces. On the other hand, the liberation movements are not similarly covered." This was inequitable, and legislation was being contemplated to deal with it. The intention was to find solutions within the framework of the constitution. There was no intention of undermining the processes of the truth commission.

State lawyers to get new salaries

THE December salary increases of public prosecutors and state advocates would be published in the government gazette tomorrow the justice department said yesterday

Once published, the department's financial section will immediately start to process the increments into their salaries, spokesman Paul Setsetse said in Pretoria (2/7/77)

He declined to give a particular date on which prosecutors and state advocates would start receiving the new pay packages — Sapa

BD27/5/77



Justice Minister Dullah Omar .. examining three issues

Omar promises transparency in the drafting of new amnesty law

(ana) hD 27/5/99
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C

Govt looking at blanket amnesty for KZN - Omar

By Jimmy Seepe
Political Reporter

JUSTICE Minister Dullah Omar confirmed reports yesterday that the Government was working on investigating a special amnesty for KwaZulu-Natal and members of the security forces there who have not come forward before the Truth and Reconciliation Commission

Omar gave the assurance that the discussion on the matter was not intended to undermine the Truth and Reconciliation Commission process

But the decision on whether to proceed with the matter would be left to the incoming government, said the minister

Speculation of a special amnesty for former members of the security forces, especially apartheid generals, and members of political organisations who had not disclosed their past actions, was heightened after the recent discovery of a large arms cache in KwaZulu-Natal

In its wake Inkatha Freedom Party member Mr Philip Powell admitted to receiving the arms cache from former Vlakplaas commander Eugene de Kock

Omar said Deputy President Thabo Mbeki had spoken to him about the issue of amnesty concerning KwaZulu-Natal political leaders and security forces

The special amnesty would also place

members of the former liberation movements on a legal footing with former security force members

"The new democratic state is held legally liable for the actions of the apartheid police and security forces," he said "This is an inequitable situation and we are looking at legislation to deal with this matter"

Omar said any proposals that emanated from discussions would be made public

"The intention is to find solutions within the framework of the Constitution," he said

Pan Africanist Congress deputy president Dr Motsoko Pheko said if the current Act were to be changed, it would cast doubts on the commitment of certain people to the rule of law

"I would have thought that the Act was law and should be binding. Why change it when certain people are now being affected?"

Pheko said changes to the law would only be acceptable if it accommodated members of all liberation forces

Freedom Front leader Constand Viljoen has been lobbying the Government for the past year to provide former apartheid generals with blanket amnesty. Viljoen is reported to have welcomed the review of the amnesty legislation

Sowetan 27/5/99

Groups lobby against death penalty

By Sharon Chetty (292)

HUMAN rights bodies are urging voters not to be swayed by emotion to support political parties that are calling for the reinstatement of the death penalty

A group of 17 non-governmental organisations (NGOs), including Amnesty International, the Legal Resources Centre and Lawyers for Human Rights, have been lobbying the Government and political parties in an effort to put capital punishment into perspective

They say that the public is being misled into believing that reintroducing the death penalty will cause a reduction in crime despite the fact that no survey ever conducted produced proof that it is a deterrent.

"As NGOs we are trying to ensure that the public knows there is another side to the debate," said Samkelo Mokhine of Amnesty International

"In their electioneering, the political parties have made it seem as if they have all the answers. They present the death penalty as the easy solution to fighting crime"

Mokhine says that the danger is that political parties are giving prominence to the issue, yet even if the New National Party – the major proponent – wins the election, it will not be able to bring back the noose without major changes to the Constitution

Recently, representatives of the NGOs met with National Council of Provinces chairman Terror Lekota to get an assurance from Government

that it would not entertain requests for a referendum on the issue

The NGOs maintain that the letter and spirit of the Constitution should be respected and holding a referendum would merely raise emotions and detract from the fact that capital punishment is no deterrent to crime

"The impression being created is that only a negligible number of people are opposed to the death penalty

"Our view is that there needs to be more public education about crime for there to be an understanding of sentencing"

Duma Khumalo, a former "Sharpeville Six" accused who was once on death row is among the people who will be interviewed on the issue in the next few days

(252)

The men who

Minutes of a State Security Council meeting indicate that FW de Klerk knew more about apartheid-era assassinations than he has let on, writes Mungo Soggot

FW de Klerk was among a heavyweight contingent of National Party leaders and securocrats present at a State Security Council meeting where former minister of finance Barend du Plessis proposed the "removal" of Matthew Goniwe

The top-secret minutes from the meeting, which started at 10am on March 19 1984, provide strong proof that the former president and other NP politicians masterminded the state-sponsored assassinations that have so far been blamed solely on their underlings in the security forces

The minutes, leaked to the *Mail & Guardian* this week, quote Du Plessis, then minister of black education, saying "*In Cradock is daar twee oud onderwysers wat as agitators optree Dit sou goed wees as hulle verwyder kon word* [In Cradock there are two ex-teachers who are acting as agitators It would be good if they could be removed]"

The timing of Du Plessis's suggestion fits with the chronology of the Goniwe assassination that emerged in evidence before the Truth and Reconciliation Commission, providing an unprecedented snapshot of the control exercised by the security council over apartheid's hit men

According to evidence at one amnesty hearing, Craig Williamson, the NP's top assassination boffin, dispatched one of his henchmen, Jaap van Jaarsveld, on March 21 1984, just two days after the meeting, to stake out the activist teachers in preparation for their assassination

"Approximately during the middle of 1984 I received an order from Mr Craig Williamson to investigate whether it would be possible to take out Matthew Goniwe, that means kill," Van Jaarsveld told the truth commission during his amnesty application in February 1998

Van Jaarsveld said he reported back that it would be difficult to slay Goniwe in his house, recommending that he be ambushed on the road He later pinpointed the date of his reconnaissance mission as having been March 21

It was to take another 15 months before Goniwe and Fort Calata were stabbed, mutilated and then burnt to death near Cradock in the Eastern Cape Two of their colleagues — Sparrow Mkonto and Sicelo Mhau — were also killed during the hit, on June 27 1985

None of the men present at the security council 1984 meeting — including its chair, for-



mer state president PW Botha, former minister of foreign affairs Pik Botha and Freedom Front leader General Constand Viljoen — have applied for amnesty, which means they could now all be exposed to prosecution for, at the very least, being party to a conspiracy to murder

The revelations from the meeting come at a particularly embarrassing time for De Klerk, whose application to interdict the truth commission's conclusions about his contribution to apartheid was postponed this week

The Nobel Peace Prize winner has objected in particular to being called an "accessory to gross human rights violations", having steadfastly denied that he presided over or ordered any of the abuses that took place while he was in government The relevant sections of the truth commission's final report were blacked out after De Klerk secured a temporary interdict If he loses his application they will be reinstated

Speaking from the London home of his new wife, Elita Georgiadis, De Klerk said this week he remembered the meeting clearly, but insisted that Du Plessis had proposed redeploying Goniwe "I distinctly remember, was it Du Plessis was then minister of black education, that he said if he is appointed elsewhere, he should be re-routed because Goniwe was a teacher if I remember correctly and Du Plessis wanted to offer a solution that Goniwe should be taken away from the school in Cradock or wherever he was and taken to another be displaced from Cradock and the area

orders



and given an appointment elsewhere I remember that"

According to the minutes, Du Plessis said Goniwe and Calata were ex-teachers, which means it would not have been in the legal power of the security council to do anything with them

Asked why matters such as teacher redeployment were discussed at security council gatherings, De Klerk retorted "Many things which shouldn't take place at the security council took place — read my book I remember that I liked the solution I thought it was good, and we should approach matters like this"

De Klerk said he could not remember seeing the word "*verwyder*", adding that the minutes would have been circulated about two weeks after the meeting "Having heard what Du Plessis had said, having seen the word '*verwyder*', logically I would immediately have related it to Du Plessis's plan," the former president said

Asked why, if all that had been discussed was redeployment, Williamson started preparing the assassination just two days later, De Klerk said "Please don't cross examine me You ask me a question, and I give you my honest recollection Those are the facts and I am sure if you phone Barend he will tell you the same"

Approached for comment, Du Plessis said "I have no recollection whatsoever I don't remember what I said 15 years ago I cannot re-

ed Goniwe's death



In Cradock is daar twee oud-onderwysers wat as agitators optree. Dit sou goed wees as hulle verwyder kon word.

(252) M+G 28/5 - 3/6/99

In on the act: FW de Klerk (middle) attended the security council meeting where Barend du Plessis suggested that Matthew Goniwe (far left) should be 'removed'

minister was also involved, was asked, and they came forth with a proposal that he could be placed again in a teaching post but in a different town than the town where he got into trouble and where the problems existed "

He was not cross-examined further on the matter

Cabinet ministers present at the meeting are likely to argue that the word "verwyder" does not mean "eliminate" However, during judicial inquests into the Cradock murders, it emerged that General Joffel van der Westhuizen, the then commander of military forces in the Eastern Cape, who sought permission from the security council in May 1985 for the "permanent removal from society" of Goniwe and the other activists, also used the word "verwyder" He labelled Goniwe as being "at the forefront of a revolutionary attack against the state"

The interpretation of Van der Westhuizen's request was debated at a 1989 inquest, where the presiding judge ruled that the words in Van der Westhuizen's telegram to Pretoria constituted a death warrant The telegram read "Dit word voorgestel dat bg persone permanent uit die samelewing, as saak van dringendheid, verwyder word [It is suggested that the above-mentioned persons be permanently removed from society, as a matter of urgency]"

The inquests nevertheless failed to pin responsibility for the execution orders on the security council, partly because the relevant communiqués between the council and its Eastern Cape arm, which were supposed to have been filed, disappeared

The security policemen who applied for amnesty to the truth commission for the Goniwe killings said they did not know who exactly issued the orders Their efforts to obfuscate the chain of command were aided by the death of Major Harold Snyman, one of the senior officers involved in the hit Snyman, who also pulled off the murder of black consciousness leader Steve Biko, escaped the hearings because of poor health and subsequently died

Goniwe's family has opposed the amnesty application of the policemen responsible, arguing that, with the exception of Van Jaarsveld, they failed to disclose the full truth surrounding the assassinations The family's lawyers homed in particularly on the officers' inconsistent testimonies about when the

assassinations were actually planned All except Van Jaarsveld said the plot to kill the Cradock Four had been hatched just weeks before the ambush on June 27 1985, whereas Van Jaarsveld told the truth commission it had been planned more than a year before

In heads of argument opposing amnesty, advocate George Bizos, SC, slated the policemen for fudging testimony about who gave them the orders

"The applicants may be persisting in the security police tradition of admitting only as much as is already known and using the publicly known date of the 7th June 1985, when the signal which formed the subject matter of the second inquest was sent, in order either to obfuscate the truth or to protect their colleagues and superiors," Bizos suggested

"The evidence of Van Jaarsveld establishes that the plan originated as early as March 1984 at national level and that [Sakkie] van Zyl was aware of this and had failed to disclose it to the committee," the heads of argument say

It emerged in the amnesty applications that the security council's action committee had recommended that Goniwe be reinstated as a teacher in June 1985, despite having received a message from Snyman that Goniwe should "never, ever again" be reinstated

The Goniwe family say the amnesty applicants failed to broach these conflicting signals Bizos suggests in the family's papers that despite the council's action committee recommendation to reinstate Goniwe, a top-level order was issued to "reassure them that their actions were endorsed at the highest level"

It remains a mystery why the assassination was delayed so long after Williamson sent down his agent to the Eastern Cape

PW Botha, who appears in the Cape High Court today for the latest round in his battle against the truth commission, declined to comment Viljoen was unavailable, and Pk Botha's housekeeper said he was at work but did not have his telephone number

Others present at the meeting included former minister of justice Kobie Coetsee, former security police chief General Johan Coetzee, and former minister of defence Magnus Malan

At the time of going to press, the Goniwe family's lawyer could not be reached for comment

I re- spond in any fashion It's totally unfair to ask me to respond I sincerely cannot remember If you want to talk about this, you'll have to do it through my legal counsel "

Du Plessis, who went on to become minister of finance in De Klerk's government, is now a wealthy businessman He sits on the board of printing giant Caxtons

According to the minutes, under the heading "Item 5 Unrest in black schools", Du Plessis said "In Cradock is daar twee oud-onderwysers wat as agitators optree Dit sou goed wees as hulle verwyder kon word "

At De Klerk's truth commission hearing, he insisted that the security council only discussed broad policy "It was broad strategies, this is what we would do, policy decisions which cannot be interpreted in any way whatsoever as authorising these unlawful acts resulting in these atrocious violations of human rights "

De Klerk was asked by the truth body to explain two sets of security council meetings in 1986, which referred to the need to "shorten the list of politically sensitive persons" He was not asked about Goniwe, but instead raised it himself, offering a different version of events to that contained in the minutes, which were not in the possession of the truth commission at the time

He said "I remember one distinct issue, and this is with regard to Goniwe The then minister of black education, and the deputy

Eugene: From Apocalypse Now

mtr 28/5-3/6/99

(277)

Over the last year and a half, Jann Turner has visited Eugene de Kock in jail several times. She found him angry and haunted.

Eugene wants to see you. He says he doesn't bear any grudges. "The call came from a lawyer I'd met during my work on SABC's *Truth Commission Special Report*. Eugene de Kock had recently been sentenced to 212 years in prison for a host of appalling crimes committed during his time as commander at Vlakplaas, apartheid's death farm. Grudges? I wondered. What on earth does De Kock mean? I had never met the man. All I knew was what I'd read of his horrifying effectiveness as an assassin and that on one of the more than 1 000 pages of his amnesty application he detailed his knowledge of my father's assassination, which was scant and nothing new. But I was curious.

And so it was that I found myself, one sunny morning in September 1997, driving up to Pretoria where I was to meet Schalk Hugo, De Kock's attorney. I had no idea of what to expect. I thought of the movie *Silence of the Lambs*, picturing myself as Jodie Foster staring down the restrained psychotic form of a South African Hannibal Lecter. I had seen De Kock only once before, during his trial in 1995, and I remembered the pure hatred I felt as I watched him and the rage and disgust I transmitted when our eyes met as he scanned the courtroom.

I chugged into the car park of Pretoria Central Prison at the appointed time. The only other car in the lot was a silver grey Mercedes. Hugo jumped out to greet me. He was young and well dressed, not at all the "perp lawyer" I'd expected.

I'd never been inside a prison before. Stepping into the maximum security section was stepping into a world I'd rather have remained ignorant of. I was struck by the sounds, of voices, of gates clanging open and shut, of jangling keys. Outside the visitors reception was a tall glass bowl with two beautiful fish swimming in it, sunlight streamed through the water illuminating their brilliant colours. The sight transfixed me. A man with a baby face and sly eyes saw me watching them and approached. He was the keeper of the fish. "They're called Oskars," he said. "They're hunting fish. If you put another fish in there the Oskars would kill them in a minute. They're very aggressive fish. Very aggressive."

In the waiting room I asked Hugo if he liked his client. He looked at me and said, "Mmm." Then he looked away, as if that discussion was over, but suddenly he turned back and said simply, "You'll like him too." Yeah, right! I thought. I don't think so. But Schalk wasn't wrong.

A minute later we were hustled into the prison itself, towards De Kock, who stood, flanked by two warders, waiting. I was amazed to find myself extending my hand, but I had no idea of how else to greet him. De Kock's handshake was pow-



"His glasses are so thick you can't see the colour of his eyes": Jann Turner and Eugene de Kock.
PHOTOGRAPH: GEORGE HALLETT

erful. "Hi, I'm Jann Turner," I said, a little shakily. Then we were led in to a consulting room. The room was putty coloured, with mismatching chairs chained to the table legs, which in turn were bolted to the floor. A warder brought us a tray of coffee. I gathered from De Kock's manner that he had ordered and paid for the coffees. Three more rounds would be brought in before I left.

I didn't know where to begin, so I launched in with the obvious "Mr de Kock, I got a message that you wanted to see me." He smiled, a surprisingly shy, nervous smile. "You don't have to call me Mr de Kock — you can call me Gene, or Eugene — or whatever you like."

He did have something to tell me. He'd read a recent article in the *Mail & Guardian* in which I'd raised some questions about the identity and whereabouts of some of the former security policemen whose names had come up in the course of my investigation into my father's murder.

De Kock had the answers. I thanked him for the information and said I would hand it over to the police. He insisted that if there was any theory or name I wanted to run past him, that I should not hesitate to do so. Why on Earth, I wondered, does he want to help? I'm still not sure that I know. As it turned out the information he gave wasn't much use. But somehow a conversation flowed from that beginning. Looking back I think it was he who initiated it. He simply started to talk.

He was angry. He felt he'd been cut loose by the generals and his superiors. He felt they should be inside with him. "When they start negotiating they have to get rid of the cupboard full of dirty tricks, so instead of being the blue eyed boy who would be the next general, I'm the leper they must dispose of."

His glasses are so thick you can't

see the colour of his eyes. I found I watched his mouth more than his eyes. His politeness and intelligence disarmed me. His shyness took me by surprise, the nervous smile and glance as he explained that if he'd known I was coming he would have shaved. He said he didn't often get attractive women coming to visit him. There was nothing lewd or sexual in the way that he said this, it was an artless, childlike compliment.

At one point Hugo got up and left the room. I wasn't really aware of how long he was gone although for a second I was conscious of being entirely alone with "Prime Evil."

I wanted to know how he felt about remorse and forgiveness. I said that if I did ever meet my father's killer I don't think I would care if he were sorry or not. He said simply that he would never ask for forgiveness because he didn't deserve it. If he were in my shoes he would want revenge.

I wanted to know how he walked into his house after a hit, how did he switch from assassin to father reading bedtime stories to his sons? He said some times after an operation he'd drink it out of his mind. Sometimes he'd go home and burn all the clothes he'd been

wearing, then wash obsessively.

Did his wife know what he'd been doing all those years? He said she had an idea that he was no ordinary policeman, but she had no idea of the extent of it. He said the strange hours and the travel took its toll on their marriage, she'd even thought he was having an affair. He said the night he told her what he'd been doing, when it was all over and he knew he'd be arrested, "it was like tearing my own heart out."

He talked about the horror that comes back to him at night. How he smells it, tastes it, sees it and he can't sleep. I remember at the time I found that reassuring, such a man

shouldn't be able to sleep at night.

He described himself as a "veteran of lost ideologies." His war was over, he insisted. What would he do if he ever got out? He didn't know. He didn't think about it. He couldn't think beyond this amnesty application.

After an hour and a half or so Hugo said it was time to go. De Kock said he hoped I would visit him again.

As we walked out I looked back into the prison, he was watching us go. He smiled and raised his arm in a kind of salute. I waved briefly back, then followed Hugo out through the massive wooden door toward the green moat where geese and goats roamed freely and warders were playing cards at a table set up on the grass. The air was warm and sweet with spring. As we drove back through the prison compound to the car park neither Hugo nor I said a word.

Three days after that meeting De Kock was moved to C-Max and there he hit rock bottom. Former National Party politicians were claiming they knew nothing of the torture and murder of their political opponents during apartheid. At best, they said, it was misinterpretation of policy, but they took no responsibility for the assassins.

Now De Kock was alone. His ex-wife and children had fled overseas, many of his former friends had ratted on him at the trial. When I visited him after Christmas I barely recognised the haggard, thin, depressed and disoriented man the warders brought in. He talked about dying, he seemed to feel he deserved to die.

That day I sensed he was changing fundamentally. There is nothing like staring at the prospect of life in jail to make a person reflect searchingly on what has put them there. I believe that is what De Kock had begun to do. He was overwhelmed by regret, he felt his life had been a destructive waste and he was angry with himself for having been naive enough to believe,

One February morning, at the Guguletu Seven amnesty hearing, I rode up in the elevator with De Kock and his guards. I asked if he felt the truth commission had changed him. He said yes and he said it so certainly that I didn't doubt him. "You see," he went on, "the only friends I have now are my former enemies."

And as the year wore on De Kock was up and down, some days he felt the process was worthwhile, some days he was tired and depressed. He was shunned by most of the other applicants he appeared with but applauded by audiences and even embraced by the families of victims who thanked him for his refreshing candour.

Hugo said to me once that he was thankful he wasn't landed with any of the other applicants as clients. "At least my boyfrie — although in some instances he did worse things — at least I don't have to worry about him lying." Hugo was up and down like his client, strained by the impossibility of judging the outcome, there are no precedents, nothing to suggest how things may turn out.

De Kock fascinated me increasingly. My friend Jon Blair likened it to the morbid obsession of one who is terrified of snakes and who can't resist watching them from behind the safety of a glass wall in a snake park. Most friends didn't want to hear about it. He's a murderer plain and simple, they said, he had a choice, but he became an assassin for an unjust cause. He deserves to rot in jail for the rest of his life.

Nevertheless I felt I had an extraordinary opportunity to understand this man, so my visits continued. One day in the middle of last year I went to see him in the privileged prisoner's section of C-Max, where he still resides.

The rain clattered down noisily on the corrugated plastic roof, we had to speak up to hear each other. He was unshaven, wearing a grubby orange C-Max boiler suit, but energetic and very up, not a trace of the blues he gets sometimes. He grinned at me. "It's funny, I was just thinking about you last night," he said. "I was thinking it's nice to have you as a friend."

He was hungry for company and conversation. We talked about books, he loves thrillers, especially Tom Clancy and Ken Follett and John le Carré. His favourite movies are war movies, especially *Platoon*, *Full Metal Jacket* and *Apocalypse Now*. All muscular, testosterone-fuelled flics, yet it's interesting that they also document the descent into madness of individuals caught up in the horror of war.

He used to own a tape of the soundtrack to *Apocalypse Now*. He has a radio in his cell and listens to music. His favourites are *Scotland the Brave*, the great march of *Aida* and *Flower of Scotland*. He told me his great passion is bagpipe music — he wants a single bagpipe to play at his funeral and it must play *Scotland the Brave*.

After nearly two hours it was time to go, we stood up, shook hands and then he embraced me. Just briefly. He told me to take care, I patted his back and said he should do the same. It was a fleeting hug, a brief, seemingly uncomplicated goodbye, but this was not an uncomplicated mo-

to Scotland the Brave

ment I've spent years looking for my father's killer; for the killer, instead I found a killer — and for me this is about understanding.

Something had changed for every one else too. In September last year De Kock appeared at the hearings in to the Cosatu and Khotso House bombings. It turned into a Vlakplaas reunion. At the lunch break I watched as his former colleagues circled fearfully, uncertainly round the man who was once their lion.

Wille Nortjie was there, one of the men who'd testified against De Kock at his trial. Nortjie approached nervously and I saw his hand shaking in Gene's steady one, his gaze flinching in Gene's unflinching one. De Kock must have been boiling with emotion, but he betrayed not a flicker of it. Afterwards he said, "Six months ago I would have puked on him, or probably six days ago. But now — ag, whatever, if it makes someone rest easier tonight then that's fine by me. Finally it just comes down to him and his conscience." From the look of him nothing rests easy in Willie Nortjie's conscience.

During Pik Botha's testimony De Kock got up and walked out of the room. I'd seen him do this before — he sometimes gets panic attacks. I followed him out to the courtyard where he stood surrounded by warders. "Are you okay?" He said he couldn't take listening to Botha. "Panic attack?" "No. More the moer in."

Then he said quietly, "I want to ask him who I was supposed to hate so much that I had to go and kill them. Who?" Silence for a bit, then he looked at me very seriously. "Jann, tell me honestly, what are my chances?" I was taken aback, not sure of the answer. "Tell me if it's bad news. Bad news is like cancer. You have to face it."

At Christmas I had a terrible dream. I was in a prison, alone. There was chaos all around me. De Kock had escaped. In *The Silence of the Lambs* Hannibal Lector cut off someone else's face and disguised himself with the mask. In my dream De Kock had simply cut off his own face and was now at large.

I woke with only a hazy sense of the dream, but felt burdened by this terrible knowledge that he was after all a dangerous psychotic and I felt somehow responsible for

unleashing this brutal man onto the world.

I saw him again this week, just before he was to appear at the first six-month cluster of amnesty hearings focussing on his time at Vlakplaas. De Kock smiled and hugged me warmly.

In the conversation we snatched as he was waiting to testify I asked how he felt. He said he hadn't slept properly in weeks. Terrifying dreams

haunt him, in one of them he is being bundled into a tarpaulin and shoved under a bed, he's unable to scream because his throat has been slit. In another he's caught in heavy surf and every time he comes up for air another massive wave dashes him down and pulls him under.

The worst, he said, is a dream in which he's choking. He wakes up and is paralysed, unable to breathe, unable to scream for help and then, af-

ter what seems like an eternity, the breath comes and he's sitting bolt upright in bed, gulping air.

The warders moved, it was time to go in. He squeezed my arm. "Now it's life or not life," he said. "This is it." And seconds later he was out there in front of the cameras and the judges, talking calmly of what he knows best — murder and mayhem.

"I take full responsibility for all operations carried out by my men

while I was commander at Vlakplaas." And, later, "We destroyed lives, ruined the lives of the families of those we killed, by living past one another we destroyed one another. It was a futile exercise, we wasted the most precious thing: Life itself."

Finally, he said, "I would like to tell these families that I'm sorry. There will always be a yearning and a sorrow, which will never be rectified."

ELECTION '99

Declaration Votes



Who Qualifies?

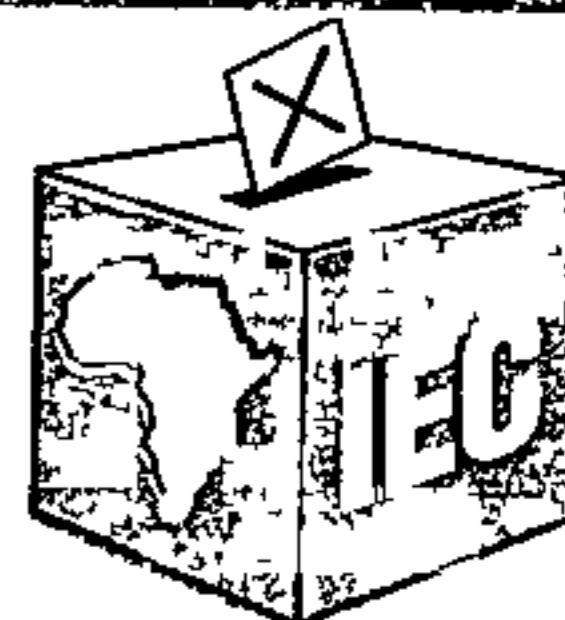
CATEGORY	WHERE TO APPLY	APPLICATION DATE	VOTING DATE
Voters who will be absent from their voting districts on 2 June 1999 as a result of	Any Presiding Officer at any Polling Station (call 0800 11 8000 for polling station details)	26 May 1999 (Between 7:00 and 21:00)	2 June 1999
<ul style="list-style-type: none"> • Employment • Business • Study Commitments • Close family trauma or • Personal trauma, will be able to vote elsewhere within South Africa by Declaration Vote.	To any Local Electoral Officer (call 0800 11 8000 for LEO details)	31 May 1999 (Between 7:00 and 18:00)	2 June 1999

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PW appealing against his

TRC conviction

(252) APR 29/5/99
Cape Town - Former president P. W. Botha appealed yesterday against a contempt conviction handed down last year for his refusal to testify before South Africa's Truth and Reconciliation Commission.

Mr Botha, 83, was sentenced to a R10 000 fine or 12 months in jail last August for defying truth commission subpoenas.

He was released on R50 bail pending his appeal.

The former president's counsel, Lappe Laubscher, told the Cape Town High Court that the last subpoena to demand Mr Botha's appearance had been invalid because the committee that issued it was not properly constituted.

Mr Botha, who was not in court, ignored three summonses to testify in person before the commission.

The TRC was seeking to uncover the chain of command behind murders, bombings and the torture of anti-apartheid activists.

Mr Botha, who ruled the country for a decade until he was ousted by F W de Klerk in 1989, has called the truth commission a witch-hunt against the Afrikaner people.

He also has repeatedly denied that he had any involvement in illegal actions.

But former security force personnel who testified before the commission directly implicated Mr Botha and accused him of authorising the murder and torture of activists.

The truth commission's final report published last October named the former president as one of the people accountable for the killings, torture and abduction that characterised the last years of the apartheid era.

The appeal hearing is expected to last several days - Reuters

They want to smear me, FW says of SSC

(257)

CP 30/5/99

By CHIARA CARTER and Sapa

Former president F W de Klerk claimed on Friday that publication of State Security Council (SSC) minutes shedding new light on the murder of activist Matthew Goniwe was an attempt "to smear me on the eve of the election".

In a statement, De Klerk alleged this had been done "no doubt in the hope that this will have an adverse effect on the New National Party".

He denied that minutes from a SSC meeting in March 1984 indicated he and other senior National Party ministers gave the orders for the murder of Cradock leader Matthew Goniwe.

City Press last week reported that George Bizos, counsel for the families of the Cradock Four, had asked the Truth and Reconciliation Commission (TRC) to reopen the amnesty hearing into the murders on the basis of fresh evidence contained in the minutes of a March 1984 SSC meeting.

This week the Mail & Guardian reported that the minutes in which former finance minister Barend du Plessis said that certain "agritator" ex-teachers in Cradock should be "removed" were proof that De Klerk and other NP politicians "masterminded" assassinations.

De Klerk, who was among those present at the meeting, said "After 15 years, neither Barend du Plessis,

who was then the minister responsible for black education, nor I can remember whether the word 'remove' was ever used in the Security Council discussion on this matter.

"What we can remember is a perfectly legitimate decision to re-employ or redeploy Mr Goniwe and the other teacher to another teaching post away from Cradock, which was at that time a hotbed of revolution," he said.

Goniwe was murdered together with Fort Calata, Sparrow Mkhonto and Sicelo Mhlau by a group of Eastern Cape security policemen in June 1985 - at the time when the SSC had decided Goniwe should be reinstated in his post.

The Goniwe family is opposing

the amnesty application of the security policemen on the grounds that they have not made a full disclosure. Previous arguments before the committee pointed to information supplied by another amnesty applicant, Jaap van Jaarsveld, who claimed he was sent by security policeman Craig Williamson to examine the possibility of killing Goniwe in March 1984.

Du Plessis this weekend said he was seeking legal advice about the Mail & Guardian report.

On Friday, the TRC's amnesty committee said it would consider reopening hearings into the murder of the United Democratic Front activist and his three colleagues, known as the Cradock Four, as a re-

sult of the evidence.

This comes after Bizos last Thursday handed the TRC a copy of the minutes. Bizos asked for the amnesty hearing of six security policemen who claimed responsibility for their deaths to be reopened.

Amnesty committee executive secretary Martin Coetzee said the committee looking at the Cradock Four murders, led by Judge Ronnie Pillay, had not decided whether to grant amnesty to the six officers.

General Nico van Rensburg, Major Herman du Plessis, Captain Izak van Zyl, Lieutenant Eric Taylor, Sergeant Gerhardus Lotz and Colonel Harold Snyman claim they do not know who issued the orders to kill the activists.

Bizos is opposing their amnesty plea on the grounds that they have failed to disclose the full truth behind the assassinations.

Coetzee said "In terms of the Act, the committee can reopen the hearing if it has not yet come to a decision on granting amnesty."

Du Plessis, now a strategy consultant to the business community, told Sapa that he "never meant or even remotely suggested that a person may have been killed".

"Even if I did (use the Afrikaans word *verwyder* or removed), the simple fact is that talking Mr Goniwe from a school in Cradock to a school elsewhere certainly would not have been welcomed by him.

"In other words, if a person

doesn't do something voluntarily, you *verwyder* him," Du Plessis said.

He said he had in the past been confronted with "documentation that has been tampered with."

"I would like to see this, to have it authenticated. I'll have to talk to government. Maybe FW de Klerk has records," he said. De Klerk said Goniwe had been redeployed to teach in Graaf-Reinet.

"Later, in September 1984, the then deputy minister responsible for black education, Dr Sam de Beer, actually wanted to bring Mr Goniwe back to Cradock and appoint him as a headmaster at one of the local schools, because he had been impressed by his qualities as a man and as a teacher" - Sapa.

Goniwe minutes

Mbeki denies any desire to change amnesty laws

(252)
Deputy President Thabo Mbeki on Friday denied reports that he intended reviewing amnesty legislation.

Reacting to recent press reports in this regard, Mbeki said that he had never suggested this.

It was reported that Mbeki asked Justice Minister Dullah Omar to consider changes to amnesty laws.

"The Office of Deputy President Thabo Mbeki has noted the recent press reports on his alleged intention to review amnesty legislation. The deputy president never suggested anything of this sort," a statement from his office said on Friday.

Mamoepe said Mbeki stood by his speech in Parliament during the Truth and Reconciliation Commission debate on February 25 that the "idea of general amnesty should never be entertained".

In his speech, Mbeki also said

South Africans should, however, not allow themselves to be drawn into a situation of conflict as a result of the political crimes of the past.

"The Office of the Deputy President wishes to point out that the sentiments expressed in his February 25 speech remain the position adopted. This forms the basis of the referral of all the issues to the Justice Ministry to look into," Mbeki's office said.

The issues sent to the justice department pertain to two specific issues: the special problem of KwaZulu-Natal, and the problem of former security force members who did not apply for amnesty because the leaders of the former government refused to accept political responsibility or grant amnesty on an equal basis to political organisations engaged in the armed struggle. Sapa

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1999

JUNE - JULY

Generals named in Botswana family

PRETORIA — Former security police general Nick van Rensburg ordered the 1990 killing of a family that helped Pan Africanist Congress members to move through Botswana into SA, former Vlakplaas commander Eugene de Kock said yesterday.

He told the truth commission that when Van Rensburg gave him the orders to eliminate the Chand family, former police general Krappies Engelbrecht was present. Van Rensburg and Engelbrecht, both brigadiers at the time, have not applied for

amnesty. De Kock is seeking amnesty for his involvement in the killing of the Chand family, who were murdered in their house in Botswana in April 1990.

De Kock led the operation, assisted by about eight former security police officers. He told the commission's amnesty committee that when they got to the house, which was close to the SA border, they

were confronted by a house guard, who spoke a language they did not understand. De Kock said he shot the guard about three times in the head with a Scorpion pistol armed with a silencer. He stepped backwards and fell down, injuring a knee and was unable to continue the operation.

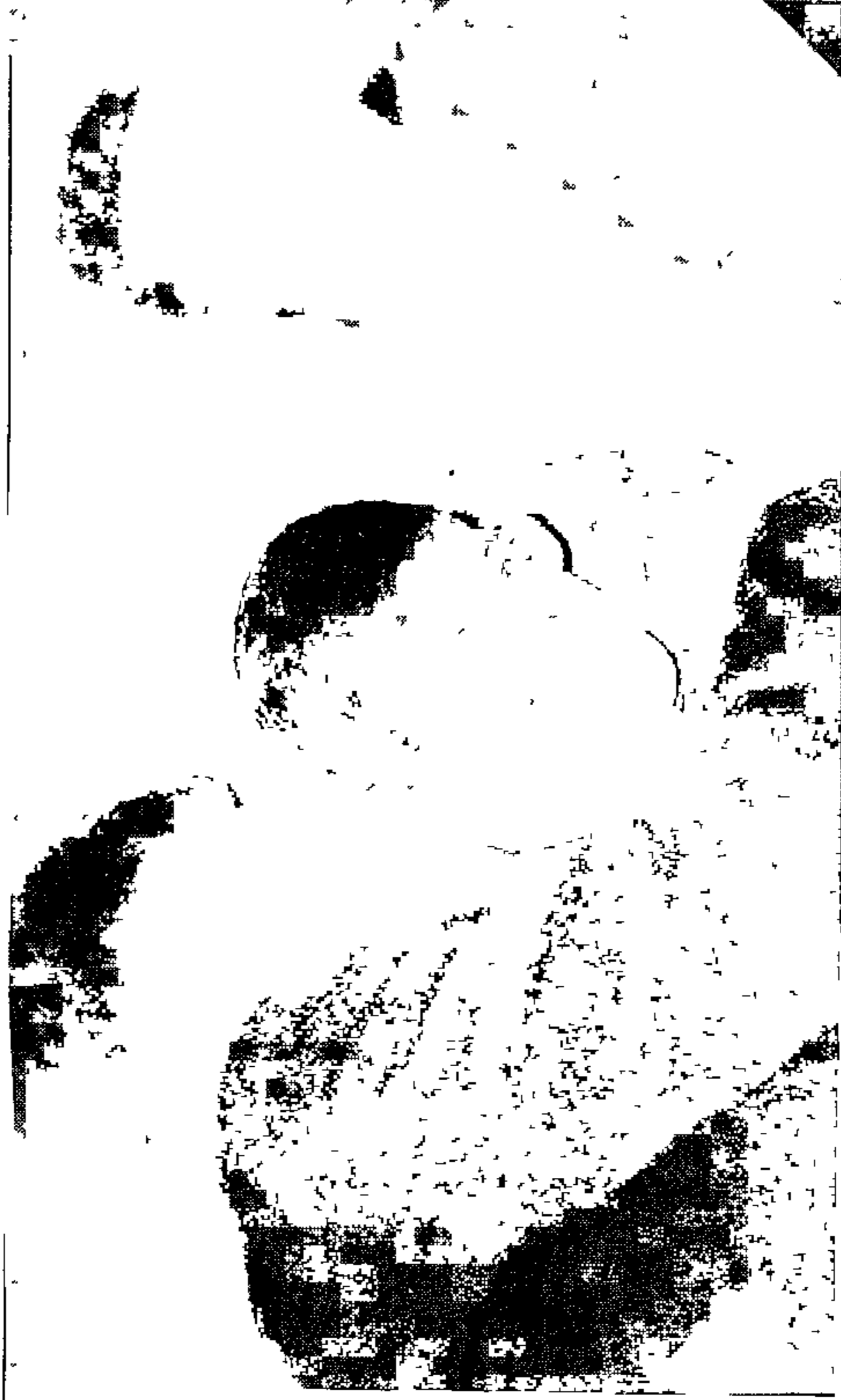
De Kock said two officers helped him to get away while the others continued with the killings. He said he found out from newspapers the following day that the three Chand children aged between 10 and 12 had been shot dead. It was not Vlakplaas's policy to shoot children, he said.

De Kock said he heard recently that the children were aged between 19 and 26. "I was haunted (by the killing of the children) until about 10 days ago."

He said that he accepted responsibility for the shooting but not for Van Rensburg and Engelbrecht's involvement.

The truth commission's amnesty committee granted amnesty yesterday to two former members of the African National Congress's armed wing, Umkhonto we Sizwe, for bombing Koeberg power station outside Cape Town in 1982.

Rodney Lawrence Wilkinson and Heather Wilkinson said that four Impet mines were used in the blast — Sapa



Former Vlakplaas commander Eugene de Kock confers with his legal team at an amnesty hearing in Pretoria yesterday. De Kock is seeking amnesty for charges including murder and kidnapping. Picture: MARTIN RHODES

20/9/91
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Killing

Judge blocked from top job

Jonny Steinberg

DEPUTY President Thabo Mbeki has put an early stamp on his expected presidency by blocking the appointment of Judge Edwin Cameron to the Constitutional Court.

Judges and lawyers close to the process said yesterday that President Nelson Mandela was set to appoint Cameron, but that acting labour court judge Sandile Ngcobo was appointed instead after intervention from Mbeki's office.

Senior jurists expressed shock at this outcome yesterday, saying that Cameron was one of the finest jurists of his generation.

It is understood that Cameron was given a "consolation prize" three Constitutional Court judges are due for successive sabbaticals, and Cameron will be appointed an acting Constitutional Court judge during their absence.

In April, the Judicial Services Commission interviewed five candidates for the Constitutional Court vacancy left by Judge John Diddcott, who died last year. As stipulated by the constitution, the commission forwarded four names to President Nelson Mandela for a decision. The four candidates were Ng-

cobo, Cameron, Judge Kees van Dijkhorst and Judge Andre Erasmus.

It is understood that Constitutional Court President Arthur Chaskalson, backed by senior judges and the commission, recommended to Mandela that Cameron be appointed to the court.

Sources said Mandela was happy to go with the commission's informal recommendation, but that Mbeki's office intervened, arguing that the current racial composition of the court was unacceptable and that the position had to go to the strongest black candidate.

Deputy president influenced decision to change court's composition

201/6/99

There are two black judges, one Indian and seven whites on the Constitutional Court bench.

Mbeki's legal advisor, Mojanu Gumbi, denied that Mbeki's office had played a role in the appointment. "The deputy president's office was consulted, but that was the extent of our involvement," Gumbi said. "The decision was the president's and his alone."

Presidential spokesman Parks Mankahlana said yesterday it was the policy of Mandela's office not to comment on judicial appointments.

Several judges and senior counsel expressed shock at the decision.

"Race is an extremely important criterion," said one senior counsel. "But Cameron is unmatched by anybody and would have brought a gold mine of progressive and creative jurisprudence to the court."

"Ngcobo is an able and a solid judge, and his appointment is in itself by no means a scandal," the advocate said. "But when the person who lost out is in a league of his own, one can only conclude that in this instance, the importance of race trumped the importance of cutting-edge jurisprudence."

Appointment draws fire: Page 2

Ngcobo appointment draws fire

(2/16/99) bD 1/6/99

While critical, legal fraternity concedes black judge's competence, writes Jonny Steinberg

SENIOR members of the legal fraternity expressed shock yesterday that a man they regard as the greatest legal mind of his generation, Edwin Cameron, failed to be appointed to the Constitutional Court.

It emerged at the weekend that President Nelson Mandela had appointed acting Labour Court judge Sandile Ngcobo to the Constitutional Court to fill the vacancy left by Judge John Didcott, who died last year.

As stipulated in the constitution, the Judicial Services Commission submitted four names to Mandela for consideration, Ngcobo, Cameron, high court judge Kees van Dijkhorst, who presided over the Delmas treason trial in the 1980s, and Judge Andre Erasmus.

It is understood that Mandela will consult Deputy President Thabo Mbeki, Justice Minister Dullah Omar, Constitutional Court President Arthur Chaskalson, and possibly leaders of opposition parties before making a decision of this nature.

Ngcobo, acting head of the Labour Appeal Court, also sits on the truth commission's amnesty committee and chairs the hearing into the Bopatong massacre. Sources in the legal fraternity say that while Ngcobo has little constitutional experience in SA, he spent a year clerking for Judge Leon Higginbotham, a US constitutional jurist.

One labour lawyer described Ngcobo as "able and workmanlike".

"He is not the sort of judge who often comes at you from an angle you are not expecting, but he is nothing short of very competent," the lawyer said. "He is thorough and careful rather than a lateral thinker, sober, solid and sound."

Several judges and constitutional lawyers, who have had little direct experience with Ngcobo, expressed surprise that "this entirely unknown entity" was chosen over the highly regarded Cameron.

"I do not know of anyone who thinks Ngcobo a bad judge," said one veteran member of the legal fraternity. "But I also do not know anybody who does not think that Cameron is the greatest jurist of his generation. It is obviously important to get a racial balance in the Constitutional Court, and if Ngcobo was up against a lesser white jurist, I would have no problem."

"But no one equals Cameron. His judgments on freedom of speech and expression have been groundbreaking. He is clearly right at the cutting edge. There clearly isn't a jurist in the world more able to shape this country's constitutional jurisprudence."

Another senior advocate was more biting in his criticisms.

"I could understand it if the white judge had a pro-apartheid history and the black judge fought in the struggle," the lawyer said. "But in this case, Cameron's political credentials are impeccable, while Ngcobo's are merely neutral. One would think that the rationale of this appointment would be to produce a progressive constitutional jurisprudence. If that was the case, Cameron would have won hands down."

"Race is a crucial factor," the lawyer said. "But in this case it appears to have been the only factor, trumping all other considerations."

Sources said that Chaskalson's choice was Cameron and that he had convinced Mandela of Cameron's worth as a constitutional jurist. The sources said that Mbeki's office intervened, arguing that the current racial make-up of the court needed to be changed. There are two black judges, one Indian and seven whites on the Constitutional Court.

A legal source who supported Ngcobo's appointment said "Cameron does have a stronger track record. But look at it in context: eight white judges out of 11 under a democracy. It's simply not on. If Ngcobo was a fool, the decision would have been scandalous. But Ngcobo is a good judge, and the highest court in this land simply cannot be white forever."

Judge blocked from top job

Jonny Steinberg

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Appointment draws fire: Page 2

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201/6/99

ARG 116/99 (272)

De Kock says truth would have landed generals in jail

Pretoria - Former Vlakplaas police commander Eugene de Kock today said that if he had told the Goldstone Commission the truth about the involvement of former police generals in human rights violations, the would have been jailed

were gunned down at their home in Botswana in April 1990.

Yesterday, De Kock told the TRC's amnesty committee that former security police general Nick van Rensburg ordered the elimination of the family, and that former

police general Krappies Engelbrecht knew about the operation.

General Engelbrecht's lawyer Jan Wagner, accused De Kock of having an obsession to see former generals implicated in human rights abuses and arrested - Sapa

'We killed family for helping Apla'

FORMER security police general Nick van Rensburg ordered the killing of a family in 1990 that assisted members of the former Pan Africanist Congress military wing, Azanian People's Liberation Army (Apla), to infiltrate South Africa, former Vlakplaas commander Eugene de Kock said yesterday (252)

He told the Truth and Reconciliation Commission amnesty committee in Pretoria that when Van Rensburg gave him the orders to eliminate the Chand family, former police general Krappies Engelbrecht was present

Van Rensburg and Engelbrecht, who were both brigadiers at the time of the incident, have not applied for amnesty

De Kock is seeking amnesty for his involvement in the killing of the Chand family, who were eliminated at their house in Botswana in April 1990

Mr Samsodien Chand, his wife Hagera and then three sons Emraan (23), Ameen (18) and Ridwaan (17) were killed in the cross-border operation

De Kock said he led the operation and was assisted by about eight other police members

He said when he and the former police members got to the house, which was close to the South African border, they were confronted by the house guard, who spoke in a language they did not understand

De Kock said he shot the guard about three times in the head with a Scorpion

pistol that had been equipped with a silencer

He said he then stepped backwards and fell down, injuring a knee and he was not able to continue with the operation

De Kock said two security policemen assisted him to get away from the house while the others continued with the killings

He said the police group went to Richards Bay in KwaZulu-Natal to make it seem as if they had been involved in an operation in the Natal Midlands

De Kock said he found out in newspapers the next day that three children aged between 10 and 12 years had been shot dead

He told the amnesty committee that it had not been Vlakplaas policy to shoot children, and said if he had known there were children in the house, he would have made different plans to kill the man and the woman

De Kock said he heard about 10 days ago that the Chand children had in fact been aged between 19 and 26

"I was haunted (by the killing of the children) until about 10 days ago"

He said he informed Van Rensburg about the incident a few days after it had happened

He told the TRC that he accepted full responsibility for the shooting, but would not accept responsibility for Van Rensburg and Engelbrecht's involvement - Sapa

Source: van 1/6/99

FORMER security police warrant officer Martinus Ras said yesterday that former Vlakplaas commander Eugene de Kock had instructed him to plan an operation where a family was killed in Botswana in 1990.

He told the Truth and Reconciliation Commission in Pretoria that De Kock told him to lead the operation while De Kock would act as an observer of the operation.

Ras said the plans included finding out where the Chand family lived, taking photographs and drawing sketches of the house.

He is seeking amnesty for his role in the killing of five members of the Chand family and a house guard in April 1990.

Mr Samsodien Chand, his wife Hagera and their sons Emraan (23), Ameen (18) and Ridwaan (17) were

Ex-security cops tell how they killed family

Sowetan 2/5/99 (2A2)

gunned down by former security police members for allegedly helping Pan Africanist Congress members to smuggle weapons into South Africa from Botswana.

Ras told the TRC's amnesty committee that he shot at four of the victims, including the father and mother. He said he also shot dead the family's dog. Ras said he fired his first shot through a window at the father and then

ran into the house and fired a shot at one of the sons who was sleeping in a bedroom. He said he then ran to the main bedroom where the father's body was lying on the ground and fired a shot at the mother who was standing in the corner of the room. Ras said he went to another room where he shot at one of the sons.

Former security police Lieutenant Johann Tait, who is also seeking amnesty for the incident, said he shot at one of the sons who was lying on a bed, but he was not sure if the son had already been shot. Former Vlakplaas member Douw Willemse told the amnesty committee that it had been his duty to unlock a lock to the front gate of the Chands' home. He said that while he was doing this he saw De Kock fall down an

embankment and injure a knee. De Kock hurt his knee after he shot the house guard about three times in the head.

Willemse said he saw the guard lying down on the ground screaming and shot the guard dead. He is also applying for amnesty for his role in the killings.

Ras said the killings did not last more than three minutes and De Kock had ordered that the entire family be eliminated. Earlier De Kock told the amnesty that if he had told the Goldstone Commission the truth about the involvement of former police generals in human rights violations, the generals would have been jailed.

"If I had told the truth in 1994 in front of the Goldstone Commission, they (the generals) would be sitting without a medical aid or pension," he said. - Sapa

Freed Botha thanks SA judicial system ⁽²⁵²⁾

FORMER state president PW Botha said this week he was thankful that South Africa still possessed a judicial system that acted independently

In a faxed message to Sapa after his successful appeal in the Cape High Court against his conviction and sentence for ignoring a Truth and Reconciliation Commission subpoena, Botha said he and his family were "obviously thankful" for the judgment

"We are also thankful on behalf of all South Africans who love their country that the judicial process in our country acts independently"

Botha said South Africa needed orderly government at all levels, and goodwill between all its different population groups. Minority rights and cultural and language rights had to be maintained, he said

Botha was sentenced in the George Regional Court in August last year to a fine of R10 000 or 12 months' imprisonment, plus a further 12 months conditionally suspended, for defying a subpoena to testify before the TRC

A full bench of the Cape High Court

set aside both the conviction and sentence on Tuesday

Judge Selwyn Selikowitz, with Judge John Foxcroft concurring, said they were mindful of the fact that many might consider it unjust that Botha's appeal should succeed on technicalities

New National Party justice spokeswoman Mrs Sheila Camerer said her party's approach was that the law should take its course and it accepted the judges' finding

The NNP did, however, find it surprising that the George magistrate had found the subpoena served on Botha to have been in order after Botha's legal advisers had told him it was not

"After all, PW was the head of state and he doesn't move without his advisers," Camerer told Sapa

She said the NNP's general approach was one of reluctance to comment on judges' findings

NNP TRC spokesman Jacko Maree said the commission had from the start been a propaganda tool for the African National Congress - Sapa

3/6/99
Sapa

Central issues ignored

AS WE approached South Africa's second democratic election, political parties were in the sometimes frantic stage of wooing, cajoling and convincing the electorate to make them their party of choice

Given our history and indeed the developments of the past five years, certain issues featured strongly in the election manifestos of most parties - crime, corruption, poverty and unemployment

These are the major challenges facing our society and the fruits of our new democracy will remain out of reach until we have successfully addressed and overcome those challenges

Yet while it is important that we address these issues, it is even more important that we understand and address them within the constitutional and legal framework of the new state

The struggle to create a new order in South Africa was about the right to affirm the humanity, worth and dignity of the individuals and communities of our nation.

Notwithstanding the various dimensions of that struggle, it was and remains essentially a struggle for human rights - it was perfectly understandable that the constitutional drafters, both in the preamble as well as in the founding provisions of the Constitution, committed our nation to the protection of human rights and fundamental freedoms

One would accordingly have expected that the advancement of human rights in all its dimensions would have become a major electoral issue, that in dealing with the challenges we face there would have been an attempt correctly to locate them within a human rights discourse

After all, these challenges are best understood and advanced when they are seen as a continuation of the struggle to affirm the dignity and worth of each individual

The creation of a crime-free society, eliminating corruption, winning the war against poverty and ensuring the dignity of being employed are human rights issues and it is imperative that in the ensuing debates they continue to be seen as such

But a cursory glance at the manifestos of most of the parties contesting the elections reflects a poor or inadequate reflection of the human rights dimensions outlined above.

It would be easy to say that this is indicative of a poor grasp of the centrality of human rights in our development. Most parties are sufficiently sophisticated to know and appreciate the driving force of human rights.

In any event, most of them were party to drawing up the Constitution with its strong and uncompromising emphasis on human rights

Why then this seemingly inexplicable and illogical omission? It is difficult to speculate,

(252)
Human rights didn't feature in most political party manifestos and this was a great disservice to SA voters, says the **Human Rights Commission**



HRC chairman Dr Barney Pityana ... his commission believes most of the parties who took part in this year's elections did not adequately reflect human rights in their manifestoes.

but it may well be that in recent years human rights has become a convenient bogeyman to explain away or justify the ills of our society.

We are constantly being told that rampant criminality is rooted in this human rights culture, that the influx of foreign nationals into our country is because of human rights; that there is ineffective discipline in our schools and communities because of human rights; that corruption is rife because human rights make it difficult to effectively deal with corrupt people.

Heart of the matter

While these are convenient explanations that seem to placate many, including politicians who often make themselves guilty of such irresponsible pronouncements, they fail to address the heart of the matter

At the heart of such matters we should rather be debating how our criminal justice system can effectively deal with crime through greater efficiency and professionalism; how our migration laws can be more effectively and competently implemented; how greater vigilance and a restoration of good moral values can break the back of corruption; how locating all these debates within a human rights discourse provides sufficient moral, constitutional and political armament to ensure we can start winning on those issues

It is therefore of concern to us as the Human Rights Commission (HRC) that human rights as a tool for transformation and empowerment, as

a vehicle for achieving substantive equality, as a catalyst to creating a just society, featured so poorly in the election debates.

Politicians did themselves and the electorate a great disservice by this omission and it is certainly our hope that we can develop a greater maturity and understanding to ensure that we retain human rights as a central pillar in the building blocks of our nation

By the very same token, there was scant mention of the role of institutions supporting constitutional democracy. They are, and will continue to be, an important feature of the constitutional state

Their role and their mandate is a *sine qua non* to a healthy democracy, yet most of the election manifestoes were largely silent on the place of such institutions in our society.

This, too, remains an area of concern to the HRC.

We are more than mindful that elections are very often about issues close to the heart of the people, and in the real world the choice and packaging of an election issue is linked with this identification

May we dare suggest that the issue of human rights has been close to the heart of this nation from time immemorial - it has been the driving force of the struggle for democracy and will remain the barometer by which we judge our successes or failures, as the case may be.

Let those who seek the hearts and minds of the electorate acknowledge this accordingly

Police watchdog hit by death threats after arrest

AMT 4/16/99

GLYNIS UNDERHILL AND MYOLISI GOPHE
SPECIAL CORRESPONDENT

charge of murder after he shot a fleeing armed robbery suspect. Directorate head Riaz Saloojee said his members were doing a difficult job, made even harder by certain elements in the police.

"We don't have firearms or bodyguards. But we have been threatened, our vehicles have been damaged, we were heckled in court and we have been spat at," he said.

Another issue adding to the tension between police and the directorate is the amendment to Section 49 of the Criminal Procedures Act, which clamps down further on the

laws governing police officers and the shooting of suspects.

The amendment has been passed in Parliament, but has not yet been put into practice as police officers will have to undergo further training to equip them to handle the changes.

As a sign of protest, members of the South African Police Union (Sapu) yesterday tried to hand over 30 spent cartridges - one for every police officer murdered in the province this year - at ICD offices.

But Mr Saloojee said he had refused to accept the cartridges

"We don't know where those bullets were used, they could be part of evidence in a court case, for all we know," he said.

Sapu spokesman Billy Daniels said the union was still calling for the suspension of Gavin Meyer, the investigator in the case of Inspector Ferreira. But Mr Saloojee said Sapu had failed to substantiate any allegations against Mr Meyer.

"The South African Police Union has not supplied us with substantiated reasons for its call to suspend Mr Meyer. Its failure to do so really just gives us the impression that they are

not acting in good faith," he said.

Mr Saloojee said the ICD was designed to help strengthen the police force by removing certain elements which could threaten its image. Last year, 800 people died either in police custody or as a result of police action in South Africa.

"We just can't have people going into police custody and not coming out alive," said Mr Saloojee.

Sapu's Mr Daniels said the original police plan to march on the ICD offices and hand in their weapons had been reconsidered.

"We reconsidered because the

of Hout Bay cop

(251)

safety of the members had to be taken into account and our members felt a responsibility to protect the community, which they cannot do without weapons," he said.

Mr Daniels said the amendment to Section 49 of the Criminal Procedures Act was further affecting the morale of police officers. At present, police can shoot when they are trying to arrest someone, or while a suspect is trying to resist arrest. The authority to kill is limited, however, to serious cases of violent crime.

André van Dyk, an advocate for the police and the director of the

police legal department, said the new amendment stipulated police officers would be able to fire only in self-defence and would no longer be able to fire a shot in an attempt to make an arrest.

"We have reason to believe this is not going to be very effective in combating crime. In some instances, it will be difficult to execute an arrest if you can't use force to stop a person fleeing," he said.

On June 23, the directorate will hold a workshop with the police to brief them on ICD functions, its powers and operating problems.

IFP killer asks for pardon

(252)

Sowetan 4/6/99

THE Truth and Reconciliation Commission's amnesty committee heard yesterday how a wedding ceremony turned into a bloodbath when Inkatha Freedom Party members from Dube Hostel in Soweto embarked on an indiscriminate shooting spree, killing two people

Velaphi Makhaye told the committee the attack went horribly wrong because innocent civilians were caught in the cross-fire

Makhaye is currently serving a 25-year sentence for the murder of Lifa "Tebogo" Mthimkhulu and Simon Ndlovu

He testified that the attack on the people in Zone 4 Meadowlands, Soweto, was an attempt to avenge an earlier attack on Dube Hostel dwellers, allegedly by African National Congress supporters

He admitted under cross-examination that the attack had gone wrong as several innocent bystanders were wounded

One of the injured, Douglas Keswa, is now wheelchair-bound due to spinal injuries he sustained in the attack

Makhaye was wounded when people attending the wedding ceremony returned fire

He was later arrested by police in a house where he sought refuge

One of his accomplices, Mándla Mchunu, was shot dead

The next-of-kin of the deceased and those who were injured are opposing his amnesty application on the grounds that the wedding was a social occasion and not a political rally

The hearing continues today at the Telkom Country Club, Montana Gardens, north of Pretoria - Sapa

TRC AND AMNESTY (272)

WIDER NET FEARED

June 4/6/99
Justice Minister examines law

One of the items on Thabo Mbeki's agenda after his inauguration as President on June 16 is to extend the amnesty process beyond the parameters of the Truth & Reconciliation Commission, whose amnesty committee is empowered to grant amnesty in return for full disclosure. Whether that means Mbeki is contemplating a form of general amnesty, against which the TRC warned in its final report, is a matter of definition.

Fears have been expressed that a form of general amnesty is in the offing for soldiers of the old SADF and for adversaries in the undeclared war in KwaZulu-Natal between the ANC and its allies and the Inkatha Freedom Party.

A formal denial by Mbeki's Office that a general amnesty is under consideration has not allayed concern that special legislation being drafted by Justice Minister Dullah Omar may provide for general amnesty by another name.

Having expressed sympathy for proposals to reappraise the amnesty question when the TRC report was debated in parliament, Mbeki has since told the *Sunday Times*: "Though the (Promotion of National Unity and Reconciliation) Act recognises that amnesty can be and needs to be granted to institutions and bodies, it doesn't make provision for bodies them-

Current Affairs

selves to apply for amnesty. It's a matter that needs to be addressed. The Minister of Justice must look at it." That implies that Omar's law will empower institutions and organisations, including political parties, to apply for amnesty.

The most instructive lesson from the recent past relates to a failed application to the TRC by 27 ANC leaders — including Mbeki — in which they submitted separate applications but asked the amnesty committee to consider them jointly.

Two of most salient points of that application for collective amnesty are

□ A joint declaration in which the 27 "collectively took full responsibility" for the actions of the ANC and its subordinates, including, crucially, Umkhonto we Sizwe and the self-defence units, and

□ A request that they be granted amnesty for any human rights abuses that may have been committed by the ANC, its members and combatants during "the struggle", while denying that they themselves had committed any such abuses.

As the DP's Dene Smuts has remarked, the ANC leaders were seeking amnesty for nothing in particular but everything in general. Put differently, while denying that they were doing so, they were in fact seeking general amnesty for themselves, their subordinates and their party.

Omar's pending legislation needs to be seen in context of a speech by Nelson Mandela, in which he expressed concern over deficiencies in the law that opened up

»» Those who did not apply for amnesty
should not benefit from their silence ««
Human Rights Watch

the "possibility of endless litigation against the new (ANC-led) democratic government" as well as "structures that were involved in the conflict".

But the Mbeki government can hardly protect itself and the ANC from the risk of "endless litigation" without granting the same right to rival parties and unnamed "structures", including Inkatha and the former SADF. If that happens, the result may well be a de facto general amnesty, human rights lawyer Brian Currin says. The case against extending the amnesty process has been expressed eloquently in a letter to Mbeki by Human Rights Watch: "All persons who committed political crimes during the apartheid period had an adequate opportunity to seek amnesty from the TRC. Those who did not apply should not benefit from their silence." Patrick Laurence

CP. 6/6/99

De Kock seeks amnesty for murder,

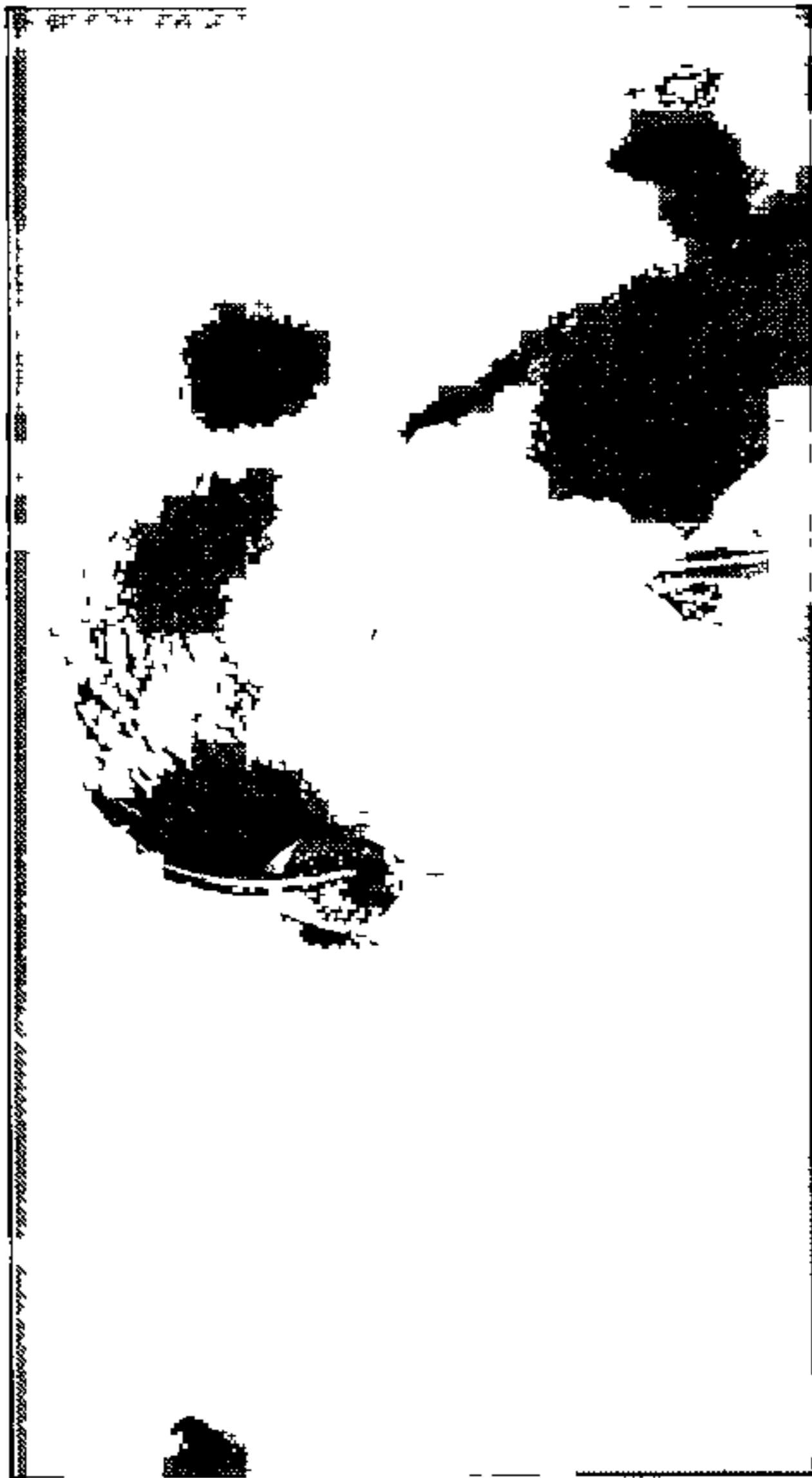
By MAX MARX and Sapa

FORMER Vlakplaas commander and self-confessed murderer Eugene de Kock, testifying before the TRC amnesty committee in Pretoria this week, implicated two former-security police generals in the killing of a family that helped Pan Africanist Congress members enter South Africa from Botswana.

He told the amnesty committee that when former security police General Nick van Rensburg ordered the 1990 killing of the Chand family in Botswana, General Krappies Engelbrecht was present.

Van Rensburg and Engelbrecht, both brigadiers at the time, have not applied for amnesty for the incident.

De Kock is seeking amnesty for his involvement in the killing of the Chand family who were murdered in their house in Botswana in April 1990. This is just one of more than 100



SEEKING AMNESTY AGAIN... Former Vlakplaas commander Eugene De Kock at an earlier amnesty hearing

incidents of murder, torture and fraud which de Kock is seeking amnesty for.

He told the committee he led the operation to kill Samsodien and

Hagera Chand but withdrew when he injured his knee falling into an embankment after shooting a night watchman who confronted them upon their arrival at the house. He

said two officers helped him get away while the others continued with the killings. Their orders had been to kill everybody in the house.

De Kock said he discovered the following day that the Chands' two deaf and dumb sons, Ridwaan and Ameen, aged 10 and 12 had been shot dead. The Chand's 17-year-old son, Emraan, was also killed in the attack.

He said it was not Vlakplaas' policy to shoot children and he had been haunted by their murders until about 10 days ago when he'd heard the two deaf and dumb children were in fact aged 26 and 23.

He said he accepted responsibility for the shooting but not for Van Rensburg and Engelbrecht's involvement. Also applying for amnesty for the incident are former Vlakplaas operatives and policemen Douw Willems, Johann Tait, Marthinus Ras, Wilhe Nortje, Dawid Brits, Nicholaas Vermeulen and Izak Bosch.

De Kock (50), is serving 262 years

in prison for six murders, several attempted murders, conspiracy to commit murder, assault, and fraud for the filing of false claims from the secret police fund.

Last week, at the start of his amnesty hearings into his involvement in apartheid crimes, he wasted no time in pointing fingers at former state presidents FW Botha and FW de Klerk for their role in ordering attacks on ANC and PAC bases in neighbouring states in which countless people died. He called Botha and De Klerk cowards for not taking responsibility for their actions and said he had been used by the apartheid government to do its dirty work. During his 1996 trial, De Kock described himself as "the State's Assassin".

He said none of the senior officials in the apartheid government, including ministers and the president, who had visited Vlakplaas to decorate men for jobs well done, could claim ignorance regarding operations

He told the committee he had been responsible for more than 40 deaths as commander of the counter-insurgency unit C10, which launched acts of terrorism from Vlakplaas farm outside Pretoria. He also said Vlakplaas was used to accommodate "contaminated" witnesses and tamed terrorists who were turned into askaris. The askaris were employed to trace terrorists and testify against them during their trials.

He told the committee that Vlakplaas was also used to assemble weapons, mostly of eastern origin, that were collected from Ovamboland, Namibia. Other units were supplied with these weapons for their struggle against the liberation movement and he also supplied Renamo and the Inkatha Freedom Party (IFP) with weapons.

He told the committee of an arms cache smuggled from Namibia to Vlakplaas on the orders of his superior, Brigadier Willem Schoon, which was used in security police

operations as well as to plant on people killed in police action.

He revealed how false weapons caches were created so that it could be claimed ANC arms caches had been discovered, which would then justify attacks on ANC bases across the border.

De Kock's amnesty hearing is expected to last until the end of November and has been divided into a number of sessions.

In the first session, five incidents are being dealt with.

These include the murders of Vlakplaas askaris Brian Ngqulunga and Themba Mabotha, the killing of ANC members Keith McFadden and Zwelakhe Nyanda during a raid into Swaziland, the attack on the Chand family house, and the Komatipoort Four incident on April 21, 1991 in which four alleged weapons smugglers were killed by Koevoet members.

The hearing into the murder of Themba Mabotha begins tomorrow.

Winnie 'sex slave' claim at De Kock TRC hearing

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(252)

Pretoria – Askari Johannes Mabothe claimed before his murder in 1989 that he was abducted by Winnie Madikizela-Mandela's former soccer club and used as a sex slave, former Vlakplaas commander Eugene de Kock said today.

Appearing before the Truth and Reconciliation Commission in Pretoria, De Kock admitted that he shot dead Mabothe, a former Vlakplaas askari who had allegedly also been working for the Mandela United Soccer Club.

De Kock said he had decided Mabothe should be killed after the Soweto security police branch told him that Mabothe had been involved in police killings.

Mabothe disappeared from Vlakplaas and was later detained by Soweto security policemen

He was interrogated by De Kock and the Soweto security police about his alleged involvement in African National Congress "terrorist" activities.

Mabothe told De Kock he had been abducted by Mrs Madikizela-Mandela's soccer club and used as a sex slave.



Amnesty bid: Vlakplaas leader Eugene de Kock

De Kock said he had later been told that Mabothe and Mrs Madikizela-Mandela had been involved in a relationship.

De Kock is seeking amnesty for Mabothe's murder on October 5, 1989 at Penge Mine near Burgersfort in Mpumalanga. – Sapa

YS:

TONIGHT'S TV TIP

Mainly for Men. New series in

presenters Hakeem Kae

vitone discuss



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At last, we have justice for the people

There has been significant transformation in the Department of Justice in the past five years, says **ENVER DANIELS**

Recently, the people who murdered "people's doctor" Aadel Moerat were convicted and sentenced to lengthy periods of imprisonment. Their arrest, prosecution, conviction and subsequent sentencing are of some significance, given the criticisms of the justice system, and are worth commenting on. But first, let us reflect on his life.

Dr Moerat was, during his university days, involved in politics and detained under the emergency regulations by the security police. He was released after an application in the Supreme Court. He was also active in the military wing of the ANC, Umkhonto we Sizwe.

Although he escaped prosecution he was detained, briefly, under Section 29 of the infamous Internal Security Act. That act authorised the indefinite detention of those suspected of being involved in activities designed to overthrow the apartheid state. Detainees were not allowed access to their legal representatives and were tortured.

The role of the courts in failing to assist detainees and in condoning the methods used to extract confessions will haunt the judicial system for a long time. But, it also explains why, today, we place such great emphasis on our constitution and respect for fundamental human rights.

Upon qualifying as a doctor, Dr Moerat decided to use his talents where they were most needed - in Guguletu. Although the area has a high level of crime, he believed that his work protected him against criminal elements.

His brutal murder outraged and shocked the community. The Community Police Forum vowed to leave no stone unturned in its efforts to assist the police to apprehend those responsible and provided the information which led to the arrests.

The families of those who had murdered him were to suffer by being separated from them for a long time. The fact that, in South Africa today, there are still people who, despite the brutality of the crimes committed against them, can forgive, gives us hope and confidence for the future and is a necessary step in restoring normality to our divided society.

The conviction is, of course, a triumph for the criminal justice system, and sends a signal to those who commit crimes that they will be dealt with.

The conviction demonstrates that, despite inheriting a justice system which defended and protected colonial and apartheid privilege for more than 300 years, the transformation process initiated by the Minister of Justice, Dullah Omar during the course of the past five years is working satisfactorily.

Central Statistical Service figures indicate that the courts enjoy a 75% conviction rate. The number of prosecutions has dropped. The reasons for this appear to be varied and complex and have to be analysed carefully, to make South African society safer and more secure.

It is abundantly clear that more prosecutions are dependent on more perpetrators being arrested on the basis of sufficient evidence to warrant prosecutions.

The most effective deterrent to crime is the certainty that criminals will be apprehended.

The appointment of the National Director of Public Prosecutions, Bulelani Ngwenkwa, will impact on prosecutions. A prosecution policy has been formulated and will apply uniformly throughout the country.

The arrest of Dr Moerat's murderers was due to community cooperation with the police. Prior to 1994, the police were viewed as the enemy whose role was to terrorise the population in defence of the apartheid state.

Now, the criminal justice system is being transformed to ensure that its pillars, the police, courts and prisons serve and protect, not a privileged few, but everyone.

In this process, community cooperation is being nurtured making more arrests a reality. Whistle blowing is no longer regarded as an act of treachery.

Transformation is taking place within the difficult confines of a negotiated settlement which guaranteed the jobs of civil servants, limited resources and an acute shortage of skilled black people. The shortage is the result of the National Party's apartheid policies and is being addressed through training programmes and skills development.

Justice College, the training division of the department, conducts seminars with prosecutors and magistrates on complex aspects of the law. Special emphasis is placed on constitutional training and gender and cultural sensitivity.

VISION 2000 Mr Omar's overall plan for complete transformation of the administration of justice, was drafted in co-operation with all the role-players and community organisations and is the foundation upon which changes are taking place.

Central to transformation, is effective and efficient service delivery to the people, as part of the National Crime Prevention Strategy to rid society of crime.

Community participation has been enhanced through the extension of the lay assessor system in which community members assist magistrates. Assessors represent people affected by crime, appreciate the conditions under which they live and understand the need to deal with crime effectively and in a way which enhances our constitution.



Speartreading transformation Justice Minister Dullah Omar has initiated wide-ranging changes in his department

and the bill of rights. Community participation in the administration of justice also deters criminality.

Measures are in place to ensure that those who commit serious crimes will not, while awaiting trial, pursue their criminal activities. The bail laws, which were revised in 1995, were amended again to ensure that, in serious matters, bail is not granted, except under clearly defined circumstances.

Magistrates have to determine whether circumstances, which would justify the granting of bail, exist. Pre-trial services, initiated at some courts, help magistrates to evaluate bail applications. Minimum sentences have been prescribed for rape, murder, serious

assaults and other violent crimes. Organised crime has been given attention by the minister of justice and a special unit, to investigate such crimes, has been established.

The Prevention of Organised Crime Act enables the state to confiscate illegally acquired assets and prohibits money laundering.

One of the main objectives of the transformation plan is to make facilities at courts enable victims of rape and child abuse to testify against their assailants with dignity, privately and in comfort, often assisted by intermediaries.

In addition, guidelines for use by judicial officials in such cases have been formulated.

The needs of women and children in respect of maintenance and domestic violence are also being addressed. The maintenance laws have been revised. Maintenance orders can be obtained quickly against those who have to support children, even in their absence, and employers can be compelled to deduct such payments from salaries.

A task team, set up by the minister of justice, is considering how best to streamline and expedite maintenance hearings. Women have also been appointed to prominent positions in the courts, as part of the transformation plans.

Justices of the peace have been appointed in many areas and, in places like Mitchell's Plain, play a vital role in assisting women to obtain urgent interdicts against their abusive partners. The extension of this system and greater involvement of justices of the peace in community dispute resolution mechanisms is being considered in consultation with a number of non-governmental organisations.

Family court pilot projects operate in the major centres. People can obtain divorces without the assistance of lawyers, and can utilise the courts to attend to problems such as adoption, care and maintenance.

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religious and customary rites. A new Legal Aid Board has been appointed to oversee the transformation of the legal aid system.

Legal aid is part of a broader process to restore the dignity of those who have been disadvantaged by apartheid by building houses, extending welfare, health care and education to everyone and by the provision of water, electricity and telephones. Most of those who commit crime are poor and disadvantaged and feel rejected by society.

Apart from a constitutional duty to provide legal representation to indigent persons, legal aid creates an element of trust in the criminal justice system and ensures that those who cannot afford the high fees demanded by lawyers are assured a fair trial.

This also impacts positively on the rehabilitation of offenders. Special provision has been made for women and those who want to access their constitutional rights, particularly in the rural areas. Victims have not been forgotten and measures designed to ease their suffering are contemplated.

A new Magistrates Commission has been appointed and will advise on the appointment of new magistrates, disciplinary proceedings, training and related matters and codes of conduct. One of the major issues facing the magistracy and the judiciary today is that of accountability. The public needs to understand judicial proceedings and decisions if confidence in the system is to be maintained.

These are but some of the many changes initiated by Dullah Omar. Numerous problems still exist, but despite these and the difficulties in integrating 11 apartheid departments of justice into one coherent whole, consisting of almost 16 000 employees, the justice system functions well and is monitored constantly so that steps can be taken to address the difficulties experienced.

The foundation blocks, however, are firmly in place. This will enable the transformation of the administration of justice to proceed apace and lead to a general improvement in the courts.

Enver Daniels is the chief state law adviser in the Department of Justice

Amnesty quandary looms for judges

A proposed law to put an end to apartheid era trials will call for a judgment not so much about law as about politics, writes Jonny Steinberg

IT IS not often that politicians ask judges to suspend the rule of law and allow people get away with murder. Government asked the Constitutional Court to do so once, in 1996, when the Azanian People's Organisation brought a constitutional challenge against SA's newly drafted amnesty law. The Constitutional Court said yes then but with a lot of misgivings and a great deal of discomfort.

Now it looks as if Deputy President Thabo Mbeki's new government is going to ask the court for the same favour once again. On the eve of the election, more than a year after the deadline to apply for amnesty had passed, Mbeki announced his intention to draft a new amnesty law, one that would allow "organisations and bodies" rather than individuals, to be granted collective amnesty.

If the law is passed, its legality will almost certainly be challenged. Will the Constitutional Court judges say yes a second time, or was once all their souls could stomach?

There is tremendous irony in asking a judge to suspend the principles of justice for the sake of something else," says a senior advocate who prefers to go unnamed. "Judges are, after all, the guardians of justice. They are being asked to bargain away the very thing they are there to protect."

In the Azapo case, the advocate says, "the court had an escape route: the interim constitution itself licenses the SA legislature to pass an amnesty law."

"The very document the constitutional court guards and interprets says that justice can be suspended in order to heal the wounds of the past."

Some experts say the court will uphold any new amnesty law for precisely the same reason. "The interim constitution does not say what sort of amnesty law is permissible. It leaves that to the legislature," says one constitutional lawyer.

"If the court upheld the last amnesty law, it will uphold a new one."

There is reason to regard this opinion with some scepticism. On the one hand, we do not know exactly what a new amnesty law will look like. Nor do we know on what grounds government will choose to defend it. So in a sense it is premature to second-guess the court.

Nonetheless, it is instructive to go back to what the court said first time round, in the Azapo case, for it is bound by the rubric of its own jurisprudence to take what it said then very seriously now.

In his judgment in the 1996 case, then Constitutional Court deputy president Ismael Mohamed was at pains to express both the gravity and the messiness of what he was doing.

"Every human being must feel grave discomfort in living with a consequence which might allow the perpetrators of evil acts to walk the streets of this land with impunity," Mohamed wrote. Bartering jus-



The Constitutional Court, headed by Judge Arthur Chaskalson, night, will have to decide whether the proposed amnesty law will barter justice for the sake of democracy or for mere convenience



writes Jonny Steinberg

justice for something else is not pretty. Mohamed said, but when that something is constitutional democracy itself, the barter, while unfortunate and disturbing, is worth it.

"If the constitution kept alive the prospect of continuous retaliation and revenge, the agreement of those threatened by its implementation might never have been forthcoming, and if it had, the bridge (to the new order) would have remained wobbly and insecure, threatened by fear from some and anger from others."

Suspending justice, in other words, was a condition of democracy's birth. It was implicit in the contract that made the transition thinkable in the first place.

Does the same argument still hold true? Or has the time of those who made amnesty a condition of democracy come and gone? It is instructive to turn to Mbeki's own words.

"Quite a lot of people in KwaZulu-Natal did not apply (for amnesty) and with the level of violence that took place in that province, if you dig and dig, you are going to have to arrest a lot of people.

That can't be right. A number of generals in the SA Defence Force (SADF) are very keen that this matter be dealt with," Mbeki said, "because their own sense, too, is that there may very well be significant numbers of people in the former SADF who didn't apply, and again, with regards to them, it would not be right week after week to charge people with something that happened in 1987."

What does Mbeki mean when he says "that can't be right"? Does he mean it is unjust to prosecute people for crimes committed long ago? Does the gravity of murder fade over time? Surely not.

Or is he saying that even though the implicit contract which made the transition possible is signed and sealed, the prospect of counter-revolution still looms, that those who broke the contract and refused to apply for amnesty may still wreck democracy; that knowing to these recalcitrants is a condition of national security?

Mbeki may be saying these things, but if so, he is speculating. Democracy in SA will never seal itself entirely from its enemies. Imaginative counterfactuals will always

raise the spectre of treason. The point is that in the Azapo case the Constitutional Court did not need to speculate. It had before it in black and white the negotiated terms of SA's transition to democracy. It knew of an agreement between the protagonists that constitutional democracy would never be born unless justice was suspended. Ruling against amnesty then would have been a rash and arrogant betrayal of those who made constitutionalism itself possible. But that was then.

It may be that what is worrying Mbeki is the question of governance. SA would be a more difficult place to govern if trials about apartheid era deeds hit the court indeed produce a political culture that looks backwards rather than forwards. Perhaps it would make it harder to reconfigure the political terrain into shapes undreamed of under apartheid. Perhaps Mbeki's dream of government by broad-based consensus would wither and die.

Yet if this is the case we are no longer bartering justice for the future of constitutional democracy, but for convenience.

We are saying that suspending justice is not a condition of the new order's survival, but a condition of making it easier to manage. If that is the case, it is not at all clear that the barter is an acceptable one, for we are no longer suspending the rule of law in order to protect its posterity. Its posterity is already as sure as it can be.

If this is the fundamental issue the court will face, the jurisprudential implications are tantalising. The court will in essence be forced to make a judgment not about law, but about politics. Who has the knowledge and the authority to rule where the boundary between national security and mere convenience lies? Do 11 unelected men and women, their lives steeped in law books, have the confidence or the right to cast the final judgment?

If and when the new law goes to the Constitutional Court, it is likely that every major political party will form a united front to defend it. Will the court have the courage even to consider telling them that they are wrong, that it is not acceptable for them to trade the most sacred of our principles as a matter of convenience?



A sombre Eugene de Kock, right, at a truth commission hearing into the Khotso and Congress of SA Trade Unions bombings last year. Picture: TREVOR SAMSON

De Kock says he slew 'sex slave'

PRETORIA Askari Johannes

Mabotho claimed before his murder in 1989 that he was abducted by Winnie Madikizela-Mandela's former soccer club and used as a sex slave, former Vlakplaas commander Eugene de Kock said yesterday.

Appearing before the truth commission in Pretoria, De Kock admitted that he shot dead Mabotho, a former Vlakplaas askari who had allegedly also been working for the Mandela United Soccer Club.

De Kock said he decided that Mabotho should be killed after the Soweto security police branch told him that Mabotho was involved in police killings.

Mabotho disappeared from Vlakplaas, and was later detained by Soweto security policemen. He was interrogated by De Kock and the Soweto security branch about his alleged involvement in African National Congress "terrorist" activities.

Mabotho had told De Kock he was abducted by Madikizela-Mandela's soccer club and used as a sex slave.

De Kock said he was later informed that Mabotho and Madikizela-Mandela had been involved in a relationship.

De Kock is seeking amnesty for Mabotho's murder on October 5 1989 in Mpumalanga.

Commission spokesman Mbulelo Sompeha said Madikizela-Mandela had been informed that she would be mentioned in De Kock's amnesty application — Sapa

Prosecutors, government set to end dispute today

(252)
Taryn Lambert

BD 8/6/99
PUBLIC prosecutors and the public service and administration department are likely to reach a settlement today in a dispute over the payment of increases that prosecutors were granted in March.

Three unions representing public prosecutors and state advocates launched a court action last month to force the ministers of finance, justice, and public service and administration to implement the pay agreement.

In terms of the agreement, the prosecutors would receive a 9% increase in addition to the 6% they received in January.

In return they are to provide improved service.

Of the 9%, the prosecutors were supposed to receive 6% on acceptance of the offer in March. The remaining 3% would be paid to them in September if they met certain targets.

Payments would be backdated to January this year.

The Society of State Advocates, the National Union of Prosecutors of SA and the Public Servants' Association asked the Pretoria High Court to order the ministers to implement the agreement because, they reported, they had still not received their increases.

The case was due to be heard yesterday, but sources said a settlement was on the cards.

Lawyers representing the parties met in Pretoria yesterday to iron-out the terms of the agreement.

Public service and administration deputy director-general Neva Seidman-Makgetla said last month that the delay was caused by red tape and the complexity of the agreement.

Society of State Advocates chairman Retha Meintjes said she hoped the matter would be resolved shortly.

The National Union of Public Service and Allied Workers, the National Education, Health and Allied Workers' Union and the Public Servants' Association signed the March agreement on behalf of prosecutors and state advocates. National Director of Public Prosecutions Bulelani Ngcuka, who was also cited as a respondent in the application, did not oppose the order.

Askari turned into sex slave - De Kock

(252) Sowetan 8/6/99

By Gershwin Chuenyane

A RENEGADE askari was abducted by the Mandela Football Club and kept as a sex slave, the Truth and Reconciliation Commission amnesty committee heard in Pretoria yesterday.

Former Vlakplaas commander Eugene De Kock told the committee that former askari Mr Johannes Mabotha told him during interrogation at Marble Hall in Mpumalanga that he was abducted by the Mandela Football Club and kept as a sex slave.

De Kock said he did not believe Mabotha was telling the truth and as a result he did not pursue that line of questioning.

Meanwhile, TRC spokesman Mr Mbulelo Sompetha told *Sowetan* that Mrs Winnie Madikizela-Mandela was served with a notification letter in terms of the TRC Act, informing her that her name would

be mentioned

"It is up to her to either send a legal representative or make a personal presentation," Sompetha said.

De Kock was giving evidence in his amnesty application for the murder of Mabotha, whose body was later destroyed with explosives at Penge mine, Mpumalanga, on February 5 1989.

The committee heard how Mabotha was shot twice in the heart by De Kock before his body was destroyed with explosives at the mine.

De Kock said that he could not take Mabotha back at Vlakplaas, because the rule was that treason was punishable by death and Mabotha's defection was seen as such.

He also told the amnesty committee that he had heard that Mabotha, who had joined Madikizela-Mandela's football club, was

involved in the killing of policemen. However, he had no first-hand information. He was told later that Mabotha was arrested and detained in Marble Hall under Section 29.

The amnesty committee also heard how De Kock left after being disgusted at the method used to torture Mabotha during interrogation at Marble Hall.

"He was seriously tortured. He was tubed, hung upside down and assaulted. But when ice cubes were pushed up his anus, I left because I've never heard or observed such a method of torture. And I did not know what value such an action would get," he said.

De Kock said he was instructed by Jan Potgieter of the Soweto security branch to "make a plan" for Mabotha.

He interpreted that to mean he had to "lead him through the gates", meaning he had to be killed.

Vlakplaas operatives blew up body

(252)

Sowetan Reporter

THE Truth and Reconciliation Commission's amnesty committee, sitting in Pretoria, heard yesterday of a sinister plan by former Vlakplaas commander Eugene de Kock to kill an Askari who had fallen out of favour

Former Vlakplaas operative Dawid Brits said it had been pre-arranged between De Kock and Major Jan Potgieter that renegade Askari Johannes Mabotha would be released at a certain time from De Deur Police Station in the Vaal area

De Kock had ordered his Vlakplaas subordinates, including himself, to wait for Mabotha in the vicinity of the police station where Potgieter would hand the renegade Askari over

They were then to take Mabotha to Penge Mine in Mpumalanga

Brits said at the time he did not know why Mabotha was supposed to be taken to Penge

However, he "thought it could be that Mabotha was to be taken there for questioning or for

training", since the mine was also used as a training facility for Vlakplaas members

Brits said he was later ordered to destroy Mabotha's body with explosives

This was after De Kock had shot the Askari twice in the chest

"The plan was that Sergeant Vermeulen and Daniel Snyman (two former Vlakplaas operatives) would fire several shots to create the impression that training was going on when the body was being destroyed with explosives so that the mine security would not suspect anything," he said

Brits admitted to the amnesty committee that he and Vermeulen had prepared the 25kg of explosives that were then placed between the legs of Mabotha who was in a sitting position

He told the committee the body had been completely destroyed by the explosion

Brits has since applied for amnesty for the part he played in destroying Mabotha's body

He gave evidence yesterday in the amnesty hearing of De Kock for the killing of Mabotha

Sowetan 9/6/99

De Kock denies askari was to testify

(252)

PRETORIA — Former Vlakplaas commander Eugène de Kock said yesterday he would not have killed askari Johannes Mabotha had he known Mabotha was to have testified against Winnie Madikizela-Mandela in a possible high treason case.

He told the truth commission's amnesty committee in Pretoria it would have been to the advantage of the former National Party government if Madikizela-Mandela had been found guilty of high treason.

De Kock is seeking amnesty for shooting dead Mabotha at Penge Mine near Burgersfort in Mpumalanga in 1989. He told the committee earlier that he shot Mabotha twice in the heart, after which Mabotha's body was blown up by about 24kg of explosives.

Former Soweto security police Col Jan Potgieter said in his affidavit he had asked De Kock to keep Mabotha safe at Vlakplaas so that he could testify against Madikizela-Mandela. De Kock denied this, saying Potgieter had asked him to "make a plan" with Mabotha, who was alleged to have been involved in police killings.

Potgieter was at the time investigating charges of high treason against Madikizela-Mandela. The case never went to court due to a lack of evidence.

Former Vlakplaas member Dawid Brits admitted that he detonated the explosives.

He told the amnesty committee that after De Kock shot Mabotha, he removed Mabotha's clothes and placed the explosives between Mabotha's legs. Former security police warrant officer, Nicholaas Vermeulen said he assisted Brits to set up the explosives and remove Mabotha's clothes.

Vermeulen and Brits are applying for amnesty for the incident. — Sapa

BD 9/6/99

Sicgau optimistic over the sale of state assets

By Mongwadi Madiseng

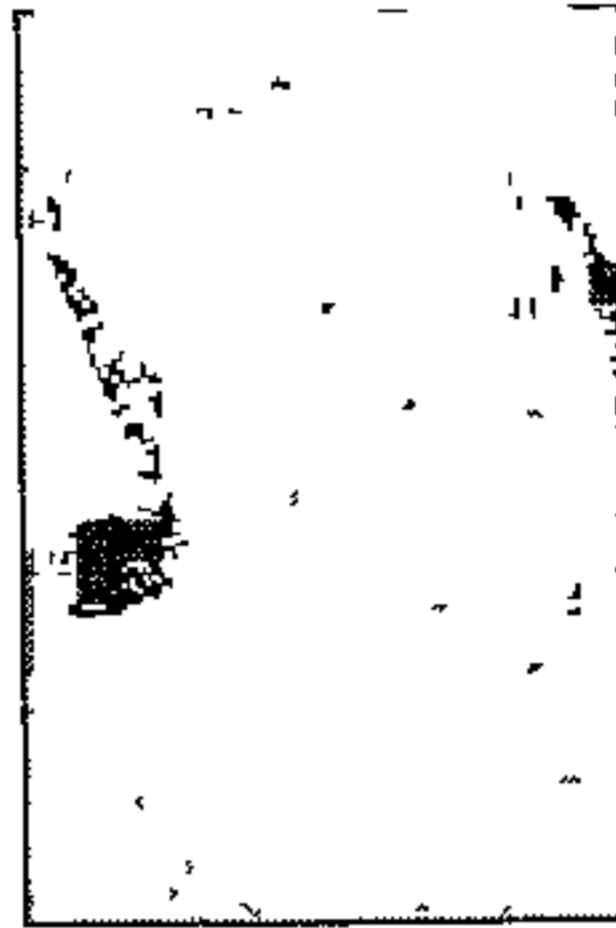
RESTRUCTURING and full privatisation of state enterprises was one of the key challenges for the Government

In her keynote address at the Privatisation Africa '99 conference yesterday, Public Enterprise Minister Miss Stella Sicgau said the principal role of her ministry was to coordinate the implementation of the process

The ministry had placed great emphasis on promoting affirmative procurement action within those state-owned enterprises and empower emerging black firms in the country

"We do not just privatise, we create new entities that will add value to the economy as indicated in the recent synergies study conducted by the ministry"

"The real purpose is to implement



Public Enterprises Minister Stella Sicgau says restructuring is driven by pragmatism, not ideology.

PIC LUCKY MORAJANE

easy, as they first needed to be commercialised and financially restructured before full privatisation could be considered

"In these organisations the process is complex as some of their business units are currently struggling to sustain themselves and would need cross-subsidisation from the Government," she said

The Government was fully committed to the process. History around the world had shown that the programme was a learning curve as a key building block for economic restructuring and prosperity

According to Sicgau four entities have already been shortlisted in the much-sought-after bid for South African Airways, with the hope that the process will be completed by end of next month

restructuring and privatisation programmes to address past inequalities, provide good quality service to the country while at the same time empowering previously disadvantaged communities"

With regard to up-for-sale institutions such as Telkom Eskom and Transnet, she said the task would not be

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9/16/99
MORAJANE

Witness 'would do anything De Kock told him'

ARGUS CORRESPONDENT

(258)

Pretoria - Vlakplaas commander Eugene De Kock had a strict policy of not allowing anyone to touch alcohol before going on operations to eliminate activists.

This was revealed to the TRC amnesty committee in Pretoria yesterday.

The two applicants, Jacobus Brits and Nicolaas "Snor" Vermeulen, seeking amnesty for the murder of Johannes Mabotha in 1989, told the committee that De Kock had a strict policy of not allowing alcohol during the operations.

Testifying about his role in Mr Mabothe's killing, Mr Brits said that he was instructed by De Kock to be present at the De Deur police station on the day when Mr Mabothe was to be released and handed over to Vlakplaas operatives.

He added that after Mr Mabothe was released, De Kock instructed him to transport the former activist-turned-Askari to Penge mine in Mpumalanga, where he was executed.

Asked if he had known that Mr Mabothe was going to be killed, Mr Brits said he was not aware of that, but he followed all De Kock's instructions to the letter without question.

He admitted that he would do anything, even if it was blatantly illegal, as long as the instructions came from De Kock.

He spoke highly of De Kock and described him as "someone who treated everybody on an equal standard".

"I only learned at the mine that Mabothe was going to be killed. That only emerged when De Kock told me that I would have to detonate the explosives to destroy Mabothe's body," recalled Mr Brits, adding that after Mr Mabothe was shot dead, his body was put in a sitting position and 25kg of explosives placed between the legs.

"As we had planned, I detonated the explosives, while the other two members fired shots constantly to disguise the noise. The body was destroyed".

Asked whether they drank alcohol before the operation, Mr Brits said "he (De Kock) had a policy of not allowing alcohol during operations".

The hearings continue.

ARG 9/6/99

MK pair's amnesty for killings

Slovo ordered cop shot

ARGUS CORRESPONDENT
AKU 9/6/99

Johannesburg - Two former members of Umkhonto weSizwe - who killed a policeman and an informer - were granted amnesty by the Truth and Reconciliation Commission's amnesty committee.

Solomon "Solly" Simelane, who was commander of MK's special operations, was yesterday granted political amnesty, with Christopher Mnisi, for the killing of security policeman Phillipus Selepe and a suspected police informer in the early 1980s.

The decision came hours after their amnesty application was heard by Mr Justice Denzel Potgieter at the Telkom Club outside Pretoria. Victims relatives who attended the hearing did not oppose the application.

Mr Mnisi told the committee that he stabbed a suspected police informer, only identified as "Disco" in the neck and killed him at Vlakplaas, where he and Mr Simelane had been detained after their capture by members of the security police.

They had been at Vlakplaas, which was then under the command of Dirk Coetzee, for five months. "Disco", the amnesty committee heard, was killed because he had been monitoring Mr Mnisi's movements.

The committee also heard that Selepe was killed at the order of the then SA Communist Party boss, Joe Slovo, since deceased, who was then based in the Mozambican capital Maputo.

Judge Potgieter said the committee was satisfied that the two applicants had made full disclosure and established that their actions had a political motive, and he granted them amnesty.

The two former MK members were not imprisoned for any of the politically motivated crimes as the indemnity process had been unfolding at the time.

Separately yesterday, the committee began hearing the application of four other former MK members, whose crimes included the bombing of a bus stop in Pretoria which injured 17 people in 1986.

Two of the applicants are now intelligence officers in the National Intelligence Agency.

Victims who attended said they were not opposing the applications. The hearing continues today.

'No discussion' on prisoner amnesty

MICHAEL MORRIS
SPECIAL WRITER

(2/12)

President-elect Thabo Mbeki appears to have no plans to let thousands of criminals out of jail early as part of his inauguration celebrations - as his predecessor Nelson Mandela did.

President Mandela granted a special remission of sentence to 15 000 prisoners after his inauguration in 1994, and to a further 9 000 as part of his 80th birthday celebrations in July last year. But there has been "no discussion" about a possible prisoner amnesty for Mr Mbeki's inauguration.

The Deputy President's office referred inquiries to Correctional Services Minister Ben Skosana, who would be "the principal adviser" on such matters.

Mr Skosana's spokesman Andrew Aphane said: "As a department, we have not discussed anything in connection with a special amnesty. We have made no recommendations, there has been no discussion."

Concerns about early releases from prisons were raised in an open letter to the deputy president by the West Metropole Community Police Board. It warned that "it has been our bitter experience that previous releases of convicted criminals by way of amnesty to celebrate the presidential inauguration, or some such significant event, has invariably led to an immediate increase in crimes (by released criminals)".

Within two weeks of last year's releases, two convicts who benefited from the President's generosity were arrested for the murder of an elderly Karoo farming couple.

ARG 10/6/99

Ex-cop tells TRC of killing spree

FORMER policeman Aniraj Singh told the Truth and Reconciliation Commission this week that he wreaked havoc and killed people in the Pietermaritzburg area in the early 1990s to further the aims of the then ruling National Party.

Singh was testifying before the TRC at the Marian Centre in Pietermaritzburg.

He told the amnesty committee his hatred of the African National Congress and its aligned movements grew when he was indoctrinated by his superiors who showed a video of ANC attacks on police officers.

"My service in the SAP was during the time when the NP was in power, and junior policemen like me were taught that the ANC, UDF (United Democratic Front), Apla (Azanian People's Liberation Army) and

Umkhonto we Sizwe were communists, terrorists and the enemy of the NP and a great enemy of the police," he said.

Singh is serving a life sentence for murdering Solomon Dlamini, Sathanathun Padayachee, Siphon Zulu, and Jeffrey Durugiah.

He said he was sent on a Specialised Weapons, Arms and Tactics (Swat) course to strengthen the fight against the ANC in 1990.

Singh said he, together with constables Devan Williams, Kriemmenthren Maistry, Norman Mchunu and Mandlenkosi Ndaba, formed a hit squad.

He and Ndaba kidnapped Dlamini on November 19, 1992 with the intention of killing him. Dlamini's body was found five days later with bullet wounds to the chest.

Singh disclosed that Padayachee was shot dead by Mchunu after they

attacked him at his house in Pietermaritzburg on November 29, 1992.

The incident was followed by an attempt to kill Zulu by members of the hit squad on May 5, 1992.

Singh, Mchunu and Ndaba kidnapped Zulu later and killed him at Claridge. On April 21, 1993, Singh and

co-applicants Praveen Ramdas, Mchunu, Adrian Aiyer and Nilesh Singh went to Mkomaas where they

shot and killed Durugiah. Senior Superintendent Cliff Marion, who arrested the hit squad members, said he saw no political

motive in the murders. Ndaba, who turned state witness, said his former colleagues knew their crimes were not politically motivated.

Charges against Ndaba were withdrawn and he did not apply for amnesty - Sapa

Newspaper 10/6/99

(277)

TRC to decide soon on reopening Goniwe case

THE Truth and Reconciliation Commission's amnesty committee is expected to make a decision soon on whether or not it will reopen the amnesty application hearing by security policemen who killed Matthew Goniwe and three other Eastern Cape activists in June 1985.

Advocate George Bizos, SC, who appeared for the families of the four former United Democratic Front activists, applied for the case to be reopened.

This followed new information which has emerged and which shows that the former state security council knew of plans to "eliminate" Goniwe. According to state security council minutes, former president Mr FW de Klerk and high-ranking National Party cabinet ministers were present when the matter was discussed.

Former finance minister Barend du

Plessis actually asked that Goniwe, who was a headmaster at a Cradock school, be eliminated, say the minutes. Although high-ranking policemen have told the amnesty committee that they had no doubt that the word eliminate meant to kill, De Klerk and Du Plessis have since said they meant the word to convey that Goniwe be redeployed in another area.

TRC spokesman Mr Phila Nqumba said yesterday that the committee was still considering the request for a reopening and would make its

decision known in the near future. Seven policemen, including former Eastern Cape security police general Nic van Rensburg, have applied for amnesty for the murder of Goniwe, Sparrow Mkonto, Fort Calatá and Sicelo Mhlauli outside Port Elizabeth.

The policemen, who for years had denied any involvement in the murders, finally admitted last year that they had killed the activists and tried to make it appear as though it had been an attack by vigilantes.

● The TRC's amnesty committee

heard on Wednesday how a security policeman was shot and killed by a group of men after an attempt to ambush a bakery delivery vehicle was thwarted in Soweto in 1993.

Marvin Maesela and Eric Nathaniel Tekane, currently serving life sentences in the Pretoria Prison, are applying for amnesty for the incidents. According to TRC spokesman Mr Vuyani Green, Constable Samuel Sathkege was shot near his home in Rockville, Soweto, on February 5 1993.

Green said a group of five men

armed with AK-47 rifles and axes fired shots at the vehicle in an attempt to ambush it but a security guard nearby thwarted the ambush when he returned fire.

The attackers fled the scene Green said minutes later the attackers approached Sathkege and fired on his vehicle. The policeman died later in hospital. An attempt to disarm him of his service pistol was thwarted by police who arrived on the scene later.

Maesela and Tekane claimed they were members of the underground structures of Umkhonto we Sizwe, the African National Congress' military wing, at the time of the incidents. They said they had intended to give the weapon to members of the ANC-aligned self-defence units in the strife-torn townships on the East Rand.

The hearing continues - Sapa



A FORMER member of the ANC's military wing, Umkhonto weSizwe (MK), told the Truth and Reconciliation Commission this week that he used a machinegun to shoot dead prominent KaNgwane homeland politician David Lukhele

Neo Potsane, now a member of the National Intelligence Agency (NIA), was testifying before the TRC in Pretoria

Potsane and three other former MK members, Frans Ting-Ting Masango, Joseph Makhura and Jabu Masina, are seeking amnesty for Lukhele's murder and a bomb blast in 1986 at a bus stop in Silverton, east of Pretoria. Seventeen people were injured in the blast

TRC spokesman Vuyani Green said the TRC heard that the four were members of MK's "elimination unit", set up to assassinate people the African National Congress considered to be

Former MK man tells TRC of 1986 slayings

2/1/99
"cohabitors" - including homeland leaders and members of the apartheid government's security forces

Potsane told the hearing that former KaNgwane homeland leader Mr Enoz Mabuza was regarded as an ANC sympathiser, though other homeland leaders were regarded as illegitimate

Lukhele, then opposition leader in KaNgwane, and Busisiwe Dhludlu were gunned down at Lukhele's home in Mamelodi, on June 6 1986. Lukhele's wife Elizabeth was wounded

Sowetan
The TRC heard Lukhele fell out with the ANC in exile after he had written and distributed a document calling for the incorporation of KaNgwane into Swaziland

"Mr Lukhele was targeted by our unit and killed by me only after the specific authorisation of the ANC was sought to eliminate him," he said

After the authorisation by the ANC he was deployed to check on Lukhele's movements. After ascertaining Lukhele would be at home on June 6 1986, Potsane and Masina left for his home

"We left the vehicle we were travelling in a few paces away from his home and walked into the yard armed with an AK47 with two magazines, while Masina stood guard outside

"I knocked at the front door, someone opened the door and I burst inside with my AK47 already drawn

"I fired at least 31 rounds at Lukhele, who fell to the floor. While lying dead on the floor, I continued pumping his body with more than 31 rounds of ammunition

"His wife was also hit in the leg as she was crawling towards the door, attempting to escape"

Potsane said he was shocked when he read reports later that another woman who was also at the house, Dhludlu, was killed in the shooting

He expressed regret at the murder of Dhludlu and the wounding of Lukhele's wife, saying they were not intended to be targets in the attack

Danny Berger, for the applicants, said the fact that the four were prepared to face death sentences during their trial testified to their commitment to the "just cause" they were fighting for

He appealed to the committee to grant them amnesty, arguing that their actions fell within the ambit of the TRC amnesty provision - *Sapa*

Murphy ruling a boost for gay rights

CHARLENE CLAYTON

Gay rights have been given a boost following a ground-breaking decision by Pension Funds Adjudicator Professor John Murphy in which he ordered a pension fund to pay out retirement death benefits to a Johannesburg man.

The determination may have far-reaching implications for gay people and their rights to the death benefits from their partners' retirement funds.

Murphy's office by Rory Martin who was unhappy about being refused the lump sum death benefit and spousal pension from his late partner's pension fund.

Sue Myrdal, who investigated the case for Murphy's office said the rules of the Beka Provident Fund regarding the spouse's pension, and in particular the definition of "marriage" unfairly discriminated against same sex relationships. Such discrimination is prohibited under the Constitution.

allowed for cohabiting heterosexual couples to be considered "married" but not cohabiting same sex couples.

"The stability and permanence of same sex relationships is no different from that of married couples and both types of union deserve respect and protection," she said. Myrdal said objective criteria may well need to be developed to determine what "as if married" means.

Murphy ordered the fund to amend its rules to include in the definition of marriage any "union of two adults, whether of the same or opposite sex, in respect of whom the board is satisfied that the parties cohabited as if married".

ART 12/6/99

(252)

(305)



CP 13/6/99 (252)

TRC subpoenoes former head of security

By MAX MARX and Sappa

FORMER head of Soweto's security branch, Jan Daniel Potgieter, has been subpoenaed to testify on June 21 at the TRC amnesty committee hearings in Pretoria into the murder of former Vlakplaas askari Johannes Mabotha.

This follows an affidavit submitted by Potgieter in which he denied involvement in the planning or execution of the operation to kill Mabotha. Former Vlakplaas commander Eugene De Kock, who is applying for amnesty for Mabotha's murder revealed during his criminal trial and again before the TRC amnesty com-

mittee this week that Potgieter had asked him (De Kock) to "make a plan" with Mabotha to prevent him from rejoining Winnie Madikizela-Mandela and her football team and to stop his alleged involvement in the shooting of police officers.

Mabotha joined the ANC in 1984 and was a trained MK operative who turned askari after he was arrested in August, 1987. He later allegedly defected back to the ANC and De Kock and others feared that he would divulge Vlakplaas secrets to the ANC.

De Kock testified that he had no doubt in his mind that Potgieter's statement "make a plan" had meant Mabotha should be killed. However, in his affidavit Potgieter, who has not applied for amnesty, said he had asked De Kock to keep Mabotha safe at Vlakplaas so that he could testify against Winnie Madikizela-Mandela. Potgieter was at the time investigating charges of high treason against Madikizela-Mandela and said Mabotha had agreed to testify against Madikizela-Mandela if need be. He said in his affidavit to the TRC that he could not fathom what led De Kock to believe he, Potgieter, wanted Mabotha to be eliminated. "I never requested that Mabotha be murdered and I was not involved in the planning or carrying out of his murder," Potgieter also denied that Mabotha

had revealed that he had carried out attacks on police officials or that the recorded telephone conversations between Madikizela-Mandela and Mabotha had revealed that they were romantically involved.

De Kock, Dawid Brits, Kobus Klopper, Nicolaas Vermeulen, Leon Floer, and Daniel Shyman have applied for amnesty for the torture and murder of Mabotha at Penge Mine near Burgersfort, Mpumalanga on October 5, 1989.

The hearing into the killings of ANC members Keith McFadden and Zwelakhe Nyanda during a cross-border raid into Swaziland in November 1983 starts tomorrow.

COMMENT

2. HERB STREET NEW DOORNFONTEIN JOHANNESBURG 2094

June 16 will never be the same again

CP 18/6/99 (252)

FOR the first time in 23 years, this year's June 16 commemoration services will be celebrated with a difference. They are expected to be all-embracing, truly rainbow nation events – something unheard of in our history.

That we have been called "two nations in one" has always been exposed on this particular day, because it has symbolised different things to different people.

To many white people, it was just another day. Before June 16 was declared an official public holiday, it was business as usual for them. They carried on as if nothing ever happened.

But to many black people, this was a day that changed their lives for ever. In defiance of the National Party government, blacks declared June 16 an unofficial public holiday.

To them, this was a day to commemorate those who died at the hands of the apartheid system. It was a day to remember their loved ones who were detained and sentenced to long-term imprisonment.

It was a day to remember those forced to flee into exile, to remember those who simply disappeared into thin air.

For 23 years blacks stayed at home on June 16 in their thousands. Many, of course, lost their jobs because of bosses who simply refused to accept this was an important day in the black history calendar.

In a way, this is a day that changed the history of South

Africa when children in Soweto schools took to the streets and revolted against Afrikaner domination.

They say when Soweto sneezes, the whole country catches a cold. And that is what happened on June 16, 1976.

This is the day when black people would reminisce about the first time they saw young men and women challenge the might of the police with only sticks and stones in their hands.

It was also the first time many were forced to inhale teargas, fired right in their faces by agitated and restless policemen.

It was during June 16 commemorations that political rivalry was at its worst, when different political movements would claim the right to own June 16.

It will be altogether different this time round. Not only is it a national Youth Day holiday, it is also the day when Thabo Mbeki will be inaugurated as the second democratic president of South Africa.

This time round all South Africans, black and white, will be celebrating a new day; a day that liberated not just blacks but whites as well from the bondage of apartheid.

When President Mbeki steps down from the podium on Wednesday, we must all help him to attain his greatest wish: to be president of One Nation, not of two nations.

June 16 will never be the same day again.

Confession sparks anti-death penalty feeling

Wrong man was hanged

By STEVE DLAMINI
and SEKOLA SELLO

THE execution of a top Umkhonto we Sizwe cadre 14 years ago for a crime he did not commit came back to haunt the apartheid judiciary this week

When Benjamin Malesela Moloise went to the gallows many people, including his defence lawyers, believed in his innocence

Moloise's killing could also strengthen the argument of those who are opposed to the death penalty at a time when there is a strong clamour, mainly among the white opposition parties, owing to the high levels of crime sweeping the country, for the return of the hangman.

Moloise was hanged in Pretoria's Central Prison on October 18, 1985 for allegedly killing a notorious security policeman, Phillipus Selepe of Mamelodi, Pretoria, three years earlier Selepe had testified for the State in several security trials

This week MK cadre Christopher Mnisi was granted amnesty by the Truth and Reconciliation Commission's amnesty committee for the killing of Selepe

In terms of the TRC Act, amnesty can only be granted after the amnesty committee has satisfied itself that the applicant has made a full disclosure of a crime or human rights violation he has committed

Mnisi took sole responsibility for the killing of Selepe and told City Press that he did not know Moloise

He said two MK cadres, Freddy Shongwe and Magubane Shabangu, drove the getaway car which was parked several streets away from Selepe's home

Mnisi said he felt "terribly bad" on the day that Moloise was executed for a crime he had not committed

"This was tragic but I guess that is the sacrifice some of our people had to make" Moloise's defence lawyer, Priscilla Jana,



CP 13/6/99 (262)

INNOCENT . . . Benjamin Malesela Moloise was executed 14 years ago for a crime he did not commit

said she "always believed" that her client was innocent of the killing

She said although Moloise had initially pleaded not guilty to the killing, he subsequently changed this plea to guilty "because he found himself in a very invidious position"

"The State had found him guilty of the Selepe killing and by changing his plea to that of guilty and saying he was sorry for the crime, there was hope that this could be used as a

mitigating factor.

Jana said Moloise pleaded guilty solely for this reason but it was not enough to save him from the gallows.

Jana said in terms of the law, once Moloise had been found guilty, he could not hope for mitigation of sentence or have the conviction set aside unless he pleaded guilty.

"This tragic case is one more argument why the death penalty should not be reinstated as some parties like the New National Party and Democratic Party want," declared Jana, who is now an ANC member of parliament

Former MK cadre and now senior officer in the South African National Defence Force, Brigadier General Jabu Shoke under whom Moloise operated underground for the MK, reiterated that there "was no way in which Moloise could have carried out the killing"

Shoke said Moloise had no links with MK leadership inside or outside the country "As guerillas we operated in small cells and I was the only link he had with MK"

"If an order had been made by MK for Moloise to kill Selepe, I would have been the one to have communicated such an order. No such order was made and Benjamin definitely did not kill Selepe"

Former MK chief of staff and SANDF chief General Sphiwe Nyanda said before Moloise was executed the African National Congress, then banned, offered to give evidence on commission about the Selepe killing, but this was turned down by Pretoria

Nyanda's only comment on the execution of Moloise was that the judiciary and the Bench "were part of the system"

Pretoria defied pleas from one of her strongest allies, Margaret Thatcher's government, as well as from the then European Economic Community, the United Nation's secretary general Javier Perez de Cuellar and several other local and international organisations to grant clemency to Moloise

Don't turn the Bench into a political bull's-eye, says court

ST 13/6/99 (252)
The Constitutional Court has closed ranks to defend judges who have been bad-mouthed, writes CARMEL RICKARD

JUDGES have been the target of unprecedented criticism over the past five years, with racial taunts and slurs on their integrity becoming almost commonplace.

Political leaders feel no constraints in dismissing a judge who makes a controversial decision as "an accomplished fascist", for example, even if they neither attended the trial nor read the judgment concerned.

Given attacks from across the political spectrum, and the resulting decline in judicial morale, the Constitutional Court's latest decision to defend judges from verbal assault by politicians and others is a particularly welcome intervention.

A couple of judges have spoken out — but they were lone voices until the Constitutional Court's judgment explained why its members had refused to stand down from hearing the appeal in the controversial legal battle between former rugby supremo Louis Luyt and President Nelson Mandela.

As part of its judgment, the court dealt with Luyt's argument that it would not have the courage to rule against Mandela because of the roasting given to Judge William de Villiers when he had the effrontery to do just that.

Judge de Villiers initially heard the Luyt dispute against Mandela but after he ruled in favour of Luyt and raised serious questions about Man-

dela's credibility as a witness, Judge de Villiers was subjected to immense criticism from ANC politicians and others.

They questioned his integrity and said he should go.

During argument of the appeal last month, Constitutional Court President Arthur Chaskalson said he deplored personal attacks on judges by the media and government officials in particular — and pointed out that the Constitutional Court, too, had been subject to such attacks. His views have now been given full backing by the rest of the court.

What should count, they said, was not whether the judge's decision was popular, but rather whether it was correct in law. However, instead of the reasons for an unpopular decision being examined, there was an "unfortunate tendency" for such decisions to be attacked by impugning the integrity of the judge concerned.

"Political discontent or dissatisfaction with the outcome of a case is not justification for recklessly attacking the integrity of judicial officers," they commented.

The Constitutional Court has experienced its share of such attacks, and the court said many of the allegations and complaints against its members in Luyt's recusal application were symptomatic of the same "tendency".

The judiciary was one of the principal defenders of the Con-

stitution, said the court, and "unjustified and unreasonable" attacks on individual judges, "whatever their background or history", were deplorable.

The judgment also grapples with the debate about the many new judges who had links with the ANC before their appointments.

Most members of the judiciary now fall into one of two camps, each with a distinct collection of political baggage: one had strong connections with the previous government and its philosophy, the other with the present regime.

Can they be equated? Are they equally undesirable?

These questions have left many who were opposed to the previous government feeling decidedly uncomfortable. If it was objectionable for judges to be linked with the government then, they ask, how could such links now pass without protest?

Dealing with this dilemma, the court seems to take the view that such a comparison is not valid. Links with the previous government were objectionable because of apartheid's intrinsically evil nature and not because it was necessarily undemocratic for a judge to have had a political profile before joining the Bench.

It was far from uncommon in other democracies for a judge to have engaged in political activity before appointment, and here, as elsewhere, it was

expected that all judges would put party-political loyalties behind them, once appointed.

In addition, the Constitution enshrined the core values of the new order, none of which had been recognised by the old.

When judges were appointed it would be surprising if their respect and support for these core values were not taken into account. Just five years into the new order it was almost inevitable that successful judicial candidates would have shown in their professional or private lives "their antipathy and opposition to the evils and immorality of the old order" to a greater or lesser extent.

So soon after South Africa's transition to democracy, it would also be surprising if many candidates for judicial appointment "had not been active in or publicly sympathetic towards the liberation struggle".

It would be ironic, said the court, if candidates were not eligible for judicial appointment merely because of such activities or sympathies.

Luyt's recusal bid directly challenged the court, with serious constitutional consequences a possibility had he succeeded. By seizing the chance to wrestle with some of the most provocative questions of judicial politics, however, the court has parried the threat, producing a judgment which seeks to defend and strengthen the entire judiciary.

Nyanda 'was sold out by friend'

Stephané Bothma

PRETORIA — SA National Defence Force chief Sphiwe Nyanda's brother Zweli, who was assassinated by former Vlakplaas commander Eugene de Kock in Swaziland in 1983, was sold out to the security forces by a "very active" double agent, the truth commission heard yesterday

The agent, named Lawrence, but also known as Cyril or Veer, was a close friend of both the Nyanda brothers during the struggle. After Zweli's death he was arrested by the African National Congress (ANC) in Lusaka, after which he died in vague circumstances

De Kock and six other former security policemen, including Brigadier Willem Schoon, have applied for amnesty for the assassination of Nyanda and another ANC member, Keith McFadden, in a house near Manzini in Swaziland in November 1983

Lawrence was also in the house when the attack took place, but

managed to escape, De Kock testified. He denied any knowledge of his being an agent

"We had orders to kill all three of them and also anybody else in the house, which was used as a transit point from which trained terrorists infiltrated SA," he told amnesty committee chairman Judge Andrew Wilson

Former police general Gert Steenkamp, who is in a witness protection programme, gave the order for the attack, the committee heard

According to Sphiwe Nyanda, who attended yesterday's hearing, Lawrence had committed suicide after confessing to his ANC interrogators that he was a spy

"It is painful to listen to the details of how my brother, a freedom fighter, came to his end, but it must be even worse for my mother Betsy to hear the detail," Nyanda said

He said his mother and Zweli's two daughters would not oppose the granting of amnesty to De Kock and the others as long as a full dis-

closure of the facts was made by them. "We support the process of reconciliation in the country"

Nyanda said his brother knew the dangers involved in fighting the system. "We all faced the danger of losing our lives," he said

The committee heard that during the attack, which took place in the early hours of the morning, stun grenades were thrown into the house before the back door was kicked down and the policemen, armed with silenced weapons, entered the house

McFadden was shot. De Kock saw a blood trail leading from one bedroom to the bathroom, which was locked. Another stun grenade was thrown into the bathroom and Nyanda attempted to escape through the bathroom window. De Kock shot him several times

The committee heard that documents outlining plans for attacks in SA were discovered in the house. The policemen all received medals for a job well done

The hearing continues today

'SHOT SEVEN TIMES IN BACK'

De Kock admits killings Natal MK commander

CT 15/6/99
(957)

PRETORIA: Former Vlakplaas member Eugene de Kock has admitted to killing Natal uMkhonto weSizwe commander Zwelakhe Nyanda at his house in Swaziland in 1983.

DE KOCK told the Truth Commission yesterday that he shot Nyanda about seven times in the back while he ran away from the house.

Nyanda was the brother of SA National Defence Force chief General Siphwe Nyanda.

De Kock is seeking amnesty for his role in the shooting of Nyanda and African National Congress member Keith McFadden, who was also shot at the house that day.

He said they were eliminated because they were involved in many deaths and helped MK members to infiltrate South Africa.

De Kock told the amnesty committee that the operation was led by former Vlakplaas commander Jack Cronje. Cronje has received amnesty for the incident.

De Kock said he was ordered to throw a stun-grenade through a bedroom window while Cronje

and other security members broke down a back door of the house.

He said he had not known that Nyanda was sleeping in that room.

De Kock said he then ran to the back door to help Cronje kick it in. Thereafter he ran to the bedroom into which he had thrown the grenade, and found blood marks leading to a bathroom. He tried to open the bathroom door but it was locked.

De Kock said he then went outside to throw a stun-grenade through the bathroom window. Nyanda jumped through the window and he shot him several times.

Former security policeman Frederik Pienaar told the committee that he shot Nyanda once in the head "to make sure that he was dead" after De Kock had shot him.

Pienaar, who has also applied for amnesty for the incident, said he and Cronje shot McFadden

dead in a bedroom.

He said former MK member Edward Lawrence, known as "Spear", was also in the house but he ran away.

Pienaar said he found out the next day from a Swaziland policeman that Lawrence had run naked to a nearby police station and reported the shooting.

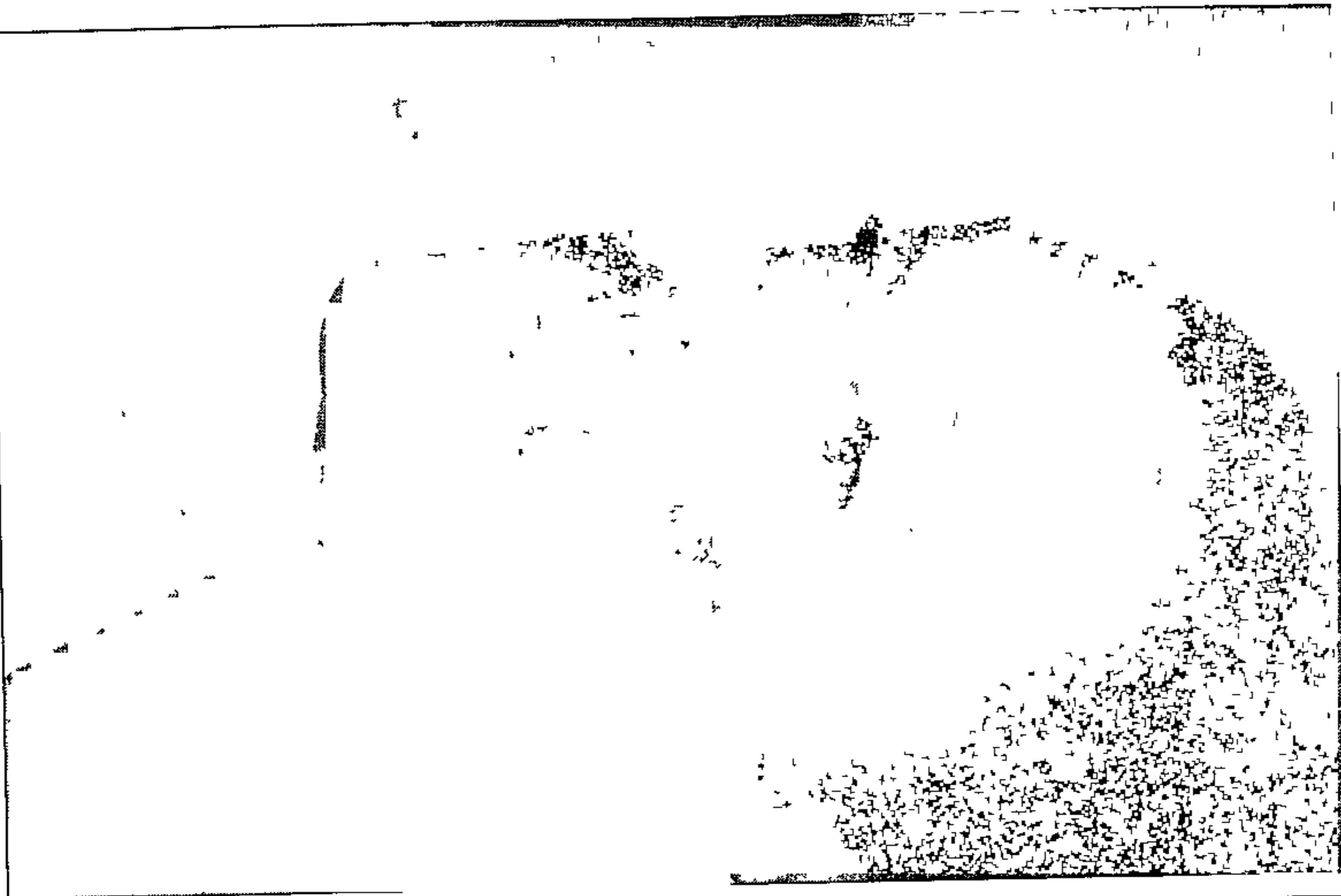
De Kock said he heard a while after the shooting that Lawrence had become the new Natal MK commander.

Earlier yesterday, General Nyanda told reporters he believed his brother had been sold out by Lawrence, to whom he said they had been "very close".

Lawrence allegedly committed suicide while being interrogated by ANC members in Lusaka.

Nyanda said it would be up to his mother, Betsy, and his two nieces to decide if they wanted to oppose amnesty.

He said his family would forgive the seven former security members seeking amnesty for the incident if they made a full disclosure — Sapa



BEREAVED. SA National Defence Force chief Siphwe Nyanda, whose brother Zwelakhe was shot dead by Vlakplaas members in 1983

De Kock admits to killing MK's Nyanda

Sowetan
252
16/6/99

FORMER Vlakplaas commander Eugene de Kock admitted yesterday to killing Natal Umkhonto we Sizwe cadre Zwelakhe Nyanda in Swaziland in 1983

De Kock told the Truth and Reconciliation Commission's amnesty committee sitting in Pretoria that he had shot Nyanda about seven times in the back while Nyanda was running away

Nyanda was the brother of SA National Defence Force chief General Siphwe Nyanda

De Kock is seeking amnesty for his role in the shooting of Nyanda and that of former African National Congress member Keith McFadden, who was also killed in Swaziland in November 1983

De Kock said the two were eliminated because they had been

involved in a number of killings and had helped other MK members to infiltrate South Africa

De Kock said the operation had been led by another former Vlakplaas commander Jack Cronje

Cronje has received amnesty for the killings

De Kock said he had been ordered to throw a stun grenade through a bedroom window while Cronje and others broke down a door into the house

After throwing the grenade, he ran to the door where Cronje was busy to help him break it down. De Kock broke his toe in the process

He entered the room into which he had thrown the grenade, to find a blood spoor leading to the bathroom. The door to the bathroom had been locked

He threw another stun grenade, this time through the bathroom window. When Nyanda tried to escape through the window, De Kock shot him dead

Another former Vlakplaas operative Frederik Pienaar told the committee he had also shot Nyanda - once in the head "to make sure he was dead"

Pienaar, who has also applied for amnesty for the incident, said he and Cronje had shot McFadden dead in a house in Swaziland. MK cadre Edward Lawrence had also been in the house at the time of the hit, but had managed to run away

Pienaar said Swaziland police had informed him that Lawrence had run naked to the nearest police station to report the shooting

The hearing continues - Sapa

PW WINNS GO TO COURT FIGHT

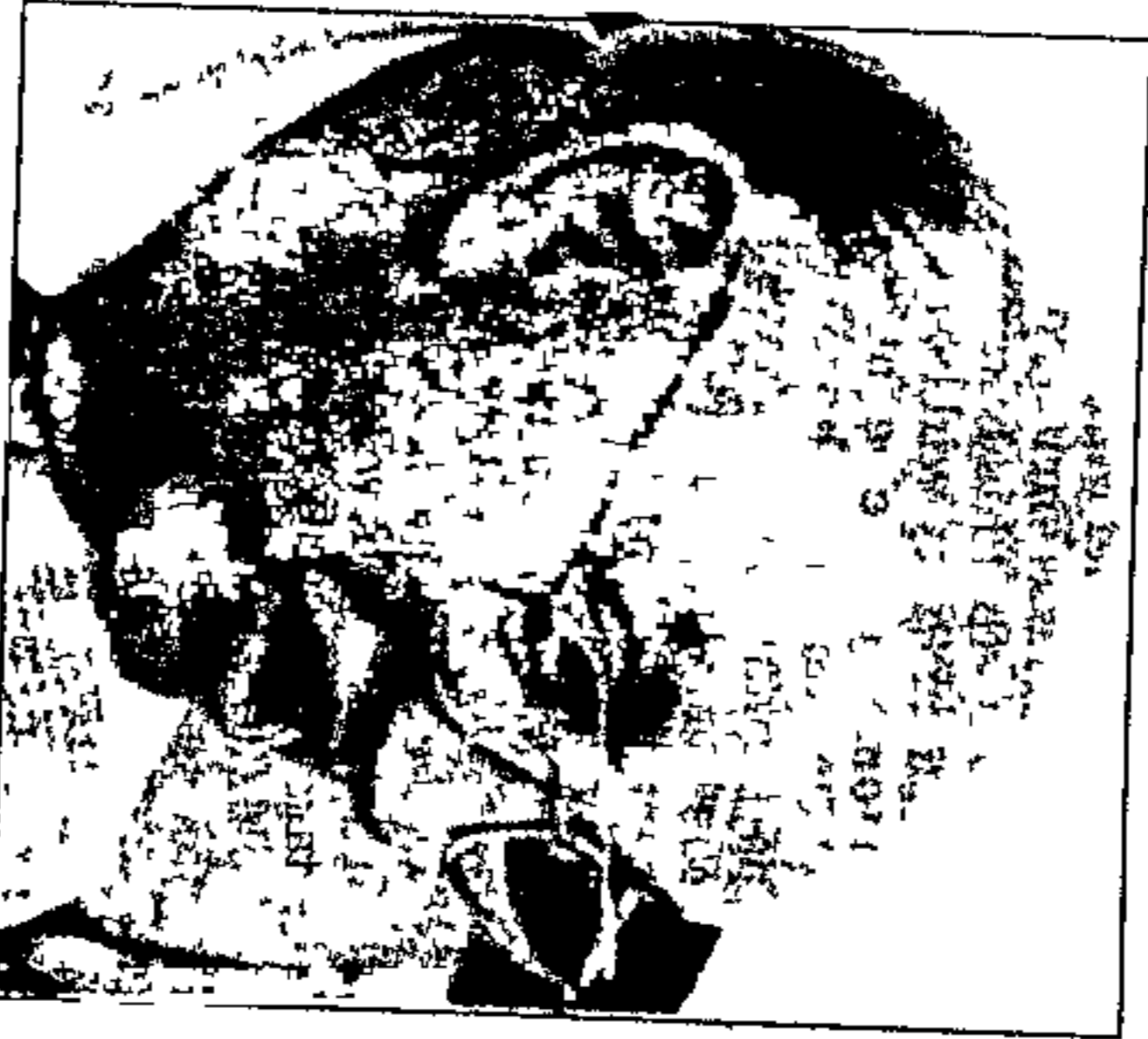
TRC acted beyond powers, say appeal judges

LENORE OLIVER
High Court Reporter

P W Botha's conviction on a charge of ignoring a subpoena to testify before the Truth Commission was today set aside in the Cape High Court.

Mr Botha, 82, who lives in the Wilderness, was found guilty after failing to attend a Truth Commission hearing despite being subpoenaed to testify on December 19, 1997, about the activities of the State Security Council, which he had headed.

He was fined R10 000 (or 12 months' imprisonment). A further 12 months was suspended for five years.



Conviction set aside - former president P W Botha

Mr Botha received two subpoenas on December 5, because the first one was found to be defective.

Today Mr Justice Selwyn Selikowitz and Mr Justice John Foxcroft ruled the TRC had acted *ultra vires* (beyond its powers) when it issued the second subpoena ordering Mr Botha to testify before the TRC's human rights violations committee.

Judge Selikowitz said the court was mindful that there would be "many who may consider that Mr Botha won his appeal on the basis that the subpoena was issued prematurely".

"The TRC has undertaken a noble and invaluable task for the country, but it still remains a statutory body. The court is

duty-bound to uphold the constitution and the law and to protect everyone.

"That same law affords Mr Botha the same protection as everyone else," he said. "For the purposes of this week's appeal, Mr Botha's legal team relied solely on a technical defence, which was disallowed during his trial."

The defence was that the TRC had acted outside its powers when it issued the subpoena for Mr Botha's case.

The main thrust of Mr Botha's case was that the TRC could not lawfully have issued the subpoena for him to testify on December 19, because on December 5, when it issued the subpoena, its powers were due to cease to have effect on December 14.

The TRC's powers were subsequently extended on December 10.

Mr Botha's legal team argued that the trial court went "overboard" when it found him guilty on the basis of an invalid subpoena. **APR 16/99**

Judge Selikowitz said the trial judge had misdirected himself when he ruled that the technical aspects of the Section 29 notice could not be considered.

"But this did not cause a miscarriage of justice," he said.

"The TRC was only in power to deal with matters before December 14.

"If (the TRC) had no authority to call a person for investigative purposes after that date because it was not legally possible"

(252)

Vlakplaas may be site of museum, says farm caretaker

CT 16/6/99

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PRETORIA: The present caretaker of former special police base Vlakplaas says he plans to buy the farm and convert it into a museum.

Caretaker Louis Smit told reporters yesterday he hopes that failed former Vlakplaas commander Eugene de Kock will be able to visit the proposed museum.

De Kock, who was giving Truth and Reconciliation Commission members a guided tour of Vlakplaas yesterday, said he had "quite a lot of mixed feelings" about being back on the farm — which he last visited in 1995. De Kock commanded Vlakplaas, about 20km west of Pretoria, from June 1985 for about eight years.

He showed amnesty committee members, reporters and lawyers where weapons had been stored and where security police had slept and eaten, as well as the location of firing ranges, a gymnasium and recreational facilities.

Many buildings on the 99ha farm, where scores of human rights abuses were plotted during the apartheid years, have fallen into disrepair.

Smit, who lives on the farm with his wife and two children, said he was not aware of Vlakplaas' history when he became the caretaker about three years ago.

"In the beginning, I felt a darkness about the place," Smit said. He had found some spent cartridges and five graves on a nearby hilltop, and some of his relatives were scared to sleep over.

He told reporters he felt sympathy for De Kock. "As a Christian, I love him."

Vlakplaas, which became a special police base in 1979, is still owned by the state — Sapa

Two AWB leaders get amnesty (2/17)

By Paul Letsoalo

Sowetan 16/6/99

FORMER comrades in arms in the Afrikaner Weerstandsbeweging (AWB), Eugene Terre'Blanche and Piet "Skiet" Rudolf, were this week granted amnesty by the Truth and Reconciliation's amnesty committee in connection with the "Battle of Ventersdorp" when rightwingers and police clashed during a meeting of former president FW de Klerk in 1991.

The two were convicted of public violence in 1993 after bloodshed in the streets of Ventersdorp on the night of August 9 1991, when hundreds of rightwingers marched on a National Party meeting in the town and were stopped by the police.

Three rightwingers died and more than 50 policemen and black passersby were injured in the ensuing violence.

Terre'Blanche and Rudolf were also granted amnesty in connection with the tarring and feathering of former University of Pretoria historian Professor Floors van Jaarsveld in 1979, malicious damage to property belonging to the University of South Africa on March 1991 in Pretoria and for illegal possession of arms and ammunition.

The committee found that the two committed the acts with a political objective in the course of the political struggle of that time. They were also found to have made full disclosure of their role in the incidents.

"They were intent on conveying their political sentiments to the leaders of the government of the time," the TRC's amnesty committee said in a statement.

De Kock, a 'victim of apartheid'

(292)
By Gershwin Chuenyane

LAWYERS representing seven amnesty applicants, including former Vlakplaas commander Eugene De Kock, said yesterday that their clients were victims of apartheid indoctrination

This was said during argument by lawyers representing De Kock and Brigadier Willem Schoon

The two are seeking amnesty for their role in the cross-border attack on an African National Congress safe-house in which Zwelakhe Nyanda and Keith McFadden were killed in Manzini, Swaziland, in 1983

Nyanda, who was the younger brother of SA National Defence Force chief General Siphwe Nyanda, commanded the Umkhonto we Sizwe Natal machinery at the time of his killing by a Vlakplaas unit, while McFadden was referred to as ANC courier

Schoon's lawyer, Advocate Louis Visser, told the Truth and Reconciliation amnesty committee that most of the members of the then South African Police joined the force after the National Party came to power in 1948 and introduced apartheid

The church also played an important role in inculcating apartheid into their minds by twisting scriptures to justify it Visser said the committee had to take into account that it was a cardinal sin for a white male to side with or sympathise with the former liberation movements

Amnesty committee chairman Judge Andrew Wilson postponed the hearings to Monday, and said the committee would consider the amnesty applications and would look into whether the applicants had made a full disclosure

On Monday the amnesty committee will also hear evidence by Major Jan Potgieter over an earlier matter in which De Kock and five others applied for amnesty for the abduction and killing at Penge mine in Mpumalanga of renegade askari Jan Mabothe, whose body was destroyed with explosives

Potgieter's affidavit on Mabothe differed with that of De Kock and other applicants

Sowetan 18/6/99

DEMOCRATISING THE JUDICIARY WITHOUT ABUSING JUDGES

FM 18/06/99 (252)
Dating back to its origins as a modern state, SA has long had a tradition of robust political debate. Largely confined to the white minority in the decades immediately after the Act of Union, the tradition has expanded to include politicians of all racial hues and ideological persuasions, particularly since the watershed year of 1990.

For decades, however, judges were exempt from the tradition. They were regarded as demigods whose judgments were deemed to be sacrosanct. Criticism of judges or their judgments was viewed as outrageous, as contempt of court, unless it was confined to academic and legal journals. Even so, Barend van Niekerk of the University of Natal was charged with contempt for daring to suggest that the implementation of the death penalty was skewed by racial prejudice.

The demise of the old racial oligarchy and the advent of the new, nonracial democracy has seen a major change. Judges are now targeted by politicians and even government officials when they disagree with the judgments handed down by the courts.

In so doing, however, they often overstep the mark, substituting personal abuse of judges for reasoned criticism of their judgments.

Judges targeted in *ad hominem* attacks include William de Villiers and Jan Combrink. De Villiers for finding in favour of Louis Luyt in his former capacity as president of the SA Rugby Football Union, and against immediate past President Nelson Mandela, Combrink for acquitting controversial politician

Sifiso Nkabinde on murder charges. De Villiers was accused by the ANC of harbouring "deep-seated feelings" of hostility against the new democracy. Combrink was castigated as an "accomplished fascist" by ANC leader in KwaZulu-Natal, Sibusiso Ndebele.

The Constitutional Court deplores these personal attacks in a recent judgment, declaring that "political discontent or dissatisfaction with the outcome of a case is no justification for recklessly attacking the integrity of judicial officers", particularly during the present period of "institution-building" in SA's fledgling democracy.

The judgment relates to Luyt's application for Constitutional Court president Arthur Chaskalson and four of his colleagues to recuse themselves on grounds of their alleged bias in favour of the ANC. It describes Luyt's application as "symptomatic" of the deplorable tendency to impugn the integrity of judges, noting that, whatever their past political sympathies may have been, the judges had all sworn to protect the Constitution and to administer justice without fear, favour or prejudice.

The inauguration of Thabo Mbeki as SA's new President marks the start of a new era. It is an appropriate time for South Africans of all persuasions to desist from personal attacks on judges and thus to contribute to respect for the independence of the judiciary. At the same time, however, judges should desist from summoning editors to dress them down for errors made by reporters. There are appropriate channels for obtaining corrections. ■

Amnesty denied in Pebco Three case

ARG 18/6/99 (257)
Port Elizabeth - Four former security policemen involved in the abduction and killing of three leaders of the Port Elizabeth Blacks Civics Organisation (Pebco) were refused amnesty today by the Amnesty Committee of the Truth and Reconciliation Commission.

The so-called Pebco Three, community leaders Siphon Hashe, Qaqawuli Godolozu and Champion Galela were abducted at the Port Elizabeth airport on May 8, 1985, and subsequently murdered near Cradock on a farm known as Post Chalmers.

Their bodies were collected, burnt and thrown into the Fish River, according to the applicants.

The amnesty applications were heard in Port Elizabeth in November, 1997, and opposed by the widows of the three leaders

on the basis that there was no full disclosure.

Those refused amnesty are Herman Barend du Plessis, former commanding officer of the Security Police in Port Elizabeth, Johannes Martin van Zyl, Gideon Niewoudt and Gerhardus Johannes Lotz, who were all attached to the Security Branch.

Mr Du Plessis was refused amnesty for ordering the abduction, and for the murders. Mr Van Zyl, Mr Niewoudt and Mr Lotz were refused amnesty for the abduction and murder of the three leaders.

The only senior Security Police officer granted amnesty in connection with the Pebco Three was the former head of Security Police in Port Elizabeth, Harold Snyman. Poor health prevented him attending his amnesty hearing and he has since died.

TRC denies amnesty to cops for Peboco 3 killing

(252) ART 19/6/99

Six policemen failed to make 'full disclosure'

SOLOMON MAKGALE
Grahamstown

Gideon Nieuwoudt, the Eastern Cape's most notorious apartheid policeman, and four colleagues have been denied amnesty for the abduction and murder of the Port Elizabeth civic leaders known as the Peboco Three.

But the Truth and Reconciliation Commission's amnesty committee yesterday granted amnesty to another security policeman, the late Harold Snyman, for "conspiring and ordering" the abduction and murder of Port Elizabeth Black Civics Organisation leaders Siphon Hashe, Qaqawuli Godolozu and Champion Galela at a deserted farmhouse near Cradock in 1985.

merely approved the killings and, when he found out the orders had been executed, had asked no more because the operation had been carried out on a "need-to-know basis".

Former Vlakplaas policeman Kimani Peter Mogoai was also granted amnesty. The committee said Mogoai was a satisfactory witness.

Port Elizabeth security policemen Johannes Martin van Zyl, Nieuwoudt, Gerhard Lotz and Hermannus du Plessis and Vlakplaas operatives Johannes Kooze and Gerhardus Beslaar were refused amnesty for failing to make full disclosure about the "assaults".

Mr Justice Bernard Ngoepe and advocates C de Jager and NJ Sandi found that Beslaar had not shown he had a political objective when he assaulted Mr Hashe and that he failed to make a good impression.

His evidence displayed a selective

memory of the events and he had not made a frank disclosure, they said.

The committee said there was enough evidence Beslaar took part in torturing the Peboco men. He had also not disclosed his part in and knowledge of the role of the others in the assaults and torture. "His persistent denials must be rejected as false."

The committee said that Van Zyl couldn't produce any evidence of a political objective. The fact that his gun was used to kill the Peboco Three did not qualify as political.

Les Roberts, the Eastern Cape director of public prosecutions, said a new docket on the Peboco Three killings had been opened in 1996 and sent to the national office for a decision. Siphon Ngwenya, speaking for the national director of public prosecutions, could not confirm if a decision was to be made about the docket. — ECN Weekend Service



NO AMNESTY - Gideon Nieuwoudt

Truth Commission refuses to meet De

By MAX MARX

THE TRUTH and Reconciliation Commission has refused to meet former state president, F W de Klerk, dismissing government suggestions that both parties discuss the impasse over the TRC's findings on De Klerk -- the subject of a pending court case.

Former president Nelson Mandela's legal adviser, Professor Fink Haysom, told City Press the government wanted interaction between the two parties because little would be served by litigation and neither had anything to win in the case. "Government felt the TRC and De Klerk's stat-

ure would be diminished over this hickering and that it would be good for all concerned if a settlement could be reached on mutually acceptable terms."

He said government was originally involved in the case because the question arose as to whether the President's Office was responsible for its costs.

"In our view the President's Office is not responsible for the costs because the court case has arisen out of a response to the report, not out of representations to the TRC. In our view cases of this nature fall outside of the mandate of the state to sponsor." Haysom said government had

no other interest in the case.

Acting judge and former TRC acting chairperson Dumisa Ntsebeza said it would be improper for the TRC to meet De Klerk to renegotiate the findings, for further representations or to find an out-of-court settlement.

Ntsebeza said the TRC would not renegotiate its finding.

"The finding that we made is one that we stand and fall by."

It had been similarly improper to meet the ANC after they had requested a meeting before publication of the TRC report.

Ntsebeza said the TRC's findings had been made after written representations had been asked

from those adversely affected by the findings. These included Winnie Madikizela-Mandela, the ANC, De Klerk and Niel Barnard, former head of the National Intelligence Service.

"We would not entertain verbal input. We had refused meeting other persons, institutions and organisations, and if we had met the ANC, it would have appeared to be preferential treatment," he said.

Ntsebeza said matters of cost were best dealt with by the lawyers of the parties concerned.

The TRC's national legal officer, Paddy Prior, told City Press that TRC commissioner Yasmin

Sooka had received a message from the president's legal advisers that the president wished to investigate a settlement.

He said while it would be improper for the TRC to meet De Klerk, it was important that De Klerk's legal team and the TRC's legal team kept the lines of communication open.

In terms of the court action brought by De Klerk against the TRC, the TRC was restrained from publishing a certain finding on De Klerk which had to be blackened out before the final report was published in October 1997.

The TRC had allegedly found

Klerk

De Klerk to be an accessory to gross human rights violations.

It found that De Klerk had been aware, when he appeared before the TRC, that former minister of law and order Adriaan Vlok and former police commissioner General Johan van der Merwe had been involved in the bombing of Khotso House.

The TRC found De Klerk had a duty to report the matter to the police once he had become aware of it and should have known the bombing constituted attempted murder in that those who carried out the deed should have foreseen that people could get injured or killed.

Major denies ordering De Kock to kill askari

BD 22/6/99 (252)

FORMER security police major Jan Potgieter denied yesterday that he had asked former Vlakplaas commander Eugene de Kock to kill the askari Johannes Mabotha

Askari refers to a turned African National Congress (ANC) guerrilla.

Potgieter told the truth commission's amnesty committee in Pretoria that he had asked De Kock to keep Mabotha safe at Vlakplaas because he would have been a witness against Winnie Madikizela-Mandela in a possible high treason case.

De Kock told the amnesty committee earlier this month that Potgieter had asked him to "make a plan" with Mabotha so that he could no longer be involved in alleged police killings

De Kock is seeking amnesty for killing Mabotha at Penge Mine near Burgersfort in Mpumalanga in 1989. Mabotha's body was blown up with explosives after De Kock shot him twice in the head.

Potgieter, who was investigating criminal allegations against Madikizela-Mandela at that time, said it would not have been to his advantage to have Mabotha killed. He could not remember exactly what he had said to De Kock about Mabotha, but if he had said "make a plan" De Kock could have misinterpreted the meaning

Potgieter had wanted Mabotha to be accommodated at Vlakplaas because his life would have been in danger if he had been allowed to "roam free"

Earlier this month Potgieter was subpoenaed to give evidence on the matter. He is not seeking amnesty for the incident

Also yesterday, Michael Phama, a former member of an ANC self-defence unit, told the committee in Johannesburg that 20 of the 21 murders for which he was convicted were committed defending Thokoza residents from occa-

sional attacks by hostel dwellers

Phama is serving a life sentence for killing 16 Inkatha Freedom Party members attending a rally at Thokoza Stadium, the murder of another four IFP members who were shot along the Vereeniging Road and the shooting of a traffic officer in Alrode, all in 1991.

Phama said the murders occurred after numerous attacks on Phola Park residents, most of whom were supporters of the ANC.

The attacks were carried out by IFP supporters from the hostels.

Phama stated he committed the murders out of loyalty to the ANC and his commanders. — Sapa.

GETTING IT RIGHT

GERT Gouws is the chief financial officer of the Industrial Development Corporation, not chief operating officer, as reported yesterday.

□□□□

RUDOLF Gouws is chief economist at Rand Merchant Bank and not Johan Rossouw as was reported yesterday. Rossouw is an economist at ABN Amro Securities.

□□□□

A HEADLINE in Friday's Business Day read "Farm murders decline in April". While the number of farm attacks did decline slightly in April, overall they have increased sharply since the beginning of 1999.

UNIVERSITY OF CAPE TOWN



Thulani Cele (right) chats to co-applicant Roy Cele (left) after a TRC amnesty hearing in Durban's Christlan Centre yesterday. Roy Cele, who is an ANC member, is applying for amnesty for killing his father, Amos Cele, who at the time was an IFP member. PIC MASTER MOSUNKUTU

Son who killed father states case for amnesty

sowetan 23/6/99 (252)

By Gabi Khumalo

THE Truth and Reconciliation Commission amnesty committee in Durban heard a harrowing ordeal yesterday of how political violence in KwaZulu-Natal in the 80s had pitted father against son, often resulting in fatal consequences

Convicted African National Congress member Roy Cele is applying for amnesty for the December 1989 killing of his father Amos Cele who was a member of the rival Inkatha Freedom Party

The killing occurred at Manyaseni in Inanda, north of Durban, at the height of political violence between the now-defunct United Democratic Front and the IFP

Cele (38) testified that on December 28 1989, he was seated

outside the house as it was not safe after the killing of Dudu Ngcobo two days earlier

Ngcobo had been killed by a mob from an area known as Manyaseni after she had been accused of having invited IFP members to attack Thulani Cele (33) who is also applying for amnesty together with Roy Cele for killing Ngcobo

Thulani Cele was sought by IFP supporters from Umlazi over the killing of Ngcobo's brother, Martin, who had his arm mutilated during the attack

In his submission, Roy Cele said a group of people came towards him on December 28 1989 and when he asked who they were, they started shooting at him.

"I had a pump-action gun and I was joined by people from the area who returned fire in the direction of

these people (attackers)," Cele said

He admitted that he fired shots at the group that had hidden behind bush and others managed to escape

The next day, he said, a body was discovered in the vicinity where the attackers had been the previous night. He said he was certain that the deceased could have been one of the previous attackers

When the body was identified, it was discovered that the deceased was Amos Cele (79) who was the father of the applicant

Roy Cele is presently serving 20 years' imprisonment at Durban's Westville Prison

He said after several complaints by the community, he and other ANC supporters formed a committee to patrol the area to prevent criminals from attacking locals and robbing them

KZN amnesty plan a priority for Maduna

(252)

Sowetan 23/6/99

By Jimmy Seepe
Political Reporter

JUSTICE Minister Mr Penuel Maduna said yesterday he planned to devote his energies to the process of working out a special amnesty programme for KwaZulu-Natal.

Many in the province who may have been involved in human rights abuses did not apply for amnesty and they could still be subject to prosecution.

The special amnesty programme was conceived by Maduna's predecessor, Mr Dullah Omar, who is now Transport Minister. The programme has the support of President Thabo Mbeki.

Maduna said the question of a special amnesty for KwaZulu-Natal was expected to feature high in his plans.

Maduna said "This matter was raised early in the year by President Mbeki and my predecessor. I need to study this issue very carefully and to be fully briefed before I decide on the way forward."

A special amnesty for KwaZulu-Natal was first raised after it emerged that many who took part in crimes in the province did not apply for amnesty before the Truth and Reconciliation Commission.

Most of the individuals concerned, including former apartheid generals, are said to have been misled by their leaders into thinking that they would not be prosecuted.

The prospect of some of these individuals facing prosecution now looms large. There are growing fears that the prospect of prosecution could once again create instability in the once

volatile province.

It is expected that the process of special amnesty would also look at how to protect the democratic state against civil litigation that may arise from actions perpetrated by the apartheid government.

Maduna's spokesman, Mr Paul Setsetse, later told *Sowetan* that a new amnesty provision would be inclusive.

Setsetse said the idea was to see how to take the process of reconciliation forward, to ensure that peace in KwaZulu-Natal was maintained.

But he said whether the process would demand new legislation was still unclear. The department was currently involved in various consultations on the matter.

Continued speculation

Meanwhile, Maduna said he was concerned about the continued speculation in the media which linked him to allegations of improper activities during his term as minister of minerals and energy affairs.

Last year, Maduna was embroiled in a controversy which tried to link him to the appointment of Liberian Mr Emmanuel Shaw to the Central Energy Fund.

"I'm very upset and disturbed by reports which indicate that I was embroiled in a series of scandals while minister of minerals and energy affairs," he said.

"The people who are making this allegation lack proper understanding of the ministry, the department and the Central Energy Fund."

"I was never involved in the appointment of anyone to the Central Energy Fund," he said.

Murderer's bid for pardon opposed

By Muzi Mkhwanazi

A WITNESS who survived the gruesome massacre of 20 Inkatha Freedom Party members in Thokoza on September 8 1991, told the Truth and Reconciliation Commission amnesty committee yesterday that innocent people on their way to a rally were killed

Mr Richard Mpanza, who was shot and injured in the massacre, told the hearings in Mayfair, Johannesburg, that not only IFP and hostel residents had attended the rally at a local stadium. He said supporters of other political organisations were also present.

Mpanza, who is opposing Michael Phama's amnesty application over the killing of 20 IFP members, said the IFP marchers were armed only with shields and sticks and not firearms.

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He denied that the marchers had planned to attack Phola Park residents after the rally.

Phama had earlier asked for forgiveness from all he had harmed, saying "I ask for forgiveness from the IFP members who I killed and from their families. I also ask for forgiveness from the residents of Thokoza, who were affected by violence because of me."

Another witness, Ms Eunice Shabangu, whose husband was killed on February 26 1992 shooting incident when Phama and other members of a self-defence unit attacked a minibus taxi containing people believed to have been responsible for killing Phola Park residents at a communal tap, said her husband had not been not a member of any political organisation.

She said on the day her husband was transporting colleagues to work

goumetan 23/6/99

De Kock may have misunderstood order

PRETORIA — Former security police major Jan Potgieter conceded yesterday that former Vlakplaas commander Eugene De Kock may have interpreted something he said as an order to kill askari (turned African National Congress guerrilla) Johannes Mabotha.

"Something had to have happened in that telephone discussion to make De Kock prepare a murder scene," lawyer Wim Cornelius told Potgieter at the truth commission hearing in Pretoria.

"I agree," Potgieter said.

On Monday Potgieter denied that he had asked De Kock to kill Mabotha in 1989. He said he had asked De Kock to keep Mabotha safe at Vlakplaas because he would have been a witness against Winnie Madikizela-Mandela in a possible high treason case.

De Kock told the truth commission's amnesty committee earlier this month Potgieter had asked him to "make a plan" with Mabotha to end his alleged involvement in police killings.

De Kock is seeking amnesty for killing Mabotha at Penge Mine near Burgersfort in Mpumalanga in 1989. Mabotha's body was blown up with explosives after De Kock shot him twice in the heart.

Potgieter, who is not seeking amnesty for the incident, was earlier this month subpoenaed by the truth commission to testify because there were discrepancies between his and De Kock's evidence about Mabotha's death.

Mabotha, a former Vlakplaas askari, was arrested at Marble Hall in February 1989 after he disappeared from Vlakplaas and joined Madikizela-Mandela's former Mandela United Soccer Club.

Potgieter interrogated him for about six months on his involvement with the soccer club and Madikizela-Mandela. When it was time for Mabotha to be released, Potgieter said he phoned De Kock and asked him to house Mabotha at Vlakplaas.

Later that day Mabotha was shot dead.

(252) BD 23/6/99

De Kock's lawyer argues for amnesty over Mabotha

PRETORIA — Former Vlakplaas commander Eugene de Kock should be granted amnesty for killing Askari Johannes Mabotha because he had made a full disclosure about the incident, De Kock's legal representative Flip Hattingh said yesterday.

De Kock is seeking amnesty for killing Mabotha, a turned guerrilla, at Penge Mine near Burgersfort in Mpumalanga in 1989. Mabotha's body was blown up with explosives after De Kock had shot him twice in the heart.

Hattingh said the amnesty committee should accept De Kock's version of the incident instead of that of former security policeman, Maj Jan Potgieter, who was subpoenaed by the truth commission to testify in the matter but is not seeking amnesty for the incident.

Earlier this month, De Kock said Potgieter had asked him to "make a plan" with Mabotha to end his alleged involvement in police killings. De Kock then thought Mabotha had to be killed.

Potgieter said he had asked De Kock to keep Mabotha safe at Vlakplaas because he would have been a witness against Winnie Madikizela-Mandela in a possible high treason case.

On Tuesday, Potgieter said that he could not remember exactly what he had said to De Kock about Mabotha, but had he told De Kock to "make a plan" De Kock could have misinterpreted the meaning.

Potgieter interrogated Mabotha for about six months about his in-

volvement with Madikizela-Mandela and her former soccer club.

Hattingh said Potgieter's testimony was doubtful because he never phoned De Kock to find out how Mabotha was, even though Potgieter had considered him to be an important witness.

Potgieter's lawyer, Fanie Rossouw, said in his closing argument "My client has made a concession that De Kock is not lying, but this doesn't mean that he (Potgieter) is lying."

Meanwhile, a self-styled Inkatha Freedom Party member who is serving a life sentence for the 1991 murder of a train commuter told the truth commission's amnesty committee yesterday that he had committed the murder under the instructions of an IFP leader.

Xolani Mnguni of Soweto, who was sentenced to death in 1993 for murdering William Aphane, told the commission he attacked Aphane because at a meeting of about 70 IFP members held in Merafe Hostel the day before the murder an IFP leader, whom he only knew by the name of Radebe, instructed them to kill any Xhosa-speaking commuter on the trains as Xhosa speakers were believed to be African National Congress supporters — Sapa

BD 24/6/99

De Kock deserves amnesty: lawyer

By Gershwin Chuenyane

FORMER Vlakplaas commander Eugene de Kock deserved amnesty as he had made full disclosure and his evidence was credible, according to his lawyer.

De Kock's attorney, Mr Flip Hatting, told the Truth and Reconciliation Commission's amnesty committee during closing argument that his client, who was applying for the killing of Mr Johannes Mabothe at Penge mine in Mpumalanga in 1989, deserved amnesty because the

killing had a political motive

Hatting said De Kock made full disclosure and his evidence was more credible than that of Major Daniel Potgieter

"De Kock's version is the one to be believed in this regard. Potgieter contradicted himself and could not be possibly be telling the truth," Hatting said.

He also told the amnesty committee that De Kock admitted that his actions were based on what Potgieter had told him about Mabothe, even though he did not necessarily rely on his instruction,

but had agreed with him on how to deal with Mabothe to prevent him from further involvement in the killing of policemen.

The committee also heard that, realising that Mabothe would rejoin the African National Congress since Potgieter had no evidence against him, De Kock had come up with a plan to stop him from getting involved in acts of terrorism.

The amnesty committee postponed the second phase of De Kock's amnesty hearings to July 12.

65/9/24/16/199
Sewerfan

Bank 'supported apartheid'

OWN CORRESPONDENT

ET 25/6/99 (272)

JOHANNESBURG: The Azanian People's Liberation Army (Apla) specifically targeted Nedbank because the bank had made decisions which indicated they supported the apartheid government, the Truth and Reconciliation Commission heard yesterday

Testifying during his amnesty bid, former Media Workers Association (Mwasa) general secretary, Sithembele Khala, told the commission "it was common cause" that the bank had stolen money intended for trade unions and used it to "oil the covert machinery of the oppressor"

Khala, who said he was a Pan Africanist Congress (PAC) member and an operative of its military wing, added that Nedbank declined to open accounts for himself and other cadres freshly released from Robben Island in 1986, and this was another indication of the bank's anti-liberation struggle sentiment.

"The targeting of Nedbank was, therefore, not by default, but by design," he said

Khala is applying for amnesty after he was convicted of robbing a Johannesburg branch of Nedbank in 1990 and sentenced to 14 years in jail in April 1992.

He has not served a day in jail despite a failed appeal. He then applied for presidential pardon and later for amnesty. He is out on R30 000 bail

Khala maintains the robbery was politically

motivated because it was a fundraising exercise for the PAC

He told the commission he did not belong to the "repossessions unit" but to the logistics structure of the army.

He had been lent to the repossessions unit after he was convinced by his comrades that the mission was not for self-enrichment, but to raise funds for the organisation.

Khala said he had been wary of his high profile as a leader of Mwasa, but agreed to drive the getaway car because the loot was for the good of the party.

He said the PAC's struggle had to be understood to be two-pronged. Firstly, to pursue a national democratic revolution in which land was to be returned to indigenous Africans and to gain political power

The second part was a social democratic revolution in which the means of production and the land were to be redistributed.

To achieve these aims, the PAC declared war on captains of industry and capital.

Khala said police had known at the time of the arrest that the robbery was politically motivated and had even said so during a bail application.

His lawyer, Lungelo Mbandazayo, told the commission his client deserved amnesty because he had acted on behalf of a known political organisation and had made a full disclosure.

Justice 'unlikely' to keep skilled people

CAPE TOWN — The justice department had little chance of retaining highly skilled personnel who could earn more money in the private sector, new Justice and Constitutional Development Minister Penuell Maduna said yesterday.

He was appearing on the SABC television programme Newsmaker.

"I don't think there is much, if anything, we can do about that," he said when asked how the justice department could hang on to experienced personnel.

The department had asked for a R3,5bn budget, but had only been given R2,7bn. Maduna said he would initially look at whether the money was being used efficiently, rather than ask for more cash.

He said the huge number of

prisoners awaiting trial was a problem, and he would investigate why courts worked on average only four-and-a-half hours a day.

"We are also looking at the whole thing of the management of prosecutors," Maduna said work would continue in transforming the composition of the bench, which currently has 14 vacancies.

"I am sure everyone is going to be sensitive to the way we fill them."

He said the constitution did not condone political interference in the work of the judiciary, but politicians were only human and their comment on judicial decisions was acceptable.

Appearing on the same programme, Agriculture Minister

Thoko Didiza pledged to speed up the land restitution process.

Roughly 50 000 land restitution claims had been lodged, while only 237 had been processed, she said.

However, much of the work for verifying claims had been done and many procedures for processing claims had been dispensed with.

Asked how farm security would be stepped up, Didiza said: "We will enhance the programme that has already been started." Plans announced by President Thabo Mbeki to clamp down on crime would also boost rural security.

Didiza, 34, the youngest member of Mbeki's Cabinet, said she did not deem it problematic that she would be working in a male-dominated field. — Sapa

(242)

BD 28/6/99

War with banks 'made Nedbank legitimate target'

BY OFFICIALLY financing the apartheid government's security police operations, Nedbank placed itself squarely in the firing line as a legitimate target of the Azanian People's Liberation Army (Apla) forces, the truth commission heard yesterday.

A former general secretary of the Media Workers' Association of SA (Mwasa), Sithembale Khala, made this submission to the commission's amnesty committee. He has applied for amnesty for the armed robbery of a Nedbank branch in Johannesburg 1990. He was sentenced to an effective 14 years' imprisonment for the crime.

Khala is a former Pan Africanist Congress exile (PAC) who served 10 years in prison on Robben Island.

He told the amnesty committee that the PAC — of which Apla was the armed wing — was involved in a "socialist democratic revolution" and at war with the banks as "captains" of big business.

"We were determined to crush big business which was part of national exploitation, and this made banks legitimate targets just like police and soldiers," he said.

When he and other former political prisoners tried to open accounts with Nedbank after their release in 1987, it turned them down on the grounds of their political status.

"As if that was not enough, the same bank publicly financed the security police, working with the likes of Eugene de Kock. This was a clear political statement and the targeting of the Nedbank was by choice."

Examined by his legal representative, Lungelo Mbandazayo, Khala said he had never belonged to Apla's "repossession unit" but to its logistics unit.

When Mwasa national organiser Vincent Mama asked him to participate as a driver in the operation, Khala was reluctant, thinking of his public image and position, but finally agreed to be "loaned" after Mama convinced

him that it was important for "fund raising"

On the morning of March 28 1990, Khala and Mama picked up some cadres in a minibus and drove to the bank in Simmonds Street. The cadres entered the bank and returned with a bag of money later.

"As we were driving down Marshall Street, we were confronted by police who were already firing shots ... and we tried to flee on foot." A shot hit him and, as he fell, he was shot several times. He eventually spent more than six months in hospital.

Questioned by commission chairman Judge Denzil Potgieter, Khala said the investigating police told him they knew the robbery was an Apla operation.

They repeated this when opposing his bail application during the trial, but Khala denied any Apla link since the organisation was banned at the time.

Asking to be granted amnesty, Mbandazayo submitted that Apla was a known political organisation, the operation was not for personal gain but was politically motivated and Khala had made a full disclosure.

Meanwhile, a former Apla cadre was granted amnesty by Potgieter yesterday for an attack in 1993 on a Johannesburg frozen food company which he claimed was robbed as part of Apla's "repossession" operations to raise funds for the organisation.

Themba Sishange was serving a 15-year jail term for attempted robbery, attempted murder and illegal possession of firearms and ammunition following a failed robbery at J&J Frozen Products in Jeppestown in 1993.

His legal representative, Lungelo Mbandazayo, told the truth commission's amnesty committee that the operation was not intended for Sishange or the group's personal gain. They were acting on behalf of a known political organisation.

The committee said it would make the reason for its decision known later. — Sapa.

Nedbank was 'struggle enemy'

By Muzi Mkhwanazi

NEDBANK declared itself the enemy of the struggle by channelling funds to government agents, the Truth and Reconciliation Commission heard yesterday.

(252)
Former Azanian People's Liberation Army (Apla) cadre Mr Sithembele Khala told the TRC's amnesty hearing held in Mayfair, Johannesburg, yesterday that the PAC's fundraising campaign involved robbing banks which had been identified as legitimate targets in the struggle for liberation.

"We were at war with the captains of capital which are the banks. The banks were therefore a legitimate target. They were like soldiers of an

enemy camp.

"It was our determination to crash banks and business organisations which were part of the capitalist machinery used against liberation movements.

"Our fundraising campaign was not conducted by default but by design," Khala said.

The former Media Workers Association of South Africa (Mwasa) secretary general is applying for amnesty for a foiled robbery of a branch of Nedbank in Johannesburg in 1990.

He was sentenced to 14 years but he did not serve time after having applied for the Presidential indemnity.

Explaining the reasons why Nedbank was chosen, Khala said: "Ned-

bank made a political statement by refusing to open banking accounts for a number of political prisoners who were released together with him from Robben Island in 1986.

"It is also common cause that Nedbank stole money which was meant for the trade unions to oil the covert machinery of the oppressor. Nedbank was as an enemy of the liberation struggle. We then discussed attacking it and indeed we did so."

Khala said he was initially reluctant to take part in the robbery because of his high profile in Mwasa, but eventually did so because he knew that he was not going to benefit personally.

The decision whether to grant him amnesty was reserved.

Sowetan 25/6/99

Justice system in for overhaul

(252) Sowetan 25/6/99

Sowetan Reporter

THE Department of Justice and Constitutional Development has plans to implement strict laws in an effort to combat misconduct in South Africa's courts.

The department said the measures would be implemented to combat late arrivals, drinking alcohol on the job and general misconduct alleged to be taking place in some courts.

"Serious and decisive steps will be taken against anybody in any position who is found to be misbehaving or breaching the code of conduct," a statement released yesterday said.

In order to ensure effective control of the justice system, the following steps will be taken:

- The department will continue to implement the lay assessor project in order to bring the justice system closer to the community,

- The department will commit itself to promoting access to legal representation with measures to extend

legal assistance to indigent persons, both in civil and criminal cases. The department's initiatives in this regard include strategic interventions to broaden the legal profession and access to the services of that profession. The Legal Aid Board will fast-track the move away from the judicare system towards an extension of the less expensive "public defender scheme".

- Enhancing the administration of justice in Southern Africa, initiatives will be continued to procure uniformity which will result in the uniform enforcement of maintenance orders and measures to facilitate closer cooperation to combat crimes such as drug trafficking and corruption,

- Ensuring that the South African Law Commission continues to investigate on a variety of issues, such as those relating to community participation.

The Department is also currently busy implementing an internal audit process to improve its financial management system.

Police Commissioner

mation of all aspects of society, which has seen ANC figures appointed to key positions. These include Ngcuka, whose job as National Director of Public Prosecutions was specially created to give impetus to transformation of the justice system; Tito Mboweni to the Reserve Bank as an understudy to governor Chris Stals; and Gill Marcus, also to the Reserve Bank, where she will be a deputy governor.

Former Unkhonto we Sizwe chief of staff, Siphiwe Nyanda, was appointed as head of the defence force in June last year.

On Friday, Mbeki announced proposed legislative changes including amendments to the firearm laws, which could see harsher sentences for offences committed with firearms. Amendments to the Prevention of Organised Crime Act, to ensure that nobody benefits from the proceeds of crime; and new laws against money laundering.

Legislation would also be introduced to ensure harsh penalties for the killing of police officers and for people guilty of corruption within the criminal justice system.

Attacks worry Chief Justice

CARMEL RICKARD

(252)
CHIEF Justice Ismail Mahomed has added his voice to the growing body of concern about unwarranted attacks on the judiciary, saying such onslaughts reduced the power of judges to protect the public.

During his address to the University of Cape Town, which awarded him an honorary doctorate on Friday, Judge Mahomed said the judiciary was the cornerstone of protection against abuse. Judges, however, had neither the funds nor the physical might to impose their will. Instead, the source of judicial power lay in the measure of public confidence it enjoyed.

Fair and even vigorous criticism of the judiciary was permissible and strengthened both the Bench and society by expanding the intellectual and moral content and the legitimacy of the law.

However, Judge Mahomed warned criticism of judges was sometimes dangerously uninformed, unfair and unbalanced, and impugned the integrity of the judiciary.

He said such criticism was dangerous because it corroded public confidence in the legitimacy of the judiciary, thus weakening its ability to defend the public against injustice and undermining the Constitution.

He challenged the universities and the media to be vigilant against this "corrosive peril".

The remarks of the Chief Justice echo similar warnings by the Constitutional Court. Just last week, Gauteng Judge President Bernard Ngoepe told a conference of magistrates that many people, particularly politicians, felt that judges were too powerful. Judge Ngoepe said there would always be tension between the judiciary and Parliament, but there were increasingly disturbing noises from politicians tending to denigrate the judiciary.

ST 27/6/99
"They suggest, wrongly, that the judiciary has too much power," he said.

'Nedbank funded racism' - robber

By MAX MARX and Sapa

NEDBANK on Friday challenged an amnesty applicant's testimony to the Truth and Reconciliation Commission that it financed the security police during the apartheid era.

Sithembele Michael Khala, former Azanian People's Liberation Army (Apla) cadre and general secretary of the Media Workers' Association of South Africa was applying for amnesty for the armed robbery of a Nedbank branch in 1990.

He told the commission the bank refused to open accounts for them because of their political status after they were released from Robben Island.

"As if that was not enough, the same bank publicly financed the security police, working with the likes of Eugene de Kock. This was a clear political statement and the targeting of Nedbank was by choice," he said.

"In a statement Mike Leeming, Nedbank chief operating officer, dismissed Khala's allegations.

"We dismiss as ludicrous any allegations against Nedbank made by the amnesty applicant (Khala) in his submission to the TRC.

"We are extremely concerned that a convicted criminal should be given a platform to make public allegations against Nedbank that have neither been tested nor verified, especially since we were not given the opportunity to oppose the amnesty hearing," he said.

Khala has applied for amnesty for the March 28, 1990 armed robbery at Nedbank in central Johannesburg.

Khala told the amnesty committee that he had driven the getaway car that had transported members of the PAC's military wing, Apla, to and from the bank on the day.



AMNESTY APPLICANT ... PAC congress member and businessman Sithembele Michael Khala

He explained to the committee that during 1990, Apla had a critical shortage of operational funds and it therefore embarked on fund-raising campaigns, which included bank robberies.

Khala told the committee that after lengthy discussions with his co-ordinator, Vincent Mama, he agreed to transport the cadres.

"There was no doubt in my mind that this mission was in furtherance of the struggle," he told the amnesty committee.

Khala was convicted of robbery with aggravating circumstances and attempted murder and sentenced to an effective 14 years' jail.

During his trial, Khala pleaded not guilty on both counts and lied to the court saying he had been hijacked and forced at gunpoint to drive the robbers.

EP 27/6/99

Maduna rules out general amnesty deal

ARG 28/6/99 (a h a)

Those who failed to apply for amnesty when they had the chance only had themselves to blame, said new Justice Minister Penuell Maduna today.

Speaking at a special ministerial briefing for journalists in Cape Town, he said the biggest challenge facing the office of the National Director of Public Prosecutions lay in the identification, investigation and possible prosecution of perpetrators of gross human rights violations emanating from the Truth and Reconciliation Commission process.

Mr Maduna categorically rejected any change regarding a general amnesty. "There will be no general amnesty," he said.

Mr Maduna said he was merely repeating what former President Nelson Mandela had already said.

However, he acknowledged that there would be certain aspects of the law that required attention.

In February, Mr Mandela said it was an omission on the part of the country's lawmakers that while individuals were accommodated, the process left open the possibility of endless litigation against the new Government - Sapa

Govt 'cannot compete'

THE GOVERNMENT has made a mistake of retaining highly skilled personnel who could earn more money in the private sector, new Justice and Constitutional Development Minister Penuell Maduna said yesterday.

He said the government's SARL (State Assets Realisation) programme was a failure.

He said he did not think there is much of anything to be done in the SARL programme. The Justice Department will be looking at the SARL programme.

The government has a R3.5 billion budget but had only been given R2.7 billion, Maduna said. He would initially look at the SARL programme and then at the SARL programme.

He said he had a huge number of awaiting trial prisoners. He said he would be looking at the SARL programme and then at the SARL programme.

He said he was also looking at the whole of the SARL programme.

He said he would continue to transform the composition of the bench. The bench currently has 14 vacancies.

He said he was going to be sensible in the SARL programme.

He said he did not condone political interference in the work of the judiciary. He said he would be looking at the SARL programme and then at the SARL programme.

He said he had received a letter from Dullah Omar earlier this month.

He said Judge Willem Heath's resignation was a matter of internal security. He said he would be looking at the SARL programme and then at the SARL programme.

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Justice and Constitutional Development Minister Penuell Maduna

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(1/1/1)

Thabo Mbeki's new Cabinet - Sana

No amnesty for those who failed to apply

THOSE who failed to apply for amnesty when they had the chance had only themselves to blame, new Justice Minister Peñuell Maduna said yesterday (29.2)

Speaking at a special briefing for journalists, he said the biggest challenge facing the office of the national director of public prosecutions lay in the identification, investigation and possible prosecution of perpetrators of gross human rights violations identified by the Truth and Reconciliation Commission process.

Maduna rejected any chance of a general amnesty.

He said he was merely repeating what former president Nelson Mandela had already said.

"It is not our intention to grant amnesty to those who ought to have applied. They have themselves to blame," Maduna said — Sapa

ARU #29/6/99

Counting costs of holding prisoners

Linda Ensor

(272) 20 29/6/99

CAPE TOWN — Awaiting-trial prisoners, some of whom spent up to seven years in jail before being tried, cost government about R1bn annually, Auditor-General Henri Kluever said in a report on the correctional services department which was tabled in Parliament yesterday.

Kluever also alerted Parliament to the fact that a conflict of interest appeared to exist in the fact that Khulekani Sithole, the prisons commissioner, had operated a soccer team, most of whose members were employed by the department.

Sithole informed Kluever last October he had sold his interest in the team, Spartak, which was in the national first division soccer league and had received 50% of the selling price. Kluever's office launched an investigation of Sithole after complaints from the SA Prisoners' Organisation for Human Rights.

Kluever said in his report for the year to end-March 1998 that awaiting-trial prisoners, whose numbers had escalated sharply since 1996, cost the state R2,7m a day. This consumed 30% of the annual budget of R3,3bn. As at end-January last year, SA's prisons were on average 44,5% overpopulated against 10,5% overpopulation as at June 30 1995 — an increase of 30%.

Kluever said medical treatment for prisoners was not always provided cost-effectively. A sum of R46m spent on medical services was found to be unauthorised because the contract awarded to Medihelp in May 1995 did not comply with tender procedures. The contract was ended on April 1.

Kluever criticised the correctional services department for delaying payment of R65m for overtime in February and March last year, so that the department did not exceed its annual allocation. This was in breach of treasury instructions and also negated the principle that Parliament should control departmental grants. The SA Police Service had delayed paying R402m during the same year.

Correctional service officials justified the action on the grounds that it was necessary while a new system of overtime payment was implemented.

Regarding the education department's finances, Kluever found that a R35m contract with the SA Broadcasting Corporation for the broadcasting of educational programmes was unauthorised because proper tender procedures were not adhered to.

DP excluded from judicial commission

ART 30/6/99

(277)

Luyt among six MPs named

ROBERT BRAND
PARLIAMENTARY BUREAU

The official opposition, the Democratic Party, was left out in the cold, but Federal Alliance leader Louis Luyt was among six MPs nominated by Parliament today to serve on the Judicial Service Commission (JSC)

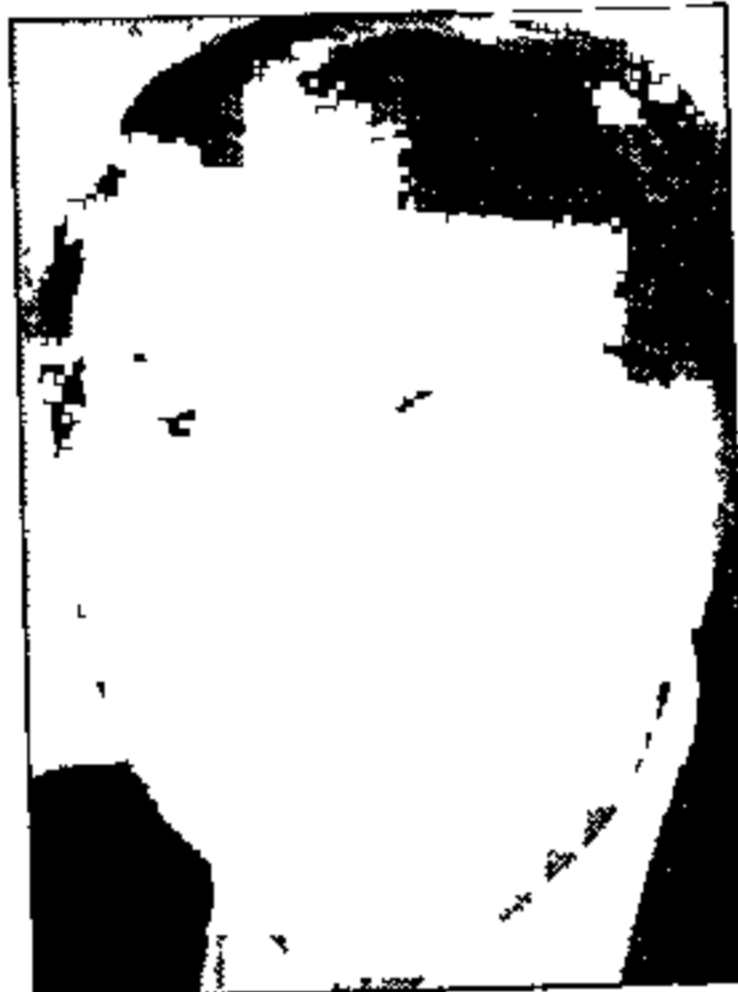
The JSC is a constitutional body which advises the Government on judicial matters and plays an important role in the appointment of judges

Six members of the JSC must be members of the National Assembly, three of which must come from opposition parties

Opposition parties could not agree among themselves on three representatives, and it was left to African National Congress Chief Whip Tony Yengeni to nominate Sheila Camerer of the New National Party,

Koos van der Merwe of the Inkatha Freedom Party, and Dr Luyt

Former justice minister Dullah Omar (now transport minister), former chairman of the justice portfolio committee Johnny de Lange and Deputy Trade and Industry Minister



Louis Luyt



Sheila Camerer

Lindiwe Ngwane were picked to represent the ANC. The motion was adopted by 304 votes to 35, with 11 abstentions. The DP insisted on a formal division of the House.

An amendment by DP chief whip Douglas Gibson, formerly a member of the JSC, that he be chosen rather than Dr Luyt, was defeated by 283 votes to 58, with 13 abstentions

Mike Ellis, of the DP, objected that Mr Van der Merwe was not allowed to be nominated as the IFP was a government party rather than an opposition one (it has three members in the Cabinet)

Speaker Dr Frene Ginwala ruled that the IFP was an opposition party

Dr Luyt's selection may raise eyebrows. In a Constitutional Court case involving the dispute between the Government and the South African Rugby Union, of which Dr

Luyt is a former president, Dr Luyt challenged the fitness of a number of judges - including Constitutional Court president Arthur Chaskalson - to hear the case. The Constitutional Court rejected the challenge, prompting Dr Luyt to withdraw from the case

DP ire at exclusion from judicial body

(252)
SOUTH AFRICA could face a constitutional crisis following the designation of an Inkatha Freedom Party MP to the Judicial Services Commission (JSC), Democratic Party chief whip Douglas Gibson warned yesterday.

The African National Congress has given the DP, its new official opposition, a resounding slap in the face by excluding the party from the list of six National Assembly representatives for the JSC, whose main task is selecting judges.

Three JSC members must be from the opposition.

Gibson said that the DP maintained that the IFP was a party in government as a coalition partner of the ANC, and therefore not in opposition.

The nomination of IFP whip Koos van der Merwe could, therefore, be unconstitutional, he claimed.

Earlier the Assembly adopted a motion by ANC chief whip Tony Yengeni that transport minister Dullah Omar, chairman of the former justice portfolio committee Johnny de Lange, and Deputy Trade and Industry Minister Lindiwe Ngwane represent the ANC. Sheila Camerer of the New National Party, Van der Merwe and Federal Alliance leader Louis Luyt represent the opposition.

Luyt's party has only two MPs (including himself) while the DP has 38 — Sapa

07/17/99

Assassination probe revived

PRETORIA: Ten years ago Windhoek advocate Anton Lubowski was assassinated, but until now it has looked as if the investigation had come to a standstill **JOHAN GAGIANO reports (ZNA)**

ANTON LUBOWSKI, the first prominent white Namibian to declare himself a Swapo member, died in a hall of AK-47 fire as he opened his garden gate at 8.30pm on September 12, 1989. He was returning from another day at work at his law office in Windhoek.

From the dark, 14 bullets tore into him. He died as he fell, his briefcase still clutched in his left hand. No one saw the killers do it. But neighbours claimed to have seen a red Volkswagen Golf speeding off.

Police described the murder as a "professional job, probably by a hired gun". Then started one of the most intensive investigations in the history of political assassinations in Southern Africa, with police in both Namibia and South Africa trying to solve the case. But exact motives for killing the 37-year-old advo-

cate elude investigators still. As a student at Stellenbosch University he stood for the students' representative council, but was rejected for his left-wing ideas. He eventually completed his legal studies at the University of Cape Town. A day after Lubowski's killing, freelance cartoonist Donald Acherson, 52, was arrested in Windhoek — driving a red Volkswagen Golf.

He was later released, but immediately re-arrested and officially charged with the Lubowski murder. An alleged Civil Co-operation Bureau (CCB) operative and former narcotics detective, Ferdi Barnard, was arrested three weeks later and police said they were looking for a third suspect. Although Barnard is at present serving a long-term prison sentence in Petro-

ria for the murder of David Webster in Johannesburg in May 1989, police could never confirm any CCB involvement in the Lubowski case. Barnard, however, admitted he had had Lubowski under surveillance while he was visiting Cape Town and that he was also monitored in Windhoek.

Warrants for the arrest of three other alleged CCB operatives, Staal Burger, Chapple Maree and Calla Botha (all former Brixton Murder and Robbery Squad detectives) were issued in March 1990. The warrants were never acted on.

During Acherson's murder trial in Windhoek, the then-acting Justice Ismail Mohammed (now Chief Justice in South Africa) slammed the prosecution for not producing sufficient evidence — four crucial witnesses failed to appear in court — and for not convincing him that Acherson should be kept in jail. Charges against Acherson were officially withdrawn on May 8, 1990.

Namibian authorities then claimed that their South African counterparts had undermined the proceedings. South African authorities, however, said they would consider any extradition request from Namibia in connection with the Anton Lubowski murder, provided it was made in a proper way.

An inquest into the murder was postponed indefinitely in November 1995 as subpoenas were served on witnesses too late for them to prepare properly. Alleged CCB operatives Burger, Wouter Basson, Slang van Zyl, Barnard, Maree, Botha and Acherson were named by a Namibian judge as being responsible for the murder.

Another inquest was scheduled for February 9 to 13, 1998, but fell through. The Lubowski family disapproved of another judicial inquiry, saying they wanted the murderers brought to trial, not another inquest.

The investigation virtually came to a standstill until six months ago when the file handed on the desk of Tone Pretorius, the deputy director of public prosecutions in Pretoria.

FILED 2/7/99



FLASHBACK: Anton Lubowski's parents, Wilfried and Moly Lubowski, show the Truth and Reconciliation Commission one of the intimidating articles their son received in the mail shortly before his assassination. **PICTURE: BENNY GOOL**

Dangling criminals at crocs

VETERAN right-wing supporter Gaye Derby-Lewis, whose husband, former Conservative Party MP Clive Derby-Lewis was convicted of the murder of SA Communist Party general-secretary Chris Hani in 1993, has joined a notoriously brutal vigilante group, *Sunday World* reported yesterday

Derby-Lewis, who now calls herself Gayle Smith, co-founded the Mapogo-a-Matamaga's Pretoria branch three months ago.

Its crime fighting methods include whipping criminals and dangling them before crocodiles.

Mapogos are run by Northern Province businessman Chief John Magolego, who faces a murder trial after one suspected criminal died at Mapogo's hands. The group's Sotho name means, "when a leopard is confronted by a tiger it becomes a tiger itself"

Smith says whites are joining the group in scores. Magolego, who went to Pretoria to meet them, said "The people have confidence in us. Criminals know that if they cross us we will work on their buttocks."

Derby-Lewis said "John is the right man at the right time and his colour is irrelevant."

Mapogo has fast emerged as South Africa's largest vigilante organisation, growing from fewer than 100 members in 1996 to about 35 000 today — Sapa

'PARTHEID MINISTER 'MUST BE HELD ACCOUNTABLE'

Prosecute Malan, says Lubowski's mother

(SAA) of 5/7/99

RELATIVES of slain Swapo activist Anton Lubowski believe the apartheid government's defence minister, Magnus Malan, should be among those prosecuted for his brutal 1989 murder in Windhoek. Their belief is supported by a senior TRC investigator **GUSTAV THIEL** reports

REACTION to Friday's *Cape Times* report that arrests are imminent in the investigation of her son's murder, Lubowski's mother Molly said the family would be satisfied only if Malan is held accountable for the actions of his minions and their attempts to smear her son's name.

A senior consultant for the Truth and Reconciliation Commission, Zenzile Khoisan, says he found a "mountain of evidence" while investigating Lubowski's murder "which linked senior government officials, including Malan, to attempts to cover up the murder".

Khoisan told the *Cape Times* he believes that "Malan has a lot of questions to answer for his role in state-sponsored murders, including that of Lubowski".

The Lubowski family was recently informed by the Directorate for Public Prosecutions that the murder investigation was reopened two years ago in the wake of the previous government's unsuccessful attempts to bring the murderers to book.

Lubowski's mother is adamant that Malan and his underlings in the state intelligence apparatus in the years preceding democracy in South Africa planned her son's murder and then, in an attempt to cover up their dirty tricks, proceeded to tarnish Lubowski's rep-

utation as a staunch opponent of government by implicating him as a covert military intelligence operative while he was working for Swapo.

Lubowski's 21-year-old son Almo says as far as he is concerned his father's name was cleared by the TRC, which found no credible evidence that Lubowski worked for military intelligence. Almo was reacting to a report in the *Report* newspaper which quoted unnamed generals of the previous regime who insist that Lubowski worked as a paid military intelligence operative.

Khoisan said the newspaper report is incorrect and added that his investigation found that Lubowski did not work for military intelligence.

Almo Lubowski said "The TRC cleared my father's name and it seems that the newspaper is out to start all the speculation again. As far as I am concerned, it has been proved that my father never worked for military intelligence. All these rumours were merely designed to cover up what really happened."

Anton's sister Annaliese says the family has been informed by a team of investigators that the prosecution of her brother's killers is likely to begin in October in Pretoria. The family has also been informed who will be prosecuted,

but investigator Superintendent Neels de Lange has asked them not to name the suspected killers.

The Lubowskis admitted, however, that the same Civil Co-Operation Bureau (CCB) operatives who were arrested shortly after Anton's murder in 1989 will "probably" be tried again this time around.

A day after the killing, Irishman Donald Acherson was arrested in Windhoek. Three weeks later police arrested Ferdi Barnard, who is now serving a long-term prison sentence in Pretoria for the murder of David Webster.

Warrants for the arrest of three other CCB members — Snaal Burger, Chapple Maree and Calla Botha — were issued in 1990, but were never acted on. In addition, a Namibian judge implicated Burger, Barnard, Maree, Botha and Acherson in the murder. The judge also named Wouter Basson and Slang van Zyl as "probable accomplices". Although a further inquest was scheduled for February 1998, nothing ever came of it.

Speaking to the *Cape Times* yesterday, Van Zyl admitted that he was approached by investigators about the case, but added that he had nothing to fear from them. "I am not aware that arrests are imminent and I think the latest newspaper articles are premature. In any case I am not one of the suspects."

Now the Lubowskis are facing the prospect of another attempt to prosecute the murderers, but this time they are expressing their faith in the legal system overseen by South Africa's democ-



LONG SUFFERING - Members of Anton Lubowski's family who are still waiting for his murderers to be prosecuted are (from left) his sister Annaliese, mother Molly and his two children, Almo and Nadia

rate government.

While the Lubowskis admit that the men named in previous investigations will in all likelihood be prosecuted again this time, it is the name of Magnus Malan that they want to see at the

top of the list.

Molly Lubowski says Malan should be held accountable for the planning of the whole operation.

"The higher up the investigation goes, the happier I am I have

no kind words for Malan and believe that he should be one of the men who is put behind bars for the murder," she said.

Annaliese Lubowski believes the family will never "achieve closure" over the murder, but says

she will not rest before "people are put behind bars, because it is vitally important to show other people who suffered similarly by losing family members that there is the possibility of finding out what happened to their loved ones"

PICTURE: ALAN TAYLOR

Establishing faith in justice

By Penull Maduna

FROM input I received during the past few weeks – from the former minister and deputy minister of justice the Department of Justice and other role players – it has become very clear that much still needs to be done to transform the justice system.

I say so because it is not only necessary to bring the justice system in line with the Constitution, but also to restore its legitimacy in the eyes of the people.

Since 1994 much progress has been made under then minister Dullah Omar and then deputy minister Dr Manto Tshabalala-Msimang. They deserve our country's sincere appreciation for their sterling work.

However, if our vision is to meet the challenge of assisting the Government to create a stable society in which all communities are able to live in peace, safety and security, we will have to work full steam towards establishing a legitimate and accountable administration of justice. It should not only be transparent, accessible and representative of the whole South African community, but also help to restore the rule of law. That will be in order to address violence and serious crime, establish accountability for human conduct and behaviour as well as ensure that a new culture based on respect for human rights is promoted.

In this regard a lot still needs to be done to instill and maintain public confidence in the administration of justice and to dispel the notion that the courts have not been effective in the fight against crime – particularly serious crime and crimes against women and children.

To reach these objectives, my department has started to re-prioritise its activities, in order to meet the needs of our people within the real budgetary constraints we are faced with.

The department will also continue to initiate measures to ensure the courts can play an effective and efficient role – within the ambit of the National Crime Prevention Strategy (NCPS) – in the fight against crime, and also to deter criminals and help combat criminality in general.



Justice Minister Penull Maduna, the justice system must be transformed to bring it in line with the Constitution and to restore its legitimacy in the eyes of the people.

I wish to indicate some of these priorities, which will have to be met head-on in the short- to medium-term periods ahead. Steps that will assist to improve the effectiveness of the courts include the following:

- The Health Commission will continue to help deal with corruption.
- The Departmental User Board will speed up the automation of systems at the courts and justice offices to improve efficiency and, in the process, also assist with workflow management and case management.
- Court management is being improved and will continue to receive attention through the management structures that are being established at both regional-provincial level and sub-office levels to attend more effectively to all court matters in their respective areas.

In addition, and within the NCPS, the re-engineering of business processes throughout the criminal justice process – that is, from arrest to prosecution, imprisonment, parole and rehabilitation – will continue.

- These actions are aimed at developing an integrated management system for the whole criminal justice system. Thus increasing the probability of successful investigation, prosecution and punishment for priority crimes and also reduce the time period between the reporting of a crime and sentencing.
- As a result of the high number of remands show 1 by court roll statuses from the regional courts, the development of a pilot project of reception-channelisation courts in major centres will be continued, as will the rationalisation of sub-offices in order to reduce

play under-utilised staff

To meet the needs of people with special needs – that is sexual offence victims, children and so on – sexual offence courts are being established and, in future, new courts will be built with full facilities in this regard.

A task team has been set up and a business plan has been drawn to roll out the sexual offences project to more areas.

In addition, the family court centres that were set up will continue as they are operating relatively successful.

The Constitution places a duty on the department to ensure that courts are accessible to every person or community. The department has committed itself to address this need in its focus on access to justice.

Examples of initiatives in this regard include the following:

- The department will continue with the implementation of the lay assessor project in order to bring the justice system closer to the community.
- The department has not only committed itself to the constitutional objective relating to access to legal representation, but has started to implement measures to extend legal assistance to indigent persons, both in civil and criminal cases.

The department's initiatives in this regard include strategic interventions to broaden the legal profession and access to the services of that profession for persons and communities from all cultural groups and economic backgrounds.

I will also be having further discussions with the Legal Aid Board to fast-track the move away from the judicial system towards an extension of the less expensive public defender scheme and other models regarding legal representation.

- To further enhance the administration of justice in Southern Africa, initiatives will be continued to procure uniformity in the whole subregion, leading to, *inter alia*, the promotion of uniform enforcement of maintenance orders and measures to facilitate closer cooperation regarding the combating of crime drug trafficking and corruption.
- The South African Law Commission will continue with its investigation on various topics, such as those

relating to community participation through alternative dispute resolution like mediation, traditional courts and community courts to facilitate access to justice bearing in mind the diversity of issues, cultures and constitutional parameters.

Other aspects are the development of a new juvenile justice system, which aims to protect the rights of children, to establish a comprehensive criminal justice system for children.

● The department's access-to-justice initiative will continue to incorporate community outreach programmes and a commitment to the simplification of language used in statutes and the administration of justice.

The promotion of certain pieces of legislation is also very important:

- The Superior Courts Bill will rationalise the present jurisdictional areas of the High Courts, leading to increased access to justice, in all nine provinces.
- The Promotion of Equality Bill will give effect to Section 9 of the Constitution.
- The Open Democracy Bill will give access to information, as contemplated in Section 32 of the Constitution.
- The Review Powers of Courts Bill will give effect to Section 33 of the Constitution, relating to just administrative action.

● The Interception and Monitoring Prohibition Amendment Bill is intended to further regulate and improve the monitoring and interception of communications in the fight against crime, and

● The Prevention of Crime Fund Bill is intended to place greater emphasis on the victims of crime through compensation and other interventions.

These, and other measures to ensure that the department plays a meaningful role in the fight against crime, will receive further attention this year.

Justice is a very serious issue which requires serious consideration by all stakeholders. To this end, my department and I are committed to continually improve the way in which courts function to promote true justice for all.

(The author is Minister of Justice and Constitutional Development.)

Hani 'ordered MK to rob rich white people'

ARGUS CORRESPONDENT (297)

Johannesburg - South African Communist Party general secretary Chris Hani ordered guerillas to rob "rich white people" to raise money for weapons and food, the Truth Commission's amnesty committee has found.

The committee granted amnesty to Phumlani Kukubeni, a former bodyguard of Mr Hani and a member of the African National Congress armed wing, Umkhonto we Sizwe (MK), for an armed robbery on a cash store in the then Transkei homeland in August 1992.

Kukubeni and two accomplices, Themba Mnguni and Mtutuzeli Ngozwana, claimed they committed the robbery after being given the go-ahead by Mr Hani, at the time chief-of-staff of MK.

Mr Hani was murdered outside his Boksburg home nine

months later by two right-wingers, Clive Derby-Lewis and Janusz Walus.

Kukubeni, Mnguni and Ngozwana were convicted of robbing the Engcobo Weirs Cash and Carry on August 22, 1992.

The committee found the three complied with the requirements of the amnesty legislation in that the offences were committed for political reasons and they had made full disclosure.

Kukubeni told the committee the Umtata base for MK's training of recruits was being hampered at the time by lack of funds to buy firearms and food.

The matter was discussed with Mr Hani and it was decided that "alternative means", including robbery, should be used to raise money.

Kukubeni said Mr Hani agreed with this, with the proviso that there should be no loss of life and that "rich white people" should be targeted.

ARG 6/7/99

Security firms called in to defend courts

ARLT 8/7/99

Escapes, fights and heists spark crackdown

LYNNETTE JOHNS
STAFF REPORTER

(252)

Security at magistrate's courts is to be beefed up by private security companies after a number of gang fights and cash-heists involving the courts.

Hishaam Mohamed, regional head of the Justice Department, said tenders would be sought from today

Security firms will have just 16 days to tender and the new system is expected to be operating by the end of the year

Mr Mohamed said emerging black companies would be considered for the job.

The department spends R2-million a year guarding courts in the Western Cape. Half the guards are on temporary contracts and the com-

pany that wins the tender will be asked to take them on.

Permanent security guards will retain their positions.

The department has made R13,6-million available from an auxiliary fund to pay for the upgrade. The Western Cape has received R1,6-million

The move to privatise security comes after a number of gang fights at courts

Earlier this week, three men awaiting trial for rape escaped from cells at Wynberg Magistrate's Court after overpowering a lone court orderly during the lunchtime recess.

Recently, money destined for the Nyanga maintenance court was stolen in a cash-in-transit heist

"These measures are to protect the community," said Mr Mohamed

"It is with public safety in mind that we are providing more security"

He said the successful tenderer would be expected to provide training and weapons for guards

Cape Town, Stellenbosch and the Bishop Lavis branch court in Goodwood will be first to get full-time guards

Part-time services will be provided for the regional office of the Justice Department, the Master of the High Court and magistrates' offices in Mitchell's Plain and Kleinvlei

Alarm systems will be installed at 25 courts, including Athlone, Hermanus, Laaiplek, Worcester and Montagu

Armed security staff will transport cash to courts in Nyanga, Mitchell's Plain, Cape Town, Atlantis and Wynberg.

Plans to modernise justice department seem likely

Pamela Whitby

BD 9/7/99 (252)

PLANS to automate the justice department's paper-based systems look more likely if the recommendations made after a fact-finding tour overseas bear fruit

The objective of the tour was to assess the effect of technologies and to test the department's strategy internationally, said Hassen Ebrahim, deputy director-general of the justice department

Investment for the conversion project is conservatively put at R300m

About 25 offices were visited on the tour, including New Scotland Yard, the Austrian justice ministry, Europol and Utah's correctional facilities. The group also attended the Microsoft Government Leaders Conference

Ebrahim said the tour, sponsored by IBM, Ariel Technology, Microsoft and Informix, had produced a clear idea of how to move forward. Costs incurred would eventually be recouped, said Ebrahim, who cited the Austrian justice ministry as an example. The ministry has awarded a tender to redesign its system to include all case types in the automation process

This should be complete by 2001. By 2004 it will save about R257m a year

By noting the pitfalls and successes of international projects, the SA justice department could take advantage of its "greenfield" environment, said Ebrahim

Although the restructuring project in SA

has begun, it is still in the early stages. Local area networks have, however, been installed at more than 60 sites nationally

Projects addressing Y2K and outdated maintenance and cash deposit systems are also nearing completion

Given the lack of experience among the technical staff in the department, it would make sense to adopt an incremental approach with smaller projects taking priority, said Ebrahim. At a news conference, he described the pact as a deal for Africa by Africans

The establishment of an intranet, extranet and access to the internet is the next step. These bigger projects would be launched next year

This national network infrastructure could benefit the National Crime Prevention Strategy by enabling access to a criminal record anywhere in the country. Currently it is only possible to obtain this where the report was filed

More innovative projects could include video-conferenced court cases, cutting the costs of moving prisoners, and voice-to-text technology for the court recording process

Public/private partnerships are being mooted as a means of funding the project. "Charging a transaction fee for civil transactions over the internet is one possibility," said Kapp. Recommendations would be made to the new cabinet soon

If approved, pilot projects in selected courts will begin, Ebrahim said

Legal eagles may take aid board to court for millions owed

GUSTAV THIELE

THE Legal Aid Board owes thousands of legal practitioners in the country over R70 million. Frustrated lawyers and advocates say they are in danger of having to close their practices if they are not paid and are now threatening to institute legal action against the board.

Although the Department of Justice received R223m in the past financial year for the administration of legal aid, the board says the money cannot be paid on time to lawyers and advocates who des-

perately need it due to administrative mismanagement in the past. In some instances, legal practitioners have waited for over six years to be paid.

The acting chief executive officer of the board, Pieter Brits, says he is confident that there is money to pay all outstanding bills, but he is unsure how long it will take to "sort out administrative problems that is a legacy of the past".

Brits conceded that a large percentage of the 6 000 lawyers and advocates who work on a part time basis for the board were owed money by the board.

Although he was reluctant to blame a specific person, legal aid staff told the *Cape Times* that details of maladministration will surface when the suspended director of the board, Nic Pretorius, appears next week, before an inquiry into his administration of the board.

Board chairperson Justice Mahomed Nava said they inherited a system that was devastated by "years and years of maladministration". He said it will "take time" to put a workable system in place. Pretorius was unavailable for comment. On March 10, he told the National

Assembly's public accounts committee that the financial state of the board was to be blamed on a lack of trained staff and an increased workload.

Brits said yesterday although the board has been unable to establish how much money was owed, it was "certainly in the region of R70 million, perhaps more".

He said there were lawyers and advocates who misrepresented the nature of the work they did for the board. His statement that "a small" number of lawyers and advocates were dishonest, drew anger from some practitioners.

CT 9/7/99

One advocate, who spoke on condition of anonymity, said his colleagues have large bills with the board. "I am owed R35 000 and some colleagues more."

"The problem is exacerbated as a lot of up-and-coming advocates do most of the work for the Legal Aid Board and they need the money to establish themselves. Often, the people who suffer the most come from disadvantaged backgrounds."

The advocate said he regarded the board's inability to pay as a contravention of the Constitution, specifically sections of Chapter 10 which stipulate that the sys-

(2/7/99)

tem of public administration must be accountable and the deliverance thereof timely. "We are left with only one option, and that is to take legal action."

He said hundreds of legal practitioners planned to take legal action, but he is unsure when this will happen.

Fifteen lawyers and advocates contacted by the *Cape Times* said their future in the legal field could be jeopardised if they were not paid soon.

Brits said he knew of the plight of the legal practitioners. "We are trying to sort out the backlog."

Street justice meets the law

Suspected kangaroo court kingpins grabbed in raids

JONAN SCHIRMER
Crime Correspondent

AKG 9/3/99
(A72)

A special investigation team probing kangaroo courts on the Cape Flats made a breakthrough today by arresting six suspected street justice kingpins, including the "judge" believed to lead the gang.

During raids in the early hours, detectives also confiscated six firearms believed to have been used in several murders and attempted murders.

Task team co-ordinator Leon le Grange said the raids were mounted on the basis of intelligence about a group of minibus taxi operators at Gugulethu's Eyoona rank who offer their services as self-styled policemen, judges, juries - and executioners.

The group apparently calls itself Project 10222, a name derived from the police emergency number, 10111.

Its services, which cost as little as R60, include imposing fines and recovering debts or stolen goods.

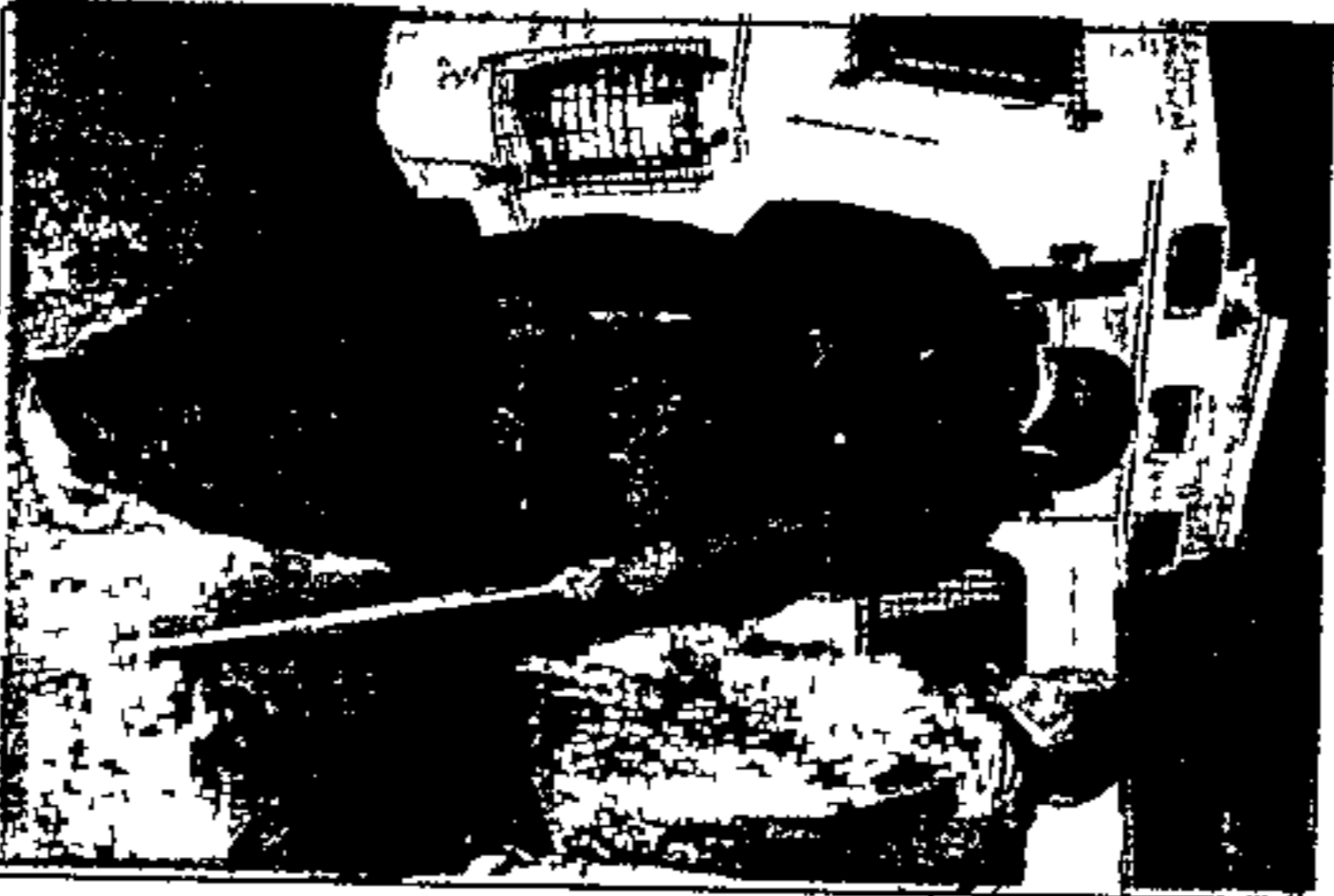
Superintendent Le Grange said "sentences" handed down to people who were given no chance to prove their innocence had allegedly included murder, assault and torture.

Men accused of rape were stripped, forced to drink their victims' urine and given electric shocks on their testicles via jump leads attached to car batteries.

Other criminals were slambokked, kicked and beaten. Acid and spirits were poured over their private parts and into their wounds.

The task team is investigating 30 kangaroo court dockets involving 57 serious charges.

Today's raids in Gugulethu began at the NY50 home of an elderly man believed to be a "judge". The old man, supporting himself with a stick, shuffled to a van where police put a mattress in the back for his comfort.



Walk this way: police lead away an elderly man accused of being a kangaroo court 'judge'

The rest of the suspects were arrested at their homes in Gugulethu and Mandlale without any resistance.

Provincial detectives chief Andre du Toit said the raids were a result of a team approach that tapped on the expertise of top detectives, Public Order Police, Special Task Team members, the Dog Unit and two legal experts including a Xhosa speaking advocate.

■ Margaret Maghula, 59, of Gugulethu, who refused to hand her teenage son to kangaroo court vigilantes, was kidnapped from her Tambo Square home recently, murdered and buried in a shallow grave.



It's just us: Special Task Team detectives enter the home of an alleged kangaroo court 'judge' during a well-planned series of raids early today that netted six suspects in Gugulethu and Mandlale

Legal centre is in trouble

Sowetan Reporter

THE Johannesburg Community Legal Centre is threatened with closure because of financial problems

Speaking to *Sowetan* yesterday, director Ms Portia Matsane said the centre, formerly known as the Legal Aid Bureau which started operating in 1937, needed at least R45 000 a month to keep it operational

"We survived for May and June due to financial donations from Legal Wise. However, we do not know if they will continue funding us for the next two months," she said

However, Legal Wise spokesman Mr Sankelo Mkhine confirmed his institution's commitment to helping the centre. "We will continue to finance the centre, but not indefinitely," he said

Matsane said the centre would also welcome donations of computers and

office furniture

The centre gives free legal assistance to about 3 200 people a month for problems ranging from unfair dismissals, third party claims, divorces to Unemployment Insurance Fund claims to jobless people

"There is an overwhelming number of people who need our assistance

"We are in existence to ensure that justice is accessible to the poor who cannot afford the services of private legal representatives

"If we close down, the constitutional rights of poor people will be violated," Matsane added

A victim of unfair dismissal, Mr Herbert Moswane, who was reinstated in his job after the centre's intervention, had this to say when he was told about the possible closure. "Where will we receive free legal assistance if such a centre, which has restored our faith in affordable justice, is to close"

Sowetan 9/7/99

(212)

War crimes court proposals for cabinet

Pearl Sebolao

THE SA justice department will prepare proposals for cabinet to endorse the creation of an international criminal court to deal with war crimes, says Medard Rwelamira, the head of the department's policy unit.

Rwelamira made the announcement on Friday after a Southern African Development Community (SADC) regional workshop to discuss the technical aspects of ratifying the Rome Statute, a United Nations initiative aimed at establishing an international criminal court to deal with crimes against humanity, such as genocide.

This did not necessarily mean SA had taken a final decision to ratify the statute, but an interdepartmental task team would prepare draft legislation to put before the justice portfolio committee for consideration. "We expect to make recommendations in this regard to the cabinet within a month or so for it to take a decision on the matter," Rwelamira said.



PH 12/17/99

Medard Rwelamira, head of the justice department's policy unit, says SA will prepare recommendations for the cabinet to endorse the creation of an international criminal court. Picture ROBERT BOTHA

The proposed court is to have greater jurisdiction than the existing International War Crimes Tribunal in The Hague which is limited to war crimes in Rwanda and Bosnia

(AP)

Rwelamira said the SADC delegates, who met in Pretoria last week, adopted a memorandum of understanding to persuade their governments to ratify the statute. They had reached an understanding on technical steps.

At least 60 nations had to sign and ratify the statute before the court could be established. Only four states had done so. None of the SADC countries had, but those represented at the workshop agreed in principle to the establishment of the court. The Democratic Republic of Congo and Seychelles, which were not able to send representatives, had "showed enthusiasm previously. We don't expect to have major objections," he said.

The workshop agreed to draft legislative guidelines that could take the process further.

Agreement on the scope and definition of some crimes listed under the Rome statute has not yet been reached. It could take five to six years to finalise the process, but this will not affect the June 30 2000 deadline set for SADC to finalise ratification.



Justice for Khayelitsha as new court gets go-ahead

LYNETTE JOHNS
STAFF REPORTER

Plans for the court have been approved and R30-million has been set aside. All Khayelitsha cases are at present heard in the Mitchell's Plain Magistrate's Court, whose caseload is second only to Johannesburg's. A court in Khayelitsha will dramatically reduce the number of cases heard at Mitchell's Plain. The new court will be built near the Cape of Good Hope College in Mwe Road. Hisham Mohamed, regional head of the Department of Justice, said builders had been appointed and the project would start before the end of the year. Blue Downs would also get a court soon, he said.

Ndungane wants 'once-off' tax for apartheid victims

(252) ARG 13/7/99

Durban - A once-off reparations tax should be levied on people of a certain income bracket to assist the victims of apartheid, the Archbishop of Cape Town, the Reverend Njongonkulu Ndungane, said in Durban today.

Archbishop Ndungane was speaking at the University of Natal at the 29th session of the Provincial Synod of the Church of the Province of Southern Africa.

Archbishop Ndungane said "I would like to propose to the Government that it levies, as soon as it is possible, a once-off reparations tax on people of a certain income bracket to be used for individual as well as communal forms of reparations.

"In particular we believe the priority should be to help the elderly, the disabled, and families who have lost their breadwinners, and to provide for the education of children who have lost parents."

He said one of the major factors hindering development in the southern African region was debt incurred by the former government. This included debt incurred by South Africa's neighbouring countries who were at the receiving end of destabilisation and war waged by the former government.

"The second category of this apartheid-caused debt is the one South Africa has inherited" he said.

"We need to find creative and innovative ways of addressing this problem so that resources are released for reconstruction and development."

He also called for the cancellation of unpayable debts owed by developing countries to the international community - Sapa

ET 13/7/99

Security policemen disagree on killing

(252)

PRETORIA Former Vlakplaas commander Eugene de Kock yesterday said he had Krugersdorp security guard Japie Maponya killed in 1985 because he concluded from remarks from a superior that the man should be done away with.

"(Lieutenant-General Johan) le Roux told me that he doesn't want to see this man (Maponya) in Krugersdorp again," he told the Truth and Reconciliation Commission's amnesty committee.

De Kock said he understood this to mean that Maponya should be killed.

He is seeking amnesty for the abduction, torture and killing of Maponya in September 1985.

Maponya was abducted in Krugersdorp by security members and taken to Vlakplaas, where he was interrogated on the whereabouts of his brother, Odenile, who was responsible for several bomb-

ings in the Pretoria and Vaal Triangle areas.

Odenile Maponya was a former commander of the African National Congress' armed wing, uMkhonto we Sizwe.

De Kock told the amnesty committee that Le Roux, who was the head of the West Rand security police branch at that time, ordered him to abduct Maponya and interrogate him about his brother.

Le Roux admitted telling De Kock this, but said he never told De Kock to kill Maponya.

He is also applying for amnesty for the incident.

Le Roux said he learnt that Maponya would be killed when security police member Captain Petrus Kleynhans told him that Maponya was not co-operating with interrogators and had to be "taken out".

Kleynhans was investigating Odenile Maponya's "terrorist" activities.

'UNDER ORDERS': Former commander Eugene de Kock

activities

Le Roux told the amnesty committee he accepted responsibility for Maponya's death even though he said he did not order it.

"The fact remains that Japie was killed and I did nothing to stop it," Le Roux said.

Maponya was taken to Swaziland where he was shot dead by security policeman Willie Nortje.

Today De Kock will give further evidence. The TRC must still hear amnesty applications from eight other security members involved in the matter - Sapa



Court staff in protest over pay

(252)

ARGUS CORRESPONDENT

ARG 13/7/99
Johannesburg - Public service workers staged a lunch-hour picket outside the Johannesburg Magistrate's Court in what union leaders called the beginning of mass action that could culminate in a national strike later this month.

Prosecutors, court clerks, interpreters and general court workers belonging to the National Education, Health and Allied Workers' Union (Nehawu) yesterday protested against the Government's 5,5% wage increase offer.

The unions are demanding 10%.

Meanwhile, the National Union of Prosecutors of South Africa (Nupsa) is investigating reports that some of its members had not received their annual salary increases at the end of June.

Nupsa general secretary Chris Kraus said there had been delays in processing the increases.

Bombing testimony left untold

Amnesty bid too late

ARGUS CORRESPONDENT

ARG 14/7/99

Johannesburg – The story behind the bombing of Dudu Chili's houses, where a 13-year-old girl was killed, and whether Winnie Madikizela-Mandela was involved, may never be told.

Ms Chili, who attended Bongani Bobo Zwane's amnesty hearing in Johannesburg yesterday in the hope of learning the truth, was obviously depressed when the amnesty committee ruled his testimony about the Orlando West attack in 1989 could not be heard because his application had been too late.

Ms Chili's house was gutted after her son, Sibusiso, had killed Maxwell Madondo, a member of Ms Madikizela-Mandela's soccer club, and Finklmsom died in the fire.

"It is a pity he did not ask for amnesty earlier and now has to return to jail. It leaves me hanging. I wanted to know who had given the directive why we should be killed," she said.

"I am not witch-hunting, I just want the truth."

A sobbing Zwane said "I was not born a killer. I was not going to kill them if the political situation had been different. I am sorry."

Zwane, who said he was a member of the African National Congress and its military wing, Umkhonto we Sizwe (MK), has sought amnesty for the killing of three policemen in Meadowlands, Soweto, and the killing of a civilian in the ensuing shootout.

Zwane, who kept referring to committee member Justice Sisi Khampepe as "Mommy" – a name Mandela United members called Ms Madikizela-Mandela, said he was ordered by his commander, Sonwabo, to find police targets.

He said three members of his unit, including Sonwabo, drove to Meadowlands, where they saw three policemen.

"Sonwabo shot them and one of them tried to run away. People who were seated outside the houses nearby started shouting. Sonwabo shot in their direction to scare them away."

"I only heard in my criminal trial that one of them had been killed," he said.

He said the policemen had been targeted because they were "pillars of the apartheid state."

Zwane was also convicted of murdering 11 people and trying to kill 22 others.

His lawyer, Kgama Shai, argued that Zwane be granted amnesty for the killing of the policemen because he had applied in time and acted in furtherance of a known political formation.

Amnesty will be decided within 14 days.

Prisoner weeps at amnesty hearing

Nomavenda Mathiane

CHARLES Bongane Zwane, a former member of the Mandela United Football Club now serving a life sentence at the Pretoria Maximum prison, broke down and sobbed yesterday at his amnesty hearing in Johannesburg.

Zwane was previously given nine death sentences and 42 years in jail for murder, attempted murder, arson and being in possession of a firearm and ammunition.

He has applied for amnesty for the killing of three policemen and a passer-by in Meadowlands in Soweto in January 1989.

He has not applied for amnesty for any murders committed while he was a member of the football club.

Sobbing uncontrollably, Zwane said "I wasn't born a murderer. I respect people's lives."

Zwane was a student and in his teens when he committed the crimes.

He also broke down when he appeared before the truth commission at its 1997 hearing on Winnie Madikizela-Mandela's activities.

At that time he described how he was tortured by security police when in detention.

Yesterday he told the commission's amnesty committee that he had been initiated into politics and in 1983 joined Umkhonto we Sizwe where he was trained by Oupa Seheri – who is also serving a long jail sentence.

Zwane said the killing of the policemen was part of the political activity prevalent at the time.

His lawyer submitted a new application for amnesty for the petrol bombing of a shebeen and the illegal possession of a firearm and ammunition, but the committee turned it down on the grounds that the prescribed period for applications had expired.

De Kock tells TRC he admired Maponya's loyalty toward his MK brother

PRETORIA Former Vlakplaas commander Eugene de Kock yesterday said he hit Krugersdorp security guard Japie Maponya twice over the head with a spade to make sure he was dead when security police executed him in 1985.

"It was standard practice to make sure people were dead after they had been shot," De Kock told a Truth and Reconciliation Com-

mission hearing in Pretoria. De Kock is seeking amnesty for the abduction, torture and killing of Maponya in September 1985. Maponya was abducted in Krugersdorp and taken to Vlakplaas where he was interrogated on the whereabouts of his brother, Orderville, an Umkhonto we Sizwe commander who was responsible for bombings in the Pretoria and

Vaal Triangle areas. De Kock said Maponya was tortured and interrogated for about 45 minutes over his brother's whereabouts. He told the amnesty committee that he admired Maponya because he was loyal to his brother and refused to give police any information about him. The day after the interrogation,

De Kock took Maponya to Swaziland to be killed. He was accompanied by Vlakplaas members David van der Walt, Willie Nortje and Eugene Rourie. De Kock said that before they drove to the Swaziland border, they went to security police Warrent-Officer Frenk Pienaar's house in Piet Retief, where he got a spade

and garden fork. He said they climbed over the border fence and headed to a forest plantation. While he was walking, De Kock heard a noise which sounded like a gunshot. He turned around and saw that Nortje had hit Maponya over the head with an Uzi machine gun. Nortje then tried to shoot

Maponya, but the gun jammed. De Kock said Maponya then ran and De Kock chased him. He said he hit Maponya on the back with the spade. "He fell down hard because he was handcuffed." Nortje then shot Maponya through the head with a 9mm pistol. De Kock told the TRC he stood

between Maponya's legs and although he could see the man was dead, he hit him over the head with the spade. He said the original plan had been to bury Maponya, but this could not be done because the ground was too hard. Maponya's clothes and hand-cuffs were removed, and his body was buried under debris. De Kock and Nortje drove back to Piet Retief and returned Pienaar's garden equipment. He asked Pienaar for eight beers and they drove back to Vlakplaas. He said he accepted responsibility for his unit's involvement in the killing. Nine other security police members are seeking amnesty for their involvement in the incident. —Sapa

(2578) CT 14/7/99

Luyt says bombing was not ANC order

THE African National Congress could not have instructed the 1988 bombing of Ellis Park Stadium as the organisation had repeatedly denied knowledge of issuing any such instructions, the Truth and Reconciliation Commission heard yesterday

Testifying before the TRC's amnesty committee, former SA Rugby Football Union chief Dr Louis Luyt said that soon after the incident he confronted the ANC leadership, including its then foreign affairs chairman Mr Thabo Mbeki

Luyt said the ANC would not accept responsibility for the bombing

Four former ANC cadres - Mr Aggie Shoke, Mr Harold Matshididi, Mr Lester Dumakude and Mr John Dube - are applying for amnesty for the bombing in which a number of fans were killed and others injured after a rugby match

The applicants claim the attack was politically motivated and was carried out on instructions from the ANC leadership

Luyt told Judge Andrew Wilson of the TRC amnesty committee that at the time of the bombing he and Mbeki were discussing ways to get the apartheid government to unban the ANC and release Mr Nelson Mandela from prison

Because of mutual trust between himself and Mbeki, Luyt was certain the ANC leadership were truthful in their denials

"I am certain the ANC would not torpedo our discussions by deliberately giving orders to bomb a stadium," he said, adding he did not believe Mbeki would have "short-changed" him

Interviewed later, Luyt said he felt "uncomfortable" that some of the applicants were currently employed as civil servants and that he would find it difficult to forgive them - Sapa

Ex-general comes clean over murder

FORMER apartheid security police general Johan le Roux accepted responsibility for the 1985 killing of Krugersdorp security guard Japie Maponya yesterday

He told the Truth and Reconciliation Commission in Pretoria he did not order Maponya's death, but had been aware of plans to kill him

Le Roux is seeking amnesty for his involvement in Maponya's death at the former security police base Vlakplaas in May 1985

He said Maponya was shot dead to protect the identity of Vlakplaas members and to maintain the secrecy of the unit

Maponya was abducted by security police and taken to Vlakplaas where he was interrogated on the whereabouts of his brother Oderlie, who was allegedly responsible for several bombings in the Pretoria and Vaal Triangle areas

Former commander

Oderlie Maponya was a former commander of Umkhonto we Sizwe, the armed wing of the African National Congress. He died in September 1985 at the Sterland complex in Pretoria when a bomb detonated in his hands

Le Roux said he learned that

Maponya would be killed when security police captain Petrus Kleynhans told him that Maponya was not co-operating with interrogators and had to be "taken out"

He said he told Kleynhans either "It is not my problem", or "It is not a problem"

Le Roux told the amnesty committee that Maponya had "signed his death warrant in an ironic sort of way", because he refused to tell Vlakplaas members where his brother lived

He said he had felt deep remorse and guilt ever since the murder was committed - Sapa

De Kock tells of (252) torture and killing

FORMER Vlakplaas commander Eugene de Kock said yesterday that he hit Krugersdorp security guard Japie Maponya over the head twice with a spade to make sure he was dead when apartheid police executed him in 1985.

"It was standard practice to make sure people were dead after they had been shot," De Kock told a Truth and Reconciliation Commission hearing in Pretoria.

De Kock is seeking amnesty for the abduction, torture and killing of Maponya in September 1985.

Maponya was abducted in Krugersdorp and taken to Vlakplaas where he was interrogated on the whereabouts of his brother Odirle, an Umkhonto we Sizwe commander responsible for bombings in the Pretoria and Vaal Triangle areas.

De Kock said Maponya was tortured and interrogated for about 45 minutes.

He said he admired Maponya because he was loyal to his brother and refused to give police any information about him.

The day after the interrogation, De Kock took Maponya to Swaziland to be killed. He was accompanied by Vlak-

plaas members David van der Walt, Willie Nortjé and Eugene Fourie.

De Kock said before they drove to the Swaziland border, they went to security police Warrant-Officer Freek Pienaar's house in Piet Retief, where they got a spade and garden fork.

De Kock said they climbed over a border fence with Maponya and walked to a tree plantation.

While he was walking to the trees, De Kock heard a noise which sounded like a gunshot.

He turned around and saw that Nortjé had hit Maponya over the head with an Uzi machine-gun.

Nortjé tried to shoot Maponya but the gun jammed; De Kock said

While Nortjé tried to unjam the weapon, Maponya ran and De Kock chased him for about 10m. He said he hit Maponya on the back with the spade. "He fell down hard because he was handcuffed."

Nortjé then shot Maponya through the head with a 9mm pistol.

De Kock told the TRC he stood between Maponya's legs and although he could see the man was dead, he hit him over the head with the spade - Sapa

561/171/199
Soweto

...you expect? ...Africa, he said.

De Kock, contradicting counsel, denies murder by spade

PRETORIA — Former Vlakplaas commander Eugene de Kock denied yesterday that he killed security guard Japie Maponya with a spade in 1985. He told the truth commission in Pretoria that he hit Maponya twice over the head with a spade only after former security police warrant officer Willie Nortje had shot him dead.

De Kock is seeking amnesty for the abduction, torture and killing of Maponya in Swaziland in September 1985. Maponya was abducted from Krugersdorp and taken to Vlakplaas where he was assaulted and interrogated. He said Nortje forced Maponya to kneel down before attempting to shoot him, but the gun jammed. Nortje then hit Maponya over the head with the spade, causing his head to split open. He said Nortje forced Maponya to kneel down before attempting to shoot him, but the gun jammed. Nortje then hit Maponya over the head with the spade, causing his head to split open.

Lamey said De Kock then hit Maponya over the head with the spade because killing him with a gun would have attracted unwanted attention. De Kock called Lamey's statement as false as a R7 note.

On Tuesday De Kock told the truth commission that he hit Maponya twice over the head after he had been "fatally" shot to make sure the man was dead. "It was standard practice to make sure people were dead," he said. In another amnesty committee hearing in Johannesburg yesterday a former African National Congress Youth

League member said he stabbed a man with a garden fork and set his body alight because the man returned to his home town after being "banned".

Location near Krugersdorp, said he murdered former Pan Africanist Congress member Abinaar Mongwalwa in 1991 because he did not adhere to "the proper conditions". Thage and his friends had decided to ban some PAC supporters implicated in the murder of an ANC member a few months before. Thage is currently serving a 15-year prison term for the murder. — Sapa.

BD 15/7/99 (252)

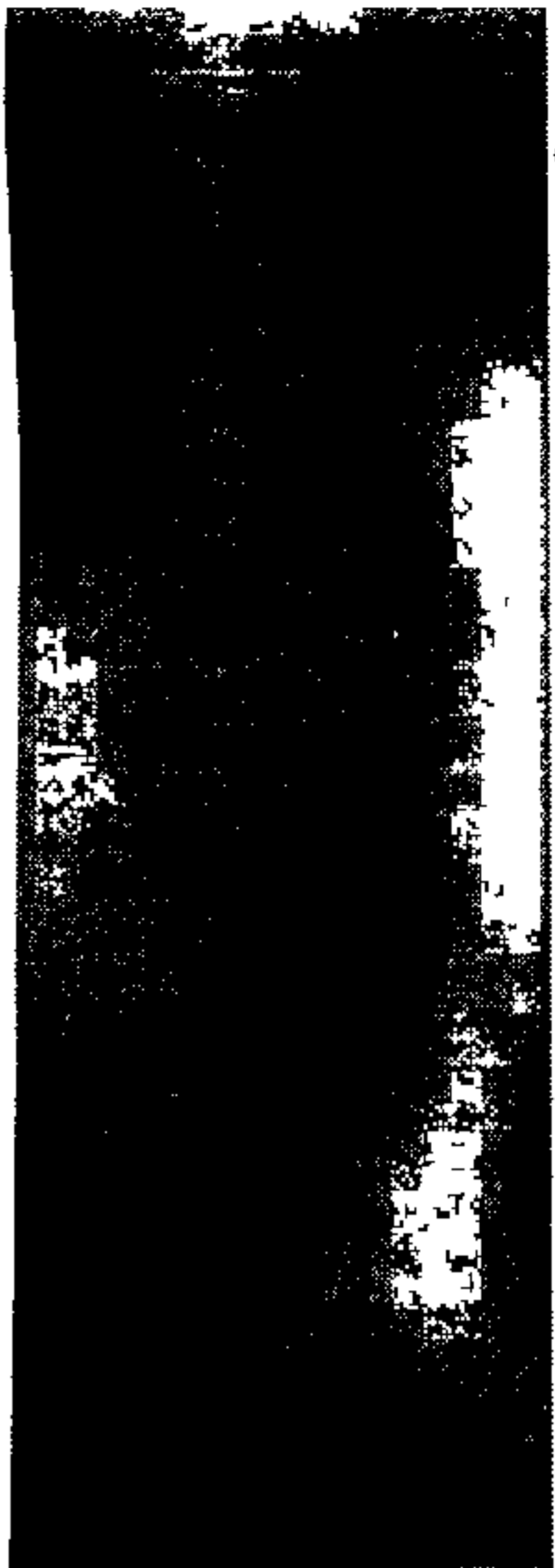
No plans to abduct guard

PRETORIA: A former Vlakplaas member has told an amnesty committee of the TRC the initial plan was not to abduct Krugersdorp security guard Japie Maponya, but to use an askari to try and obtain information from him.

Willie Nortje, connected to the C1 Unit under the command of Eugene de Kock, yesterday told the committee at the Idasa Centre that in his first discussions with the members of the Kagiso Security Branch during September 1985, it was agreed that an askari would be used to get information from Maponya.

The security branch wanted to obtain information about the whereabouts of his brother, Odirile, an MK cadre wanted in connection with a series of Pretoria and Vaal Triangle bombings.

Nortje said he was informed during discussions with former Kagiso security branch policemen Johan le Roux and Petrus Kleynhans that they had tried to recruit Maponya, but he refused to cooperate — Own Correspondent



...his involvement with the
Picture TREVOR SAMSON

Truth commission 'losing steam'

Nomavenda Mathiane

BATTLE-weary staff at the truth commission are running out of steam as the November deadline to wrap up their work approaches, say commission sources.

Commission CEO Martin Coetzee denies these allegations. He says the commission is on top of things and is confident it will meet the November deadline. Furthermore, he suggests that the deadline is flexible, as it is one the commission set for itself.

Coetzee says that since 1996 the commission's amnesty committee has completed 6 400 applications and of the 800 applications pending, 500 are to be heard soon, the rest will be heard in chambers.

Other sources within the com-

mission say the process has gone on for too long and that workers are no longer tackling their responsibilities with energy.

They say that the situation is so bad that applications are being grouped together at odd venues.

For example a matter that was to be heard in Pongola has now been scheduled to sit in Pretoria.

Victims may not be able to oppose the amnesty application because they cannot afford make the trip to Gauteng.

When former Mandela United Football club member Charles Bongani Zwane appeared before the committee in Johannesburg on Tuesday the victims had not been contacted. The committee was told that they had been notified through a newspaper advertise-

ment. The amnesty application was not opposed.

Sources also say some investigations are not undertaken or completed by the commission.

Gauteng leading investigator Fanie Killian says he has requested the commission's Cape Town office to issue him with the number of outstanding applications but these have not been forthcoming.

He says the commission is doing everything in its power to accommodate the victims when they cannot be reached attempts are made to contact them using newspaper advertisements.

Coetzee says cases are grouped for logistical purposes and victims will be transported to where the hearings take place and accommodated in hotels.

SA leader

Stephen Laufer

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Ministries to target corrupt officials

Pule Molebeledi

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DURBAN — A national probe is under way into plans hatched by convicts to release themselves from prison with the help of corrupt correctional services officials, says Safety and Security Minister Steve Tshwete.

Tshwete, who did not give details about the probe or the planned escapes, said he was jointly involved in the probe with Correctional Services Minister Ben Skosana.

At the Chatworth stadium in KwaZulu-Natal, Tshwete assured police officers that government was behind them in their fight against crime. "Any perception that may have lingered in your mind that this was not the case must be dispelled," he said.

He urged the police to launch the "biggest, sustained and merciless" campaign against criminals, but said this should be done within the confines of the constitution.

"We must defeat these criminals, not tomorrow, today. We must move in a hurry to confront them. Give them no corner. We

must arrest and convict them," he said. "It should not be our intention to make them smile. We must flush them out of our society and lock them behind bars."

Tshwete promised government would provide everything needed by the police to fight crime, "even if it means us going back to parliament to legislate afresh in areas where you are handicapped in terms of taking forward your responsibility." He said he did not want to supervise a police service that had its hands tied behind its back.

Tshwete said embattled KwaZulu-Natal police commissioner Chris Serfontein had indicated that he was on top of the situation in the province. Serfontein, who has had running battles with the African National Congress on performance-related issues, is facing a strike from the Congress of SA Trade Unions which has accused him of failing in his duties. Cosatu said it would make known the date of its strike soon.

Tshwete said government had commissioned people to look into the problems of

racism and ethnicity in the force

He said corruption in the force was a big problem which should be dealt with, not only by the political leadership and management, but also from within the force itself, with police officials taking a stand against their corrupt colleagues. "We must flush them out mercilessly. They are making things difficult for you and putting your own lives at risk and some of them may be responsible for the elimination of police members. They are a nuisance and we can never for one moment be seen to be hugging these hyenas in our midst."

He said the same should be done with corrupt prosecutors and home affairs officials whom he referred to as "thieves, mercenaries and scum." The safety and security, home affairs and correctional services departments have launched a joint programme to fight corruption. Tshwete said by the end of this year the police top management level would change drastically, particularly with regard to representation.

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De Kock ordered

killing — claim

(2572) PD 16/7/99

PRETORIA — Former Vlakplaas commander Eugene de Kock ordered the killing of Krugersdorp security guard Japie Maponya in 1985, former security policeman Willie Nortje said yesterday.

He told the truth commission in Pretoria that De Kock decided to have Maponya killed after police assaulted the man at the Vlakplaas security police base where liberation movement activists were tortured, interrogated and murdered during the apartheid era.

De Kock has denied ordering the killing. He told the commission's amnesty committee earlier this week that former West Rand security police commander Gen Johan le Roux ordered the murder.

Nortje said yesterday Le Roux approved of Maponya's abduction and interrogation but not of his murder. Le Roux also denied instructing De Kock to kill Maponya.

Nortje is seeking amnesty for the kidnapping, torture and murder of Maponya at the Swaziland border in September 1985. Maponya was abducted in Krugersdorp and taken to Vlakplaas where he was interrogated and tortured on the whereabouts of his brother, Oderile, an Umkhonto we Sizwe commander who was responsible for several bombings in the Pretoria and Vaal Triangle areas.

Nortje said that the day after Maponya was beaten up, De Kock phoned former Piet Retief security police commander Freek Pienaar. It was decided that Pienaar would show De Kock where Maponya could be killed in Swaziland.

Nortje said he, De Kock, and security policemen Eugene Fourie and David van der Walt took Maponya to Swaziland. They picked up Pienaar at Piet Retief.

Nortje said the plan was that when they got to the border he would shoot Maponya.

He said he ordered Maponya to get on his knees and then hit him on the head with an Uzi machine gun. He tried to shoot Maponya, but the gun jammed. Nortje told the amnesty committee.

"De Kock took a spade and hit him over the head two or three times," he said. Nortje shot Maponya through the head with a 9mm pistol because, he said, Maponya "was still showing signs of life."

Nortje received immunity from prosecution, in terms of section 204 of the Criminal Procedures Act, when he testified at De Kock's trial a few years ago.

Nortje now works for the National Intelligence Agency. Ten people have applied for amnesty for the incident — Sapa

Truth body 'implicates' PW in murder of activists

FORMER state president PW Botha has been named by the truth commission as one of those "implicated" in the murder of East Rand activists during the apartheid era.

The commission said in a statement yesterday that former Vlakplaas commander Eugene de Kock and 11 other apartheid security policemen would appear before an amnesty committee on Monday for their role in the murder of eight United Democratic Front youth activists on the East Rand in 1985.

In what was dubbed the "zero-zero" hour incident, the activists were killed when Joe Mamasela and another Vlakplaas askari, Daniel Nkala, gave the activists "zero-zero" grenades and impet-

mines to blow themselves up, the commission said. Seven others were badly hurt in the blasts.

According to some of the applicants, Operation zero-zero hour was approved by cabinet ministers, including Botha. Apart from Botha, persons implicated in the zero-zero incidents included several generals — Sapa

(2572) PD 16/7/99

Human rights fundis debate two key 'transparency' bills

PRISCILLA SINGH

(2/12)

A THREE-DAY workshop to debate two bills aimed at promoting government accountability began in Cape Town yesterday, with the keynote address delivered by Human Rights Commission head Barney Pitso

The workshop, hosted by the South African Human Rights Commission, will focus on two pieces of legislation, the Open Democracy Bill and the Administrative Justice Bill, which will be debated by local and international human rights experts

The participants include Constitutional Court judge Zac Yacoob, David Goldberg of Glasgow, advocate Mojanku Gumbi from President Thabo Mbeki's office, Professor Marinus Wiechers from the University of South Africa and Rick Snell from the University of Tasmania

The two bills are expected to be passed by Parliament by February 2000, making the principle of open and accountable governance a reality in South Africa

The Constitution provides for "right of access to any information held by the state" and to "any information held by another person" required to exercise or protect one's

rights. It also provides for "administrative action that is lawful, reasonable and procedurally fair"

However, these rights cannot be exercised fully until Parliament enacts the proposed legislation. The Human Rights Commission has been tasked not only with educating the public about the Open Democracy Bill, but also with consulting broadly on the implications of the bill

After initial studies of the draft legislation, the commission has expressed concern over the public's right to gain access to privately held information from, for example, private hospitals and banks. Other aspects for discussion include enforcement mechanisms, protection of "whistle blowers", review and appeal mechanisms and positive duties of government.

How and when information can be justifiably withheld will also be discussed at the workshop, as will the possible creation of tribunals or court procedures to offer greater access and flexibility

The Administrative Justice Bill will be the subject of debate today. Recommendations arising from the discussion are on the agenda for tomorrow

CT 16/7/99

PW Botha implicated in killings

(A572)
M+C 16-22/7/99
Vor Powell and Mungo Soggot

Former state president PW Botha could face prosecution in connection with the grisly 1985 killing of eight East Rand youth activists by booby-trapped grenades.

Botha has been named in the Truth and Reconciliation Commission amnesty application of South African police Commissioner Johan van der Merwe as having authorised what has come to be known as the "Zero-Zero Operation" in which the activists, members of the United Democratic Front, blew themselves up with grenades from which the timing pins had been removed by South African police technical expert Colonel WAL du Toit.

The grenades were provided by former Vlakplaas killer Joe Mamba, who had infiltrated East Rand UDF structures under the command of Vlakplaas kingpin Eugene de Kock. Apart from the eight fatalities, seven other youths were seriously injured in the explosion.

Van der Merwe claims he was told by former police minister Louis le Grange that the operation was authorised at Cabinet level, with the approval of Botha himself.

Twelve former members of the apartheid state's security forces are applying for amnesty. Mammasela was promoted to the rank of sergeant after the mission was successfully completed.

The possibility of legal action against Botha for the East Rand killings coincides with moves to bring him to book for his alleged participation in the murder of Matthew Goniwe, the Eastern Cape activist murdered in a state-sponsored hit in 1985.

Lawyers representing the Goniwe family have applied to the amnesty committee to reopen the amnesty application for Goniwe's killers in the light of sensational new evidence which implicates Botha and his Cabinet.

The new evidence consists of minutes from a State Security Council meeting chaired by Botha in March 1984. At the meeting the then minister of Bantu education, Barend du Plessis, suggested that Goniwe be "eliminated".

Two days later, state assassins started planning the hit which was to take place a year later.

Furniture deal used to entrap Lubowski

(A573)
M+C 16-22/7/99
South Africa's Directorate of Covert Collections used a front company to make Swapo advocate Anton Lubowski appear to be a MI spy. Evelyn Groenink and Pierre Roux report

South Africa's military intelligence (MI) used a furniture transaction to make South West African Peoples Organisation (Swapo) advocate Anton Lubowski appear to be their spy. But the main purpose of the deal was to plant bugging devices under the beds and in the offices of Swapo leaders.

Lubowski bought furniture in 1989 on behalf of Swapo from an MI front company. MI then made three deposits into Lubowski's personal bank account, ostensibly as commission.

The Directorate of Covert Collections (DCC) was in charge of both the furniture deal and the entrapment of Lubowski.

The MI payments to Lubowski three months before he was murdered in Windhoek in September 1989 were made to look like legitimate fees and might therefore not have aroused his suspicions.

Lubowski was Swapo's deputy head of finance at the time and negotiated many business deals for the liberation movement.

The first payments by Swapo for furniture required for offices and homes for new government ministers match the three MI payments to Lubowski in June 1989. The first payment was made a day after Swapo paid for the first batch of furniture.

The money amounted to 5% of the furniture transaction, which is a common commission fee on a business transaction. Swapo paid R2 million for the furniture and Lubowski was paid R100,000.

Former defence minister Magnus Malan repeatedly stated that Lubowski had been an MI spy showing copies of cheques made out by MIs as proof. With his allegation that Lubowski was "his man", Malan tried to ward off suspicions that it was his military who gunned him

down in front of his house in Windhoek, asking: "Why would we murder our own spy?"

Gijima Express, the company posing as a furniture dealer, was, according to military sources, a front for an MI operation.

The *Mail & Guardian* has documents proving that it was a so-called "shelf" company without any assets, run by a businessman with ties to the South African military and staffed by a known agent of the DCC.

"Military intelligence people framed Anton with these payments," says Charles Courthay Clark, who did Lubowski's personal books at the time. According to Courthay-Clark, any income Lubowski expected was written down and no attempt was made by Lubowski or by him to hide the June 1989 payments.

"We did not really talk about where any payments came from. Most of the time he wasn't even aware of the exact situation of his finances. He was careful, not nervous, and would leave the administration either undone or to me. I may just have written these payments in the cash book without talking to Anton about it."

His official accountant, Leon Raath, agrees that Lubowski consciously tried not to get involved in any corruption. "Anton was even trying to get rid of shares in a fishing company. He was worried that he, as an advocate and a Swapo official, should not have such business interests."

"He obviously found nothing wrong with the MI payments. This means he must either not have noticed them, because his administration was always behind and he was careless with it, or have assumed they were legitimate. Otherwise he would have said something about it."

The Lubowski operation, under



Framed: Military intelligence made payments, ostensibly commissions on a furniture deal, into Swapo advocate Anton Lubowski's bank accounts to make it appear that he was a spy. PHOTOGRAPH: JOHN LIEBERBERG

the control of then DCC head for Namibia Koos Louw, amounted to much more than just an attempt to damage Lubowski's reputation with MI payments.

CC operative Rich Verster told the Truth and Reconciliation Commission they were trying to recruit Lubowski as an agent and that the DCC agent working for the furniture front company, Rob Colesky, was instructed to befriend Lubowski.

Verster also said there were two other DCC agents who befriended Lubowski and gained access to his home. The DCC used the contact with Lubowski to provide the government-in-waiting with bugged furniture.

Louw, now an admiral in the South African navy, confirmed that Verster and Colesky worked for him, but refused to comment on Lubowski. "I was in Covert Collection and covert means secret," Louw said.

Lubowski's friends say he trusted the "furniture salesman" because the director of Gijima Express was not a South African but a French businessman, Alain Guenon.

Guenon had been introduced to Lubowski by a representative of the French Embassy as someone who wanted to help Swapo.

Guenon was reputed to be close to the Mitterrand family, and an anti-apartheid supporter. He was also close to Winnie Mandela.

When Guenon offered to help Swapo officials who were coming home from exile with offices and

furniture, they jumped at the opportunity.

Swapo was weary of Southern African white businessmen, who might be connected to the apartheid regime. Ironically, it was then "anti-apartheid supporter" Guenon who put Lubowski in touch with the DCC furniture operation.

"It was Guenon who found Colesky," remembers Lubowski's secretary Nina Viall. "He said this man has a good furniture company, who can deliver on time, and [is] not too expensive."

Guenon and his company Gijima Express, which employed Colesky to buy the furniture, made a huge profit out of the deal — there was an 83% mark-up on prices, and Swapo was invoiced twice for some of the goods.

It is still unclear whether Lubowski found out that there was something wrong with the furniture deal. He was murdered a week after the last payment by Swapo to Guinna.

A year later, Swapo tried to sue Guinna for the overcharging and double invoicing, but was not successful since there were no responsible directors or assets or cash flow left in the company by then.

The former chief investigating officer into Lubowski's murder, Namibian Inspector Jumbo Smit, says Lubowski was "very carefully and meticulously framed".

When asked about the bugged furniture deal, the Namibian Director General of National Intelligence, Peter Tshirumba, said he could not comment.

Botha⁽²⁵²⁾ approved killings?



JOHANNESBURG: Former members of apartheid-era security forces have accused former president P W Botha of approving the murder of eight black activists in the mid-1980s, the Truth and Reconciliation Commission (TRC) said yesterday.

An official said details of the allegations would be sent to prosecutors for a decision on whether to charge Botha, now 83.

The TRC will begin hearings next week into an incident in 1985 when members of an apartheid death squad supplied booby-trapped grenades and mines to the activists, who were killed when they tried to prime them.

Seven other members of the United Democratic Front were wounded in the incident, known among security forces as the Zero-Zero Hour operation.

The TRC said in a statement that Botha had been implicated by former members of the security forces who were seeking amnesty for the killings.

"Some of the applicants implicate him (Botha). He has been notified and his lawyer will be present," TRC spokesman Mbulelo Sompeta said.

Botha's lawyer was not immediately available for comment.

Sompeta said the accusers

ACCUSED OF COMPLICITY:

Former president P W Botha

claimed the operation had been approved by Botha and other ministers in his National Party cabinet.

Botha, who has called the TRC an anti-Afrikaner witch-hunt, has repeatedly denied involvement in illegal actions.

In June, Botha won an appeal against a conviction for contempt handed down last year after he refused to testify before the truth commission.

Sompeta said the TRC's findings would be given to prosecutors who would decide whether to pursue the incident.

Botha is among 11 former apartheid government and security officials named by a dozen men who are seeking amnesty for the Zero-Zero Hour operation.

Sompeta declined to say which of them had specifically accused Botha.

The amnesty-seekers include former general Johan van der Merwe, brigadier Willem Schoon and ex-police colonel Eugene de Kock, who led the death squad in the mid-1980s — Reuter

Law courts shock ministers

By Sphiwe Mpye

THE ministers of justice, safety and security as well as correctional services paid visits to magistrate's courts around Gauteng where they saw a lack of security, vandalism and filth.

Justice Minister Penuell Maduna said the visits were part of an integrated approach to the criminal justice system, and were designed to acquaint them with the problems faced by the police, prisons and the courts.

Maduna said this approach was based on cooperation between the three departments, along with the Department of Home Affairs in the

fight against crime (257) . . .
He gave as an example the need for a common database for the departments to have information pertaining to offenders available at all times.

Thus, according to Maduna, would stop the granting of bail to criminals wanted elsewhere for other crimes.

The three ministers were particularly troubled by the state of the Alexandra Magistrate's Court.

When they arrived, they were greeted by filth, broken windows - one of which has been broken for 10 years - and graffiti.

What was even more disturbing was the lack of security.

Access to the court is free, without any scanning for concealed weapons.

According to control prosecutor Mr Theo Barkhuizen, prosecutors and magistrates did not feel safe in and around the court.

"Magistrates have been hijacked on their way to work. The fact that there is a police station on the same road is no deterrent," said Barkhuizen.

He said missing dockets were another problem hindering the prosecution process.

Tshwete said it was no surprise documents disappeared, as some policemen and prosecutors were accepting bribes.

Sowetan 16/7/99



From left, Justice Minister Penuell Maduna, Correctional Services Minister Ben Skosana and Safety and Security Minister Steve Tshwete view holding cells at the Wynberg Magistrate's Court in Alexandra yesterday. The ministers were on a fact-finding tour of Gauteng's criminal justice facilities. Picture MARTIN RHODES

Alexandra lock-up key missing

Taryn Lamberti

WHEN Justice Minister Penuell Maduna, Safety and Security Minister Steve Tshwete and Correctional Services Minister Ben Skosana paid a surprise visit to the Wynberg Regional Court in Alexandra yesterday, they discovered that a key to the holding cells had been lost.

The control prosecutor, Theo Barkhuizen, said that although the key had been missing for some time, no escapes appeared to have occurred as a result.

The ministers visited magistrates' courts in Johannesburg yesterday to see for themselves what was "happening on the ground". The three departments form the integrated justice system and the ministers vowed to report their findings to cabinet.

The control magistrate, Mike Cloete, said the visit gave the ministers an opportunity to see the dilapidated state of the court building for themselves.

He said one of the window panes had been broken for 10 years after someone had committed suicide by jumping through it. "There is not a single window pane that is still intact. The building belongs to the public and it is not the officials who have broken the windows, but the members of the public themselves," Cloete said.

Three magistrates were hijacked outside the court in London Road, now infamous for hijackings.

Cloete said the major problems facing the court were a shortage of funds and the inexperience of officials. There were also no facilities to enable children to testify. Cases involving juvenile witnesses had to

be transferred to Randburg. This court usually had a backlog of crimes which had taken place in its jurisdiction, the magistrate said.

There was no security check at the front door and people entering the courthouse were not searched for firearms.

Tshwete said that in Pretoria recently, a magistrate had to take cover behind the bench to dodge bullets being fired by a person in the court room. In another incident, a complainant was shot and killed in the court.

The ministers also inspected the turnstiles at the entrance to the Protea Magistrates' Court in Soweto. Although there were metal detectors, there were no facilities for people with licensed firearms to lock their weapons away and so they were allowed to take them inside with them.

De Kock ordered Maponya's death, TRC hearing told

Sowetan 16/7/99 (252)

FORMER Vlakplaas commander Eugene de Kock ordered the killing of Krugersdorp security guard Japie Maponya in 1985, former security policeman Willie Nortje said yesterday.

He told the Truth and Reconciliation Commission in Pretoria that De Kock decided to have Maponya killed after police assaulted him at Vlakplaas security police base, where liberation movement activists were tortured, interrogated and murdered during the apartheid era.

De Kock has denied ordering the killing.

He told the TRC's amnesty committee earlier this week that former West Rand security police head General Johan le Roux ordered the murder at a meeting in Krugersdorp after Maponya was abducted.

"He (Le Roux) told me he never wants to see this man (Maponya) in Krugersdorp again," De Kock told the TRC during his amnesty application for the killing.

Nortje said yesterday he never heard Le Roux tell De Kock that he never wanted to see Maponya again. He said Le Roux approved of Maponya's abduction and interrogation, but not the murder.

Le Roux has also denied instructing De Kock to kill Maponya.

Nortje is seeking amnesty for the kidnapping, torture and murder of Maponya at

the Swaziland border in September 1985.

Maponya was abducted in Krugersdorp and taken to Vlakplaas where he was interrogated and tortured on the whereabouts of his brother, Odirile, an Umkhonto we Sizwe commander who was responsible for several bombings in the Pretoria and Vaal Triangle areas.

Nortje said he had warned Le Roux that Maponya might die while being assaulted during interrogation.

He said that the day after Maponya was beaten up, De Kock phoned former Piet Retief security police commander, Freek Pienaar, and it was decided that Pienaar would show De Kock where Maponya could be killed in Swaziland.

Nortje said he, De Kock, and security policemen Eugene Fourie and David van der Walt took Maponya to Swaziland.

Before they drove to Swaziland, they picked up Pienaar at Piet Retief.

Nortje said that when they got to the border he ordered Maponya to get on his knees. He then hit him over the head with an Uzi machinegun and tried to shoot him, but the gun jammed.

"De Kock took a spade and hit him over the head two or three times," he said.

Nortje shot Maponya in the head with a 9mm pistol because he said Maponya "was still showing signs of life" - *Sapa*

PW 'implicated' in killing of activists

FORMER state president PW Botha has been named by the Truth and Reconciliation Commission as one of those "implicated" in the murder of East Rand activists during the apartheid era.

According to a statement from the TRC yesterday, former Vlakplaas commander Eugene de Kock and 11 other apartheid security policemen will appear before the amnesty committee next Monday for their role in the murder of eight United Democratic Front youth activists on the East Rand in 1985.

In what was dubbed the Zero-Zero Hour incident, the activists were killed when Joe Mamasela and another Vlakplaas askari, Daniel Nkala, supplied the activists with "zero-timed" grenades and limpet mines to blow themselves up, the TRC said.

Seven other activists were seriously injured as a result of the blasts.

According to some of the applicants, Operation Zero-Zero Hour was approved by cabinet ministers, including former state president PW Botha.

TRC spokesman Mbulelo Sompeta said the TRC would convey its findings to the prosecuting authorities, who would decide whether to investigate the findings further and prosecute anyone.

"Implicated persons" were normally notified of their status by the TRC, Som-

peta said, and it was up to them whether they wanted to attend a hearing or send a lawyer on their behalf.

The intention of Operation Zero-Zero Hour, the TRC said yesterday, was to stem the tide of revolt and increasing politicisation of East Rand township residents, especially in Thokoza, Katlehong, Duduza, Daveyton, Kwahema and Vosloorus.

Amnesty applicants for the Zero Zero Hour operation include former police commissioner General Johan van der Merwe, Brigadier Willem Schoon, Eugene de Kock, Daniel Nkala, Captain Roelf Venter, Martinus Delpont, Francois Steenkamp, Kobus Kok, Japie Kok, LCM Prince, André Roos and Wal du Toit.

Implicated persons in the Zero-Zero incidents were named as Sergeant Gert Kruger, General Joep Joubert, late cabinet minister and speaker Louis le Grange, General Johan Coetzee, a General Schutte, Brian Ngqulunga (deceased), Moses Nzimande (deceased), Eric Maluleka, PW Botha, Cornelius Beeslaar and Tobogo Michael Mathukinca.

The hearing will be held at the Idasa Centre at the corner of Prinsloo and Visagie streets, Pretoria - *Sapa*

We won't be held to ransom, says head of justice

(252) ARU 17/7/99
LENORE OLIVER

Magistrates have been accused of holding the Western Cape justice system to ransom by resigning before completing court cases and then offering to finish hearing them for R1 500 a day

In many cases, the magistrates have resigned to go to better paying jobs

Western Cape Justice Department head Hishaam Mohamed said this week he would not be held to ransom by these regional court magistrates who demanded R1 500 a day to complete their cases after leaving the department's employ.

In one case, a magistrate left with 51 partly heard cases pending

This magistrate had now proposed that although it would normally have taken him three months to complete the cases, he would hear them in six weeks at R1 500 a day

"We won't be held to ransom but we are in a Catch 22 situation. Part-heard matters can be heard afresh only if the presiding officer is sick or incapacitated and then only on review through an application to the High Court," said Mr Mohamed

All the records of the trial would then have to be retyped which would cost about as much as it would to pay the trial magistrate R1 500 a day

Mr Mohamed also criticised the magistrates for giving short notice of their intention to leave.

"Many magistrates, although not deliberately, leave when they know they have a roll full of part-heard matters

"They leave at short notice and then expect fair treatment. It is also a question of ethics. If we know that a person is leaving we can organise his court roll."

Mr Mohamed said R1 500 a day was set down as the maximum payable to such a magistrate.

"In this sort of scenario one starts to question the community's interests as well as the one's own legal ethics"

"We are not asking the magistrates to work for nothing. There should be a sense of civic duty and serving the community should always be part of legal ethics," he said.

At a meeting to be held later, Mr Mohamed will propose to the department that

- The maximum of R1 500 be withdrawn
- An offer be extended to magistrates who resign to be paid an amount to finish cases, based on their salaries at the department.
- Before resigning, magistrates give undertakings that part-heard matters will be dealt with at their convenience
- Short notice of resignation be stopped

Unenforced and full of holes, new laws fail victims of domestic abuse

PETA KROST

When the Domestic Violence Act was introduced, it was heralded as a step in the right direction to protect women against human rights violations. But laws are only as good as their enforcement.

Susan Sitthole was one of many women murdered by her husband. She had moved out their home and had requested the police to accompany her to retrieve her belongings. When her husband asked the police to wait outside while he "sorted out a domestic matter", they obliged. A few minutes later, Susan Sitthole was dead.

"Many women have been murdered and continue to die in the presence of police," said Minabathio Ramogoshi, of the National Network on Violence Against Women. Although women go bravely to court to get an interdict to prevent their partners from further abusing them, the interdict only serves to make the men angrier and more abusive.

Marian had a history of violence in her marriage. She got an interdict and secretly moved in with her family. But her husband found her and continued to harass her. She returned to the police and got another interdict. Four days later, Marian was dead.

The Gauteng Network on Violence Against Women campaigned this week for the effective implementation of the Domestic Violence Act. They demanded to know why the Government was dragging its feet when the number of women being kicked, beaten and killed was on the increase.

"It is incredibly frustrating. We are always running workshops to prepare women to deal with the new system, only to find that the system is still unfriendly," said Funeka Njole and Tebogo Matsoane of the Tshwaranang Legal Advocacy Centre. It is estimated that one in six women involved in relationships is abused, but organisations believe the real figures are much higher. However, there are no official statistics as most women never report the abuse.

The new act ensures that if a victim reports a domestic violence case, the police must ensure that the victim is protected. If the victim wants to lay a charge, the police have to provide her with adequate information and help. They are also obliged to assist in getting medical attention and safe shelter. The organisations dealing with domestic abuse believe that this time the law recognises the difficulties faced by abused women.

Ms Ramogoshi said the act can force the abuser to pay medical bills for the woman. It states that the police can arrest a man if he refuses to obey an interdict. An abuser can be ordered to vacate the house he shares with the abused woman and pay the mortgage if the woman can't. The act enables authorities to demand the abuser to hand over his weapon and also deny him access to his children. Lisa Vetteen, the gender co-ordinator for the Centre for the Study of Violence and Reconciliation, said that although the act still needed work, its implementation had taken much longer than expected. Other organisations agree that a lot could already have been achieved if people in the Government had put their minds to it.

"At the moment, there are too many holes in the system and victims are unprotected. With the new act the police have to take the victim for medical treatment and help the person to look for a place of safety. But who pays for the medical expenses when the police have to take the victim to the hospital? Most of the time victims have no money on them. And what happens if there is no shelter in the area?" asked Ms Vetteen.

"The law on its own won't stop violence," she said. "We need the departments of Welfare, Trade and Industry, Housing and Labour and private sector's help in this fight. At the moment there is no disciplinary action and police have no guidelines on how to handle domestic violence."

She said under the new act women would have to get permission from the authorities before they could withdraw charges. She said it was essential that the police were carefully educated on domestic abuse so they understood why women withdrew charges against their partners. Under the new act, even women who have one-night stands are protected, as are lesbian lovers, children and elderly people abused by their children. The act also considers emotional and financial abuse. The new act is a huge step, especially considering the old laws only really protected married women who were physically abused.

"But for now women need to know that they are on their own. If they are abused, they need to seek help," said Ms Matsoane.

(M2) AKU 17/7/99



AWB 'Generals' in blood money scam

By City Press Correspondent

A SPECIAL investigation team from the Public Prosecutor's Office is closing in on prominent leaders in the Afrikaner Weerstandsbeweging (AWB).

A team under deputy director of prosecutions, Paul Fick, is investigating claims that persons who gave instructions to far-right saboteurs, later betrayed the saboteurs to claim the big rewards that were posted for their arrest and conviction.

Well-known figures in Eugene Terre'Blanche's AWB are named as *agent provocateurs*. Certain AWB "generals" allegedly acted as paid agents who spied on the

fighting for the former government's intelligence structures.

AWB footsoldiers allegedly received instructions for acts of terror from these agents - but the instructions actually came from the former Security Branch.

In the ensuing "police breakthroughs," the policemen involved got a pat on the back and the agents walked away with bags of money.

It is alleged that these AWB "generals" lived a high life on expensive properties along the Cape coast after acquiring speedboats, businesses and even an escort agency - all of it bought with "blood money".

Fick this week confirmed the ongoing investigation.

Investigators are awaiting the outcome of amnesty applications by several rightwingers before action will be taken. Fick did not want to elaborate. It was reliably learnt that two senior retired police officers have been secretly investigating the matter with the cooperation of former AWB members for more than a year. Some 42 former AWB members have made statements so far. The statement from Nico Prinsloo, former AWB secretary general, apparently consists of more than 200 pages.

Cliff Barnard and Koper Myburgh, two AWB agents who are serving long sentences in C Max in Pretoria for AWB acts of terror, allege they were instructed by two

top AWB leaders to establish "Boere assault troops" after an earlier escape from prison.

One of them - an AWB "general" - gave them explosives.

After a few small bomb attacks, the "general" instructed them to plant a bomb in a supermarket in Worcester in the Western Cape.

The same "general" then allegedly informed the police of Barnard, Myburgh and accomplice Jan van der Westhuizen's hideout. The R250 000 reward was allegedly paid out to him.

In his statement Dytis Kriel, another former leading figure in the AWB, named two AWB "generals" who had received R150 000 following his arrest in February 1994.

War is declared on mob justice

CP 18/7/99

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By DOMINIC MAHLANGU

THE DEPARTMENT of Justice and Constitutional Development (Formerly Department of Justice) has declared war on mob killings which it says are on the increase throughout the country.

The department says these killings are receiving the fullest attention of the National Crime Prevention Department including the Department of Justice. Cheryl Gillward, member of a parliamentary committee on 'mob justice', said most of the cases related to mob killings stem from civil grievances that are not properly addressed either by courts or the police.

She said the establishment of community courts would stamp out most of the incidents of mob justice. Gillward said the justice department understands the frustrations which communities had about crime but individuals must not re-

vert to criminal activities in an effort to achieve justice.

"Community police forums already exist in most areas. Active community participation in these forums will make communities effective mechanisms for reducing and preventing crime," said Gillward.

David Bruce of the Centre for the Study of Violence and Rehabilitation (CSVVR) had a different view of the matter. He said the rise in mob killings was an indication that the South African criminal justice system was in a shambles. He said in every society where there is a breakdown of the criminal justice system, "communities will always seek alternative ways to address their problems".

He said drastic changes were needed in the criminal justice system if the country was to win the war against mob killings. "Can you tell a person who has been a victim of crime that the police, and the

courts will address his problems? People have lost their trust in the justice system. That's why they tend to support mob justice."

Bruce has conducted research into mob killings. He explained that the killings in townships occurred due to a lack of trust in the justice system by community members.

"Most black people still view the criminal justice system as favouring a certain sector of the population (whites). They (blacks) feel discriminated against every time they go to court. This creates a fertile ground for vigilantism and mob killings to occur," added Bruce.

Senior Superintendent Farzel Abdul Kader from the national commissioner's office confirmed that acts of violence in the country were on the increase.

He did however add that police are working hand in hand with the justice department to come up with legislation that will effectively deal with the problem.

IFP opposes ANC amnesty



IN PROTEST IFP supporters in Tokoza took to the streets questioning the TRC's decision to grant amnesty to ANC member Michael Phama, who killed 21 IFP members
Pictures George Mashinini

By DOMINIC MAHLANGU (252)

INKATHA Freedom Party members took to the streets this week in protest against the granting of amnesty to ANC member Michael Phama

Phama was released from jail when he has served seven years of his 18 year sentence for the murder of 21 members of the IFP in Thokoza on the East Rand in 1992.

Phama testified before the Truth and Reconciliation Commission amnesty committee that he killed the 21 IFP members in Tokoza during political violence.

In an interview with City Press from his hide-out in Thokoza minutes after the march by IFP members on Wednesday, Phama said that the protest march by the IFP was out of line with peace developments being achieved in the area.

He said he went to the TRC not only to tell the world what he had done, but to

heal the wounds of those families that lost their next of kin in the violence.

"I served my time in jail for what I did and for the IFP to protest against the decision taken by the TRC raises questions about their role in fostering peace in the area," said Phama.

IFP Youth League organiser David Mazibuko said his organisation would continue to protest against the decision.

He said many of the IFP members who were arrested for having committed crimes related to the politics of the area, had been denied amnesty even after full disclosure.

"It is now clear to us that IFP members will not qualify to get amnesty - they'll rot in jail," said Mazibuko.

Mazibuko, who led the IFP march to the Thokoza police station where he handed a memorandum to the senior station officer, said the IFP wanted answers from the TRC as to why their members

were not granted amnesty.

"Phama killed 21 IFP members in the area and, with no evidence given by families who lost their loved ones, they granted him amnesty because he is a member of the ANC," said Mazibuko, addressing IFP members who gathered at the police station.

Phama, a father of four, said he had served his dues and had spoken the truth to the nation.

"When I came out of prison I had nothing and I continue to suffer despite having liberated ANC members in the area. All that I need is to find



FREE MAN Michael Phama at home after his release last month after spending seven years in jail.

a job and support my family," he said. Simo Ngvagwa, ANC ward councillor in Phola Park said security around Phama had been boosted after he was released from prison. He said the ANC took a decision to boost security around Phama after they realised that certain people in the area were not happy about his release.

"We do sympathise with the IFP but they must accept the decision taken by the TRC."

"The ANC did not force Phama's release, he testified before the amnesty committee and his release should not be confused with street politics."

Pardoned Killer now wants peace

By Themba Molefe

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ICHAEL Phama does not readily strike one as a killer who would mow down 21 people with the world's deadliest hand-held automatic weapon and nonchalantly go back to the comfort of his Phola Park home to his two wives and four children.

An African National Congress (ANC) member and former chairman of its Phola Park squatter camp branch on the East Rand, Phama was sentenced to 21 life sentences on October 12 1993 for the shooting with an AK-47 assault rifle of 20 Inkatha Freedom Party (IFP) members and a traffic officer two years earlier.

He was released from Leeuwkop Prison outside Johannesburg on June 30 after being pardoned by the amnesty committee of the Truth and Reconciliation Commission (TRC).

In fact, to him the war that ripped the Thokoza community apart in the early 1990s is over and his job is done. Now he is heading for his ancestral home in Tsomo, Transkei, to be cleansed.

In passing sentence Rand Supreme Court Judge MC de Klerk said "Taking into account the current political developments, the death penalty will be a 'paper sentence'".

De Klerk added "The enormity of your actions is that you are guilty of more murders than anyone I can recall in the history of this land."

The TRC actually granted Phama amnesty on the basis that there was never a cessation of hostilities between the ANC and IFP and accepted that Phama's action had a political objective.

However, last Wednesday about 200 IFP Youth Brigade members converged on the formerly notorious Khumalo Street in Thokoza to protest against the granting of amnesty to Phama.

IFPYB provincial chairman Mr Thabang Dlamini said "I wish to put it on record that the IFP is not against Phama but against the way the TRC preferred his application over many others, including that of our member Nicholas Chamane, whose application was turned down three times."

However, Dlamini said that IFP-ANC relations were still "very cordial" in Phola Park.

Recalling September 8 1991, the day

(2/1/91)



IFP Youth brigade members protest against the granting of amnesty to Michael Phama (inset) by the TRC. The organisation's regional chairman said that the action was aimed at condemning the TRC's handling of Phama's case rather than at Phama himself.

of horror, Phama said emotionlessly "We heard they were marching down Khumalo Street and knew they were coming to attack us, our women and children. So we wanted to 'welcome' them. And 'welcome' them, we did."

"I am not a hero. I joined the ANC after seeing Boers kill children in the 1970s. I did not plan that one day I would carry an AK-47 and shoot anyone. I had never killed nor shot anyone before that day. I was at war."

How did he feel on that fateful day as his victims succumbed to the bullets

from his AK-47? "Nothing," he said. "You see, I saw them fall from a distance as I fired. I don't have any nightmares. Maybe it would be different if I was using a knife and at close range. But remember, I was at war with the IFP and it is over now."

Phama said he identified with past president Mr Nelson Mandela's call that "we open our arms and embrace, reconcile and make peace. I am ready to do that after having made peace with IFP comrades I met in prison."

On forgiveness from the victims

and their families, Phama said "That was in fact the basis of my application for amnesty. I am already working on meeting IFP leaders in Phola Park."

He came to Johannesburg in 1972 and became a self-taught electrician. While in jail Phama lost his house in Thokoza after it was repossessed due to non-payment of his bond.

What would he do if he were given a chance to 'live his life again'? "I would definitely preach to the youth not to resort to violence and killing, because they do not work. Let us talk. I would say"

Nortje denies bid to sabotage application

(252)
Stephans Bothma

PRETORIA — The man whose 1994 testimony before the Goldstone commission resulted in the criminal prosecution of Eugene de Kock denied yesterday that he was attempting to sabotage the amnesty application of the former Vlakplaas commander.

Willie Nortje, a self-confessed multiple murderer and Vlakplaas operative who currently holds a senior position in the National Intelligence Agency, applied for amnesty for the 1985 kidnapping and subsequent murder of Krugersdorp security guard Japie Maponya.

Maponya, whose brother at the time was being sought by the security police for 'terrorist' activities, was kidnapped by members of the notorious Vlakplaas unit at the request of Gen Johan le Roux in an attempt to obtain details of his brother's whereabouts. After failing to divulge any information to the unit, Maponya was taken to the Swaziland border where he was shot in the head by Nortje.

The version of the murder given yesterday to the truth commission's amnesty committee by Nortje, who was granted indemnity from prosecution for the murder after testifying against De Kock in the Pretoria High Court in 1996, differed from that given by De Kock in several crucial respects.

The former Vlakplaas commander has also applied for amnesty for the murder.

"I am not here today to dispute De Kock's version," Nortje said in response to an allegation by De Kock's advocate, Flip Hattingh SC.

"I am one of the people who set the ball rolling with my testimony before the Goldstone commission and although I have already been indemnified from prosecution I cannot withdraw from the process now," Nortje said.

He insisted that De Kock hit Maponya with a spade on his head when he attempted to escape, De Kock last week declared that he hit the security guard with the spade only after Nortje had shot him in the head.

Both Nortje and another former Vlakplaas operative Eugene Fourie, who also applied for amnesty for the Maponya murder, told the commission yesterday that Maponya's death had been "unnecessary".

"With hindsight, there were other options," both men told the committee.

They said that at the time they believed Maponya should be killed to avoid any possibility that he could identify his kidnapers and embarrass the police and the government.

Nortje testified that even if no permission had been obtained by De Kock to eliminate Maponya the Vlakplaas operatives involved would have enjoyed the support and protection of their superior officers.

The applications continue today.

APARTHEID TO BE DECLARED A CRIME

New bill to outlaw racism

CT 20/7/99

(252)

LEGISLATION to outlaw the last vestiges of apartheid discrimination will come into force early next year with the passing of what legal experts have termed the "most important piece of legislation after the Constitution".

LINDIZ VAN ZILLA reports

THE long-awaited Prevention and Prohibition of Unfair Discrimination Bill — known as the "equity bill" — will come hot on the heels of a groundbreaking cabinet move to ratify a 1973 United Nations convention declaring apartheid a crime.

The UN's International Convention on the Suppression and the Punishment of the Crime of Apartheid was adopted in 1973 and came into operation on July 18, 1976, but was not recognised or signed by the apartheid state.

The Department of Justice and Constitutional Development yesterday announced that the cabinet had approved the ratification of the convention and would ask Parliament to adopt it at its next sitting, beginning in August.

Significantly, one of the terms of the convention requires countries to adopt legislation to prevent any encouragement of segregation policies and to punish people guilty of doing so.

The equity bill, due to be passed in February, falls in line with the UN's requirements and is seen as a major step in speeding up the eradication of discrimination. The bill will seek to enforce the clause in the Constitution which outlaws discrimination on the grounds of race and gender.

One of the architects of the leg-

islation, Human Rights Commissioner Jody Kollapen, said "This has to be the most important piece of legislation after the Constitution. The bill will fall in line with requirements laid down by the UN to outlaw discrimination."

He explained that discrimination was covered by only three lines in the Constitution. The equity bill had been drawn up to lay down guidelines on what constituted discrimination and the measures needed to combat it.

"The bill is pretty comprehensive in its ambit and will regulate not just state actions but also those of private individuals."

In addition to discrimination on the basis of race or gender, the bill also outlaws discrimination by government or private organisations on the basis of age, religion, ethnic or social origin, pregnancy, marital status, sexual orientation, belief, disability, conscience, culture and language.

Instances in which the proposed legislation could be applied include cases involving banks or lending institutions who refuse loans to families living in areas deemed "high risk."

The bill, drawn up by the Human Rights Commission and the Department of Justice, is set to provoke controversy over certain proposals aimed at regulating the extent to which private clubs,

restaurants, schools and hospitals will be allowed to discriminate in choosing their clients.

Kollapen said structures such as the Human Rights Commission and Commission on Gender Equality would be used to receive and investigate complaints.

Further changes to accommodate the proposed legislation might come in the form of "specialised equality divisions" within the court system, he said.

Kollapen emphasised that the legislation would have to be accompanied by an extensive educational campaign — not only by the government but also civil society in the form of non-government organisations and churches. "It is important that South Africans understand the proposed legislation," Kollapen said.

Minister of Justice and Constitutional Development Penuell Maduna said "It is (regrettably) that the convention against apartheid has not yet been ratified despite the fact that it is a foundation of our new democratic government." Maduna said the previous government could not sign the convention because its main pillars had been apartheid and racial discrimination.

The UN convention could theoretically be used as a basis to prosecute members of the former NP government for apartheid crimes, but the Department of Justice has dismissed the possibility. A Justice Ministry official said the convention would not be applied retroactively because the Truth and Reconciliation Commission had dealt with apartheid injustices.

Basson to face three more charges

Stephané Bothma

PRETORIA — SA's gerin wartare hastermind Wouter Basson, who already faces criminal charges involving the death of 230 people and fraud transactions worth R74m, has been served with an additional indictment detailing three charges of theft and fraud of R6,4m.

The cardiologist, who is expected to stand trial in the Pretoria High Court in October this year, allegedly stole 31 342 units of protective clothing, known as NBC suits, from the SA Defence Force (SADF) and then sold the goods for his own account.

the 274-page indictment served on Basson in March this year, Basson agreed to provide a private company, Technotek, with about 30 000 NBC suits at a cost of R210 each. The suits were the property of the SADF.

Another amount of R2 033 492 was paid into the account of WPW Investments Incorporated at the Banque Indosuez in Geneva. The rest of the money was paid to a go-between, according to the indictment.

(25/9)

DD 2117199

During January and February 1991 Basson gave an order that 18 770 and 12 572 suits be delivered to Technotek respectively.

At all relevant times, Basson created the impression that Regent International and WPW were front companies of the SADF or of the SA government, it is claimed in the charge sheet.

In regard to the order for 18 770 suits, Basson allegedly ordered that payment be made directly into the account of Regent International Trading Services, held at Nedbank in Verwoerdburg.

However, the SADF was unaware of the existence of the two companies and of the fact that Basson delivered the NBC suits to Technotek.

Technotek paid an amount of R504 580 to Regent International for the order for 12 572 suits.

Basson's trial is expected to last for at least two years.

According to an addendum filed with the high court in addition to

Blows traded at hearing

TEFO MOTHEBELI

(252)

of 21/7/99

from 10 to 18 years.

"I don't feel safe among them. They are not happy about the fact that I have disclosed the truth," he said afterwards.

Earlier in the day Sibongile Manyika, the last of the victims to appear before the committee and who is opposing the application, added a new twist to the hearings when she alleged that there were women among the group of assaultants who attacked them.

She said she did not see them but only heard their voices ululate as the men went on the rampage.

The victims suffered a minor setback when an application by their lawyer, Danny Burger, to have a former police officer, Sergeant Gerhardus "Pedro" Peens, summoned, was turned down. Peens was to be questioned on his utterances implicating the police in the massacre. Committee chairperson Judge Sandile Ngcobo ruled that Peens' appearance in the hearing would not take the matter any further.

The police have denied any involvement in the attack.

The hearing was adjourned to next Tuesday.

JOHANNESBURG: Blows were traded at an amnesty hearing in Vanderbijlpark yesterday when tension among Inkatha Freedom Party members who are seeking amnesty for the Boipatong massacre exploded into the open.

The hearing is underway at the Iscor recreation club.

Andres Nosenga, who joined the other 14 men late in their quest for pardon, punched one of his colleagues in the face while they were squabbling.

Officials acted swiftly and gained control of the situation.

Nosenga, 24, said tension between him and other applicants developed after his testimony to the committee in which he implicated the police and senior IFP members in the 1992 attack which claimed the lives of 45 people.

He is the only one, among the 15, whose statement corroborated the victims' charge that the IFP and the police were involved in the attack.

The applicants received sentences ranging

Maponya's torturer talks

(252)
Sowetan Reporter

A FORMER security policeman told the Truth and Reconciliation Commission yesterday that he had assaulted security guard Japie Maponya before Maponya was killed.

Sergeant Johannes Mbelo said at the TRC's amnesty committee hearing in Pretoria that he had been at the apartheid death camp Vlakplaas in 1985 when he, an askari named W Nzimande, and another Vlakplaas operative Almond Nofemela had abducted Maponya.

The aim of the abduction was to get Maponya to tell of the whereabouts of his activist brother, Odirile.

However, according to Mbelo's testimony, Maponya did not reveal anything of substance despite the severe torture he endured.

Mbelo admitted to slapping Maponya "with an open hand on his back" during interrogation.

The prisoner was also sprayed with teargas more than once in the course of his ordeal.

"Maponya was telling us he did not know anything about his brother," said Mbelo. He added that at the time even the white Vlakplaas operatives had given up on getting any worthwhile intelligence out of Maponya.

That an important part of the Vlakplaas ethos was raw fear also emerged in yesterday's hearing.

When asked why he had not questioned the disappearance of Maponya, Mbelo said the asking of too many questions in the camp was certainly not something one did.

"At Vlakplaas you did not ask questions, you only listened. If you asked too much you would get the same fate. What I mean is that your honesty would be doubted," Mbelo said.

Mbelo and former Vlakplaas commander Eugene de Kock have both applied for amnesty for their involvement in the murder, assault, kidnapping and cover-up of Maponya's killing.

After his interrogation, Maponya was taken to the Swaziland border and shot to death by Vlakplaas operatives including De Kock and Willie Nortje.

Earlier another Vlakplaas operative, David van der Walt, who is also applying for amnesty, told the committee that it was sometimes more difficult to get sympathisers and collaborators to cooperate than it was to get trained "terrorists" to talk. Van der Walt referred to Maponya's refusal to talk about the whereabouts of his brother.

"In retrospect I think it was an overly hasty decision to kill him."

The hearing continues.

Decisions loom on the public's right to know

(252)

Exemptions on government and privately held information have to be resolved within months

David Greybe

BD 22/7/99

CAPE TOWN — Government has to decide how far to broaden major new "right to state information" legislation to include the private sector before it can proceed in Parliament, according to the SA Human Rights Commission.

However, time is running out as the constitution has set February 4 as the deadline for enactment of the Open Democracy Bill, according to commissioner Leon Wessels.

A second crucial decision facing government is what state and privately held information to exempt under the new human rights legislation, Wessels says.

The Open Democracy Bill and the Administrative Justice Bill and Promotion of Equality Bill are intended to make for more open and accountable governance.

The bills are closely linked administratively and share the same February 4 enactment deadline. While the Open Democracy Bill has already been tabled in Parliament, although with important "political issues" unresolved, the other two bills have not.

The promotion of equality legislation will outlaw discrimination at all levels of public and private life — from private clubs that discriminate against prospective members to employers who deny work to pregnant women, newly married women or people who are HIV-positive.

The Administrative Justice Bill must provide for "administrative action that is lawful, reasonable and procedurally fair", the constitution says. In other words, Wessels says, "John and Jane citizen must be guaranteed fair administration procedures when dealing with government."

It follows, therefore, that the successful implementation of the Open Democracy Bill and the Promotion of Equality Bill will depend in large part on successful implementation of the Administrative Justice Bill.

The commission will be responsible for, among other things, monitoring the functioning of the Open Democracy Bill and informing the public of their right to access information. Wessels will oversee the process on behalf of the commission.

He says the commission is drafting reports on the three bills for Parliament's justice committee, which has to deal with the bills in the new session starting next month. This follows a three-day workshop last week of stakeholders from the private, public and non-governmental sectors organised by the commission.

Wessels says it is clear from the various inputs that government will have to make some major political decisions.

While there was broad consensus, even within the private sector that the open democracy legislation had to include the private sector, there were still "major differences" between political and business stakeholders on how to achieve this.

Wessels said the commission, in drafting its report, would meet representatives of the private sector to explore the matter further. In the end, though, a political decision would have to be made, he said. The issue of exemptions also needed a political decision.

Bullets fly over firearms control

South Africa's morbid march to a firearms related death toll of more than 10 000 people a year continued unabated this week as gunmen targeted victims across the metro politan area

In one case Gary Kitchen, who works for the Seven Eleven franchise head office, was hijacked, robbed and shot by a gang who surrounded his bakke when he pulled up at the intersection of Orey and Strandfontein roads on Saturday

The men grabbed a money bag containing R30 000 and drove off with Mr Kitchen before leaving the wounded man in his bakke at a secluded spot in Philippi. Mr Kitchen is in hospital.

On Tuesday, two students and a security guard who boarded a taxi in Rondebosch at about 6.30pm were attacked by a group of fellow passengers, and were shot at but not hurt when the vehicle stopped at an intersection. Police caught up with the taxi in Athlone and arrested three men from whom they confiscated a firearm.

These attacks brought home the trauma that is played out on the streets of this city every day

Gun related deaths and injuries in Cape Town in the past few weeks have injected a shocking shade of realism into the unfolding public debate on proposals by the Department for Safety and Security to replace the Arms and Ammunition Act with a new Firearms and Ammunition Control Bill.

The debate, which will take place formally before the parliamentary portfolio committee on safety and security later this year, will happen in terms of a mandate from Steve Tshwete, Minister for Safety and Security, to reduce the proliferation of small arms and ammunition.

"The easy availability of guns is a major contributor to violent crime in South Africa," says Bernie Fanaroff, deputy-director general of safety and security, and the prime sponsor of the draft legislation.

"We are not unique in this regard. Brazil is also busy with a major gun control programme in response to the high rate of violent crime.

"Police statistics show half of all murders in South Africa are committed with firearms.

"A total of 75% of murders in Soweto are committed with firearms, and firearms are used in more than 70% of robberies."

Dr Fanaroff says many murders and serious assaults are committed in or around people's homes and in around bars and shebeens usual

As the debate on firearm licensing heats up, some people are calling for responsible gun ownership. While others want a gun-free South Africa - except of course, for the police and armed services. Special Writer TYRONE SEALE reports



Do's and don'ts for gun owners

TYRONE SEALE

- Guns are not the first stop on the road to personal safety, says the Western Cape Department of Community Safety.
- In a brochure, the department starts with taking proper security measures at home or while driving or walking. Ensure that your burglar alarm, security gates and burglar bars are in good order. Get a guard dog. Continually remind your family of safety issues.
- Other important advice is:
 - The law says that if you are attacked, you may defend yourself as long as the action taken is not more violent than the attack.
 - A gun licence will not be issued to you if you do not have a safe in your home.
- If you wish to defend yourself, try these alternatives to a gun:
 - Take a class in self-defence.
 - Carry a personal "body alarm", mace or pepper spray, a whistle or an electric shaver.
 - Before you buy a gun, consider the following:
 - Don't think you are invincible if you own a gun. Your own gun is more likely to be used against you.
 - If criminals think you are armed, it is more likely they will use their guns against you. They may also target you specifically to steal your gun.
 - Studies have shown that the incidence of accidental death, homicide and suicide are far higher in homes with guns.
 - Most parents think their children are not capable of firing a gun. Most children, four years and older, know how to fire a gun.
 - Guns are closely related to drug trafficking, and are often exchanged for drugs. Keep this in mind if you have teenage children.
 - If you have a gun,
 - Never leave it in your car. Thieves will find it in seconds.
 - Keep it on your person at all times if it is not locked in a safe from the magazine and bullets.
 - Store your firearm apart from the keys to the safe on your person.
 - Know how to use your gun if you have to defend yourself. Fire your gun regularly at an approved firing range.
 - Never point a gun in anyone's direction.
 - Never sleep with a loaded gun under your pillow.

Writing to the Cape Argus: The Reverend David Newby, Western Cape chairman of Gun Free South Africa, underscores the police statistic that 30 000 of legally owned

firearms remain in circulation. Limiting the ability of law-abiding citizens to defend themselves and their families does not lead to a

Mr Van Tonder says his company will support any tightening of legislation that will make it more difficult and less rewarding for criminals to use firearms.

Koosun Kalyan, general manager of Shell SA's corporate division, says her company spends millions of rands each year to provide better lighting and security cameras at petrol stations around the country.

Ms Kalyan is concerned at the increase in hijackings of fuel tankers which, she says, are emptied before the cargo is smuggled around the country and possibly across borders.

On top of these losses, the company has to foot the bill for medical and psychological treatment of staff who are targeted, and has to grapple with staff turnover problems arising from victims who choose to work in a safer environment.

These days, one of the least safe environments in which to work is the cash in-transit industry, which is targeted by ruthless gangs.

Albert Erasmus, Western and Eastern Cape regional manager for Coin Security Group, says his company's policy is "minimum force".

"If we have to arrest someone, we use minimum force. But if we've been shot at, and when your life is in danger, we use the same force back."

Beesged businesses get support from Business Against Crime, whose Western Cape MD, Adam Penberthy, says the fact guns fall into inappropriate hands and are used against business, is "costing the economy enormously in terms of withdrawal of investment and the cost of human life and suffering".

Ironically, Mr Penberthy made these comments days before the announcement by the Johannesburg Stock Exchange that it was moving to Sandton from downtown Johannesburg because of the crime situation around Diagonal Street. Personally, Mr Penberthy stands for a gun free South Africa, but he admits that under the present circumstances this is wishful thinking.

Meanwhile, he says, Business Against Crime will support new, stringent controls on firearms.

Cape Town's metropolitan mayor, William Bantam, says: "At first (in the current debate) it seems that legal gun owners are being unjustifiably targeted, but if we look at the proliferation of

restitution of theft, and full recognition of the right of citizens to obtain, own, carry and use firearms for personal and family defence.

Adding substance to the debate is a report issued last week by the United States State Department which says organised crime in southern Africa has become active in arms trafficking.

"Gun runners and drug peddlers in southern Africa are beginning to pool their resources to maximise profits," the report said.

"There has been a fundamental change in weapons sales in sub-Saharan Africa since the end of the Cold War. Many nations and manufacturers eager to empty warehouses and arsenals of arms made superfluous by post-Cold War political and technological advancements have seen Africa as an attractive market.

"The consequent widespread availability of cheap weapons, easy to use and maintain - AK-47s sell for as little as \$6 (under R40) in some African countries - fuels destruction throughout the continent."

In South Africa, this destruction is evident where it hurts most: in the economy. Pierre van Tonder

(911) (2072) ARK 22 17/99

That is money we could spend on staff training and other benefits," he says.

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Dr Panaroff says many murders and serious assaults are committed in or around people's homes and in or around bars and shebeens, usually by people who are known to the victim.

"These are often committed with legally owned firearms. Legally



Do's and don'ts for gun owners

- TIP OF THE DAY**
- Guns are not the first stop on the road to personal safety, says the Western Cape Department of Community Safety.
 - In a brochure, the department starts with talking proper security measures at home or while driving or walking. Ensure that your burglar alarm, security gates and burglar bars are in good order. Get a guard dog. Continually remind your family of safety issues.
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Writing to the Cape Argus, The Reverend David Newby, Western Cape chairman of Gun Free South Africa, underscores the police statistic that 30 000 of legally owned firearms are stolen or lost each year. He says gun ownership is not a right, but a concession.

"We, the unarmed majority, insist on our constitutional right to be protected from the dangers of guns, and that the state exercise all caution in issuing firearms."

But another director of United Hammond Action, Peter Christian Action, believes the unarmed will not inherit the Earth as long as four million illegal firearms remain in circulation.

"Limiting the ability of law abiding citizens to defend themselves and their families does not lead to a decrease in crime."

"Instead of firearm control we need crime control - by instituting mandatory capital punishment for all first degree murder and rape,

restoration of theft, and full recognition of the right of citizens to obtain, own, carry and use firearms for personal and family defence."

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In South Africa, this destruction is evident where it hurts most: in the economy. Pierre van Tonder, group managing director for Spur Steak Ranches, which operates 244 franchises countrywide, says that in Johannesburg alone, stores are each spending between R4 000

5. He says:

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Meanwhile, he says, Business Against Crime will support new, stringent controls on firearms.

Cape Town's metropolitan mayor, William Baatman, says: "At first (in the current debate), it seems that legal gun owners are being unjustifiably targeted, but if we look at the proliferation of firearms in our own city, then one has to say that we must devise much stronger measures against guns."

"It seems that it is too easy to get a licence at the moment."

Justice comes in a container

ARL 22/7/99

Daily queues at Khayelitsha 'court'

(272)

STAFF REPORTERS

It is probably South Africa's quickest "court". Cases are investigated, suspects brought in for a hearing and "justice" meted out, all in 24 hours.

No, it is not some new anti-crime plan cooked up by new Justice Minister Penuell Maduna. The "court" in question is run by the Peninsula Anti-Crime Agency (Peaca), an organisation made up of former members of the African National Congress and Pan Africanist Congress armed wings.

And the "court officials" claim to have a good working relationship with police.

Hidden among the shacks in Khayelitsha's Site C informal settlement, two dilapidated shipping containers serve as the unofficial court's headquarters.

It opens for business when the sun rises and finishes when it sets - mainly because the containers have no electricity.

In case someone thinks justice was not done, the "court" has not one "judge", but five. Even the secretary sometimes interrupts proceedings to ask a question.

The "judges" all admit they have no formal training. Most are unemployed and see maintaining the "court" as their contribution to their community.

Peaca spokesman Moses Simanga said the "court" was formed last August. It was not, he said, a kangaroo court and, unlike other community courts, those found guilty were not beaten.

INSIDE

- People say taxi drivers give better service than cops
- Police denied my son protection, mother claims

Page 2

He said Peaca had a good working relationship with police and, in some cases, people were handed over to police.

In others, those found guilty were fined, or told to go and make good any damage done to a complainant.

Early every day, dozens of Khayelitsha residents queue outside the two containers with complaints, or to report crimes.

Cases have to be referred by street committees. Next to the containers is a sedan taxi used to ferry complainants around Khayelitsha to point out suspects and crime scenes for a R50 fee.

Yesterday, Nobesuthu Mndende, 21, came to the "court" to report her live-in boyfriend had assaulted her and pointed a gun at her on Tuesday night. The man was summoned to the "court" and questioned by the "judges". He denied owning a gun.

After a few tough questions it was agreed that the couple should go back home and sort out their problems themselves. The boyfriend was warned that if another complaint was made by Ms Mndende, the case would be dealt with more seriously.

Among the more bizarre cases was one involving a man who claimed he had been forcibly circumcised by a mob.

Meanwhile, residents and members of political organisations convened at the Eyona shopping complex in Guguletu last night to discuss the way forward after the arrest of a group of taxi operators accused of holding kangaroo courts, two weeks ago.

In a second raid on the homes of kangaroo-court kingpins last night, a special investigations team arrested eight suspects for street justice related to murders, assaults, kidnappings and robberies.

The eight men, aged between 36 and 55 and all from Guguletu, were expected to appear in the Wynberg Magistrate's Court today, together with the suspects arrested during the earlier raid.

During the first raid on July 7 in Guguletu, under the command of Leon le Grange, police arrested six minibus taxi operators based at Guguletu's Eyona taxi-rank who offered their services as self-styled police, judges, juries and enforcers. Detectives confiscated four guns.

Residents resolved to petition the magistrate in an attempt to get him to understand the crime situation in the townships.

Pienaar denies killing Krugersdorp guard

PRETORIA — Former security police member Freek Pienaar denied yesterday that he was involved in the killing of Krugersdorp security guard Japie Maponya in September 1985.

He told the truth commission in Pretoria that had he been involved, he would have applied for amnesty for the murder as he had done for other killings he took part in during the apartheid era.

Pienaar was last week implicated in Maponya's murder by former security policemen David van der Walt, Wilhe Nortje and Eugene Fourie. They told the commission's amnesty committee that Pienaar, who was the security commander of Piet Retief at the time, accompanied them and former Vlakplaas commander Eugene de Kock to Swaziland to show them where Maponya could be killed.

De Kock, Van der Walt, Nortje and Fourie are seeking amnesty for the abduction, torture and killing of the security guard Maponya was abducted in Krugersdorp and taken to Vlakplaas where he was interrogated on the whereabouts of his brother, Oderile, who was responsible for bombings in the Pretoria and Vaal Triangle areas.

De Kock said during his amnesty testimony that before they drove to the Swaziland border, they went to Pienaar's house to get a spade and garden fork. He said Pienaar did not go to the border with him.

Pienaar was requested by De Kock's advocate Flip Hattingh to testify in the matter. He is not applying for amnesty for Maponya's murder.

Pienaar said last week he could remember De Kock, Nortje, Van der Walt and Fourie arriving at his house and De Kock asking for gardening tools. He said De Kock might have asked him about police movements at the border. De Kock said he had hit Maponya twice on the head with the spade after Nortje shot him dead in a tree plantation at the Swaziland border.

Amnesty committee chairman Judge Selwyn Miller asked Pienaar why he thought three security policemen had implicated him. He said maybe they were confused with a similar incident he was involved in because "we were not enemies". Van der Walt, Fourie and Nortje's legal representative Albert Lamey told Pienaar that he denied being involved in Maponya's death because if he had applied for amnesty for the incident he would not have been able to prove his political motivation.

Pienaar disagreed and said he had had no knowledge of Maponya or his death. — Sapa

DD 22/7/99

'Free kangaroo court suspects'

Arrested taxi drivers provide better service than police, say residents

THABO MAGASO AND MYOLSI GOPHE
STAFF REPORTERS

Township residents are calling for the immediate release of people arrested two weeks ago in what police said was a breakthrough in investigations into kangaroo courts.

The arrests have angered residents from Guguletu and other townships. They said the taxi drivers were providing an invaluable service in combating crime in their communities.

Six taxi drivers, including a 65-year-old grandfather alleged to be a "judge" in kangaroo courts, were rounded up in a pre-dawn raid by a police task team which is probing the illegal courts.

The men are due to appear in the Wynberg Magistrate's Court today to apply for bail, and civic leaders are expected to testify on their behalf.

The six are facing charges ranging from assault to murder.

The investigating unit is probing 30 kangaroo court dockets involving 57 serious charges. Among these is the case of Guguletu resident Margaret Maghula, 59, whose body was found shortly after she refused to hand over her



In session: 'Judge' Sisa Mahobe, centre, listens intently to a complainant during a 'hearing' in Khayelitsha

teenage son to a kangaroo court. Township residents were bused to the Wynberg Magistrate's Court for the first court appearance of the six. Some residents said the men

should be released as they had done nothing wrong. Township residents met at Guguletu's Eyoona shopping centre last night to decide on a course of

action. Former Guguletu police forum member Michael Njikelana said township residents were turning to taxi drivers for help because polic-

ing in their communities was not good enough.

"When you call the police hotline you are told one of three things: there are no cars, no drivers, or that the police will come and then you end up waiting as long five hours for them," he said.

"We turned to taxi drivers because they were willing to help. Proof of their good work is that rapists and murderers were caught and handed over to police," said Mr Njikelana.

The Guguletu taxi rank became notorious for its treatment of alleged criminals last year. Alleged criminals were rounded up by taxi drivers, stripped naked and beaten with sjamboks.

Moses Dlamini, a Guguletu priest with the Ethiopian Church of South Africa, said he had used the services of the taxi drivers after his church had been burgled five times, and after another occasion when he had been forced at gunpoint to open his church by robbers.

"I reported the break-ins to the police and nothing happened, even when I told them who the robbers were," said Mr Dlamini.

"However, it took one day for the taxi drivers to round up the men and return my goods," he said.

their problems.

(2/11) ARU 22/7/99

Draft law aims to hit bigots where it hurts

MICHAEL SCHMIDT (252)

ST 25/7/99

INSTITUTIONS and individuals that discriminate against the poor or people with HIV/AIDS could find themselves paying out huge compensation claims under a sweeping new law

The law is expected to ban numerous common commercial practices, most notably the so-called "red-lining" by some banks of poorer suburbs, denying people who live there access to certain loans and services

Under the draft Equality Bill, medical aid schemes have to treat gay couples as they would heterosexual couples, the retirement age for men and women will be equalised and the Department of Health's attempt to make HIV/AIDS a notifiable disease may be overridden

Thuli Madonsela, chief director of transformation and equity in the Department of Justice

and one of the drafters of the Bill, said victims of discrimination would be better served by making the perpetrators pay compensation rather than having them rot in jail

The Bill enables anyone who feels they have been discriminated against because of race, gender, age, religion, language, poverty and a slew of other categories to take those who harass and obstruct them to the civil courts — and, in many cases, receive compensation

Madonsela said "We haven't gone for the criminalisation of apartheid. But there was a strong view that certain crimes, if committed with a racial or gender bias, should fall under a proposed amendment to the Criminal Procedures Act"

The draft Bill goes beyond the Bill of Rights by outlawing discrimination based on people's socio-economic background, domestic and family responsibility or nationality

IN OCTOBER 1998 the Truth and Reconciliation Commission published its mammoth report. Its findings though not legal judgments are damning of the organisations and individuals held morally or politically accountable for crimes of abduction, torture and political assassination. They are already playing a key part in shaping public perceptions of the conflict, and are likely to do so in increasing measure as individual recollection of events begins to fade.

But do the commission's findings merit the stature they are being accorded? Has the commission in fact "contributed more to uncovering the truth about the past than all the court cases in the history of apartheid" as chairman Archbishop Desmond Tutu claims in his foreword to the report?

A comparison of its findings and earlier judicial rulings suggests the opposite.

On various occasions, the commission contradicts earlier court findings, its own findings, and sometimes even itself. In doing so, it sometimes got the facts wrong—such as the death tolls in specific incidents.

In its report it says police at Sebokeng, near Vereeniging, shot dead 13 people in March 1990 in various other places; it puts the death toll at 17, "at least 13," and eight Judge Richard Goldstone had earlier investigated the shootings; however, and found police had killed five people.

Referring to another incident in Sebokeng in September 1990, the commission says the army shot dead 15 people. Judge E.H. Stafford had earlier found that the army had killed four. (The commission seems to have based its conclusion on a simple but misdirected subtraction. The IFP, according to Judge Stafford, had killed 38 people earlier that day in an attack on a Sebokeng hostel. The commission says the IFP killed 23, and then apparently attributed the remaining deaths to the army.)

The commission says three gunmen killed 23 hostel residents in Tokozza township, on the East Rand, in September 1991. The Goldstone commission established to probe public violence from 1991 to 1994, had earlier found the death toll to be 18. The commission says 42 people died in revenge attacks in Kaitleng, Tembisa, and Johannesburg in the next two days. Judge Goldstone had found that effective security force action had prevented retaliatory attacks in the immediate aftermath of the massacre.

On occasion the commission misrepresents what courts and other inquiries had said. According to the commission, Judge Goldstone had found that

Our past gives lie to the TRC's findings

The Truth and Reconciliation Commission claims it has done more to uncover the truth about our violent history than South African courts had ever managed. Not so,

writes ANTHEA JEFFERY
(201) ST 25/7194

the Tokozza attack had been planned and carried out by a police informant Mncugi Ceba. Judge Goldstone made no such finding. He noted that Ceba was a police informant but he never found Ceba responsible for the attack. In fact, he made it clear that his inquiry could not and would not name any individual as culpable without sufficient evidence.

Sometimes the commission paid no attention to a conflicting judicial ruling. It states, for example, that the shooting of eight IFP supporters outside Shell House, the ANC's national headquarters, in Johannesburg in March 1994 had taken place in response to an IFP assault on the building. Yet Judge Bob Nugent, in an earlier judicial inquiry, had found that no such attack had taken place.

Judge Nugent had also found that allegations of an impending attack had been fabricated after the event to justify shootings that were entirely unwarranted. The commission makes no reference to the inquiry. It cites no evidence or reasons to support its description of the incident.

The commission did much the same with the assassination of Chief Mhlaburizina Maphumulo, a former president



BOWED DOWN Archbishop Desmond Tutu can take no more during evidence presented to a commission hearing

of the Congress of Traditional Leaders of South Africa. Maphumulo was gunned down in the driveway of his home in February 1992. An alleged "hit squad" operative claimed that the murder had been planned by the Martizburg police, and that the assassins were paid R5 000 each. Inquest Judge N.S. Page found this witness unreliable.

Judge Page also dismissed the testimony of another alleged "hit squad" member as "appalling" and "even worse". The commission, however, ignores all this and finds that Maphumulo had been "targeted for attack in a planned hit squad operation". Again, it disregards Judge Page's judgment and cites neither evidence nor reasons to support its own contrary conclusion.

Sometimes the commission notes earlier court or inquiry rulings, but then repudiates them anyway. In the context of the Trust Feed massacre of 11 people in December 1988, the commission refers to police Sergeant Neville Rose, who had been acquitted of their murders in 1992 (Captain Brian Mitchell and four special constables were all convicted of murder for the killings). Among other

things, Rose was accused of helping to spirit the four special constables out of Trust Feed after the massacre. Judge Andrew Wilson dismissed the evidence against him as unreliable and the TRC recorded the acquittal. But it then proceeded to find Rose an accessory to the Trust Feed killings. It cites no new evidence or reasons for discounting Judge Wilson's judgment.

The commission takes the same line over the Bolpatong massacre of 45 people in June 1992. The Goldstone commission had mounted brief investigations and found no evidence of police involvement. Later, 30 IFP supporters went on trial for murder before Judge J.M.C. Smit. All denied their guilt, blaming the police instead. Police culpability became the key issue in the trial. Three accomplices and 120 residents of Bolpatong who testified before the court all denied police involvement. Two residents who did claim police complicity were conclusively discredited. Judge Smit ruled that the police had played no part in the killings. The commission quotes both judges' findings. It then finds that the police had not

only helped plan the massacre, but had taken part.

Again, the commission cites no new evidence, and gives no reasons for repudiating the earlier rulings.

A similar phenomenon is evident in relation to train violence on the Reef in the early '90s. The Goldstone commission had conducted two inquiries into attacks on commuter trains and stations. It found "no evidence that any organisation actively encouraged the perpetration of violence on trains". It said there was no reason for believing that hostel residents (generally believed to be IFP supporters) were mainly responsible for the attacks.

It states that "train violence could not be separated from the ongoing violence in the townships", in which both the ANC and IFP had played a part.

The commission refers to Goldstone's inquiries, and then largely disregards them. According to the commission, though train violence was not official IFP policy, "both local and regional IFP leadership were centrally involved in the authorisation and planning of train violence" in which, it continues, 570 people died in more than 600 attacks.

The commission bases this conclusion on vague or hearsay allegations made about 10 specific incidents, as well as

some more general accusations that "special forces" and "Vlak-ships" had orchestrated the attacks. It fails to properly describe the evidence on which it relies. It fails to explain why this evidence sufficed for its findings that "the IFP, the SAP, and the SADF were responsible for the killings that took place during the train violence attacks". It also fails to explain why it was right and Judge Goldstone wrong.

There are other examples. Overall, they indicate that the commission had little hesitation in disregarding tested evidence and judicial rulings in order to arrive at its own version of events—and that it did so wrong.

without citing evidence or reasoning to support its conclusions. Yet the findings it made include accountability for murder and are of the utmost seriousness.

There is little reason to believe that the commission has uncovered the "real" truth about the Sebokeng shootings, the deaths in Tokozza, the Beppalong massacre, the Shell House shootings or the train violence. On the contrary, the commission has distorted rather than disclosed the truth.

Dr Jeffery is the author of *The Truth about the Truth Commission*, to be published by the SA Institute of Race Relations this week.

Picture: RAYMOND PRESTON

If the weather was hot, paint the nursery blue

ROBERT UHLIG, London

conception Unseasonably warm weather yielded more boys than unusually cold sp

Witnesses safety plan

By Jimmy Seepo
Political Reporter

A REVITALISED programme that gives witnesses greater protection and provides them with better security has been launched.

The director of the Justice Department's witness protection programme announced this in Pretoria yesterday and urged Mandela Park

informal settlement residents, who may have witnessed this week's massacre of seven men but fear for their lives, to approach his office.

Programme director Mr Piet Kleynhans said that witnesses to the seven murders had no reason to fear giving evidence against the perpetrators of Monday's massacre as they would be covered by the programme.

The programme, which works separately from that of the police, provides people who fear

for their lives with "a safety net" away from intimidation and possible threats from suspects. Safe accommodation and allowances are provided until the conclusion of the case.

Kleynhans said: "Witnesses to murder and rape should have no fear, as the programme will provide the witnesses with security and possible relocation from the area until the danger (of giving evidence against the perpetrators) has been removed."

Some witnesses, including their families, could have the "benefit" of being relocated out of the area and housed in safe accommodation.

An allowance, calculated according to an individual's income level, will be paid to witnesses. This starts at R10 a day and can be as high as R400 a day, provided it has been authorised by the director-general of the Justice Department.

● To page 2

Government unveils new witness protection plan

From page 1

Those who might have participated in the killings and would like to break ranks and provide information against their accomplices, have also been advised to approach the programme's national or regional offices.

Kleynhans emphasised that individuals who did not feel safe reporting to the police could approach his offices where confidentiality would be guaranteed.

The Monday shooting, which destroyed the relative peace that existed in the area, followed tension between groups aligned to the African National Congress and United Democratic Movement.

Kleynhans said the Justice Department intended spending R11 million on the witness protection programme.

The programme works in a different way from other benefits and incentives offered by the South

African Police Service to witnesses of murder, rape, attempted murder and fraud.

"The programme is separate from the police's reward scheme," he said.

"The fact that a person got a reward does not preclude him from getting into the programme should that individual experience a threat to his life," Kleynhans said.

However, he emphasised that the programme was not a reward scheme but a mechanism to help people dis-

charge their civic duties by testifying in criminal cases to ensure successful prosecutions.

"The purpose of the programme is to enable people to come forward and testify knowing that by speaking out they will not place their loved ones or themselves in danger," he said.

"The incentive is people's safety." Currently, 670 people are covered by the programme in cases that include high-profile taxi murders, political killings and drug-related cases in

Western Cape.

Kleynhans said the programme not only covers the recent murders on the East Rand but other serious criminal cases that people have witnessed but may be afraid to report.

Unemployed witnesses will be allocated a nominal amount of money to cover incidental expenses. Kleynhans sounded a warning that the intention was not to provide people with a free picnic at the expense of the taxpayers.

(252)

See item 22/7/99

See item 22/7/99

Truth with misgivings

PEOPLE working with the Northern Ireland peace process have often had discussions with South Africans involved in the Truth and Reconciliation Commission (TRC) to find out how this country dealt with atrocities of the past

One of those called on for advice is former TRC head of investigations Dumisa Ntsebeza, who, while explaining the successes of the commission, is also quick to point out what he considers to have been its failures

Besides sharing ideas with Northern Ireland, TRC members have been invited to share their experiences with the government of Guinea Bissau, which is looking for a way of dealing with atrocities committed during its civil war

Ntsebeza will soon speak at a round-table discussion in Nigeria at the invitation of a non-governmental organisation in Lagos, which is also concerned with ways of reconciling the past

The Irish and British were particularly interested in how to deal with a police force whose credibility is contested

"We pointed out to them the necessity of having trained police working alongside a civilian component and outsiders, which in our case was the international community"

Ntsebeza says he was also forthright about the need for acceptance of a process like the TRC and for the two sides to start compromising on little things

"What I saw clearly, even before any agreement was signed, was just how wide the chasm was. From the first time Unionists and Sinn Fein visited South Africa in September 1998, I found that the two parties were not prepared to talk directly to each other or even share the same room"

Also, based on the South African experience, the attitude and language had to change for there to be progress, he advised

"When one party, like a British minister, refers to 'terrorists', you cannot have informed debate," he says

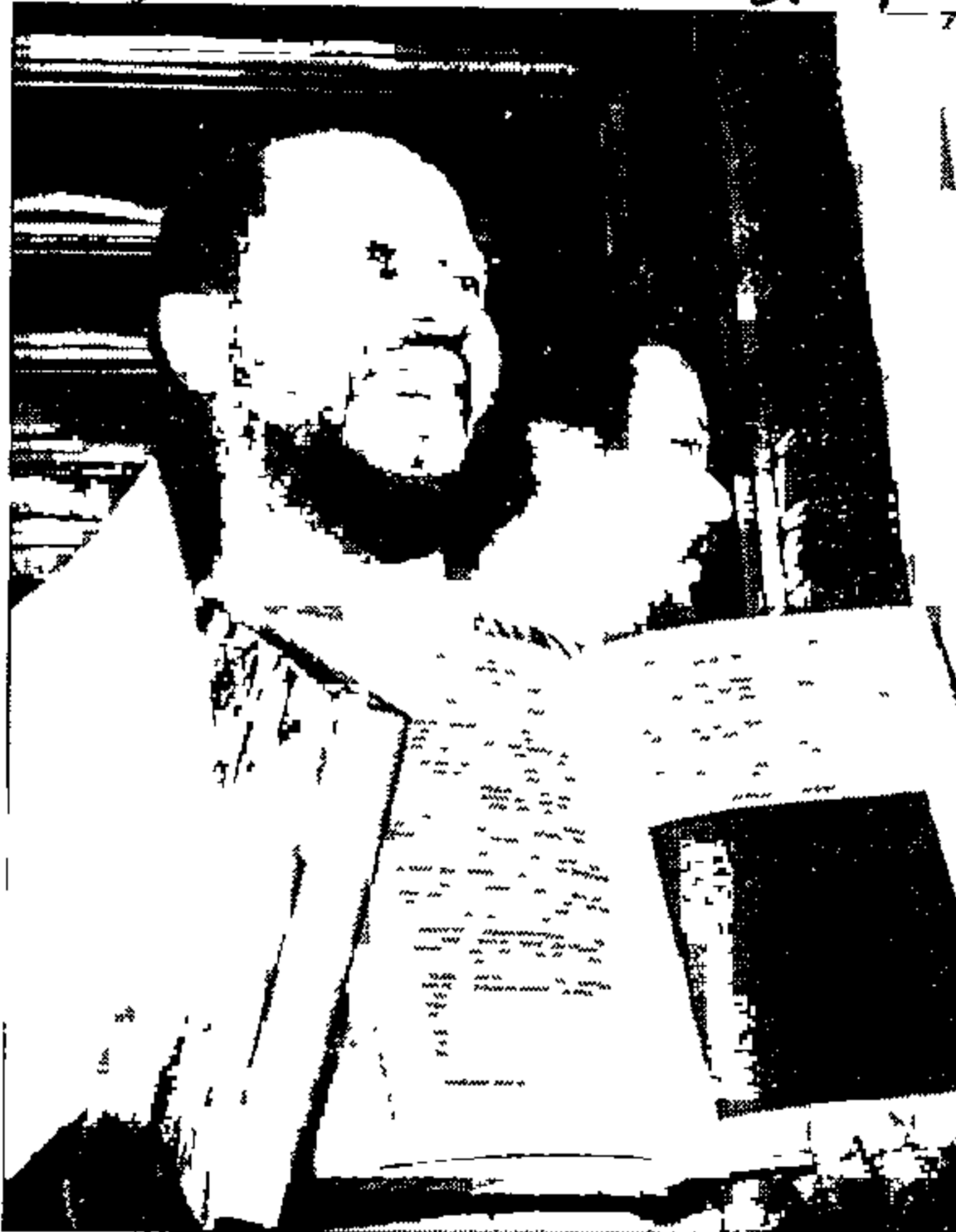
"As far as weapons were concerned, they focused on 'terrorist' weapons, conveniently ignoring the caches of paramilitary groups that were pro-Unionist," was another of his observations

It may appear that outsiders are more generous in assessing the TRC, since within the country there still appear to be misgivings about the exercise and many critics of the TRC conveniently ignore the fact that it was one of the major compromises made during the multiparty negotiations

"There's always wisdom in hindsight," he says, "and, yes, there are many things that one is not entirely satisfied with. But the TRC is not an end in itself - it's for future generations to judge

SA's unique TRC process was a valuable lesson in reconciling seemingly intractable foes - but it did have its failures, writes **Sharon Chetty** (252)

Souletan 23/7/99



Flashback... former TRC investigations head Dumisa Ntsebeza with copies of the TRC report in Pretoria last October.

PIC REUTERS

its value"

Chief among his regrets is the fact that he realised too late that the South African National Defence Force did not intend cooperating fully with the TRC

"Our biggest mistake was to enter into an arrangement with them which we thought they would honour with integrity. Instead, it was not unusual for them to take six weeks to hand over one document, and even after that we would be sent from pillar to post

"They assigned us retired officers from the old order, purportedly to assist with information. Instead, they acted as gatekeepers and did their best to hamper our every effort"

Army liaison officers spent close to two years frustrating the TRC attempts to get close to its secrets and archives, and only released limited information to them towards the end of its tenure, making any qualitative research difficult

Ntsebeza says he wanted to "haul them before the courts to compel them to release the

information" but for various reasons, especially the fact that "there was going to be life after the TRC", the commission declined

Although he concedes that the nature of the TRC would nonetheless have resulted in not all cases being investigated, Ntsebeza still feels that he should have insisted on legal action against the defence force

"At least then we would have an idea of what they got up to, there would have been a bigger picture. I would not be left with this feeling of 'I don't know what they're hiding'"

The defence force was as involved in atrocities as the security police, but managed to protect their own so well that it was only through TRC and other investigations that some of their misdeeds became public

Another contention is the fact that reparations were not handled as delicately as they should have been

"I think we failed a lot of people. All we managed to do was provide some interim relief"

An example was the case of the Trust Feeds massacre, where policeman Brian Mitchell was granted amnesty and released from jail. He met with hostility when he went back to the community he had attacked

"They saw him out of jail in circumstances where their lives had not changed. It was not surprising that people felt let down"

Despite "much unfinished work", Ntsebeza also believes that it was necessary for the TRC to have a short lifespan, and whatever the criticisms now, it must be acknowledged that "the TRC infused the South African psyche with facts and information that makes it impossible for anyone to deny" any knowledge of apartheid atrocities

"We must accept it was a political process throughout. Every side had something to hide, so there was never not going to be any misgivings"

"Whatever we are criticised for, I accept and welcome the debates. But I still say, the entire process was very specific. It was an attempt to reach some sort of truth and the belief was that reconciliation would follow"

Battle over transparency Bills

Barry Streek (252)

MtG 23 - 29/7/99

Parliament has a constitutional deadline of midnight February 3 next year to pass two potentially controversial new laws entrenching the right of access to state information and ensuring administrative justice.

If the Open Democracy Bill is not enacted by February 3 2000, Section 32 of the Constitution will stand. "Everyone has the right of access to (a) any information held by the state, and (b) any information that is held by another person and that is required for the exercise or protection of any rights" And if the Administrative Justice Bill is not enacted by then, Section 33 of the Constitution will read "(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair. (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons"

Both sections have clauses providing for national legislation, but if it is not passed within three years after the Constitution took effect on February 4 1997, these clauses will "lapse"

A committee headed by Professor Hugh Corder of the University of Cape Town has not yet finalised a draft of the Administrative Justice Bill, which proposes that the public will be able to demand written reasons for any administrative decision affecting them — from the issuing of parking fines to the granting of licences

"Every single decision of every single administration at every level of government will have to comply with the rules," said the Black Sash's Allison Tilley at a South African Human

Rights Commission workshop in Cape Town last week "All decisions will have to be lawful, procedurally fair and reasonable. For the average person this Bill will be as important as, if not more important than, the Constitution"

The Open Democracy Bill will transform the state bureaucracy from secrecy and the blocking of information to openness and accountability, human rights commissioner Pansy Tlakula said at the workshop

The battle over the Bill is far from over There are many problems, one of the most significant being a joint submission by the Black Sash, the Environmental Justice Networking Forum, the Human Rights Committee, the Institute for Democracy in South Africa, the Legal Resources Centre, the Southern African Catholic Bishops Conference, the South African Council of Churches and the South African NGO Coalition

The memorandum said it was imperative that the Bill give full effect to the right to information, as provided in the Constitution It said earlier drafts of the Bill contained provisions for open meetings of government bodies "We object strongly to the removal of [these provisions] from the tabled version of the Bill"

The Legal Resources Centre objected to the references to "aggression against the republic" and "sabotage or terrorism aimed at the people of the republic or a strategic asset of the republic" which permits non-disclosure if disclosure would "jeopardise the effectiveness of arms"

"These provisions are eerily reminiscent of those to be found in apartheid statutes like the Internal Security Act"

Volunteers take over Bench

Attorneys work as unpaid magistrates to help clear Cape court logjam

TAANNI HALLAM
SPEECH REPORTER

A group of Cape attorneys has volunteered to work without pay as magistrates to help clear a backlog of about 7 000 cases choking regional courts.

This week, the first of seven volunteer magistrates, Cordelia Robertson, started her stint, and others are soon to follow. The attorneys will work for a week at a time.

The others are Mohammed Salle, James Yekiso, Herbert Ludick, Frans van Dyk, Musshak Parker and William Booth.

This was the first initiative of its kind and indicative of the "transformation that is happening in the justice system", said Gadla Khan, newly appointed president of the Cape Division's Regional Court.

"There is a severe shortage of regional magistrates, who are allotted 200 cases a month on average. An escalating number of trial cases and bail applications, including complicated and lengthy fraud cases, are referred to regional courts."

Mrs Khan, who selected the attorneys for the project, said "They are highly experienced senior professional trial lawyers, who require no training to preside as regional magistrates. We at the regional magistrate's office are confident that these people can make a difference and can assist in reducing the backlog."

The idea of attorneys working as magistrates is not new. Mr Parker offered his services to the regional court four years ago, but met with much resistance from within the ministry of justice. "They told me it would never work," he said.

Two years ago, a similar initiative also met political obstacles and red tape.

"Now, after years of perseverance, the project is taking off."

"I have decided to give back to the system," said Mr Parker. "This is an inexpensive way to alleviate the problems facing the criminal justice system; and it is for the public's benefit."

Mr Salle felt it was "high time that attorneys be given the opportunity to preside in regional courts, especially as judges in the high courts were appointed from the ranks of attorneys."

Ms Khan said she hoped other members of the Bar and Side Bar would be motivated by the example.

The other new acting regional magistrates will start duties next month at courts in the Cape Division.

Pickens, page 6

Police act on court safety after strike threat

JOHAN SCHROENEN
CRIME CORRESPONDENT

Moves are afoot to bolster the number of police on duty in courts after orderlies in Cape Town and Wynberg threatened to strike.

Courtsrooms have become a weak link in prisoner security, with the dwindling numbers putting more pressure on the few policemen left. In the past three weeks, there have been three break-outs from the Wynberg Magistrate's Court cells.

West Metropole acting chief Johan Kleyn, under whose jurisdiction the Wynberg court falls, averted the strike by holding a meeting with the orderlies.

Director Kleyn said he would remind station commissioners of the need to make staff available to act as court orderlies. He had approached police management to get them to pay the standard R300 a month danger allowance to all orderlies.

Only police on duty at Cape Town, Mitchell's Plain and Athlone Magistrate's Courts - the so-called red danger areas - get the allowance at present.

But Director Kleyn said it was a "numbers problem". "We're in a 'Catch-22' situation. Taking police from the streets leaves the residents vulnerable," he said. "At the same time vicious criminals, desperate to escape, are brought to court and left in the care of a handful of orderlies."

Earlier this month, an orderly was attacked and locked into a holding cell by three awaiting-trial prisoners, who escaped.

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Don't (Yankee) doodle with guns

MTG 23-29/7/99

Donald McNeil

A SECOND LOOK

An, the battle over gun control is finally coming to South Africa. What fun. You're in for many years of bald lies, cooked statistics, pictures of dead children, thinly veiled racism, tall tales about small American towns that solved their crime problem by issuing everyone a machine gun and all the other dum-dums that enliven the endless gun debate on American shores.

The combination of the United States' constitutional "right to bear arms" and a powerful gun lobby has completely crippled any effort to write sensible gun laws in the US. Lee Harvey Oswald bought the rifle he killed John F. Kennedy with by mail order. The teenagers who killed 12 classmates at Columbine High School had a friend buy theirs at an outdoor "gun fair". The rightwinger who wandered the Midwest shooting blacks, Jews and Asians bought his pistol from someone who bought a gun a week legally from a licensed dealer — for private resale. Congress can't even pass a law saying Americans may not own assault rifles, which are useful only to killers, not hunters.

The American gun lobby, which pretends to be a bunch of chimney duck hunters, is supported by legions of people with vile motives — the importers of cheap pistols who want to sell to teenagers, the makers of kits that convert semi automatic rifles to full auto machine guns, the nuts who'd like to hunt black people, "survivalists" and "militiamen" who want to shoot tax collectors, rightwingers who believe the United Nations has a secret army poised to invade the US in silent black helicopters.

However, they always push to the fore the kindly immigrant shop-owner who killed a robber with his licensed pistol and the dignified old gent with the Purdy shotgun worth \$20,000. Gunshops pay heavy dues to the lobby. It's well funded and well organised, and most con-

gressmen are just plain afraid of them.

The catch is that the "right to bear arms" enshrined in the US Constitution is on their side. The American right to bear guns doesn't stem from a right to defend one's home against criminals (or against Indians, if you want to harp on our genocidal past). Nor from a right to hunt deer. It stems from a right to overthrow the government.

You don't have that in your Constitution. In fact, your Constitution provides for states of emergency that make it easier for your government to overthrow you. We have an 18th-century Constitution, you have a 20th-century one.

So forget about any inherent right to own guns. In South Africa, there isn't any. You also don't have our legal limitations. Your gun lobby is still only about as powerful as your anti-gun lobby. You're used to common sense ideas like a police check before issuing a gun licence. You still have time to write gun laws that make sense.

Some obviously need to change. You have a few that even Americans find crazy. The one that allows a licensed owner to legally "lend" his gun with a letter is an invitation to criminals. Also, your laws make it easier to buy a pistol than a rifle or shotgun (and encourages you to carry it concealed). I asked a gunshop owner why and he said it was because a pistol was to defend a home while a rifle or shotgun was for poaching. That logic makes sense in a rural society dominated by Afrikaner farmers. It doesn't make sense in an urbanised society plagued by criminals.

In South Africa and the US, two trends are the same.

● Lots of legal guns lead to lots of illegal guns. Many are stolen. And many "good gun owners" who want lax laws actually sell guns on the side.

● More guns, legal or illegal, lead to more killings. It takes far more effort to beat someone to death than to pull a trigger — ask Eugene de Kock.

It's true, as the gun lobby says, that "guns don't kill people, people kill people." But easy gun laws mean many hot headed young men



Darken Anti-gun protesters in the Netherlands burn automatic weapons. PHOTON AP

get to shoot victims they would otherwise punch. Seize guns, and you trim fatalities.

You also cut down dramatically on the number of drunk husbands who kill their wives instead of beating them. The number of women like Charize Theron's mom who kill abusive husbands is tiny compared to the number of men who shoot their wives. All women should favour gun control, statistically, the domestic threat is far greater than the hijacker threat.

You could write laws like Israel or Switzerland — you serve in the army, you take your rifle home, you keep it safe. You're on call to defend your country, and criminals know every law-abiding citizen has an assault rifle.

Only letting veterans own guns makes some sense. The army teaches respect for guns, and a drill sergeant who lives with you for eight weeks is a far better judge of your sanity than a silly "psychometric exam".

Given the history of Collin Chavke's pals, it might be best that only veterans of the former South African Defence Force qualify. That will lead to cries of racism, but that will rectify itself in a few years, since the South African National Defence Force is mostly black and getting blacker.

Alternatively, you might pass a law saying you can only legally own one gun. Or only buy one a year. That cuts down on "private" gun dealers.

Much more sensibly, you might ban all pistols. Make only guns with long barrels legal. (Even an AK-47 has a relatively short one.) It's perfectly easy — even preferable — to defend

your home with a shotgun. Hunters use rifles or shotguns. Cops and security guards can carry shotguns. So many off-duty cops are killed for their pistols that they'd be safer without.

Then set up metal detectors in malls, at traffic roadblocks, at taxi stands, at schools, at railroad stations. If short guns are simply illegal, you can be very aggressive about seizing them. No arguing about licences — you have one on you, it's confiscated, you're arrested.

Law-abiding white men who've had pistols in their belts or glove-boxes for decades will howl. So will black taxi drivers and security guards who've just won the right to own them. So will domestic pistol makers like Vector.

Too bad. Let them howl. Society is safer without concealed guns than with laws to keep them in "good" hands that inevitably fail. If they really need a gun, they can keep shotguns in the car.

Collectors will wail that they'll lose expensive guns. Let them keep them — but not at home. Let them turn them over to museums. Display them with owner's plaques. But for home defence, they must buy a cheap shotgun, not pretend they need an historic Lutiger.

Alternatively, you could outlaw all guns without advanced safety devices. There have been rapid advances in these, notably a gun with a microchip that lets it fire only if it gets a signal from the shooter's bracelet. You hide the bracelet apart from the gun, and arm it by punching in a code. Like an auto immobiliser.

In any case, come up with new ideas. The US's are a huge flop.

Maponya family will not forgive his killers

(2/12)
PRETORIA — The family of Krugersdorp security guard Japie Maponya, who was killed by former security police in 1985, yesterday told the policemen they could not forgive them.

Maponya's brother, Andries, told the truth commission in Pretoria the family was opposing the amnesty applications by the policemen, because they could not say where Maponya's bones were so that he could be buried properly.

Ten people are seeking amnesty for their involvement in the abduction, torture and murder of Maponya in Swaziland.

He was abducted in Krugersdorp and taken to Vlakplaas security police base where he was interrogated on the whereabouts of his brother, Oderile, who was responsible for bombings in the Vaal Triangle and Pretoria areas.

Maponya did not divulge any information about his brother.

The next day former Vlakplaas commander Eugène de Kock and three former security police members, Eugène Fourie, Willie Nortje and David van der Walt, took him to Swaziland where he was shot dead.

Andries told the commission's amnesty committee that Maponya was apolitical.

He said if Maponya had known where Oderile was, he would have told the police.

Andries said it was too late for the amnesty applicants to be forgiven because they should have asked for forgiveness from Maponya's parents while they were still alive.

Amnesty committee chairman Judge Selwyn Miller expressed the committee's sympathy to the family — Sapa

BD 23/7/99

The rise and fall of kangaroo courts

BETWEEN June last year and earlier this month, before police swooped on Gugulethu to arrest six "street justice kingpins", the rule of law in several Cape Flats townships was driven by the people through so-called kangaroo courts and not the formal criminal justice system **MANDLA MNYAKAMA reports**

MANY victims of crime in Cape Flats townships still perceive kangaroo courts as one of the best ways to curb crime in their communities, but most taxis operators, who have until recently been investigating their complaints, are no longer interested in dealing with crime.

It seems the recent arrests of those said to be running the Gugulethu kangaroo court has knocked the stuffing out of their collective enthusiasm.

This week, the only taxi rank still functioning as a sort of kangaroo court was the Nyanga taxi rank, run by the Cape Amalgamated Taxi Association (Cata), which instructed victims to go to their local police station and get "written permission" from the police for the crime to be investigated by an outside agency, Duma Jaxa, provincial secretary for Cata said.

Until recently, Cata minibuss taxi operators at the rank claimed, the police usually sent victims of petty crimes to report these incidents to the Cata offices.

A Convention for a Democratic Taxi Association (Codeia) run taxi rank in Site C, Khayelitsha, which was also recently known as a type of community court, now sends complainants to the nearby Peninsula Anti-Crime Agency (Peaca) instead.

This is the story of the rise and demise of kangaroo courts in Cape Town over the past year.

Since mid-1998, residents in areas like Gugulethu, Khayelitsha, Langa, Nyanga, Crossroads and Phillipi, frustrated by the police's apparent inability to deal with crime in their communities, approached taxi operators to protect them from criminals.

They had lost confidence in the authorities and the criminal justice system and were living in fear.

Their frustration with the criminal justice system initially boiled over in Gugulethu when residents, wishing to

report crime at the local police station, ended up getting assaulted themselves. They included local journalist, Thabo Mabaso, who lost an eye during his assault. Residents accused police of being in cahoots with criminals.

Taxi ranks were places that many residents feared because of taxi violence. But makeshift charge offices were erected so victims could report crimes. So kangaroo courts evolved.

Residents and taxi operators met out justice together by catching suspects, stripping them naked and parading them on the streets before taking them to court to be spankboxed.

Until recently the police usually sent victims of petty crime to report these to the Cata offices



STREET JUSTICE. An alleged crime suspect in school uniform is questioned by a crime victim at a kangaroo court in Gugulethu. The teenager was severely beaten for stealing household furniture

pickpockets, also assaulted those who tried to steal from them.

The luckier suspects escaped injuries after the intervention of police. The less fortunate were severely beaten and hospitalised. Some assaults led to deaths.

Sympathetic relatives and friends who intervened were themselves beaten or chased away.

During the course of the beatings, stolen items were easily recovered after confessions by the suspects who pointed out the places where the stolen goods were sold or kept. Authorities criticised these goings-on as a bloody and brutal form of justice which lacked proper investigation and did not afford suspects the opportunity to defend themselves.

But residents felt pleased by what was done to those who terrorised them. They felt it was now safer to walk the streets without being attacked, robbed or raped. Random

shootings at night also decreased. Gangsters in possession of illegal firearms no longer fired them indiscriminately for fear of being identified and brought to a kangaroo court.

A month ago, five Gugulethu men and two women accused of stealing from a church were caught and severely beaten by a kangaroo court. Women from the church had approached Cata taxi operators for help. After the group was beaten, 47 of 60 stolen chairs were recovered. Around the same time, Brown's Farm residents accused four boys of stealing electricity cables and punished them.

In July, a man was caught and severely beaten by commuters on a Khayelitsha-bound train after he allegedly tried to rape a woman.

But public sentiment has been turning against kangaroo courts. The Cata-run Gugulethu taxi rank at Eyona shopping centre has begun turning away crime victims.

Cata provincial secretary Duma Jaxa said they no longer considered stripping and beating suspects at their rank. "We decided to stop it because after each of the beatings other residents were left disaffected by what our members did. Although we were authorised by the community to punish the thieves, rapists, murderers and others complained that we killed their children."

"We urge residents not to bring their cases to our ranks any more because many of them led to the beatings that injured some of the suspects," said Jaxa.

Codeia officials in Khayelitsha also stopped administering kangaroo court justice after Peaca opened offices next to the rank last October.

Peaca is a non government organisation formed by 1 500 former Azanian People's Liberation Army, Umkhonto we Sizwe and SANDF soldiers as an alternative to kangaroo

court justice.

Moses Simanga, a spokesperson for Peaca, said the organisation discouraged kangaroo courts.

"We didn't support it because it's destructive, especially to children who were exposed to public indecency during the beatings."

Simanga encouraged authorities to arrest those who continued beating criminal suspects in the townships.

Nyanga police spokesperson Vuyisile Janhies said it would be very good if taxi operators brought suspects to them.

Gugulethu police spokesperson Charles Kakudi said more than 25 youngsters, including women, were stripped and beaten in kangaroo courts in Gugulethu since mid-1998.

"So far, six Gugulethu residents who owned minibuss taxis or, who worked as taxi drivers, have been arrested for their participation in kangaroo court justice," said Kakudi.

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PICTURE. MANDLA MNYAKAMA

DIALOGUE OF THE DEAF

Safety and stolen gun posers

As the controversy over government's draft law for stricter control over firearms intensifies, a dialogue of the deaf is in progress between the main protagonists the Department of Safety & Security, the SA Gun-Owners' Association (Saga) and Gun Free SA.

Bernie Fanaroff, deputy director-general of Safety & Security, says government obtained a clear mandate for stricter gun control in the June 2 election, and that it thus has the support of the majority of South Africans, nearly two-thirds of whom voted for the African National Congress.

But, repostes Martin Hood of Saga, government was careful not to detail the provisions of its draft law during the election because it feared disclosure would cost the ANC too many votes.

Hood contends the draft law discriminates against the poorer or historically disadvantaged communities by raising the cost of obtaining a gun licence in three ways: increasing the licence fee from R50 to R500, forcing licence applicants to produce R1 200 for psychometric tests proving they are mentally stable, and by compelling them to fork out another R150 for training in the use of firearms.

Hood's contention relates to an important change in the pattern of gun ownership since 1994 — that is, a marked increase in the number of licensed black gunowners, many of whom, like their white counterparts do not have faith in the ability of the police to protect them against criminals.

Demonstrations against the draft law known as the Firearms & Ammunition Control Bill, substantiate Hood's point. Some of the more vociferous protesters are drawn from black communities.

Hood concedes there are no hard statistics as the Central Firearms Register does not identify licensed firearm owners by race. But he argues that extrapolation from addresses and surnames shows that many new licence holders live in historically black residential areas or have indigenous African names.

Black support for Saga's strong stance against the draft law — under which all current licence holders will have to reapply for licences, at considerable cost and inconvenience to themselves — leads Hood to fire a shot in the verbal war over

FM 23/7/99

the Bill. He targets Gun Free SA, which has come out in strong support of stricter gun control and whose director, Adele Kirsten, has called for the implementation of the new law by next year. He describes Gun Free SA as a typical liberal organisation led by whites claiming to know what is best for black people.

He draws counterfire: "Where were they 10 years ago?" Kirsten asks of Saga's longstanding white members. "Probably behind the barrel in the townships."

Gun Free SA is part of a broad alliance of organisations in favour of stricter gun control, Kirsten adds in her bid to show the organisation has popular support. She lists some of its allies: "All the major religious organisations, many women's organisations, the disability movement and Business Against Crime." Fanaroff — who declined to take a call from the FM on the grounds that he has said all he has to say for the immediate future — insists in a press statement: "The easy availability of guns is a major contributor to violent crime in SA." Half of the murders and more than 70% of the robberies are committed with firearms, he adds in his statement.

But, counters Saga, judging from those parts of the draft law released to its corporate members for comment, the Bill concentrates on control of licensed guns

owned by law-abiding citizens. It does little or nothing about illegal guns and the criminals who use them to terrify the general populace.

Saga is anxious for another reason. It fears the stringent conditions for obtaining a licence will deprive citizens of their right to own guns for self-protection in a society characterised by rampant crime. As Saga spokesman Juan de Greef puts it: "Government's intention is to disarm the population of legally owned firearms under the pretext of going after criminals and illegally held weapons."

Fanaroff offers a counterargument: most illegal guns were originally legally owned weapons but were added to the arsenal of weapons used by criminals after being lost or stolen.

"We must reduce the number of legal guns and we must

improve controls over their use and storage," Fanaroff says. Unless that is done, illegal weapons confiscated by police will be replenished by lost and stolen licensed arms, he adds.

However, Hood is unimpressed, charging that government is now pressing to put the Bill on the statute book before the Open Democracy Bill becomes law, because it does not want the information on which it bases its argument scrutinised too closely.

One conclusion stands out amid the reverberations of the verbal battle: if government is to garner maximum support for the Bill, it will have to address the fears and suspicions of gunowners and persuade the public generally that it has the capacity to administer a law that will require constant monitoring.



Vigilante acts undermine democracy, human rights

(257) CP 25/7/99

By PAUL SETSETSE

IT is clear to most people that the operation of vigilante groups in taking the law into their own hands, while to an extent understandable as a direct result of frustration, is unacceptable.

We all accept that murderers, rapists, abusers of women and children and other criminals must be brought to trial and, if found guilty, punished through appropriate prison terms.

But to permit private citizens to mete out punishment without the rule and force of the law is to perpetuate anarchy.

Government has since 1994 introduced a remarkable array of new legislation, designed both to protect the rights of individuals and to provide mechanisms through which wrongdoers may be dealt with.

Among others, this legislation has brought about the institution of stricter bail conditions, tougher sentences, more stringent parole review conditions and improved witness protection programmes.

President Thabo Mbeki's government has already given the strongest possible evidence of its determination to further strengthen our democracy's ability to deal with criminals.

It cannot, however, permit the taking of law into private hands.

Such actions are in fact no better - and certainly no more legal - than the acts they propose to correct. Vigilantes who take such action will themselves be subject to trial and imprisonment if found guilty.

This position is essential to maintaining and developing a culture of human rights which we as a nation hold so dear and for which the majority have fought.

The only way in which to ensure that criminals are brought to justice while the rights of every member of our society are protected is to be certain that our actions remain within the law.

Mbeki announced during his address to Parliament at its recent opening, that the government would establish "within two weeks" a special unit precisely to fight priority crimes for which vigilantes seek to make their own retribution.

The new unit, the Special Operations Directorate, nicknamed the "Scorpions", is to be led by former senior policeman Frank Dutton.

Most recently, Dutton has been



VICTIM This man knows first-hand the terror of mob justice. While vigilante groups justify their actions as in defence of the community, can we really accept the brutality that results from mass hysteria?

abroad, probing war crimes on behalf of the United Nations.

He returns to South Africa presently, specifically to head up this important special unit.

The self-contained unit will consist of highly experienced investigators, intelligence agents, police investigators, financial and forensic experts and state prosecutors.

They will focus on the activities of organised crime, corruption within the criminal justice system, economic crimes and crimes against the state.

But this is not the only step taken by government.

The attention of ministers involved in the national crime prevention

strategy is also focused on improving the training of magistrates, prosecutors, judges, the police and correctional services' officials.

These high priority crimes deserve indeed our firmest resolve.

It is not enough for us as citizens to sit back and let the authorities operate alone.

We all have a responsibility to support our rights to live in peace, free from the abominable actions of a very small percentage of people.

Our duty as South Africans is to become involved through our community policing forums and other relevant structures.

We must ensure that the police, the courts and the criminal justice

system at large are in the best possible position (which is to say, adequately informed) to arrest and prosecute the perpetrators of crimes such as rape, abuse of women and children, hijacking, murders and the perpetrators of other violent crimes.

Vigilante actions are not an acceptable means of achieving these objectives.

Barbaric and inhuman methods such as sjamboking, burning and killing in the manner of the vigilante groups undermine our democracy and our collective human rights.

The police will rightly act against those who take such actions.

Cops arrest Mapogo

By Makhudu Setara

Six members of the controversial crime-fighting group Mapogo-a-Mathamaga have been arrested in connection with the alleged kidnapping and torture of a suspended police constable, Sowetan has learned.

Four of the suspects are Indians, police spokesman Senior Superintendent Phuti Setati said yesterday.

The six were arrested by members of the murder and robbery unit at Leboyakgomo, near Pietersburg.

The suspects, who are expected to appear in the Nebo Magistrate's Court today, were arrested in a midnight raid on their homes around Nebo.

for two weeks to attend the ongoing DRC peace talks in Lusaka, an Organisation of African Unity summit, and a holiday in North Africa - *Sapa*

Dispute
Kabila, along with his allies Namibia, Angola and Zimbabwe, signed the ceasefire agreement in the Zambian capital Lusaka on July 10, as did

family had arrived in South Africa yesterday, *Sowetan* said. Kabila was here on a private visit.

"As is convention, he may pay a courtesy visit on President Mbeki," Mamoepe said.

"But there are certainly no talks scheduled on the DRC process," he said.

HOW TO REACH SOWETAN
Johannesburg (011) 471-4000
Pretoria (012) 325-6213
Pietersburg (0152) 291-5876
Durban (031) 309-1341
Cape Town (021) 403-2756
E-mail: swtmedit@sowetan.co.za

Sowetan 26/7/99 (252)

Mapogo has gained notoriety for severely spambanking people found "guilty" of crimes. The group claims to help rid South Africa of crime. Some of its members, including its leader Moshle Magolego, are facing criminal charges including murder.

Setati said the suspects were arrested in connection with the alleged kidnapping and assault of Constable Noah Nkadimeng two weeks ago.

The six men face charges of kidnapping, assault with intent to do grievous bodily harm and robbery, Setati said. The suspects had allegedly robbed the Nkadimeng family of about R400 that belonged to Noah's mother, Martha (69).

Sowetan reported the hostage-taking last week after being told about it by members of Mapogo who accused the policeman of involving

At the time Northern Province police said they could not rescue Nkadimeng because the matter had not been reported to them.

Nkadimeng, who is attached to the Grahamdal police uniform branch, told *Sowetan* he was warned by Mapogo to "hide South Africa if I dared open a case against them".

Speaking from his hideout at the weekend, Nkadimeng was full of praise for *Sowetan* for highlighting his plight.

"The coverage of my kidnapping has helped me and my family in many ways."

"Despite my family reporting my capture by Mapogo to Hligoson, police station, police started taking action only after the press reported on two occasions that my life was in danger," Nkadimeng said.

by the murder and robbery unit and hoped that those who made his "a living hell" would be prosecuted.

Nkadimeng, who could not talk properly as the group had allegedly beaten him with an iron bar under the feet and all over his body, denied any knowledge of the stock theft he was accused of.

"I have not confessed to stealing anything, as Mapogo alleged. I am innocent. The people who assaulted me claimed I told some people in the village that I wanted to shoot and kill Mapogo members one by one."

"They arrived at my home but did not find me. They searched and ransacked the house looking for a weapon," he said.

Despite Nkadimeng's visible injuries,

An end to state secrecy is in sight

But Cabinet shouldn't be excluded from Open Democracy Bill, says academic

Effective freedom of information law is as vital to South Africa as jobs and houses, says Australian academic Rick Snell. The inevitable alternative, he tells Special Writer **MICHAEL MORRIS**, is a creeping, costly, cancer of secrecy.

Rick Snell evidently relishes the notoriety he has earned in Tasmania as a "serial Freedom of Information user".

This charge by peeved ministers in the island's parliament was coupled with a claim that his requests for government data under Freedom of Information law had cost no less than \$16,000 (about R64,000).

Mr Snell's almost impish rejoinder was yet another request: this time, he wanted to know how the costs had been reckoned. The answer was revealing.

"I found they justified a new computer on the basis of tracking the records I had requested - an alphabetical list of all treasury files - because until then, the files were not kept in alphabetical order."

"How they found their way around their filing system, who knows?" he laughs.

The point is, the Tasmanian treasury has never been better organised. Or, for that matter, more alert to the public it serves.

As South Africa gets down to fine tuning its own draft legislation to establish unprecedented access to Government information - and, democrats hope, a level of informed public debate unprecedented in its history, the experience elsewhere provides valuable lessons on the opportunities and pitfalls.

At its core, Freedom of Information - or FOI as it known internationally - is impelled by the simple idea that most information held or used by the state, its officials and the politicians they work for, should be subjected to public scrutiny and debate if democracy in the best sense is to

emerge used their law at an early stage to try to set up case law which would be beneficial to the Act, and I set out to do the same."

He often helped journalists, "trying to ensure the Act was used effectively". As a former "insider", his knowledge of FOI applications proved invaluable. He even uncovered a secret bid to neutralise the law through amendments.

"Acting on a rumour, I used an FOI request to find out what was going on. We managed to get a parliamentary inquiry launched which prevented the negative amendments taking place," he recalls.

What is at stake, he argues, is "a benign condition of secrecy which is counter-productive to good policy making."

The mentality of secrecy assists in corruption, graft and inefficiency in developing countries

"Off-setting" its negative consequences means drawing more varied and informed contributions to debate so better decisions are more likely. It is a shift away from the notion that "the bureaucracy and the government are the sole holders of all the knowledge."

"More so in South Africa, given the character of your past, and the role of secrecy. I think you owe yourself a positive debt to be as open as possible and to distance yourself as quickly and as far as possible from the way things used to operate."

Among the special considerations in developing countries is that "when you get economic development, the mentality of secrecy assists in corruption, graft and inefficiency, and you need something to break the cycle. FOI is key to that."

What about the costs? Can South Africa afford to spend more money on yet more instruments of democracy?

Rick Snell has no doubts about that. "It's only fair to talk about the revenue, not dollar revenue, necessarily, but consider the savings when, for instance, you have a ministry being embarrassed about how rat-shit a record keeping system is, and having funding going towards that. The results better administration."

"The avoidance or uncovering of a scandal at an early stage could save a million pounds or more. That's from what had to be



(AFSA) ARU 26/7/99
says academic

"It does not mean the current Government is going to do it, but the temptation is there, and once you have the temptation, it will be used."

"That's why I call it a cancer. What you effectively destroy is the whole reason for what you were trying to create."

Exempting the cabinet means "this will be a strategic position in which information management has the possibility of taking place."

That can be avoided by subjecting the cabinet to FOI discipline.

In fact, the Canadian and Australian versions are marginally better than South Africa's proposed clause in protecting only cabinet "deliberations", rather than everything to do with cabinet.

Mr Snell notes: "Even if you just borrow this example, and allow an exemption, but limit it to deliberations, that's better than what you've got."

But the best model, in his view, is New Zealand, where the need for cabinet secrecy in special cases is acknowledged, though the executive is still subject to FOI provisions.

"They are required to weigh up the conflict between people's need to know and better decision-making."

"It's up to the ombudsman on appeal, and the ombudsman has never released information where cabinet has been steadfastly opposed."

"New Zealanders - partly because they trust their government, and mainly because of the way the Act was created - have worked their way towards a better use of the law over the years."

"The Prime Minister can use a veto to stop release of information, but that carries a very high threshold, and he would have to justify it convincingly."

The government has "not fallen apart" as a result.

Mr Snell says the New Zealand law is "not perfect" but it works on a principle "which I think South Africa ought to work on, which is that you really want to include all people in policy-making process. Not just today, but in 20 years' time."

"It's that vision that counts."

Mr Snell acknowledges South Africa's pressing socio economic priorities, but

At its core, Freedom of Information - or FOI as it known internationally - is impelled by the simple idea that most information held or used by the state, its officials and the politicians they work for, should be subjected to public scrutiny and debate if democracy in its best sense is to function fairly and openly.

In South Africa's case, the Bill of Rights entrenched their right to such access, but says legislation to give effect to it must be introduced by February 2000.

Without the legislation, it doesn't amount to much. Hence the long-awaited Open Democracy Bill, which Parliament must pass before the year end.

It was with this tight time-frame in mind, and the substance of the proposed law, that the Human Rights Commission convened a three-day workshop in Cape Town last week to give people, and lobby groups, a chance to formulate recommendations and help shape the outcome.

Rick Snell was one of four keynote speakers. This "serial Freedom of Information user" has a rare insight into the business, he's served on both sides of the divide - as a public servant responsible for giving information, and, latterly, as a requester of information, intent on setting precedents. "In the United States, a number of acad-

a ministry being embarrassed about how rat-shit a record keeping system is, and having funding going towards that. The result is better administration.

"The avoidance or uncovering of a scandal at an early stage could save a million rand or two, that, if you put back into FOI, could pay for its operation for a number of years.

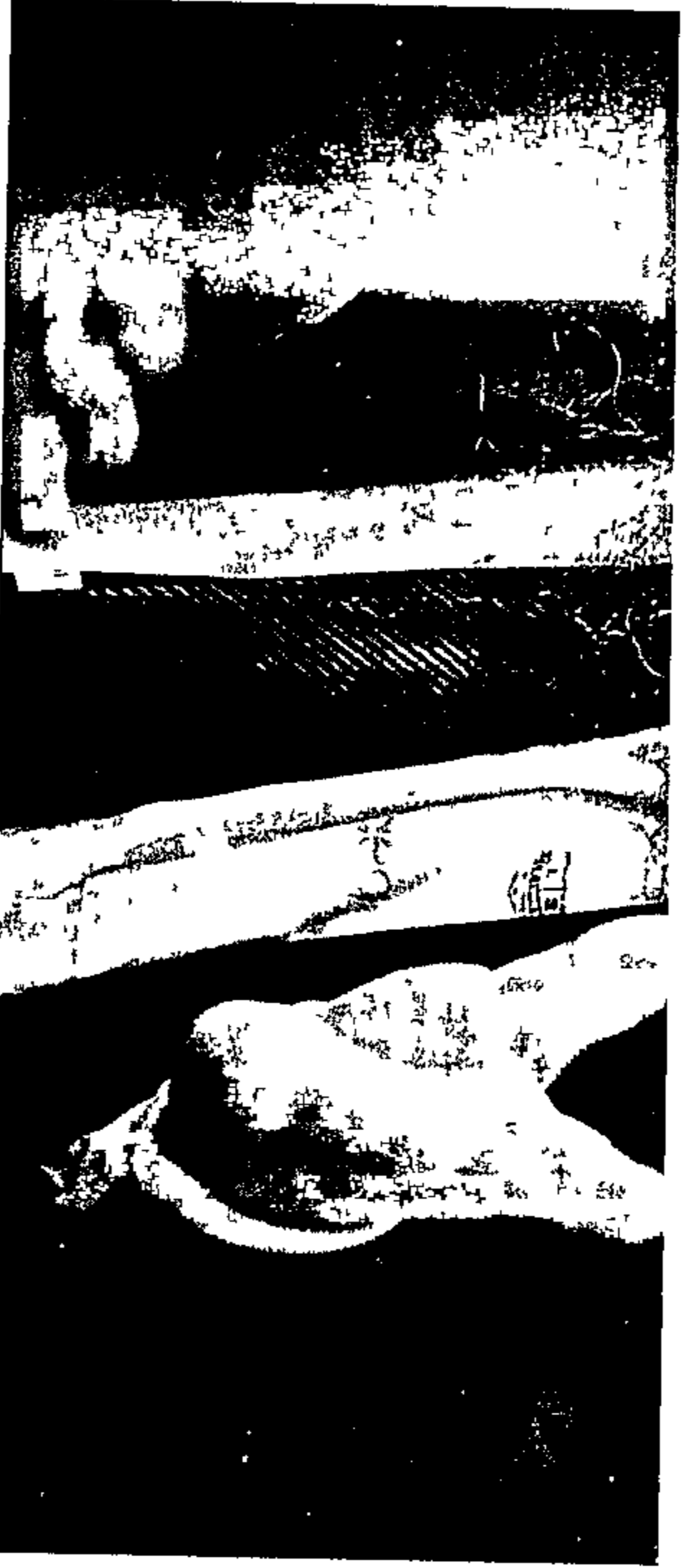
If you "up the level of democratic dialogue", he argues, you up the level of efficiency.

But there's a far more significant, lasting consequence. "FOI, like the Human Rights Commission and the Public Protector, are as vital as economic infrastructure.

"Countries that put all their eggs into economic or social development, without legal and democratic development, become lop-sided, and you eventually lose the investment and everything else.

"If the sole cost of doing business is a degree of transparency and accountability, that's far cheaper than paying millions in graft to corrupt public officials who will stab you in the back at a moment's notice, or be dismissed, leaving you to inherit a new lot, or be exposed for corruption in your own home country."

Confidence translates into investment, and prosperity - conditions under which



Freedom fighter Rick Snell, who has made it his business to establish freedom of information precedents in Tasmania

FOI pays for itself in a short time. "It's a worthwhile investment. But if your sole basis for making decisions is the bottom dollar line, then you are going to start making very poor decisions."

Mr Snell is not actually convinced South Africa is going far enough. Rather, if it fails to change the draft law, it will be making a bad mistake by exempting the cabinet from FOI obligations.

The experience in Australia and Canada - "and you are making the exactly the same mistake in not letting the cabinet be covered" - illustrates the risk of "setting in train the possibility of abuse."

How a freedom of information law worked in practice in New Zealand

NEW ZEALAND

Could South Africa afford a law that provided at least qualified Freedom of Information (FOI) access to the Cabinet? The answer might best be provided by examining how it works under one of the most far-reaching such laws in the Commonwealth, in New Zealand.

A signal instance of the trade-off between reasonable confidentiality and the public interest has only been achieved in New Zealand. The Freedom of Information Act 1982 has a cliff edge. In the 1970s, the Ministry of Waitangi, to which the Crown had ceded sovereignty, accepted New Zealand sovereignty to the United Kingdom in return for the Maori's retention of fishing and hunting grounds. For more than 150 years, it carried a heavy, contested deal, but in the mid-1970s efforts dating back to the 1970s to settle the issue were working towards finding a figure, or package, the Maori would accept in final settlement of all their land claims under the treaty.

The Maori got word of this, and said, "We want the briefing papers, because we won't know if we are being ripped off if you are giving us some kind of ambulatory offer, or giving us the cheap offer, and hoping we will go for it."

They put in an FOI request. The ombudsman said this was a really important public interest issue. In New Zealand, there was a strong case for letting them see the documents.

The government came back and said, "No, it's going to interfere, with everybody lobbying ministers. If we are going to make an offer, we have to have agreement in the cabinet, and this could be upset by revealing details now."

So the ombudsman said, "OK, but on condition that on the day you make your final offer, you put together all the information you used to reach it and give it to the Maori so that they can assess if this was the best deal you were offering them."

When that occurred, Rick Snell believes, "the objective of the cabinet was advanced."

"That's a high profile instance, but it shows the value."

A lack of openness could well have bred suspicion and distrust, and scuppered an historic, important national arrangement.

Several multimillion-dollar settlement deals, including the return of thousands of hectares of land and an apology from the Crown, through Queen Elizabeth II, resolved disputed Maori claims between 1995 and 1997.

In some cases, the settlements included the right to name mountains and rivers, often in combination with English names.

Advocates to tackle court backlogs

(252)
CT 27/7/99

JOHANNESBURG: Advocates have volunteered their services to help state prosecutors clear backlogs in the country's criminal courts, the General Council of the Bar (GCB) said yesterday.

In a statement at the end of its 54th annual general meeting in Johannesburg, the council urged the government to use its members "in fighting crime".

Advocates would help clear backlogs and enable state prosecutors to focus on priorities set by the National Directorate of Prosecutions

The council's proposal follows a recent initiative in the Cape High Court in which 17 senior counsel (SC) gave up their holidays to clear a backlog of nearly 150 pending criminal appeals.

The silks were paid only for the days they sat as acting judges, and not for the many days spent in preparation

At its meeting, the council offered its support in judicial training and proposed an expanded pro bono service by the country's advocates

Acting judges should also undergo judicial training, it said.

The council, a federation of all South Africa's bars, called for "an urgent assessment" of deteriorating working conditions in the courts

The council also expressed concern about problems in the system of judicial appointments by the Judicial Service Commission, but did not elaborate.

It proposed the appointment of Milton Seligson SC of Cape Town, with Annamare de Vos SC of Pretoria as alternate, to the commission. It supported the re-appointment of Maruma Moerane SC as a co-representative of the advocates' profession.

Seligson was a former GCB chair, a prominent leader in the field of human rights and legal aid on the International Bar Association, the council said.

The council also elected a new national executive, chaired by Jeremy Gauntlett SC. — Sapa

De Kock tells of more killings

ARCHIE MINI

DURBAN Eugene de Kock, the apartheid assassin and last commander of C1, a police counter-insurgency unit based at Vlakplaas farm outside Pretoria, appeared before the Truth and Reconciliation Commission amnesty committee at the Durban Christian Centre yesterday.

De Kock and 14 other former security branch policemen are applying for amnesty for their involvement in three incidents of murder, where they killed nine ANC members from KwaZulu-Natal in four days in 1988.

In the first incident, Surendra "Lenny" Naidu, 23, Notsikelelo Cotoza, 25, Makhosi Nyoka, 25, and Lindwe Mthembu, 21, died when their car was ambushed in Houtkop Road outside Piet Retief in Mpumalanga, on the night of June 8, 1988.

Seven people — Leon William Flores, Jury Bernardus Hayes, Gerrie Johan Barnard, Flip Koenaard Theron, Frederick Johannes Preenaar and Marthinus David Ras — are applying for amnesty with De Kock for the killing of the four MK operatives, who were unarmed when they came under fire. The families of the dead are opposing the application.

De Kock told Morane Moerane, representing the family of the deceased, that he organised the ambush after a request was sent to him by "a Mr Preenaar", former head of the security branch in Piet Retief, to "help them; with an operation



MORE HORRORS: Former Vlakplaas commander Eugene de Kock

concerning trained ANC members infiltrating the country from Swaziland"

Four days later, on June 12, 1988, De Kock sprung another ambush where four men known as J J Sibisi, S Nxumalo, I N Thenjwayo and B Mthembu were killed. De Kock and seven others are also applying for amnesty in connection with killing of the four men.

A few hours after the June 12 ambush, Johann Hendrik Tait, Paul Jacobus van Dyk, Cornelius Johannes Botha and Marthinus Ras crossed the border into Swaziland where they shot and killed Bongani Emmanuel Gaga, the man they

claim smuggled the MK operatives into the country. The four men are also applying for amnesty for the murder of Gaga.

De Kock arranged for the first group to be fetched from the border by Lt Moshé, a Vlakplaas askari who died of a heart attack a few days after the second ambush. Sgt Manzini fetched the second group four days later.

"They had to give a signal of a flashing left indicator to let us know that the occupants were armed. They also had to pull over, then run in front of the vehicle, away from the line of fire."

In both cases the signals were made, according to De Kock and Preenaar. To cover up the shooting of unarmed combatants "we planted a Makarov pistol on the body of Lenny Naidu and an F1 handgrenade in one of the bags of the women."

De Kock alleged that the second group was armed with AK-47s.

"We are opposing the application for amnesty," said Leo Naidu, Lenny's father. Zizile Cothoza, mother of Notsikelelo, said she cannot forgive De Kock.

"Why didn't he at least arrest them, as they were unarmed?"

Earlier De Kock told Moerane how he ordered Marthinus Ras to shoot Cotoza, who was still alive after the ambush.

"A right rear door of the car opened and a woman peered through, gasping for air. I told Ras to shoot her, and he did just that."

The hearing continues today

Handwritten notes and scribbles at the bottom of the page.

Mystery of 'woman who spied on MK'

AKL 27/12/94 (252)

Durban - Former security policeman Freek Pienaar today refused to name a woman - claimed to be a top official in the new government - who allegedly gave police information that led to the deaths of eight Umkhonto weSizwe fighters in 1988.

He told the Truth and Reconciliation Commission in Durban he would not give the name because her life would possibly be in danger. Yesterday, jailed former Vlakplaas commander Eugene de Kock told the TRC's amnesty committee the informant was a woman with a responsible position in the present government.

Pienaar is seeking amnesty for his role in the killing of MK infiltrators close to the Swaziland border in June 1988. On June 8, three women and a man were shot dead by former security policemen and, on June 12, the police gunned down four men. Pienaar, who was commander of the Piet Retief security police at that time, was allegedly tipped off by the informer that the fighters wanted to infiltrate the country.

He then asked De Kock to help him eliminate them. De Kock, who headed the operation, has also applied for amnesty for the killings.

The legal representative for the families of the victims, Marruno Moerane, told the amnesty committee the source's name should be made known so that the families could "begin the process of healing". "I submit that her identity should be disclosed for the sake of the families. They have no malicious intent against her."

Amnesty committee chairman Mr Justice Selwyn Miller said the committee would decide later in the week whether the informer's name should be revealed.

She would have to be informed that she was being implicated so that she could get legal representation.

In earlier evidence, De Kock said he was asked by the Piet Retief security police to assist in containing the activities of MK soldiers who had crossed into the country to carry out operations.

The police had infiltrated MK and a "reliable female informer" who had knowledge of MK's functioning collaborated with the police in the capture of the guerrillas.

Surenndra "Lenny" Naidu, Nontsikelelo Cothoza, Makhasi Nyoka and Lindwe Mthembu were killed in one ambush.

In the other, J J Shiba, S Nxumalo, IN Thanywayo and B Mthembu were killed.

Askaris, ANC members turned police informers - who had themselves become police informers - were used to lure the victims to their deaths.

In June 1988 Lieutenant Sibusiso Mose, an askari in a Vlakplaas unit, picked up four MK members and drove them to a spot for the planned ambush. Police lying in waiting then sprayed the vehicle with bullets.

The same method was used in the second ambush. In both incidents the police found their victims were unarmed.

They planted a Makarov pistol and two handgrenades on one group, De Kock said.

Race institute's new book to make waves

Nomavenda Makhane (252)

LEADING SA researcher Anthea Jeffery will release a new book tomorrow. The Truth about the Truth Commission, which looks set to stir controversy.

The book published by the SA Institute of Race Relations evaluates the truth commission's final report by examining the veracity of the statements submitted by victims of human rights abuses and amnesty applicants.

Jeffery also challenges the commission's methodology, the contextualisation of events and investigations and research.

The commission relied on various sources of information for its findings, notably statements from victims of gross human rights violations and from people seeking amnesty for their actions.

The foreword, written by the institute's CE, John Kane-Berman, seeks to give a balanced yet critical analysis of the role played by the commission in exposing the "whole" truth about SA's past.

Kane-Berman calls for a more sober evaluation of the commission's report. "The methods used by the (commission) are deeply flawed", he writes.

"From flawed methods, flow flawed conclusions," says Kane-Berman.

However, he acknowledges the value of allowing victims to tell their stories and of highlighting gross human rights violations perpetrated by the security forces, the Inkatha Freedom Party and the Pan Africanist Congress.

But Kane-Berman says the commission's findings against the United Democratic Front and the African National Congress are too superficial to add significantly to SA's understanding of its past.

"On the contrary they seem calculated to preclude a proper comprehension by discounting rather than exploring the impact of the people's war," he says.

DP brands the blanket amnesty call a betrayal

Wynham Hartley (252)

CAPE TOWN - The Democratic Party (DP) has criticised the call by the SA Human Rights Commission (HRC) for prosecutions of apartheid era crimes to be ignored even if amnesty has not been granted, saying it flew in the face of restoring respect for the law.

DP truth commission spokesman Dene Smuts, said HRC chairman Barney Piysana's call for people accused of apartheid era abuses of human rights not to be prosecuted amounted to a blanket amnesty.

"The DP notes that Piysana speaks in his personal capacity when he makes the quite extraordinary suggestion that the law should be ignored and the director of public prosecutions instructed to freeze prosecution of pre-December 1993 offences," she said.

"Quite apart from the unworkability of the proposal, it flies in the face of the restoration of the rule of law and the right to equality before the law. The effect of this proposal is a blanket amnesty and, therefore, a betrayal of all the footsoldiers who have participated in the truth commission process in good faith."

Smuts said it was to be hoped the HRC would act as a guardian of the rights of those who had applied for amnesty and of victims.

"Instead we hear nothing but proposal after proposal about ways of allowing leadership cadres to escape their responsibilities, both civil and criminal," she said.

Both former president Nelson Mandela and President Thabo Mbeki have at various times ruled out the chances of a general amnesty.

Persistent rumours continue, however, that a special amnesty deal will have to be reached in order to resolve outstanding problems in KwaZulu-Natal.

De Kock tells of guns planted on bodies

DURBAN - Former Vlakplaas commander Eugene de Kock said yesterday he ordered guns to be planted on four people killed by security police in 1985 to avoid embarrassment to government and police.

He told the truth commission in Durban "it would have been an embarrassment to the government" if reporters found out that the victims were shot dead although they were not armed.

De Kock is seeking amnesty for his involvement in the shooting of two groups of alleged Umkhonto weSizwe members close to the Swaziland border in June 1985.

A man and three women were shot dead on June 8 and a few days later four men were gunned down.

De Kock said he received information that the victims were armed and trained MK members trying to infiltrate SA from Swaziland. He said Piet Retief security commander Freek Pienaar asked him to assist with eliminating the

MK members. De Kock said that for the first time he ordered guns to be planted on four people killed by security police in 1985 to avoid embarrassment to government and police.

He told the truth commission in Durban "it would have been an embarrassment to the government" if reporters found out that the victims were shot dead although they were not armed.

He said the security member stopped the car at the ambush area. He got out and ran round the front of the car which indicated that the MK members were armed. De Kock said he and the other security members opened fire on the car killing two women and a man.

He said another woman fell out of the car. She was still breathing. De Kock then ordered security policeman Martinus Ras to kill her, which he did.

The victims and the car were searched for ammunition but none was found. Guns were then planted in the car.

A few days later, Pienaar told De Kock that a second group of armed MK members would enter SA from Swaziland. De Kock said a second ambush was planned along the same lines as the first one.

The car stopped about 18m from the ambush site. De Kock said while he was running towards the vehicle one of the occupants armed with an AK-47 assault rifle got out of the car.

He was about two metres away from me and I started firing with an Uzi (machine gun) shooting him about four times before he fell. De Kock said the other security policeman fired at the car, killing four men. Four AK-47s were found in the car, he said.

De Kock said that after both incidents he informed his commander, Brig Willem Schoon. He said he accepted full responsibility for the killings.

Fifteen former security police members are seeking amnesty for their role in the incidents - Sapa.

Advocates offer to assist courts

Taryn Lambert (252)

ADVOCATES in private practice have volunteered to help clear a backlog in prosecutions set by the national prosecutors to focus on priorities, says the General Council of the Bar.

Cape Town advocate Jeremy Gauntlett SC, who was elected as chairman at the council's annual general meeting at the weekend, said yesterday that the profession had proposed the greater use of advocates in fighting crime as an "urgent priority".

Gauntlett said that in the past two weeks 17 senior advocates had assisted the Cape High Court in hearing about 150 pending criminal appeals while they were on leave. Although the advocates were paid for the days they sat as acting judges they were not paid for the time spent preparing for the hearings.

The council also offered its support in the training of judges and proposed an expanded pro bono service by advocates in private practice.

The bar expressed its concern about the "deteriorating working conditions in the courts" and the "problems in the system of judicial appointments by the Judicial Services Commission".

Meanwhile, SA attorneys' journal De Rebus has said that Justice Minister Fenuel Maduna intends to introduce a Legal Practitioners Bill into Parliament early next year. The justice department's policy unit had produced a discussion document proposing a single act to govern attorneys and advocates.

Maduna reportedly said that there was "no justification" for the "enforced perpetuation of the split profession".

"It cannot be in the public interest to force a litigant to use two lawyers where one could do the job. The discussion paper suggests a single practising profession as far as statutory regulation is concerned.

"If certain practitioners choose to practise in the old way and their clients accept that then it is their business," Maduna was quoted as saying.

National director of public prosecutions Buleani Nguna's spokesman Sipho Ngwenya yesterday welcomed the advocates offer to help in reducing backlogs and said many advocates had been employed already, particularly in the Asset Forfeiture Unit.

He took issue with the criticism of the "deteriorating working conditions in the courts", saying while there was "always room for improvement", conditions in the courts had significantly improved.

Maduna hails Bar's offer

JUSTICE Minister Penuell Maduna has welcomed an offer by the General Council of the Bar to assist with the prosecution of cases in the country's courts, saying the move will go along way to eliminate backlogs

A working relationship between his department and the legal profession was being worked out and an announcement of the appointment of at least six magistrates in Johannesburg would take place in the

next month or two, Maduna said yesterday (252)

This follows an announcement by the General Council of the Bar on Monday that its advocates would help clear court backlogs to enable state prosecutors to focus on priorities set by the national directorate of prosecutions

Maduna said the action stemmed from a request to professional organisations - made by his predecessor, Mr Dullah Omar - to nomi-

nate suitably qualified people to serve as acting regional magistrates

He expressed his appreciation of the "spirit of cooperation, willingness and dedication" displayed by advocates in offering their services as magistrates, prosecutors and judges

Maduna said he was confident the additional appointments would go a long way to help to alleviate the backlog of cases in the country's courts - Sapa

Ex-cop refuses to name informer

FORMER security policeman Freek Pienaar refused yesterday to reveal the name of a female police informer who gave security police information which led to the death of eight African National Congress cadres in 1988

Pienaar told the Truth and Reconciliation Commission in Durban he would not give the name because it might put her life in danger

On Monday former Vlakplaas commander Eugene de Kock told the TRC's amnesty committee the informer was a woman with a responsible position in the Government

Pienaar is seeking amnesty for his role in the death of eight Umkhonto we Sizwe members close to the Swaziland border in June 1988. On June 8 three women and a man were shot dead by security policemen, and on June 12 the police gunned down four men

The cadres were killed because they were trained and armed MK members who wanted to infiltrate South Africa from Swaziland

Pienaar, who was the commander of Piet Retief security police branch at the time, was told by the informer that the cadres wanted to infiltrate the country

Pienaar asked De Kock to help him eliminate the MK members

De Kock headed the operation. He also has applied for amnesty for the killings

The legal representative of the families of the victims, Mr Marumo Moerane, told the amnesty committee the source's name should be made known so that the families can "begin the process of healing"

"I submit that her identity should be disclosed for the sake of the families

They have no malicious intent toward her"

Amnesty committee chairman Judge Selwyn Miller said the committee would decide whether the informer's name should be revealed later in the

Miller said the woman would have to be informed first that she was implicated in the murders and so that she could get legal representation - Sapa



Eugene de Kock

About 1 200 graves to be investigated

(252) *Sowetan* 28/7/99

By Sharon Chetty

SEVERAL sites, possibly containing the remains of more than a thousand missing activists, are being investigated by the Truth and Reconciliation Commission

Whether investigators will be able to put names of activists killed secretly by apartheid security forces to the remains in the graves is uncertain

TRC investigator Mr Fanie Molapo said "We found out about many places where bodies were buried but there is no record of who is there"

These are in addition to places already dug up by the TRC and where the remains of activists have been found and identified

Molapo said that special investigations point to at least 1 200 corpses that may have been secretly buried in far-flung places

Through a combination of investigation and information gleaned from statements made by amnesty applicants to the TRC, Molapo said, they are aware of graves in and around the Free State, Ladybrand, Ficksburg, Louis Trichardt, Pietersburg, Nelspruit, Barberton, Mafikeng, Zeerust and Thabazimbi

In some instances the bodies of activists may have been mixed up with those of paupers. In several instances the victims of security force brutality were anonymously buried as "unknown black males or females"

The figure he has is for grave sites in the country

There have been delays in the investigations since the TRC was winding up its work and only the amnesty committee is

still functioning

However, another TRC official, Ms Madeleine Fullard, said that substantiated reports point more to 200 to 250 graves, but added that a lot of the information given to the commission had still to be corroborated

TRC commissioner Ms Yasmin Sooka said that investigations were continuing. In about two weeks' time the commission was likely to have a fuller picture of the number of bodies still to be exhumed

She was reluctant to put a figure to the number of graves

"There are so many reports of people missing and we are trying to link those with incidents"

Sooka said that the assistance of Argentinian experts had been enlisted and local investigators were now also being trained in forensics to be able to analyse the bones once they are unearthed

A report is being compiled and Sooka said that the interministerial committee the TRC reported to, comprising the departments of Justice, Arts and Culture, Welfare and Health, regarded the identification and exhumation of the graves as important

So far the research was being confined to South Africa, since "there is no money" to include those buried outside

Sooka said that families of activists executed by the former regime were also trying to reclaim their remains

Justice Ministry spokesman Mr Paul Setsetse said the department was "currently looking at various options on how to take the matter forward" since the lifespan of the TRC is almost complete

Hands-on government

Sowetan 29/7/99

THE RECENT visits by the criminal justice system cluster of ministers to our courts, police stations and prisons signify the new integrated, hands-on approach and new style of government under the leadership of President Thabo Mbeki

During his State of the Nation address to Parliament in June, the President pledged to the people that the style of his government would be an integrated one

He stressed that his Cabinet would work jointly as clusters to deal with, among other things, unemployment and poverty, crime, corruption, violence against women and children, economic, agricultural and trade development, the improvement of health and social services, and generally the creation of a better life for all

This integrated approach reaffirms a saying in Setswana that says *Se dikwa ke Mphwa pedi gase thata* ("a job performed jointly is always easy to complete")

The surprise visits by Safety and Security Minister Steve Tshwete, Justice and Constitutional Development Minister Penuell Maduna and Correctional Services Minister Ben Skosana to the courts, police stations and prisons around Gauteng during the past few weeks symbolised and concretised this position

The purpose of the visits by the ministers was to acquaint themselves with the conditions of our courts, police stations and prisons, to boost the morale of our officials and to assess the capacity of the institutions and the facilities available

It was, however, also the intention of the ministers to get down to the people on the ground. We can say without any hesitation that these visits have indeed boosted the morale of our officials

But although they were happy and inspired by the visits of the ministers, the working conditions of many of the officials left much room for improvement

It was clear to our ministers that the conditions under which some of our magistrates, prosecutors, police officers and prison warders work are rather depressing and shocking, and indicated that the facilities such as office equipment, buildings and ablution facilities are in a terrible condition and require drastic action

The ministers all agreed that these areas will form part of their priorities and also pledged that they will do everything within their budgetary constraints to improve these conditions as speedily as possible

It is clear that if something is not done to improve the situation, the commitment by Government to fight crime will be seriously hampered. These conditions contribute to the backlog of cases in courts and a decline in successful prosecutions

The recent surprise visits by ministers to courts, police stations and prisons were more than a public relations exercise, write **Paul Setsetse** and **André Martin**

(251) (252) (253)



Ministers Penuell Maduna, Ben Skosana and Steve Tshwete talk to prisoners awaiting trial in their holding cells at the Alexandra Magistrate's Court recently

PIC PAT SEBOKO

While the ministers undertook to do everything in their power to improve the conditions at our police stations, prisons and courts at the same time they believe that not only Government but also business and the community at large should play a role in these initiatives

The contributions made by Business Against Crime in certain areas are acknowledged and appreciated, but all sections of business and communities should form partnerships with Government to ensure that our crime-fighting institutions are properly equipped to deal effectively with criminals

The perceptions and allegations that the ministers' visits were nothing but a public relations exercise, and that prisons are like five-star hotels, are completely wrong

The ministers went to these institutions in order to gain first-hand experience on day-to-day problems experienced by officials within the criminal justice system

The visits will also go a long way in instilling and maintaining public confidence in the criminal justice system. They will also help to dispel the notion that the criminal justice system is not

fighting crime effectively

It will also enable the ministers to jointly make informed decisions regarding the use of limited resources in the fight against crime

Measures to be considered by the ministers in order to address the situation include the speedy investigation of cases, better bail administration, review of sentencing policies as currently investigated by the South African Law Commission and generally the upgrading of facilities

Training and capacity building of our magistrates, prosecutors, police and correctional services personnel will also receive serious attention from the ministers

Many of these training and development initiatives are already taking place

Visits to other courts, police stations and prisons throughout the country will take place in the next few weeks, whereafter the ministers will report to the Cabinet on their findings

(Paul Setsetse is spokesman for the Minister of Justice and Constitutional Development. André Martin is spokesman for the Minister of Safety and Security.)

Security cops 'paid informer R10 000'

(252)

Sowetan 29/7/99

A FEMALE police informant was paid R10 000 after she gave information to former security policemen that led to the death of four African National Congress cadres in 1988, former security policeman Flip Theron said yesterday

He told the Truth and Reconciliation Commission's amnesty committee in Durban the woman was also paid between R50 000 and R60 000 after ANC members released her from a prison outside Lusaka in Zambia

On Monday, former Vlakplaas commander Eugene de Kock told the amnesty committee the informant was a woman with a responsible position in the Government

Theron, who was the woman's handler, said she voluntarily gave information to him about Umkhonto we Sizwe (MK) members wanting to infiltrate South Africa from Swaziland

In June 1988, the source's information led to nine cadres being killed close to the Swaziland border

Theron, De Kock and 13 other former secu-

rity policemen are seeking amnesty for their involvement in the deaths

On June 8, security policemen shot dead three women and a man and on June 12 five more men were gunned down in separate incidents - four of them close to Piet Retief and one in Swaziland

All the incidents were planned ambushes, and two of them were headed by De Kock

He said the former commander of the Piet Retief security branch, Freek Piensaar, asked him to assist in the eliminations

The cadres were killed because they were trained MK cadres who were armed and wanted to infiltrate South Africa from Swaziland

Yesterday, former security policemen Johann Tait, Paul van Dyk and Cornelius Botha admitted to killing a cadre in Swaziland

He was killed after he took four MK members to a pick-up point at the border

His car was then set alight. His body, which was lying close to the vehicle, also caught fire

- *Sapa*

Mercy killing laws reviewed

SOUTH AFRICA may soon have some of the most liberal euthanasia laws in the world if recommendations by the SA Law Commission are accepted by Parliament. Health writer **JUDITH SOAL** reports



DOCTORS who help their terminally ill patients die a dignified death should be protected from prosecution, the South African Law Commission recommended in a report released yesterday.

Although controversial enough as it stands, the report side-stepped the more contentious issue of "active euthanasia" or physician-assisted suicide.

Under existing legislation, doctors are entitled to switch off life-support machines once a patient has been declared brain dead, but strictly speaking are acting against the law if they withhold treatment from dying patients.

The commission called for urgent legislation to change this. It recommends that

- A medical practitioner or a nurse may prescribe sufficient drugs to con-

control the pain of a patient with a terminal illness, even if this dosage shortens the patient's life.

- A terminally ill patient who is mentally competent may refuse medical treatment, even if this will cause or hasten their death.

- If the patient is not mentally competent, a doctor may withdraw treatment if the patient drew up a living will asking for this while still competent.

- Family members may ask that treatment be withdrawn if the patient is unable to make or communicate decisions regarding their treatment.

Doctors can also withdraw life-saving treatment if authorised by a court order. These recommendations allow for so-called passive euthanasia, when the patient already faces a terminal disease and the intervention is by withholding rather than providing treatment.

Active euthanasia, made famous by

US doctor Jack Kervorkian, is defined as an active intervention to end the life of a patient with a devastating but not necessarily terminal illness.

Kervorkian was recently convicted of murder for giving a lethal injection to a man with motor neurone disease.

Rather than making specific recommendations on active euthanasia, the report urged the government to consider three options:

- To retain the existing laws that prohibit so-called doctor-assisted suicides.

- Or to allow doctors to decide whether to agree to a request for active euthanasia, as long as the patient is mentally competent and strict conditions are met.

- Or to set up a multi-disciplinary committee to consider such requests according to set criteria.

The report said legislation was necessary because there is a lot of uncertainty in the minds of both the public and the medical profession about the legalities of treating terminally ill people.

"These matters are at present being dealt with on a fairly ad hoc basis," it said.

"Doctors want to act in the best interests of their patients but are afraid of being exposed to civil claims, criminal prosecution or professional censure

should they withhold treatment, even if they are complying with the wishes of the patient."

The commission's recommendations received a mixed response yesterday. Fazel Randera of the South African Medical Association said "When we canvassed opinion among our members we found there is still much divergence in their views."

"As doctors we are trained to save lives, not end them, but every day we are faced with very difficult decisions."

"If a cancer patient comes to you and they are suffering and there is very little you can do, do you increase the dosage of morphine to allow them to pass away peacefully or do you prolong the dying process?"

He welcomed legislation to protect doctors who act ethically in these circumstances, but warned that such law should be abused.

"Unless this legislation allows for some form of peer review there could be a situation where doctors 'play God' and take decisions that are not in the best interests of the patient."

City doctor and Aids activist Ashraf Grimwood agreed "There's a fine balance between being nihilistic — that is,

helping, say, HIV positive patients die because you don't want to treat them — and being concerned for their well-being."

He said he respected people's right to be allowed to die, but knew that these decisions were often complicated.

"I've worked with terminal patients for over 10 years and I've found that when some people say they want to die, it is because they are depressed or they think no one cares for them."

"You always have to try to clear up the underlying issues before going ahead."

The anti-euthanasia group Doctors for Life was cautious about the recommendations.

"We are relieved that there is no call for active euthanasia," said spokesperson Albu van Eeden. "We were concerned that they would try to slip this through, but there are pitfalls with living wills and passive euthanasia too."

The Justice Ministry has passed the recommendations to the Health Ministry, which is expected to draw up legislation this year.

● Do you think euthanasia, active or passive, should be legalised? Phone Teleletters between 10am and noon on (021) 488-4722

ANALYSIS

Can we trust TRC findings?

ANTHEA JEFFERY

The author of *The Truth about the Truth Commission* looks at the accuracy of TRC victim and amnesty statements.

THE Truth and Reconciliation Commission (TRC), in making its findings of accountability for killings and other gross violations, relied primarily on its "victim" and "amnesty" statements.

However, most of the amnesty statements were either irrelevant or had to be confirmed as accurate, while victim statements were not sufficiently substantiated.

The TRC obtained some 21 300 "victim" statements, in which approximately 38 000 violations were described. These statements were important in providing victims a cathartic opportunity to tell their stories. No one who heard victims tell of abuses they had endured or loved ones they had lost could fail to be moved by their accounts. As substantiated evidence, however, these statements were deficient in various ways.

Some 90% of them were not given under oath and were not even affidavits. Very few were tested under cross-examination, so any flaws such as testing might have revealed were not brought out.

In addition, though the TRC claimed all its victim statements were corroborated, only a "low level" of corroboration was obtained. This left out the identity of perpetrators.

Yet victim statements, uncorroborated on this vital issue, were used by the TRC to make findings against named individuals and organisations.

Victim statements were also full of hearsay. In some 17 500 instances — almost half of the 38 000 reported — victims told the TRC of gross vio-

lations committed against people other than themselves. Much of this testimony must have been based on hearsay, rather than personal experience.

The dangers of hearsay are illustrated by the example of Sicelo Dlomo.

Dlomo, who was a well-known UDF activist in Soweto, was killed in 1988. He had earlier told his mother he was likely to die soon as the police were after him. When his body was discovered with a bullet hole in the head, she concluded that the police had killed him. She told this to the TRC in 1996.

But her testimony was based on hearsay and not on what she had witnessed.

In February 1999, contradictory evidence emerged. Four ANC supporters applied for amnesty to the TRC — and confessed that they had killed Sicelo. His mother's hearsay testimony, proffered to the commission in all sincerity, was inaccurate, it seemed. The TRC not only admitted hearsay but also took it into account in making findings of accountability.

Take another case, of Victoria Mxenge, a lawyer and UDF supporter. She was killed at her Umlazi, Durban home in 1985. According to the TRC, former askari Jimmy Mbane had stated that another askari, Thabiso Sphamla, confessed (while drunk) that he and three others killed her.

Pat Hlongwane had stated that his cellmate in the ANC's Quatro camp, Marvin Sefako, had told him that he had killed Mxenge "on orders from Captain Dirk Coetzee of Vlakplaas", and Sefako himself confessed (while imprisoned in Quatro, it appears) that he had shot Mxenge five times and thereafter "followed her with an axe and chopped her next to her dining room door."



THE WHOLE TRUTH: TRC chairperson Archbishop Desmond Tutu and TRC investigator Dumisa Ntsabenzu display copies of the TRC report at the state theatre building in Pretoria.

The "evidence" thus comprised two conflicting "confessions" — one made by a drunk askari, and the other made by an individual who was imprisoned in Quatro and who, as the TRC acknowledged, may have been acting under duress.

The allegation that Coetzee ordered Mxenge's death was hearsay about hearsay. The role of the one alleged assassin, Sphamla, was apparently not investigated further. The other, Sefako, could not be questioned either, for he had been killed in 1991 after having returned to South Africa (his killing is attributed to the IFP at one point in the TRC's report and to the ANC at another).

The TRC's finding on Mxenge's death read "The commission finds that Mrs Victoria Mxenge was killed by, or on the orders of, unknown members of the security forces, and that her death was a gross human rights violation which entailed deliberate planning on the part of the said

security forces. "Mxenge may in fact have been killed by the security forces. But this is also not the only possible explanation of her death. And the commission could not properly make a finding of accountability on the basis of this hearsay and contradictory evidence. Its willingness to do so in this and other instances casts doubt on the reliability of its report."

At the time the TRC wrote its report, its 7 127 amnesty statements also weren't better sources of substantiated evidence. Only 1 341 clearly concerned gross violations, and only 102 of these had seemingly been verified through the granting of amnesty.

While 1 239 relevant statements remained to be confirmed, the TRC was in no position to apportion blame for the violations committed in the past.

● Jeffery's book is being launched in Cape Town today.

TRC was in no position to lay blame

Book slams commission for using uncorroborated evidence to make findings

DR ANTHEA JEFFERY in

The Truth About the Truth Commission, to be published today, questions the reliability of statements which the TRC used to make its findings on who was accountable for killings

The TRC obtained some 21 300 "victim" statements, in which approximately 38 000 violations were described.

These statements were important in providing victims a cathartic opportunity to tell their stories. No one who heard victims tell of abuses they had endured or loved ones they had lost could fail to be moved by their accounts.

As substantiated evidence, however, these statements were deficient in various ways.

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Victim statements were also full of hearsay. In some 17 500 instances (almost half the 38 000 reported to it), victims told the TRC of gross violations committed against people other than themselves. Much of this testimony must have been based on hearsay, rather than personal experience.

The dangers of hearsay are illustrated by the example of Silelo Domo. A well-known UDF activist in Soweto, Silelo was killed in 1988. He had told his mother he was likely to die soon, as the police were after him. When his body was discovered with a bullet hole in the head, she concluded that the police had killed him.

She told this to the TRC in 1996. Her testimony was based on hearsay, however, and not on what she herself had witnessed.

In February 1999, contradictory evidence emerged. Four ANC supporters applied for amnesty to the TRC and confessed that it was they who had shot Silelo dead.

Value of the TRC is in the process – the Final Report is purely academic

I was actually waiting for it, and thought it would have happened earlier – the New Right's full-on assault on the Truth and Reconciliation Commission and its Final Report.

Predictably, the attack came from the pool of reactionary bitterness nourished by the once-respectable Institute for Race Relations. Anthea Jeffery and John Kane-Berman.

Extracts of Jeffery's book, *The Truth About the Truth Commission*, and Kane-Berman's foreword to it, have been published in newspapers, but the book is launched only today.

I look forward to doing a proper critique of the book once I have read all of it.

Perhaps I should first state my credentials for having strong opinions on the Truth Commission.

For the first 100 weeks of the TRC, I lived and breathed it every day as the editor of a weekly television documentary on the TRC process.

It was called the *TRC Special Report*, and was broadcast by the SABC every Sunday night.

(That was during the middle of the period of five years when I was, as were all my SABC colleagues and millions of viewers, under the overwhelming impression that I worked for the SABC. We were all corrected this week by the SABC bosses and the CCMMA – I was most emphatically never employed by the SABC. Now, I have to figure out how it was possible for certain people at the SABC to dismiss me "for not showing them enough respect", when I never worked for them in the first place. A weird and wonderful world, this new South Africa.)

Jeffery echoes the sentiment repeated many, many times by former cabinet ministers and generals before the TRC: the commission failed to describe the glasnost of the revolution against which the repulsive actions of the apartheid government were invoked.

She concludes: "Far from being strong on the truth, as the commission has claimed, it has produced a report which distorts as much as discloses the truth."

I hope nobody has been foolish enough to make a case that the TRC's five-volume Final Report was flawless.

I have also picked up a few mistakes and inconsistencies.

If the TRC had been given two years and a few dozen experts to prepare this report, these mistakes and shortcomings would have been unforgivable.

But with the severe restraints on

askari, Thabiso Sphamla, had confessed to him, while drunk, that he (Sphamla) and three further askaris had killed Mxenge.

Pat Blomgwanne had stated that his cell mate in the ANC's Quatro camp, Marvin Sefako, had told him that he had killed Mxenge "on orders from Captain Dirk Coetzee of Valaplasas".

Sefako himself had confessed (while imprisoned in Quatro, it appears) that he had shot Mxenge five times and thereafter "followed her with an axe and chopped her next to her dining room door".

The "evidence" thus comprised two conflicting "confessions", one made by an askari who was drunk and the other made by an individual who was imprisoned in Quatro and may, as the TRC acknowledged, have been acting under duress.

The allegation that Coetzee ordered Mxenge's death was hearsay about hearsay. The role of the one alleged assassin, Sphamla, was apparently not investigated further.

The other, Sefako, could not be questioned either, for he had been killed in 1991 following his return to South Africa. (His killing is attributed to the IFP at one point in the TRC's report, and to the ANC at another.)

The TRC's finding on Mxenge's death reads: "The commission finds that Mrs Victoria Mxenge was killed by, or on the orders of, unknown members of the security forces, and that her death was a gross human rights violation which entailed deliberate planning on the part of the said security forces."

Mxenge may in fact have been killed by the security forces. But this is also not the only possible



MAX DUPREEZ

have a final document in which the TRC could contextualise the process, draw important conclusions and make some recommendations.

But the real value of the commission was in the process, in the telling of the stories.

I think the South African Truth Commission will stand out in history as one of the most remarkable human processes in memory because of the process it brought to South Africans every day for almost three years.

I have yet to meet an adult South African who was completely untouched by the process.

It dominated our lives, it permeated our whole beings for so long. It changes us all, whether we want to admit it or not.

It is impossible for me to think of a South African society in 1999 without that experience.

ART 29/7/99

Value of the TRC is in the process – the Final Report is purely academic

I find it sad that Anthea Jeffery had spent such considerable intellectual energy and resources on the denial of the Final Report, rather than look at what the truth commission process had done for us as a nation.

Nobody has really done that, and I think it is important, especially now, that we have a bit more distance.

It has become a very popular thing to say the TRC did not bring us any closer to reconciliation. Intellectuals and politicians from all sides say it.

I think they are all very wrong. I personally saw "reconciliation" happen to many dozens of survivors of gross human rights violations, or their family members.

It happened because, for the first time, they were acknowledged by their society and government to have suffered and contributed to

freedom, it happened because they could express their pain and grief in public, and it happened because many of them got answers to old, burning questions.

But I also saw a re-adjustment of mindsets among the vast majority of whites and others who once supported government by a racial minority.

The truth commission experience changed their perceptions of the past, however reluctantly, and it changed the language they used, the parameters of their thoughts.

This is true even as they deny it.

I think we would not have had such a tolerant, peaceful 1999 election if we had not gone through the truth commission experience.

I think South Africa would have been in trouble now if we never went through that process.

The heart rejoices, but the head says no

Many would gladly forfeit some basic rights to fight crime but who decides how many, asks **Bart Henderson**

(252) (34) 20 29/7/99
The Prevention of Organised Crime Act No 121 of 1998 is a daunting and contentious law. Although the act attempts to pursue an objective which is sufficiently important to justify limiting individual constitutional rights and appears to be rationally connected to the objective, it is almost certainly going to be challenged in the Constitutional Court.

Significantly, the terms of reference virtually acknowledge the provisions might be violating the Bill of Rights in the constitution, simply by making direct reference to the recognition of those rights.

The act attempts to justify this by admitting that our common and statutory law fail effectively to deal with organised crime and to keep pace with international measures.

The specific potential constitutional issues the act is concerned with would include the right to refuse to be searched and the right to personal privacy, the right not to be dispossessed of property and the right to be presumed innocent and to remain silent.

The act has managed to deal with the issue of the burden of proof by recognising an application for a confiscation order as a civil and not criminal procedure, although the act itself is a parallel process of both civil and criminal procedures depending on the discretion of the state.

Therefore the issue of presumption is no longer a factor, as the matter decided in the confiscation process relates to "legal ownership", and not criminal misconduct.

As a natural progression, the rules of evidence in respect of a confiscation application are decided on a balance of probabilities and not beyond a reasonable doubt as in criminal proceedings, making it easier for the state to seek the confiscation order.

The law attempts a constitutional balancing act by holding in one instance that the bill of rights element of the constitution calls for generous and purposive interpretation, avoiding what has memorably been referred to as "the austerity of tabulated legalism" so as to give individuals the full measure of the fundamental rights and freedoms referred to. In another instance, it holds that while a purposive approach to the interpretation of the constitution may be required, that does not mean the rights of individuals in the constitution are absolute or that limitations to such rights are not acceptable.

The purpose of the act is to criminalise gang-related crime to allow for the civil forfeiture of criminal assets. This law means that, should the state have reasonable grounds to suspect assets were procured as a direct or indirect result of a felony, the state may seek a confiscation order from the court. The defendant has the right to appeal and prove that the assets (held for safekeeping by a curator boni) were acquired legitimately.

Should the defendant not be able to

prove how their assets were acquired, the court has the power to order the liquidation of the assets and the proceeds to be held in a criminal assets recovery account.

These proceeds are then applied at the discretion of a committee to paying the curator boni and other related expenses and to fund further anti-crime efforts.

Although the presumed intentions of this law may seem admirable at first glance, undoubtedly constitutional rights are impugned. The question is not only whether the interests of the state are sufficiently cogent to justify this infringement, but what the implications of these infringements are.

Under the provisions of the act, all citizens are guilty until they can prove their innocence, no citizen has the right to privacy or to refuse to be searched, and any citizen may be dispossessed of his or her property even if he or she has not been charged with a crime.

This is certainly not a generous and purposive interpretation avoiding the austerity of tabulated legalism giving individuals the full measure of fundamental rights and freedoms the Constitutional Court referred to. However, should the act triumph, this legislation means criminal activity can no longer hide behind the constitution.

The legislation will have far reaching effects for business and society bending under the strain of crime. For instance, traders caught selling fake leading brand labels are not only liable to lose their consignments, but the vehicles the consignments were transported in as well as the property the goods were found on and any other assets they might have, not excluding their homes and their homes' contents. A thief travelling in his car with suspected stolen car radios stands to lose not only the radios, but his car and the garage he parks it in.

Similarly, employees or organised criminals plaguing retailers with the theft of billions of rands worth of goods for which the consumer pays, stand to see the confiscation of everything they own.

"Soft" muggers at automatic teller machines might also keep an eye open because they will not be able to explain their income away and will stand to lose everything.

The act does leave one with a sense of divine justice. Although my heart sees this law as something we desperately need — living in a state of virtual anarchy I personally am prepared to see my constitutional freedoms impugned in the interests of a better life — my head says it is unjust.

The point is if we go on impugning our constitutional rights, where do we stop? Who decides which rights may not be impugned and which rights may?

In fact, why bother having a constitution?

Henderson is a forensic auditor and lecturer in private practice

Former policemen admit they helped gun down MK man

DURBAN — Former security policemen Johann Tait, Paul van Dyk and Cornelius Botha admitted yesterday to killing an ex-MK member who helped four cadres infiltrate SA from Swaziland in 1988.

Botha, Van Dyk and Tait are seeking amnesty for the death of an unidentified man in Swaziland on June 12 1988.

The three policemen told the truth commission in Durban they shot the man dead to protect the government in power at that time (252)

The murder of the former member of the African National Congress's armed wing was apparently ordered by former Vlakplaas commander Eugene de Kock. Van Dyk, who commanded the operation in Swaziland, told the amnesty committee the security policemen waited for the man at his car while he walked with the cadres to a pick-up point close to the Swaziland border.

Van Dyk, Botha, Tait and former Vlakplaas operative Marthinus Ras opened fire on the man when he returned to the car.

The car was then set alight and the man's body, which was lying close to the vehicle, also caught on fire.

The four MK members were killed later that day in a planned ambush headed by De Kock. — Sapa

BD 29/7/99



South Africa is experiencing an increase in racially motivated attacks on black people. The government is expected to submit periodic reports about legislative, judicial, administrative or other measures adopted to give effect to its provisions. HRC commissioner Toyi Kolape has implications on the manner in which becoming part of the convention.

25 years later, apartheid is a 'crime'

By Ido Lokets (262) *Sowetan 30/7/99*

The recent decision of the South African Government to become part of the United Nations International Convention on the Suppression and Punishment of the Crime of Apartheid is a major step towards eradicating the firm apartheid and racism in South Africa.

The Cabinet's decision to approve South Africa's accession to the convention comes at a time when the country is experiencing an increase in racially motivated attacks on blacks, largely by white farmers, and the seeming refusal by white farmers, and the seeming refusal to face by mainly white police officials to act against the perpetrators.

The main purpose of the UN convention is to declare apartheid a crime and to criminalise it. It was adopted and opened for signature, ratification and accession by the UN General Assembly on November 30, 1973 and came into operation on July 18, 1976.

In terms of the convention, its provisions are required to adopt any legislation or other measures necessary to suppress and prevent any act of apartheid and to punish those guilty of such crimes.

Already the Department of Justice and Human Rights Commission (HRC) is developing legislation that will declare any act of racism a crime in South Africa.

The convention obliges its members to submit periodic reports about legislative, judicial, administrative or other measures adopted to give effect to its provisions. HRC commissioner Toyi Kolape has implications on the manner in which becoming part of the convention.

Chief among his misgivings was the provision for the prosecution of those who had not received or applied for amnesty through the TRC process. The suggestion is contentious since it would favour the perpetrators and calls for South Africans to "forgive the past".

Pityana's proposal comes after much consideration of the TRC report. It also stems from concerns that there has not been "much intellectual debate" about the TRC since the report was released last October.

Instead, the media and others focused on the dispute between African National Congress president Thabo Mbeki and TRC chairman Desmond Tutu over the way the liberation movement was depicted, he says, resulting in the substance being ignored or lost.

His proposal on the halting of prosecutions is influenced by pragmatism, he says, adding that many of his misgivings about the TRC are shared by others.

"Should we be spending resources on an enemy who is defeated, who is lying down, kicking and dying?"

The reality is that most of the people who were perpetrators or former apartheid agents have either continued in their jobs, retired or taken special retirement packages.

"Amnesty had required no more of them than to make a clean breast (of things), so in the end they walk away with everything except a bit of shame.

"The victims almost universally are left with nothing or very little. They are dependent on the reparations that will hopefully come one day."

A difficulty with prosecution is that the authorities would have to be selective since the resources will never be enough.

And they are unlikely to succeed since the evidence needed may not be that readily available, witnesses would have to be sought and investigations done afresh since the statements made before the TRC are not admissible in a criminal trial he points out.

Pityana also believes that the Government's exploration of a special amnesty for KwaZulu-Natal already undermines the whole process.



Dr Barney Pityana suggests that the prosecution of apartheid criminals be stopped. PIC CLEMENT LEKANYANE

"But more importantly, we need to allow ourselves the opportunity to make a new start. And I am concerned we could spend another 10 years navel gazing, looking back and neglecting what are more important issues," he emphasises. Although he does not support a general amnesty, he believes there should be a moratorium.

"We should not actively pursue or set up a special prosecutions unit. However, if any of the people like (the Inkatha Freedom Party's) Philip Powell is implicated in gun-running and there is evidence that could link them to the past, then they should be prosecuted."

Pityana concedes that a lot would depend on circumstance and some would have "the luck of the draw."

As for criticism that not prosecuting would encourage impunity, Pityana says "Most of these people (perpetrators) would no longer be engaged in ongoing criminal activities.

"Many of them would be over-anxious to lead a quiet life somewhere. I think these guys have been defeated - they no longer have the stomach to fight the wars of apartheid."

However, he strongly disagrees with the TRC not recommending lustration (a form of purification) saying there should be a limited form of such censure.

Forgive the past

Prosecuting people for apartheid crimes will be too expensive and will lead to the neglect of more important issues, Barney Pityana tells Sharon Chetty (252) *Sowetan 30/7/99*

Dr Barney Pityana recently made the suggestion that perpetrators of human rights violations should not be prosecuted, he did not expect his views to be popularly accepted.

He does hope, however, that there will be vigorous and intelligent debate around such a contentious suggestion.

In an assessment of the Truth and Reconciliation Commission to the Anglican Church synod three weeks ago, Pityana, chairman of the Human Rights Commission, raised several reservations about the TRC's report and its recommendations.

Pityana believes perpetrators should never be put in positions where they are expected to maintain the security of the state again.

During the trial for former defence minister Magnus Malan, he says trials would take too long without the verdict necessarily being "worth the effort."

And despite the new service under the national director of public prosecutions, Bulelani Ngcuka, Pityana is still unconvinced of the potential for success.

"I think I know the workload they have and (considering) the public anxiety about crime and lack of resources with which he has to work, it would be unrealistic to expect him to dedicate time and resources to things people did 10 or 20 years ago."

Pityana also cautions against "the law being used as an instrument of revenge."

"That's one way we discredit the law. And if it is perceived by whoever that it is possible to use the law and bring out prosecutions in order to satisfy something (in our hearts) I think that is retributive."

"I personally believe that people who have been through all of this, at some point would need to make a fresh start."

He believes the human spirit can only "allow something to gnaw away for so long."

"I think we need to release people to release even those who perpetrated the vile deeds, to allow them to join the mainstream of society. We need to assist them through reparations to make their lives afresh."

One of the investigations likely to be hailed is that of the killers of Black Consciousness leader Steve Biko. Pityana supported the family in opposing amnesty to the former security branch policemen responsible for Biko's death.

"Those who murdered Steve, and many of my other close friends, would have murdered me since I was detained and tortured by them at the same time."

Fate and circumstance deemed that he survive, so he is not speaking "outside the environment and feelings of a victim," he emphasises, adding that he does not expect a lot of people to be enamoured with his proposal.

"I am saying it because I am convinced, almost in spite of myself, that if we are going to move forward in our country, we will never forget, but we will need to have the freedom or the grace or the generosity to forgive the past and move forward."

Tension rises as police act against township vigilantes

MYOLISI GOPHE
STAFF REPORTER

ARLS 30/7/99

Tension between police and vigilantes in the townships is rising as anti-crime activists face a string of charges.

Eight men belonging to the Peninsula Anti-Crime Agency (Peaca) have been arrested by Khayelitsha police at various times in the past two months.

Four of the eight, believed to be senior officials of Peaca, are still in custody, facing charges of assault and abduction, another two are out on bail and charges against the remaining two have been withdrawn.

One of those in custody is due to appear in the Mitchell's Plain Magistrates Court today.

Peaca, a group made up of former

liberation army veterans, is described by residents as being known for "quick actions in dealing with crime."

Recently, the organisation played a key role in helping the community arrest a man in connection with the rape and murder of 15-year-old Aziswa Dza of Khayelitsha.

But Director Hennie Haarhof, police station commander at Khayelitsha, said Peaca was acting outside the law, because members were forcing alleged criminals to confess to crimes by beating them.

Peaca in turn accuses the police of trying to destroy it, even though, it says, most of the community had lost faith in the police and preferred to report cases to Peaca. But police and community policing forums had refused to recognise it.

We were protected, say Vlakplaas men

Amnesty committee hears how nine activists were ambushed and gunned down

PADDY HARPER
DURBAN

On June 8 1988, Lindwe Mthembu, Surendra "Lenny" Naidu, Makhozi Nyoka and Nontsikelelo Cothoza met someone whom they believed to be one of their ANC comrades at the Swaziland border on the road between Houtkop and Piet Retief.

The young activists believed they were about to be shipped back into South Africa to take up the armed struggle. But the "comrade" driving the pick-up car, whom they knew only as "Amos", was an Askari, Lieutenant Situdame Moshé, who drove them straight into a security ranch ambush. They were shot dead, and a pistol and grenades were planted in their car.

Four days later another four young ANC members, Boxer Mthembu, Sifiso Nxumalo, Jabulani Sibisi and Nkosi-nathi Thanyayo arrived at the same crossing point, again at night, also intending to slip back into South Africa.

Again the driver of the waiting kombi was a security branch member Sergeant Frans Manzini. Like their comrades, the four were driven into an ambush and gunned down by a hit team headed by Vlakplaas commander Eugene de Kock.

At about the same time as the second group were being killed, the two ANC

escorts who had driven them to the border, Bongam Gasca and Leonard Gwebu, were ambushed by members of De Kock's team inside Swaziland.

Mr Gasca was shot dead and his body burnt in the car. Mr Gwebu, now a member of the South African National Defence Force, escaped by hiding in a ditch for the night.

De Kock revealed in an amnesty application before the Truth and Reconciliation Commission in Durban this week that the two were ambushed in an attempt to keep secret the identity of a security branch "source".

The "source", the amnesty committee heard, was responsible for running an ANC safe house on the Swaziland side of the border and identifying infiltration routes and arranging transport for cadres from the South African border to KwaZulu Natal.

Her handler, amnesty applicant Flip Koensard Theron, said she was paid R10 000 after the ambushes and R50 000 on her return to South Africa after the unburning of the ANC.

The local security branch was taking flak at the time because of the large number of infiltrations into KwaZulu Natal and Transvaal from the Piet Retief area.

De Kock, Theron and 13 other members of C1 and the Piet Retief security branch, a number of whom still hold senior ranks in the police force, painted two different pictures of how the eight young activists and Mr Gasca were killed that followed in 1989 and 1990.

De Kock and fellow Vlakplaas members Leon Flores and Marthinus Ras described how they and Piet Retief security branch members Juri Hayes, Gerrie Barnard, unit commander Frederick Pienaar and Theron had carried out both ambushes and made false statements about how the eight young infiltrators were killed.

The second ambush was carried out by the same group, with the exception of Ras who was involved in the attack on Mr Gwebu and Mr Gasca along with Piet Retief branch members and fellow applicants Johann Tart, Paul Jacobus van Dyk and Cornelius Botha.

De Kock's group had also decided to use local security branch policemen James van Zweel, Christo Deelbees and Christiaan Rorich, as well as Vlakplaas operative Nicholas "Shor" Vermeulen, for the second ambush, in which the

four were shot in the kombi driven by Sergeant Manzini. Again, an intricate—false—version of the killings was concocted.

A statement claiming the eight activists were involved in shootouts with the police at roadblocks was issued a week later by Adriaan Vlok, the minister of law and order.

Inquest courts were fed manufactured versions of both attacks and they ruled that both groups of infiltrators had been killed in legitimate police action.

Changes in initial amnesty applications made by the Piet Retief groups, who had struck by their story that they had been fired upon first by armed insurgents, were repeatedly questioned by the amnesty panel, headed by Judge Selwyn Miller.

Flores and Nortje contradicted the version by the Piet Retief applicants, saying they had not been fired upon when they attacked the second group. Both said that while the occupants were armed, they had not heard shots from the kombi as they ran towards it.

They and De Kock, they said, had been closer to the kombi than Pienaar, Van Zweel and Deelbees, and would have seen the muzzle flash if the ANC member who De Kock shot had opened fire. Nortje said he had examined the man's AK-47 to see how close he had come to

shooting before De Kock killed him and found that while it was cocked, it did not appear to have been fired.

Advocate Marumo Moreane, appearing for the families of the victims, challenged the version that the four insurgents in the kombi had been armed, and argued that the weapons had been planted to provide a cover story.

Hayes, Barnard, Theron, Van Zweel, Pienaar and Rorich argued that they had intended to arrest the insurgents if possible, but were unable to do so because they were armed.

Again they were contradicted by De Kock, Flores, Vermeulen and Nortje, who said the intention was to kill the insurgents in both ambushes and not arrest them.

Nortje, the last applicant to testify, said Vlakplaas members felt "protected" when they committed illegal acts including murder and abduction.

He said that the command structure, from Brigadier Willem Schou to General Krappies Engelbrecht and downwards, was aware of their activities, as were politicians.

"If we were not protected, we wouldn't have done those things," he said. "We were protected by senior (government) officials and policemen. Our direct heads would protect us. We just got more involved and the whole thing escalated."



CONTRADICTION REPORTS Vlakplaas commander Eugene de Kock

(A57) ART 31/7/99

Shout-out silences real gun debate

Myth and emotion are clouding debate on new rules on firearms use by the police, writes Jonny Steinberg

By Jonny Steinberg

(34) (5/8)



Police officers are unhappy with new gun laws

SECTION the words "section 49" to a policeman in SA and he will scream blue murder. "They are trying to kill us," a flying squad member said over his shoulder as he drove through Johannesburg's inner city.

When the new law governing the use of firearms by the police comes into force, it will not be allowed to shoot until shot at. When shots are fired from a fleeing vehicle, I will only be able to shoot while he is pumping his trigger. Once the bastard puts his face back into the car, I must put down my gun. Basically, you cannot shoot until you are dead.

Wild and fanciful myths about the new law are raging like wildfire at station level. They are woefully off the mark, sheer fantasies that bear no relation to the black and white of section 49 itself.

The old section 49 of the Criminal Procedure Act, which will be repealed later this year, gives police licence to use lethal force to capture anyone resisting arrest for a schedule one offence. These include a whole battery of crimes ranging from murder to housebreaking to forgery. Under the new law, currently in draft form, lethal force may be used only when the arrestor's or someone else's life is in danger.

"Clearly the suspect does not need to pull the trigger for you to know that life is in danger," said a senior police manager, who asked not to be named. "In a situation like a cash-in-transit heist, an armed gang robbing a bank or a hostage drama, no judge will convict a policeman of murder for falling to wait for bloodshed before using his own firearm. The stories going round police stations are ridiculous."

shoot while being shot at is both interesting and disturbing. It opens a window onto the way the language of SA's new human rights regime is understood at the grassroots of the criminal justice system. In a recent judgment, the Constitutional Court expressed surprise that SA magistrates were letting professional cash-in-transit robbers out on bail because of a mistaken belief the bill of rights required them to do so. Section 49 is another example of officers sparring with a phantom law, one conjured up by what they believe a human rights state is like. There is a danger that myths become self-fulfilling. The phantom law begins to shape the actions of police and magistrates.

Judicial officers let professional killers out on bail. Policemen take a bullet for fear of being convicted of murder. The human rights regime does indeed become a crazy alien imposition that endangers innocent lives and sets the guilty free. As the law itself becomes an object of loathing and anger, so the country shuns it, and the primitive allure of vigilante justice becomes all the more inviting.

Popular misconceptions about section 49 are all the more disturbing because they shroud those areas where the new law is indeed controversial and ambiguous.

Take a familiar scenario. A patrol car responds to an armed robbery alert late at night. Two officers arrive to find three silhouetted figures scaling the wall of a suburban home and disappearing into an alley. The officers give chase. They identify themselves and fire a warning shot.

The suspects do not turn round and shoot nor do they give themselves up. They keep running. The radio alert said it was an armed robbery, but the officers themselves have not seen guns. They can

not expect immediate backup. They cannot expect ever to learn the names and addresses of the three. What do they do?

The new law says lethal force can be used if the arrestor reasonably believes his life is in danger. Is it? If the two policemen catch up the suspects and apprehend them with batons or their hands will the suspects draw their guns and shoot?

The law also says lethal force may be used if the arrestor believes there is a substantial risk that the suspect will cause imminent or future death. If the arrest is delayed, is it reasonable to assume that three men who rob a house in Johannesburg in 1999 are both armed and happy to use their weapons? Is it reasonable to assume they might one day shoot an innocent victim in a future armed robbery?

The officers, who must weigh up these matters in a split second, decide life is in danger if the suspects get away and using nonlethal force will put their own lives at risk. They shoot low, aiming for the suspect's legs but one is shot in the small of his back and dies. The other two keep running and escape. Examining the body, the officers find the man they killed was in fact unarmed. Nobody will ever know whether

the two who fled were carrying guns.

Murder charges are laid against the two officers. The judge hearing the case will be the first to interpret the new law. Does he convict them, or does he rule that they acted lawfully in terms of section 49?

The judge knows something sacred will be lost either way. Letting the officers off he sets a precedent that immediately nibbles away at the new section 49. Once the news of the judgment filters through, how many policemen will feel they can shoot people in the back with impunity?

However, there are grave costs entailed in going the other way. If he convicts, how many cold-blooded felons will resist arrest and flee with impunity? How many innocent people will they kill in the course of their careers? How many policemen will lose their lives apprehending armed felons with their bare hands?

There is a maxim that does the rounds at law schools around the world: saving one innocent person from the gallows is worth letting 10 guilty people go free. No judge has a crystal ball. He can guess at the consequences of the judgment, but no economic theory of exchange will guide him with any certainty.

Then there is the question of context. The judge's courtroom is in the centre of a dangerous, violent city. He is a citizen of a fragile new democracy whose institutions are threatened by the rise of a violent and deadly underworld.

Does the metaphorical ratio of 10 guilty to one innocent drop in a country like SA? Is stability under so great a threat from the underworld that we must lower our threshold and give police greater leeway? Or do such thoughts tempt us to abandon the rule of law entirely and turn our police force into a bunch of vigilantes?

Another thought crosses the judge's mind. If he convicts the decision will fan the flames under an already boiling cauldron. Many believe a person fleeing from a predatory crime should expect to be gunned down. Live by the sword.

Does he fight popular sentiment and interpret the law as severely as he can? Or does he wonder whether a severe judgment will deepen the gulf between constitutional law and popular culture, which will itself erode the legitimacy of the law?

Section 49 will raise a host of fundamental questions. It is a shame they are being buried by wild and fanciful folklore.

THE TRUTH COMMISSION

SLAMMED AS THEATRE OF VICTIMS

Jeffery's book says too much was left out and that the process was biased (Afr)

MM 19849 30/07/99

The suggestion of Barney Piyaana, chairman of the Human Rights Commission, that those who fail to get the nod from the amnesty committee of the Truth & Reconciliation Commission (TRC) should not be prosecuted, is significant. It follows high-level proposals that a blanket amnesty could be accorded leaders of the warring parties in KwaZulu-Natal, and perhaps is in synch with a public perception that in Piyaana's words, "it would be time-consuming, expensive and would perpetuate the idea that we should keep looking at the past" (see *Sunday Independent* July 25).

Piyaana's views help to open up debate about the actual utility of the TRC process. Part of the TRC's remit was to identify the perpetrators of human rights violations in the conflicts of the past (from March 1960 to May 1994) and compel them to confess their deeds in exchange for forgiveness. Those granted amnesty would then be free of criminal or civil liability. But did the TRC perform as it was required to do?

A just-published analysis of the TRC's workings by Anthea Jeffery of the SA Institute of Race Relations (SAIRR) — *The Truth About the Truth Commission* — provides an understated but probing critique of the legal and fact-gathering shortcomings of the commission. In a scrupulous deconstruction of the TRC's October 1998 report Jeffery charges it with failing to be even-handed, of skirting the *audi alteram partem* ('hear the other side') rule of justice of a selective agenda based on the premise that the conflict was purely between a criminal State and its allies (primarily Inkatha) and an innocent liberation



Arnold Pronto TRC relied on uncorroborated evidence



But the amnesty hearings are to continue until conclusion after which the TRC is to be reconvened to consider any fresh revelations, and only then produce its final report. Jeffery says that TRC chairman Archbishop Desmond Tutu, feels that "The commission can claim without fear of being contradicted, that it has contributed more to uncovering the truth about the past than all the court cases in the history of apartheid." She disputes this, arguing that the TRC is complicit in "the widespread media depiction of its report as a final one and (indicates) that it will need, at most, a 'codicil' to be appended to it." A statutory commission, the TRC was required to make "defensible findings according to established legal principles" and those findings had to be made on a "balance of probabilities" as in civil litigation.

But as SAIRR chief executive John Kane-Berman writes in his foreword, the TRC "reached its major conclusions about violations when 90% of amnesty statements (on its own reckoning, a vital source of evidence) had still to be considered. It never quantified how many killings had occurred within its mandate period (and left 12 000 or more killings unexplained — notably those that occurred when violence was at its most intense." That period began after the unbanning of the ANC and SACP in 1990. "The av-

erage fatality rate in political violence from 1985 to 1989 was about 1 080 a year, but in the early Nineties it more than tripled to 3 400." The TRC report scarcely considers this surge — at a time when the Nationalists were seeking to negotiate reforms — and finds that the former government committed "the predominant portion of gross violations" in the mandate period, in collusion with the Inkatha Freedom Party.

The TRC's finding is that while there was "little evidence about violations when 90% of amnesty statements had still to be considered" — a "net- to the book" — a "net- work of security and ex-security force operatives, often acting in conjunction with rightwing elements and/or sectors of the IFP, had fomented and engaged in violence including both random and targeted killings" it clung to that view.

The PAC and ANC were also respectively condemned for striking at civilians or for operations that went "awry". The United Democratic Front was criticised for losing control of its adherents — but the TRC does not make the essential link between the ANC and UDF. Too much is left out.

This "bias" is reflected in the report as a whole. Victims were seldom required to testify on oath, and never cross-examined in the manner of amnesty-seekers. They achieved catharsis — or at least some of them did — in a therapeutic forum. Even when their evidence was contradictory, few were thoroughly checked since it was felt that the "therapy" had to run its course.

Moreover, the TRC's investigative unit under Durrisa Ntsebeza lowered its criteria for factual cross-checking, accepting for 700

"On a national basis, the commission has succeeded in explaining a maximum of 8 500 out of a minimum of 20 500 fatalities. Within KwaZulu and Natal, it has accounted for 5 600 killings out of a total varying from 10 500 to 20 000. Its report thus falls very far short of the comprehensive account it was supposed to provide — and casts no light at all on how or why these thousands of further killings occurred." Peter Wilhelm

such intangibles as "the truth of wounded memories" and "instinctive suspicions". As deadlines neared, the depositions of amnesty applicants — of which only 102 out of 7 127 had been heard when the TRC went to press last year — were scrutinised, even though none of the waiting amnesty statements had yet been verified, so they could not properly be taken into account in making "findings of accountability". Jeffery discerns many errors of fact in the TRC report. Previous trial and inquiry findings were ignored, death tolls are frequently erroneous, and the networks of "statement lakers" sent out by the committee were given "pointers" that led them to focus upon security force — particularly police — abuses.

Though evidence of the ANC's declared "people's war" was introduced, it was subordinated to the actions, real or alleged, of the apartheid state. This amounts to a whitewash of the liberation movements' abuses — though, ironically, the ANC is not happy with even the moderate blame it has been apportioned.

According to SAIRR research, the thousands of unaccounted for deaths could emanate from the "people's war" — launched in 1963 after the ANC had assessed the Vietnamese experience at first hand. Perhaps it is in this context that the "missing" (predominantly black) dead are to be found. They have gone into a "memory hole".

Kane-Berman states "The people's war explicitly targeted not only policemen and soldiers, but also local councillors, 'collaborators', 'informers', and all 'puppets and agents of the regime'. The aim of the people's war was to render SA 'un-governable' and ultimately overthrow all authority. But because it relied on the masses to mount an insurrection — rather than on trained guerrillas to fight the police and army — the violence it generated spiralled out of control. And because it targeted so many in the black community it also produced a violent backlash from some at least. Once the rebellion began, moreover, it developed its own

momentum and, among other consequences, evolved into a civil war between the ANC and the IFP that spread in time from Natal and KwaZulu-Natal to the Reef."

In the SAIRR's view, the TRC's inept methodology and report have implications for the rule of law. Ntsebeza — appointed an acting judge on the Cape bench — wants "The legacy of the TRC to find its way into the criminal justice system." This could mean (in Jeffery's words) that "guilt would be determined more by public perceptions than by due process and in which the requirement of proof beyond reasonable doubt would be dispensed with".

The TRC was guided in part by a disjunction articulated by Justice Albie Sachs of the Constitutional Court, between "microscope truth" and "dialogue truth". "The first is factual, verifiable, and can be documented and proved. Dialogue truth, on the other hand, is social truth, the truth of experience that is established through interaction, discussion and debate."

By focusing largely on victims of apartheid — and accepting their "social truth" as pre-emptive — the TRC became less a vehicle for objectively recording the past than a theatre of victims and their painful (yet often unreliable) memories. It failed to fulfil its mandate and operated in an atmosphere of moral relativism. If these lacunae are remedied in the final report, the ANC might figure more largely in the culpability stakes than it does now.

It could be, therefore, that any blanket amnesty — as called for by Piyaana — would best suit the ANC's vision of itself as a gallant liberation force ranged against a monolithic, evil and devious system. Apartheid was unquestionably evil and some of its agents devious killers, but the TRC's report is unverified and childish in its black-white portrait of past conflict. Even so, blanket amnesty would further nullify its relevance to the problems of the present.



Robbie Tshobalala the TRC contributed most to uncovering the truth

THE MISSING OF THE WAR

SLAYINGS UNACCOUNTED FOR

The Institute of Race Relations believes the Truth & Reconciliation Commission (TRC) confined its focus on political killings to those described in victim statements. "These fatalities totalled 9 980 — fewer than half the 20 500 politically

motivated killings the institute's statistics reveal for the period from 1984 to 1994 alone. Of these 9 980 fatalities, the TRC accounts for a maximum of 8 500 — finding that about 4 500 were caused by the Inkatha Freedom Party, 2 700 by the SA Police, and 1 300 by the African National Congress. Many of these deaths occurred in KwaZulu and Natal where, according to the commission, the IFP was responsible for about 3 800 killings, the ANC for 1 100, and the SAP

for 700. "On a national basis, the commission has succeeded in explaining a maximum of 8 500 out of a minimum of 20 500 fatalities. Within KwaZulu and Natal, it has accounted for 5 600 killings out of a total varying from 10 500 to 20 000. Its report thus falls very far short of the comprehensive account it was supposed to provide — and casts no light at all on how or why these thousands of further killings occurred." Peter Wilhelm

PUBLIC SECTOR
GOVERNMENT
JUSTICE

1999

AUGUST - DECEMBER

City courts rehire costly prosecutors

By DOMINIC MAHLANGU

THOUSANDS of rands are being lost by the South African government to the Johannesburg magistrates and prosecutors who resigned, in numbers to join the public sector, only to be rehired by courts on temporary basis at costs of up to R40 000 per case.

The prosecutor, who earlier moved out of the justice department in search of greener pastures, are said to be charging the State up to R2 500 per case, and with postponements, they end up getting over R40 000 on a single case.

The revelations came to the fore after the Integrated Justice System led by Justice Minister Penuel Maduna conducted surprise visits

to courts around Johannesburg last week.

Johannesburg Chief Magistrate Mncedisi Bashe was last week reported to have told Maduna of the situation.

Bashe told Maduna that the Johannesburg courts were often unable to replace prosecutors who had resigned, thus creating a problem of having to rehire prosecutors for uncompleted cases.

Spokesperson for the National Director in the Justice department, Siphon Ngwema, said the problem was not as widespread as was reported to be.

He said since last year more than 300 vacant posts within the public prosecutors department had been filled, and that the move had led to a

scale down of payments made to the rehired prosecutors.

"The matter is being blown out of proportion, prosecutors are only rehired for specific cases which the State has decided can only be tackled by the same prosecutors who resigned," said Ngwema.

Ngwema, who also refuted allegations that the justice department was grinding to a halt due to the high payments made to the rehired prosecutors, said that every effort was being made to raise the morale of public prosecutors whose salaries had been raised.

"The allegations can only be based on isolated cases and incidents which the department has already addressed by employing over 300 new prosecutors," he said.

New SA gun law — will it kill our 'gun culture'?

(SFA) (314)

IN the preamble to a report on gun violence against women, researcher Elizabeth Ryan tells how even as she was writing the report she continued to encounter more female victims of gun violence. A woman called to tell of years of being terrorised with a gun by her junkie husband and his friends. One of her husband's friends had suddenly become irrational and abusive on the day she called and turned the gun he was firing in their backyard on her. Luckily for Ryan's caller the gun had apparently run out of bullets.

The woman was not among the 14 informants in Ryan's report. Ryan's research goes on to look at how the use of guns against women forms part of the abuse of women, and at the movement towards women arming themselves. The use of guns against women also features in a study by Wijs academic Antony Altheiker, carried out in Bramley and Alexandra township north of Johannesburg.

This study found that 506 of the 802 dockets of violent crimes examined involved the use of a



GUN CULTURE The anti-gun lobby has campaigned for toy guns to be taken off the shelves, arguing that they teach children at an early age to see guns as a status symbol

Will the proposed stringent new gun control laws go far enough in appeasing the anti-gun campaigners, or will the gun lobby find them a bit too much? Andile Noganta looks at the two sides of the gun debate

ES 118/99

gun In 118 of these cases the guns were actually fired. Gun, Free South Africa (GFSA) commissioned the studies, whose findings it has used to strengthen its hand all over again, as the old debate around South Africa's "gun culture" flares up.

Evidence from these studies will once again find its way to the fore of the debate around the controversial new move to tighten gun control laws in a society where it is the norm to "pack a piece". The government says it has decided to go ahead with a ministerial policy on firearm control following two years of comprehensive research. Andrew Leach, an insider close to the proposed new legislation at the safety and secur-

ity department, says this was preceded by a two-pronged approach controlling unlicensed firearms and monitoring licensed ones. "And as for what exactly the new law will mean for licensed gun holders, Leach says it's too soon to tell. Still, there is a big hullabaloo about the implications if citizens are disarmed and required to reapply for their licences.

The gun lobby says, if implemented, the move leaves a large number of law-abiding citizens vulnerable and has declared it extremely dangerous. As would be expected in a country with a gun culture like South Africa, the gun industry has long resisted regulation.

Ron Anger, editor of *Magnum*, the main firearm magazine in the country, says the whole motivation behind the proposed law makes it look as if all violent crimes are committed with guns.

Anger says disarming legal gun owners would give the criminal a lot more options, taking away the firearms removes the deterrent, and nothing will stop burglars breaking into a family's home, he argues. "The criminals wouldn't need a gun. Everybody would be an easy target," he says.

Chairperson of the South African Gun Owners Association, Chris Evans says "We oppose any further gun control because the government is not dealing with the problem of crime. It has been shown throughout the world that gun control does not solve the problem."

Reduce the problem that creates the demand, crime, and people won't have the need to own guns.

But if the new legislation does not entail a wholesale disarmament of the populace, having everybody re-apply for their licence, licensed firearms issued in the former homelands will remain in the wrong hands.

The government says it has already relicensed up to 40 000 guns issued in the TBVC states as part of its control over licensed guns, but it has also admitted that there are no records for some of these licences.

So you will still have potentially dangerous gun holders who should be rescreened hanging on to those licences.

There is a clear sense that GFSA will not have had its way if anything short of a complete disarmament

cutting down the number of guns in society. There is an easy supply of guns in South Africa either through the legal or illegal route. In order to deal with this you have to tackle the problem, you have to control supply and demand," Kursten says.

She says because too many gun licences are issued, criminals have a bigger pool of firearms to steal from. And the problem of guns ending up in the wrong hands is a big one in South Africa.

Police say 22 147 guns were reported to the Central Firearms Registry as lost or stolen last year. But still the gun lobby says there is no need for everybody to be disarmed, only the bad ones.

"It's not practical. Who's going to pay for all the guns that are taken back from licensed owners? If I had 50 guns and the government said 'no you can only have five', are they going to buy the other 45? And where is all the money going to come from?" asked Anger.

The gun lobby insists that there are measures in the existing legislation that guard against the abuse of licensed guns. They say these measures only need to be tightened up and properly enforced.

The gun lobby also disputes that guns do not guarantee protection, although the research in Bramley and Alexandra shows that in only 24 per cent of the cases examined was a firearm actually used by the victim or a third person in defence, and in only two percent of cases was the victim able to use his own firearm in self-defence.

They also dismiss all suggestions that firearms are a potential danger to their owners, and that the guns find their way into wrong hands.

"There is no factual statistical evidence or research to suggest that the number of licensed guns in society has a direct correlation with the amount of crime and they cannot prove that legally owned guns are the major contributor to criminal activity in South Africa," Evans says.

The furor around the new gun control measures is also likely to suck dealers of gun-related consumables into the old debate about what has been called South Africa's gun culture.

GFSA has always come out strongly against the social acceptability inculcated in young minds by the 3 ori-



GUN CULTURE The anti-gun lobby has campaigned for toy guns to be taken off the shelves, arguing that they teach children at an early age to see guns as a status symbol

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So you will still have potentially dangerous gun holders who should be rescreened hanging on to those licences.

There is a clear sense that GFSA will not have had its way if anything short of a complete disarmament takes place. The anti gun campaigners say crimes are committed with guns that started off as licensed firearms.

The national director of GFSA, Adele Kirsten says there would be less firearms in the wrong hands if the number of guns in circulation was reduced.

"By getting stricter gun laws we are clear that this is one step towards

cutting down the number of guns in society. There is an easy supply of guns in South Africa either through the legal or illegal route. In order to deal with this you have to tackle the problem, you have to control supply and demand," Kirsten says.

She says because too many gun licences are issued, criminals have a bigger pool of firearms to steal from. And the problem of guns ending up in the wrong hands is a big one in South Africa.

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But still the gun lobby says there is no need for everybody to be disarmed, only the bad ones.

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The furone around the new gun control measures is also likely to suck dealers of gun-related consumables into the old debate about what has been called South Africa's gun culture.

GFSA has always come out strongly against the social acceptability inculcated in young minds by the glorification of guns, a factor blamed on the mass gun related consumables characterised by anything from gun magazines to war toys.

The glorification of guns is represented by language such as "packing a piece", as well as slang like "dressed to kill".

"This is another problem. People, especially young men, see it as a status symbol," says Kirsten.

two sides of the gun debate

11/8/99

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WRITING in the Sunday Times last week, Anthea Jeffery questioned whether the Truth and Reconciliation Commission report had "contributed more to uncovering the truth about the past than all the court cases in the history of apartheid". As its chairman, Archbishop Desmond Tutu, has claimed ("Our past gives lie to the TRC's findings", July 25)

In her book, *The Truth about the Truth Commission* (published by the SA Institute of Race Relations), she argues that a comparison of the report's findings with earlier judicial rulings "suggests the opposite".

The allegation that the TRC's findings are invalid ignores and, in fact, falsifies the history of apartheid and the violence that accompanied it.

The transition in South Africa has been remarkable. The seemingly hopeless situation at the beginning of 1990, characterised by international ostracism and the force used by the state and liberation movements, gave way to democracy. It was a transition few South Africans dreamt possible, made more extraordinary by the violence and division that racked the negotiation years, during which almost 20 000 people died

The truth about the truth commission

JEREMY SARKIN investigates a study that calls on the past to invalidate the findings of the TRC and concludes that it reeks - of the tactics of the past

ST-1/8/99 (252)

The first post-apartheid government saw the task of confronting past abuses of human rights as crucial. It argued that a process of public truth-telling was necessary to bridge the bitter divisions of the past in the interest of peace and unity. Ignoring history would lead to a collective amnesia, which would result in the unresolved past returning to haunt all South Africans in the form of anger, resentment and revenge.

Thus, the truth commission was born. It began its work in 1996 and handed over its report in October 1998, although its amnesty committee has still to

be concluded, on the strength of a newspaper report, that the ANC was responsible for the Kwamukutha massacre - over which General Magnus Malan, other security force operatives and IFP members were prosecuted for hit-squad activity. The court even conceded that the massacre was carried out by Inkatha's offensive unit, which was trained by the SADF.

To claim, as Jeffery does in her latest book, that the courts during the apartheid years played an important role in uncovering human rights violations is nonsense. Although

many thousands of people died in political violence, there were only a few prosecutions and even fewer convictions.

It is clear that the courts did little to uncover political violence during these years. In fact, people within the justice system frequently helped cover up state abuses. For example, the attorneys-general often refused to prosecute politics-related matters and inquests commonly found no one to blame for deaths in political violence.

Jeffery contends that many of the TRC's findings are untrustworthy because they contradict previous inquest findings. But



UNWITTING PAWN: A new book uses conclusions reached by Judge Richard Goldstone's commission to attack the work of the TRC

inquests were often misled by security force personnel and witnesses often refused to appear because they mistrusted the legal system.

To suggest, as Jeffery does, that court findings should stand as the truth over the TRC's findings is tantamount to suggesting history be recorded through the eyes of many pro-Nationalist judges of the apartheid era.

Jeffery argues that the existence of some errors in the TRC's report invalidates it. In an attempt to pick holes in it, she

ipated in the train violence, but that it had found no evidence of this - a vast difference. Also, it is important to remember that, in the early years, the Goldstone Commission rarely appointed blame for political violence.

Of course the TRC's report is not without flaws. There is no doubt there are errors in detail and, in certain cases, the number of deaths. This can be attributed to the TRC's short lifespan, the limited investment in its investigation unit and its small number of researchers.

However, it is clear that the general findings of the process, and the blame apportioned to political parties and the security forces, are on the whole correct. The testimonies of those now applying for amnesty bear witness to this. For example, the IFP's Phillip Powell recently pointed out a major arms cache provided to the IFP by the security forces.

Using the guise of an academic study on the TRC's report, Jeffery simply repeats the propaganda she and other apologists for the former regime have been promoting for years. Real evaluations are still to be written.

● *Jeremy Sarkin, professor of law at the University of the Western Cape, has written extensively on human rights and truth commissions in other countries*

Strike hits courts, cases postponed

STAFF REPORTERS AND SARA (2/72) (1/72)

of pay talks between the State and the unions today

Courts such as Welkom in the Free State and Wynberg in the Western Cape were also affected by Nupsaw's stoppage.

A senior official at Wynberg Magistrate's Court reported that only three interpreters were on duty, leading to a substantial number of cases not proceeding. Twenty-five interpreters, some clerks and five prosecutors had joined in the strike.

"We are not seriously affected as we have planned ahead," said chief magistrate Berrus Jooste.

Nupsaw claimed support services had been disrupted at Grootte Schuur Hospital and the Odi Hospital in Mafobane in the North West Province.

Grootte Schuur Hospital spokeswoman Philippa Johnson said a small group of strikers had picketed the hospital, but services were running normally and no patients had been compromised.

About 150 members of the Public and Allied Workers Union of South Africa (Pawusa) protested outside the main entrance to the parliamentary complex in Cape Town.

The protesters chanted slogans and some carried placards bearing the words "Geraldine you liar, analysts confirm that there's money for us", referring to Public Service and Administration Minister Geraldine Fraser-Moleketi.

The Pawusa members plan to march through the streets of the city in support of their demands for a 10% wage increase.

Pawusa spokesman William Hoffmester said depending on the outcome of the meeting between unions and the government later today, the union was likely to declare its programme of action for the week.

The protest proceeded peacefully and police monitored the situation from a distance. — Sapa

'BOOBY-TRAPPED' GRENADES

PW denies part in setting up activists

(2/72) UT 3/8/99

PRETORIA: Former president P W Botha angrily rejected attempts to implicate him in the killing of eight ANC activists, with booby-trapped grenades, in 1985.

President Nelson Mandela to heal the wounds of apartheid by offering amnesty for crimes, on both sides of the conflict, in exchange for truth.

Botha is among 11 former apartheid government and security officials named by those seeking amnesty for the operation.

In June 1985, members of the notorious Vlakplaas death squad approached young activists in the East Rand under the pretence of being members of the ANC military wing.

The agents said they had been sent to train local members. The youths were given mines and grenades of which the fuses had been fixed to explode as soon as they were pinned.

On June 25, eight activists were killed and seven injured in separate blasts.

In his amnesty application, Vlakplaas commander Brigadier Jack Cronje said the operation was

"He (Van der Merwe) told me the instruction had been approved by Gen Coetzee with the knowledge and approval of police minister Louis le Grange and president P W Botha," Cronje said in his application.

"(He also said) that it was done to prevent and combat attacks on policemen."

Van der Merwe, who is seeking amnesty for the killings, told the TRC hearing yesterday he was in charge of the operation.

"I knew Le Grange would never have taken such a decision without consulting the president," he said.

Botha has called the TRC a witch-hunt against his Afrikaner people, and has repeatedly denied involvement in illegal actions.

In June, Botha won an appeal against a conviction for contempt, handed down last year after he refused to testify before the TRC. — Reuter

Booby-trapped grenades 'set off cycle of violence'

BD 3/8/99 (2/52) Stephané Bothma

PRETORIA — A plan by former SA Police commissioner Gen Johann van der Merwe to protect black policemen and their families in volatile East Rand townships in 1985 unleashed a cycle of violence that continued unabated and resulted in the declaration of a state of emergency that lasted five years.

Van der Merwe, who at the time was deputy security branch chief, masterminded the plan to supply militant youths on the East Rand with booby-trapped hand grenades, which were known as zero hour grenades that left eight Congress of SA Students (Cosas) members dead and another seven maimed.

The deaths of the Cosas members also directly resulted in the necklacing of Maki Skosana, which was televised worldwide and sent shock waves through the country.

Skosana was brutally attacked and set on fire by a large group of people after being suspected of being a police informer and somehow involved in the deaths of the Cosas members.

The former police commissioner told the truth commission's amnesty committee yesterday that despite an allegation by former Vlakplaas commander Brig Jack Cronje, who was in charge of the grenade operation, that then state president P W Botha was aware of the plan, he (Van der Merwe) had no knowledge of Botha's involvement.

Botha's lawyer Ernst Penzhorn, appeared before amnesty committee chairman Judge Selwyn Miller yesterday to object to the fact that his client had not been properly informed that he was being implicated in the death and mutilation of the youths.

On behalf of Botha, Penzhorn denied any knowledge of the incident.

Van der Merwe is one of 12 former security policemen applying for amnesty for the murder of the Cosas members.

He said the grenades were handed to former Vlakplaas askar Joe Mamasela, who handed them to the Cosas members with an order to select their own targets. Mamasela also gave some of the activists a crash course in how to handle grenades.

The amnesty committee heard that the zero hour grenades had a dual benefit to the state — they permanently eliminated activists and made them seem incompetent, thereby undermining the credibility of the African National Congress.

The amnesty applications continue today.

I did not

(2/2)

authorise

murder - PW

Sowetan 3/8/99

FORMER President PW Botha rejected allegations yesterday that he approved the murder of eight activists in 1985 by 'booby-trapped' hand grenades and mines given to them by security agents.

The Truth and Reconciliation Commission's amnesty committee began a week of hearings into the so-called Zero-Zero operation for which a dozen ex-security-force members are seeking amnesty.

At least one senior officer has implicated Botha, who was president from 1979 to 1989 and headed the National Party government's state security council.

"I have taken instruction and wish to put on record that Mr PW Botha denies he ever approved of this action and that it was never discussed with him," Ernst Penzhorn, Botha's lawyer, told the amnesty committee.

Botha is among 11 former apartheid government and security officials named by those seeking amnesty for the operation.

In June 1985, members of the notorious Vlakplaas death squad approached young activists on the East Rand under the false pretence of being members of the African National Congress' military wing, Umkhonto we Sizwe, saying they had been sent to train local members.

The youths were given mines and grenades in which the fuses had been fixed to explode as soon as they were primed.

On June 25, eight were killed and seven injured in separate blasts.

In his amnesty application, Vlakplaas commander Brigadier Jack Cronje said the operation was authorised by former police commissioner General Johan Van Der Merwe, General Johan Coetzee and other high-ranking government officials.

"He (Van Der Merwe) told me the instruction had been approved by General (Johan) Coetzee with the knowledge and approval of Police Minister Louis Le Grange and President PW Botha, and it was done to prevent and combat attacks on policemen," Cronje said in his application - Reuters.

Ngcuka nails Basson

Dr Death's assets of R44 million attached

By Gershwin Chuenyane

ASSETS valued at R44 million belonging to the man alleged to have masterminded apartheid's chemical and biological killing machinery, Dr Wouter Basson, have been attached by the office of the National Director of Public Prosecution (NDPP).

The assets, located locally and abroad, were attached after the Pretoria High Court granted an interim order to the asset forfeiture unit (AFU) in the NDPP office yesterday.

The unit's head, Mr Willie Hofmeyer, explained that the assets would be kept by the curator until Basson's trial was completed.

NDPP office spokesman Mr Sipho Ngwema said the order allowed the unit to attach property valued at R44 million, the amount Basson allegedly misappropriated from the state.

In addition, Basson's actions allegedly cost the state another R100 million in fraud which benefited other people.

Assets seized included a company and bank accounts in the United States, a R3 million cottage and a bank account in Britain as well as more than R300 000 in a Swiss bank account.

The AFU has already contacted authorities in these countries, who will cooperate with them in recovering the assets, Ngwema said.

He said the unit acted in terms of section five of the Prevention of Organised Crime Act (POCA), which allows for the confiscation of assets after their owners have been convicted.

That Act, he added, was retrospective and the action against Basson was therefore not affected by the recent judgment in the case of KwaZulu-Natal detective Piet Meyer.

"The action demonstrates our resolve to continue using the asset seizure powers aggressively. We are determined to get the message to criminals that crime does not pay. The actions also mark the beginning of the closing of a sordid chapter in the history of our country.

"We will do everything in our power to retrieve as much as possible of the taxpayers' money allegedly defrauded by Basson," national director of public prosecutions Mr Bulelani Ngcuka, said in a statement.

Basson, known as "Dr Death" in military circles, continued to practise as a doctor at 1 Military Hospital in Pretoria despite revelations at the Truth and Reconciliation Commission about his role in the apartheid-led biological warfare programme.

He was only suspended earlier this year after 67 charges were brought against him relating to conspiracy, murder, dealing in ecstasy tablets and defrauding the state of millions of rands.

Twenty seven of the charges involved fraud and theft estimated at R44 million.

Basson was alleged to have set up a web of secret companies which he used to channel state funds in his sanction-busting attempts to acquire chemical weapons overseas.

One of his notorious projects is the Project Coast in which 200 Swapo operatives were allegedly poisoned and blown up before their

money allegedly defrauded by Basson, bodies were dropped into the Atlantic Ocean.

Other allegations were that he manufactured chemicals intended to make black women infertile. He also allegedly manufactured non-traceable poison to kill anti-apartheid activists. He was said to have developed substances that could cause deadly diseases such as cholera.

His defence, which could run into millions, is scheduled to resume on October 4 in the Pretoria High Court. The South African National Defence Force will foot the bill.

Basson is out on R40 000 bail.

His was the fourth case to be handled by the unit. Recently, the unit successfully seized R145 000 in cash from the boot of a drug dealer's car as well as the assets of Ms Amanda van der Westhuizen, who allegedly defrauded Investec of R1.6 million.

The unit is also appealing against the court ruling in Meyer's case (and that of alleged drug lord Gavin Carolus).

The court ruled that section six of the POCA was not retrospective.

By Gershwin Chuenyane 4/8/99

De Kock takes blame for booby-trapped limpet mine

FORMER Vlakplaas police commander Eugene de Kock yesterday said it was his suggestion to booby-trap a limpet mine that killed an anti-apartheid activist in 1985.

He told the Truth and Reconciliation Commission amnesty committee in Pretoria yesterday that he made the suggestion because the activist would have recognised Vlakplaas member Joe Mamasela, an askari, if Mamasela had handed the mine to the activist.

De Kock is seeking amnesty for the deaths of eight members of the Congress of SA Students who were killed on the East Rand in June 1985.

Seven were killed by hand grenades that had their detonators modified so that when they were thrown, they would explode in the hand. The limpet mine was also modified in this manner.

Seven were injured by the grenades. The activists were targeted after security police received information that they wanted to attack the homes of black policemen and were waiting for weapons for that purpose.

Mamasela gave the Cosas members the modified grenades and the limpet mine.

De Kock was not the commander of Vlakplaas at the time of the killings, but he was a member of the unit.

He said he and a senior officer, Captain Roelf Venter, received the grenades from the security police head office in Pretoria.

He made the suggestion to Venter that the limpet mine be booby-trapped.

Security policeman Lawrence Prince picked up the limpet mine in Pretoria a few days later.

De Kock told the amnesty committee he supported the operation.

"An activist did not attack the home of a policeman, a terrorist did. That is why we fought terrorism with counter terrorism," he said.

Prince testified yesterday that after he had picked up the limpet mine, he gave it to Mamasela.

He said that before the operation began, Venter showed him a hit list apparently obtained from the Cosas office which had his name and address on it.

Prince said that after the operation had taken place, he was "relieved because my wife and I could live in peace" - *Sapa*

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By Gershwin Chuenyane 4/8/99

Fight Cosas members were

'not activists, but terrorists'

(2nd) 01/18/99

Eugene De Kock claims he believed in fighting terrorism with counter-terrorism



Former security policemen, from left, Eugene de Kock, Martinus Delpont and Willem Schoon, and former police commissioner Johann van der Merwe, right, were at a truth commission amnesty hearing in Pretoria yesterday. Twelve former security policemen are applying for amnesty for the 1985 deaths of eight student activists on the East Rand.

Pictures ROBERT BOTHA

Stephane Bothma

PRTORIA — The eight Congress of SA Students (Cosas) members who were killed on the East Rand in 1985 after receiving booby-trapped hand grenades from the security police were not merely political activists, but "terrorists", the truth commission's amnesty committee was told yesterday.

"Mere activists did not attack the homes of policemen. Terrorists did such deeds and I believed in fighting terrorism with counter-terrorist," former Vlakplaas commander Eugene de Kock testified.

De Kock is one of 12 former security policemen who are applying for amnesty for the June 1985 murder of eight and attempted murder of another seven Cosas members in three different East Rand townships.

Former SA Police Commissioner Gen Johann van der Merwe and the former head of the security branch C-section, Brig Willem Schoon, are also among those seeking amnesty for the killings which were carried

out to combat the attack on black policemen and councillors on the East Rand.

In the period immediately preceding the deaths of the young men, 31 homes of policemen in the area were destroyed by activists, the committee heard. One policeman's home was attacked 10 times.

The plan — to supply the Cosas activists with hand grenades which had their detonators modified so that they exploded in the hand of the person throwing the grenade — was devised by Van der Merwe.

Although De Kock was not involved in the planning of the operation, the former Vlakplaas commander, currently serving a more than 200-year jail term, did suggest that one of the activists be given a mini limpet mine instead of a grenade to ensure that the activists died. This was because the activist could identify askari Joe Mamasela, who had infiltrated the Cosas group, pretending he was an African National Congress (ANC) member and who handed to booby-trapped grenades to the activists.

Despite the fact that SA Police technical services head Wal du Toit applied for amnesty for the killings, claiming he was responsible for booby-trapping the grenades, Schoon insisted in his testimony yesterday that the modifications to the grenades had been carried out by the SA Defence Force's special forces unit.

Schoon told the committee, under the chairmanship of Judge Selwyn Miller, that he believed the operation had the approval of the State Security Council because "it was a unique operation and the first of its kind".

The seven Cosas members, many of them mutilated when the booby-trapped grenades exploded, were charged in the Supreme Court months after the explosions.

A member of the East Rand security branch, Capt Francois Steenkamp, who gave evidence in the trial which saw the seven Cosas members convicted and sentenced, said at the time of his testimony he had been aware that it was a police operation, but kept this to himself. The hearing continues today.

Pule Molebeli

DURBAN — Kwazulu-Natal's new economic development and tourism MEC Mike Mabuyakhulu put his head on the block yesterday by pledging to create 100 000 new jobs within the next five years through his coalition strategy.

the provincial economic council should become the vehicle through which business, labour, community and local government engage the provincial government.

He said he would propose that the Kwazulu-Natal cabinet establish an economic cabinet sub-committee on which the council's CD and board chairman would be represented. This way we would be able to

on the block to achieve not just 100 000 jobs but 100 000 new sustainable jobs.

He said he would like to work with other economic role players as well as provincial and national government to achieve the target. However, Mabuyakhulu pointed out there was a need to first unlock direct investment in the economy as quickly as possible and not have it as a post-

MEC, puts his head on block, over jobs

ARG 4/8/99

High Court at standstill as officials join strike

(2nd) (17a)

STAFF REPORTERS

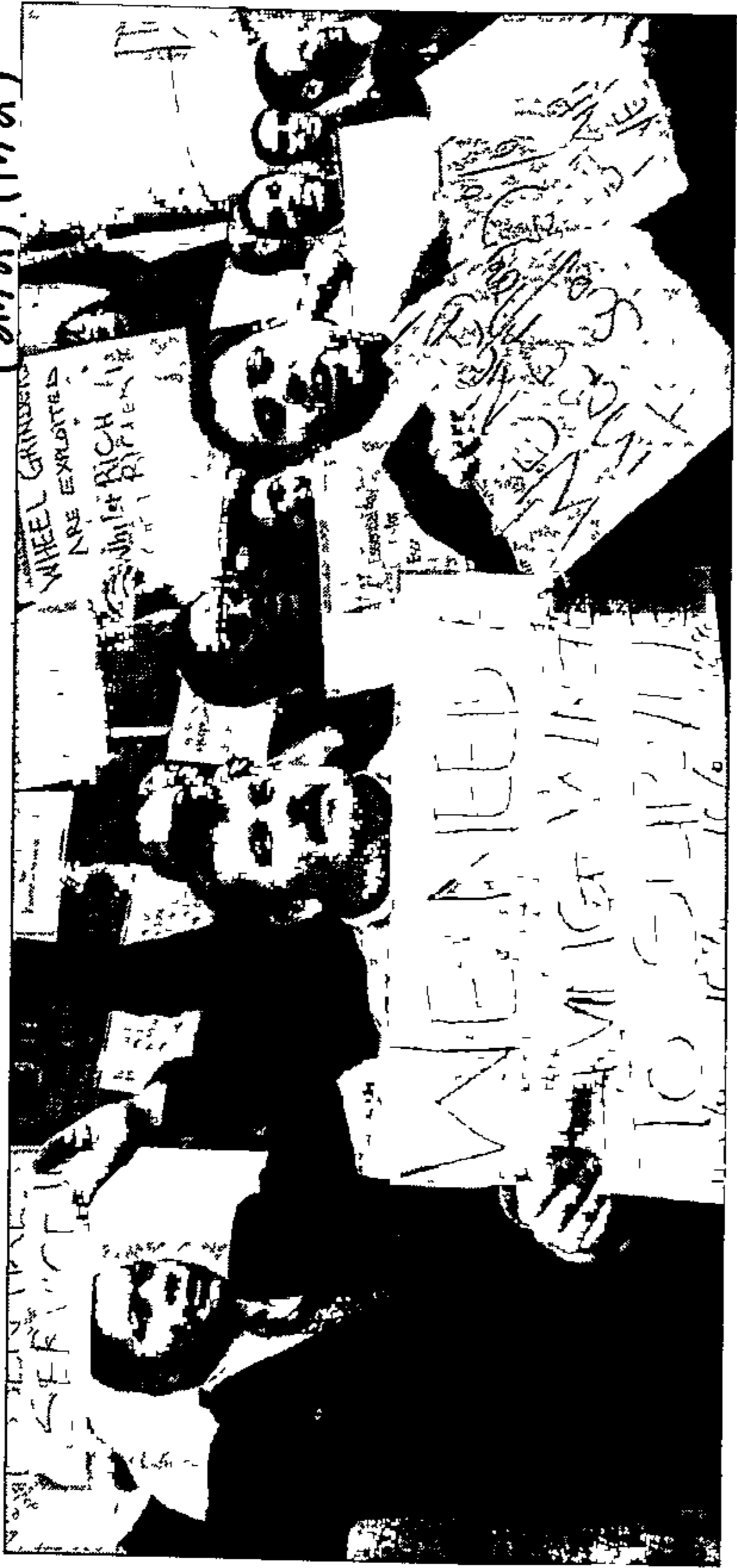
About 50 Cape High Court officials have joined the national public service strike, bringing proceedings to a virtual standstill.

The officials, including interpreters, security officers and clerks of the court, yesterday embarked on strike action after meeting at noon to discuss what they could do to help persuade the Government to give them a 10% salary increase.

They decided on their action in spite of a call by Justice Minister Penuell Maduna for all court officials to return to work.

By noon most of the courts, which re-opened on Monday after a month-long recess, were silent. However, it is expected that the High Court will only feel the pinch next week, if the strike continues, when new criminal cases are expected to start.

Yesterday's strike action follows repeated comments by Public Service and Administration Minister Geraldine Fraser-Moleketi that the Government was unable to grant workers more than a 6,3% pay increase.



JACK LESTRADE

Give us more pay: Cape High Court officials protest outside the court in Dorp Street in support of the national public service strike

After the noon meeting, in which the court officials decided to "down tools", they congregated on the steps of the court and vowed to continue their strike until the Government increases its wage offer.

A spokesman for the group, Elliot Qukwana, an interpreter, said High

Court officials would accept nothing less than a 10% increase.

Mr Maduna yesterday called on court employees to return to duty as their work constituted an essential service.

He said the principle of "no work, no pay" would apply to employees

who took part in strike action.

Meanwhile public service labour unions have undertaken to consider a new pay offer of 7% after yesterday's wage talks. The unions will consult their members about the new offer and meet Government representatives on Friday.

Penuell Maduna, the floor is yours

New legislation is aimed at addressing serious shortcomings in the maintenance system. But it doesn't go far enough, writes Shireen Motara

The honeymoon is over. The election euphoria has subsided and as our new President, Thabo Mbeki, has said, it is time to get South Africa working. His intentions are also apparent from his appointment of a Cabinet which will be dedicated to implementing government policies. More importantly, they will ensure that "a better life for all" becomes a reality. Unfortunately, this is easier said than done. How do you get people working when almost half of the population is without a job, and more and more people are joining the ranks of the unemployed on a daily basis? It is no maybe that women — black women — are the majority of the unemployed. This status, in addition to their subordinate position in the workplace and the home, has ensured that women remain dependent on men (whether as husbands or bosses) for economic and financial relief.

One major area where this dependency is especially prevalent is child maintenance. With the increase in female-headed households and the rise in single-parent families (read single-mother families), women are reliant on maintenance to provide for their children's basic needs. However, the maintenance system has become more of a problem than a solution. The newly passed Maintenance Act (1998) and the review of the maintenance system by the South African Law Commission bear testimony to this. Legislative difficulties, administrative hiccups and human resource problems all contribute to the fact that women sometimes have to wait up to three years before they can secure maintenance for their children.

Research conducted for the National Association of Democratic Lawyers' human rights research project in Cape Town in 1998 has again shed light on the avalanche of problems with the maintenance system. Whether or not legislation can address these problems remains to be seen. The research included interviews with women who have used the maintenance system, maintenance officers, magistrates, advice workers and senior officials from the Department of Justice (the deputy minister of justice, the director of courts, the chief family advocate and the head of the gender directorate). In essence the research revealed the following obstacles:

- that there are lengthy delays between applications for maintenance and the receiving of the maintenance order; with one woman waiting four years before being granted an order;
 - that there is ineffective implementation of defaulting procedures, resulting in more than 50% of fathers not complying with maintenance orders every month; and
 - that there are numerous difficulties encountered with maintenance officers, including the fact that they do not explain the maintenance procedures to women, leaving them totally uninformed about the route the process will follow.
- Women also noted that maintenance officers were "unfriendly and unhelpful", and some women commented that maintenance officers often appeared to be biased in favour of the fathers.

MAG 30/7-5/8/99



Bureaucratic nightmare. Mothers queue for maintenance pay outside the Lenyene Magistrate's Court. Full court rolls, staff shortages and outdated equipment compound the problems. South African women encounter when they apply for maintenance. PHOTOGRAPH NADINE HUTTON

As one woman said, "I wanted to go through [to the court] to get an order, but because he pleaded and promised to contribute, the maintenance officer gave in to him — I wanted to go before the magistrate but I had no power to do that."

Responses from maintenance officers revealed the following:

- There is no uniformity in the manner in which maintenance officers deal with complaints. This is illustrated by the time it takes for action to be taken against defaulters. It ranged from three days to three months, with the waiting period differing even within the same court.
- Most matters are settled by the maintenance officer without their having to go to court. This was confirmed by a magistrate who indicated that 10% to 20% of cases eventually end up in court. This is highly problematic when maintenance officers are ill equipped to do their job successfully. This was also confirmed by some women who felt that maintenance officers compelled them to settle when they wanted to take the matter to court.
- The qualifications of maintenance officers, in addition to their experience and the training they receive, have an impact on the way they do their work. This is compounded by a lack of promotional opportunities for them. Most of the maintenance officers who participated in the study indicated a need for training and "workshops and discussions on improving the service" they provide.
- Poor working conditions are a major contributing factor to the unsatisfactory way in which the maintenance system operates. These include long working hours, full court rolls, staff shortages, outdated equipment and lack of co-operation from the police and the sheriffs.
- Most maintenance officers (including the two prosecutors interviewed) indicated that prosecutors should not deal with maintenance. The reasons given were a lack of interest on the part of prosecutors and that they do not know what is happening. According to some of the magistrates, prosecutors prefer not to do maintenance matters because of the "status" of maintenance matters and the fact that the work is monotonous. This was confirmed by the head of the gender directorate in the Department of Justice and the chief family advocate.

Public figures who are allowed to shrug off maintenance claims because their superiors do not speak out set a bad example

Does the new Maintenance Act address these problems, or, indeed, can it? In a nutshell, no, it cannot. It is a well known fact that legislation has limited success on its own. In order for it to be effective, it must of necessity be accompanied by a holistic approach which encompasses policy guidelines as well as implementation. Nevertheless, the new Maintenance Act has made efforts to address some urgent shortcomings in the old Act. These measures are aimed at providing short term solutions and include the following:

- The appointment of maintenance investigators to track down fathers who are escaping their maintenance responsibilities.
- The use of garnishee orders when a maintenance order is granted, provided that the father is employed. The garnishee order requires the employer to deduct the maintenance from the father's salary each month.
- The granting of maintenance orders by default. This means that, unlike in the past when fathers used to avoid their obligations by not appearing in court, the court can now make an order in his absence if it is satisfied that he had knowledge of the subpoena and failed to appear before the court.

Again, for these measures to be successful, there must be an examination of the practicalities involved in implementing them. The incorporation of regulations in the Act will go a long way towards setting this out.

As part of addressing the lack of uniformity in the way maintenance officers do their work, the regulations prescribe set forms which have to be used in the process. This is to be welcomed because, as the research has indicated, the lack of consistency in the operational methods of maintenance officers was a concern of most of the women who were interviewed.

However, while the regulations give some practical guidance, some concerns remain. It is essential that these be taken into account by the Department of Justice as well as the South African Law Commission.

The regulations will not ensure that women are provided with information about the maintenance process. Rather, it will reinforce the disempowerment of women because the forms which will be provided for women to fill in will either be too legally complex or in a language they do not understand. This will isolate illiterate women from the entire process.

It is therefore important that, in a country

where we are attempting to build a constitutional democracy, we must not base our work on the assumption that all people are literate and English speaking.

The regulations and the Act will also not address the kind of problems mentioned above. These relate to human resources and can only be addressed by the appointment of additional staff, and better working conditions, continuous training and a change in attitudes.

Another major shortcoming of the new Act is that it still does not provide for the availability of legal aid in maintenance cases. This is highly disadvantageous when one takes into account the lack of information on the part of the women and the lack of commitment and interest which prosecutors show in maintenance matters.

Unless and until all these issues are addressed, the new Act will have very limited success. The above suggestions are aimed at providing the Department of Justice and the Law Commission with recommendations on improving the maintenance system. The research conducted also makes far reaching recommendations which aim to address the short term and long term difficulties with the maintenance system.

The restructuring and improvement of the maintenance system is critical to the creation of a society where the responsibility for the well being of the children is shared by both parents. It also has implications for the promotion and protection of gender equality in South Africa. Until women are equal players in the home, the workplace and society, they will continue to look to men and the state for assistance.

With the social welfare system unable to address all needs, there is a responsibility on the government to show its commitment to gender equality by ensuring that there are resources available to improve the maintenance system. It can also show its commitment by taking strong action against maintenance defaulters within its own ranks by making a public example of them. Public figures who are allowed to shrug off maintenance claims against them because their superiors do not speak out against them set a bad example for the rest of the country. This is a challenge to the new minister of justice. Penuell Maduna, the floor is yours.

Shireen Motara is the deputy director for policy and research at the Commission on Gender Equality. This article is written in her personal capacity.

No reconciliation possible without investigation

M&G 30/7-5/8/99

Piers Pigou (252)
A SECOND LOOK

Barney Pityana's call for a halt to investigations and prosecutions of those who committed gross human rights violations during the pre-1994 era coincides with the end of one of the Truth and Reconciliation Commission's (TRC) longest amnesty hearings, regarding the massacre at Boipatong in June 1992.

The TRC Act prescribes that the offence committed must have a political objective. The stated political objective in Boipatong that night was to attack members of defence units, whom KwaMadala hostel residents held responsible for attacks on Inkatha Freedom Party aligned men and women based at the hostel. When the special defence units could not be found, the attack degenerated into a free for all as the impis descended on to the unsuspecting township.

The TRC must also decide whether the results of the attack were in proportion to the objective. The applicants painted a picture of a community under siege, in a state of desperation, and acting, in the spirit of proactive self defence. While it is evident that a number of KwaMadala residents were targeted by Vaal special defence units and on occasion other residents, the numbers killed reflect only a fraction of the number of murders attributed to hostel residents from KwaMadala. This was not the revenge of the innocents.

The attack on Boipatong was indiscriminate and excessively brutal. When asked why children had to die, one applicant responded that "a snake gives birth to a snake". While the attack on a community perceived as partisan to the African National Congress may provide motive, it remains unclear what the precise political objective was, apart from spreading further fear and terror about the infamous hostel and its residents. The attack

was condemned by the IFP leadership. More than 200 men were involved, yet when asked to provide names of others who participated or were part of the leadership structures inside the hostel, only the names of dead men and other applicants were disclosed, with one or two exceptions. Testimony appeared contrived to limit disclosures.

The issue of police complicity is pivotal to the committee's decision. All the applicants, with the exception of Andries Nosenga, denied the police were present or involved in the attack.

While the committee's final report found that they were directly involved, this finding was made largely based on existing information and statements submitted to its human rights violations committee. No further investigation was conducted by the commission.

Rian Malan informed readers (*Mail & Guardian*, May 28 to June 3 1999) that "three exhaustive investigations rendered the [allegations of police complicity] ridiculous and that the TRC relied on biased and slanted propaganda as the basis for its findings. This is simply untrue."

The "investigations" referred to were those conducted by British police expert David

Waddington, the Goldstone commission and the trial of the 16 amnesty applicants. Waddington, at the behest of the Goldstone inquiry spent two weeks investigating the police response to the massacre. He was never asked to nor did he direct his investigations into the allegations of police involvement and collusion. This investigation was conducted by major Christo Davidson from the unrest and violent crimes unit based in Pretoria. Davidson, a former long term member of the Natal Midlands security police and close associate of Basie Smit, was implicated in the watershed Goldstone report of March 1994.

Davidson's investigation was tailored to disprove the allegations and within a couple of weeks he claimed that the allegations were false. Judge Richard Goldstone was largely dependent on Davidson's investigation and, on that basis, he deferred "judgment". No mention was made at the time that the investigations were inadequate and biased. The amnesty committee's own investigations into the massacre focused on Nosenga's allegations and were largely inconclusive. They did, however, strongly support the need for a broader investigation into the dynamics of violence in the area.

Despite the Vaal townships being an epicentre of violence in both the 1980s and early 1990s, the TRC has been unable to investigate most gross human rights violations there. Apart from the limited Boipatong inquiry, the murder of 19 residents of the Sebokeng hostel on the night of September 3 1990 was the only other matter in the region to have received any sort of scrutiny. In that case Themba Khoza and 137 IFP members and supporters from the KwaMadala hostel were arrested after they were trapped in the hostel compound and weapons supplied by Vlakplaas were found in the back of Khoza's security police vehicle.

Senior members of various police units, including the head of the Vaal security police, have applied for amnesty for securing Khoza's acquittal by fabricating evidence.

This matter has far greater implications than simply getting Khoza off the hook and proving another relationship between the security and IFP establishments. The fabrication of evidence and lacklustre investigation into the Sebokeng killings effectively meant that there was no forensic evidence secured which could be used to link those arrested with the 19 murders.

Those arrested with Khoza must have been aware of the special relationship that existed between themselves and the police. Add to this the consistent allegations from a variety of sources regarding police bias towards the IFP, a systematic failure to secure convictions against IFP supporters in the area until late 1993, and recent revelations that the head of the IFP in the Vaal was a member of the returned exile committee, a security police project.

Although this does not prove police collusion in the massacre, allegations of this collusion were repeated across the Reef, and they reveal a relationship between the police and the IFP that requires further inquiry.

We now know that the context in which the Boipatong investigation occurred was one of cover ups and collusion. A month before the massacre, police chiefs were appealing to the



Nothing but the truth. The Boipatong hearings in 1998 and the subsequent TRC report may be to no avail, since little proper investigation could be done. PHOTOGRAPH: NADINE HUTTON

Pretoria High Court to prevent further disclosures by the *M&G* and the *Vrye Weekblad* about police involvement in political violence.

Many of the then incumbent police chiefs, including the former commissioner of police, Johan van der Merwe and general Gerrit Erasmus, who was charged with searching the KwaMadala hostel after the Boipatong massacre, have now applied for amnesty for sanctioning murder and torture in other matters they feared could result in prosecution. These can hardly be regarded as individuals who were predisposed to validate allegations made against the very organisation or supporters they had committed criminal acts against.

Coupled with concerns and evidence that Davidson's investigation was neither impartial nor thorough, other major discrepancies occurred, such as the mysterious wiping out of police tapes and the destruction of important ballistic evidence. It is reasonable to conclude that further investigations are warranted.

The amnesty committee must now make far reaching decisions about the Boipatong massacre based on a set of contradictory and inconclusive versions, as well as its own limited and inadequate investigations. This is by no means the only case where such problems confront them.

If the option were available, I am sure that they would refer the matter for further investigation. Whether or not the versions presented by the applicants or the victims are believed remains to be seen.

Whatever the committee's finding, the debate on what to do next regarding this or other matters will continue. Given the seemingly contradictory need to avert being bogged

down in the conflicts of the past, the development of reconciliation at all levels of society, and the quest for the truth, all solutions appear flawed. But perhaps the most flawed is to do nothing. However painful, the subject must be addressed and solutions must be found.

Pityana says the country cannot afford this. Investigations and prosecutions should be stopped and there should be some sort of mass forgiveness. While it is true that investigations will mean the use of resources, this issue should not be seen as an all or nothing situation. Like many other challenges in South Africa, it will be a long process, based on priorities and available resources. Suggesting, as Pityana does, that this is a solution to the failure of TRC efforts to establish a "legacy of reconciliation and unity" is bewildering, especially coming from the chair of the country's leading human rights institution.

Considerable investigation and research are required to ensure the dynamics of the past conflict are properly documented and understood.

Current inquiries are only at the stage of infancy. Reconciliation is only possible if based on a strong foundation of truth. In terms of the past conflicts, the TRC has revealed that we have only scratched the surface of that truth. Consequently the prospects of sustainable reconciliation and healing will remain elusive for many including the people of the Vaal Triangle, if Pityana's counsel is heeded.

Piers Pigou is a senior researcher at the Community Agency for Social Enquiry and a former TRC investigator.

Basson case: state eyes more assets

Sowetan 5/8/99 (252)

ASSETS worth about R10 million were in the process of being seized from apartheid's chemical and biological warfare expert, Dr Wouter Basson, the office of national director of public prosecutions Mr Bulelani Ngcuka said yesterday.

Mr Willie Hofmeyr, who heads the asset forfeiture unit in Ngcuka's office, said assets already attached included Basson's Pretoria home and its contents worth about R100 000, the farm Joostenberg in Western Cape and all his domestic bank accounts.

The unit was in contact with foreign governments in an attempt to seize a R3 million cottage and bank account in Britain about R300 000 in a Swiss bank account and a company and bank accounts in the United States.

The unit was granted an interim order by the Pretoria High Court on Tuesday to seize property worth R44 million from Basson - equal to the amount he is alleged to have misappropriated from the state.

The order allows for the assets to be frozen until a final attachment order can be made upon Basson's conviction.

"We had to do this because we are concerned that he will sell his assets before the final order can be made," Hofmeyr said.

"He has a history of coming up with fantastic schemes to protect his money."

The contents of Basson's home in Lukasrand, Pretoria, has been left untouched pending the outcome of his criminal trial. He



Dr Wouter Basson

is facing 67 charges ranging from fraud, theft, murder, conspiracy and dealing in Ecstasy tablets.

Hofmeyr said it was not known if Basson had assets totalling R44 million, although this has been claimed by some witnesses.

The court order compels Basson to reveal all his assets, including gifts given to other people so that these can also be attached.

Hofmeyr said Basson had until August 20 to appeal the court ruling. - *Sapa*

How Basson 'stole' R150m from state'

Court told of network of front companies (AFA) APR 18/99



Wouter Basson: assets of R44-million

ARGUS CORRESPONDENT

Pretoria - The man dubbed apartheid's "Dr Death" - former military chemist Wouter Basson - set up a complex network of interlocking companies on three continents with money allegedly siphoned from state funds.

The tentacles spread from the Caribbean tax haven of the Cayman Islands to a country cottage in the idyllic English county of Berkshire.

This has emerged in evidence about the former government's top-secret Project Coast chemical and biological weapons programme, which Dr Basson headed.

The information was disclosed in two affidavits to the High Court in support of a forfeiture bid on his property.

In the affidavits, the National Director of Public Prosecutions, Bulelani Ngcuka, and David Pouché, a former deputy attorney-general and investigator for the Office for Serious Economic Offences, have detailed how Dr Basson allegedly defrauded the state of more than R150-million.

They describe how front companies were allegedly used to divert the cash into various bank accounts, to buy properties and companies, and provide funding for various projects, before being routed back to Project Coast's funds.

The state earlier this week won a

aimed at establishing a chemical and biological warfare capacity (it) operated under cover of a range of front companies and was funded by state money primarily channelled through a secret Special Defence Account," Mr Ngcuka said.

The affidavits says charges faced by Dr Basson relate to

- The poisoning of 200 Swapo members, whose bodies were then allegedly dropped from an aircraft into the sea.
- The attempted murder of the SA Council of Churches head, the Rev Frank Chikane (now director-general in the president's office), struggle figure Ronnie Kasrils, now Water Affairs and Forestry Minister, and former Cabinet minister Pallo Jordan.

■ The alleged seeding of a Swapo camp's water with cholera.

Mr Fouché says his investigation found the then chief of the SA Defence Force, the surgeon-general, the chiefs of defence staff, finance and intelligence, and Dr Basson were the "co-ordinating control committee" for Project Coast.

The key front company was known as Infiladel. But Dr Basson, allegedly established the WPP/WIS-dom group of companies, "which consisted of a large number of entities" in the Caymans, the US, Luxembourg, Britain and South Africa.

They owned properties in Britain, South Africa and Florida, US

High Court order allowing the seizure of Dr Basson's assets in South Africa, the US and Britain - estimated to total R44-million.

Mr Ngcuka said Mr Basson was the accused in a criminal case - due to start in the Pretoria High Court on October 4 - involving six charges of murder and 11 of conspiracy to murder, and 67 of theft and fraud.

They were allegedly committed while he was project officer for Project Coast, set up by the SA Defence Force.

"Basson was instrumental in the conceptualisation and implementation of a top-secret military project

Unit rejected askari after young girl shot

SA 5/8/99 (252)

who employed him at security police headquarters after he was no longer welcome at Viakplaas.

"Mamasela claimed the girl was shot after he was attacked but I did not want a person like that in my unit," De Kock said.

De Kock is one of 12 former security policemen applying for amnesty for the murder and attempted murder of the East Rand activists all members of the Congress of South African Students (Cosas) on June 25 1985.

Although evidence implicates Mamasela as the operative who recruited the activists and also handed them booby-trapped hand grenades and one-mini-lumpet mine, modified to explode in the hands of the person handling it, he has not applied for amnesty.

Amnesty committee sources say Mamasela also has no intention of testifying at the hearings as an implicated person.

A fellow askari Daniel Nkala who worked with Mamasela to recruit the Cosas activists told the committee in his testimony support-

ing his amnesty application that he was almost killed on June 25 1985 - "I was not told that the hand grenades and lumpet mine were booby-trapped," Nkala testified.

However, when Mamasela drove off at high speed after ordering Nkala to accompany a Cosas activist to plant the lumpet mine at an electrical substation, Nkala became suspicious and made an excuse not to go with the activist.

"Shortly afterwards I heard an explosion," said Nkala who hid in the veld near the substation at the time.

"If I did not take cover, I would have been dead - I would have been with my grandparents," Nkala told the commission.

Nkala said that when the hand grenades and lumpet mine were handed to the activists, he had no suspicion that they would be killed or seriously injured. "I believed that the security police planned on setting a trap to arrest them."

The amnesty hearings continue

Stephané Bothma

PRETORIA - Viakplaas askari Joe Mamasela, who handed booby-trapped hand grenades to a group of young East Rand activists in 1985, killing eight and seriously injuring another seven, was removed from the notorious police farm after killing an eight-year-old girl, the truth commission's amnesty committee heard yesterday.

The killing of the girl in Vereeniging, also in 1985, was covered up by the police, but Mamasela was no longer welcome at the C10 unit based at Viakplaas, former unit commander Eugene de Kock testified.

Mamasela, who earlier admitted being personally involved in the murder of more than 30 people, was "very mean at times, especially to fellow askaris," De Kock told the committee chaired by Judge Selwyn Miller.

"I personally did not like Mamasela," De Kock testified. However Mamasela enjoyed the protection of other high-ranking officials

HUMAN RIGHTS

'EQUALITY' FLAT-IRON HEATS UP

Framework document subordinates freedom of speech and association (252) FM 6/8/99

The architects of the 1996 Constitution were nothing if not visionary. In the equality clause of the Bill of Rights they laid the foundations for far-ranging legislation to overturn a history of colonial inequality, apartheid, and all enduring forms of "unfair discrimination". A law to this effect was to be enacted within three years of the adoption of the new Constitution — a deadline of February 2000.

No Bill has been put before parliament yet, but its outlines have emerged in a confidential "framework document" being circulated to interested parties, though not the public.

It is the result of the deliberations of a joint Justice Department-Human Rights Commission "equality legislation drafting unit". The HRC (chaired by Barney Pitso) is one of the institutions listed in the document as empowered to initiate legal action against any person or corporation that discriminates on the basis of "race, colour, sex, gender, disability, religion, conscience, language, (or) culture".

Indeed, discrimination on these grounds would constitute a "gross violation of human rights". And this judgment — as well as appropriate penalties — would be decided by an entirely new branch of the judiciary, the Equality Division or Court, with representation in every province.

What the framework document calls the "burden of proof" would be upon the respondent. If charged, you would have to prove your innocence on the basis that the alleged discrimination was not covered by the categories set out by the drafting unit, or was "reasonable and justifiable".

Such matters would, it seems, be refined by the accumulation of case law in the Equality Division. This entity's powers would range from enforced payment of damages for "proven financial loss" and even "damaged feelings". An apology might be ordered, or an audit of "certain policies or practices", or both. Further, an order could be issued requiring the respondent to "adopt a plan of action to remedy unfair discrimination".

Racial and sexual harassment are included in the definition of unfair discrimination. The document — which is not yet a draft Bill — is less than clear on what might

constitute "fair" discrimination, which must be "reasonable and justifiable in the circumstances". The intention is to "promote equality, prevent and prohibit all forms of discrimination and to make provision for the advancement and protection of persons previously disadvantaged by unfair discrimination". The State, and "any person, natural or juristic", will be bound by the law.

The document attempts to blanket all sectors of society with its prohibitions. It targets discrimination in the workplace, education, health services, accommodation, the media, insurance, pensions, bank lending and "the provision of grants, loans, credits or finance", transport and travel, "entertainment, recreation and refreshment", business associations and partnerships, professional bodies and clubs.

To consider just the last category a club includes an association "established for social, literary, sporting, athletic, recreational, community service or any other similar lawful purpose". No member or official of a club may refuse or fail to consider any person's application for membership, or deny or limit any benefit arising from membership and supplied by the club.

A suburban, all-male, poetry-reading association would be vulnerable to the law, and so, for that matter, would be a women's focus group which a male wished to join.

The list goes on. No insurer may exclude anyone by "refusing to provide or to make available an equivalent policy to that person". Neither the State nor any person may fail to provide "accessible accommodation in any development of land and property to the aged or disabled". No member of a partnership may discriminate by "determining who should be invited to become a partner". No professional body may refuse or fail to accept any person's application

for membership in that profession.

The media are constrained from "violating the privacy of another on any of the prohibited grounds by publishing information without permission or without regard to their dignity or in a manner that suggests discrimination". This clause alone would emasculate functional journalism in SA.

The FM understands that the framework document has been referred for legal advice. While this may have the effect of eliminating some of its extremes — such as subordinating the right to freedom of association and expression — it is difficult to foresee a workable Bill emerging from such Orwellian excess. Nor, given the equality clause itself, is it clear why detailed schedules of offence and penalty are necessary at all.

The Constitutional Court was established to enforce and clarify the Bill of



Barney Pitso

THE FRAMEWORK DOCUMENT ON EQUALITY

Aim

"To promote equality, prevent and prohibit all forms of discrimination and to make provision for the advancement and protection of persons previously discriminated against"

Target

Discrimination in the workplace, education, health-care services, accommodation, the media, insurance, pensions, bank lending and the provision of grants, loans, credits or finance, transport and travel, entertainment, recreation and refreshment, business associations and partnerships, professional bodies and clubs

Rights — as it has done on such issues as abortion and the death penalty. The framework document also appears to be, in part, an attempt to rewrite existing labour legislation. There are both criminal and civil avenues that can be pursued by anyone who feels that she or he is being discriminated against on any of the grounds set out in the Constitution. So why this document? And whatever happened to transparency? Peter Wilhelm

De Kock granted his first pardon

Stephané Bothma

BD 6/8/99

(252)

PRETORIA — Multiple murderer Eugene de Kock, who has admitted involvement in more than 50 killings during his career as a policeman, was granted his first pardon by the truth commission yesterday

De Kock, former law and order minister Adriaan Vlok and former police commissioner Gen Johann van der Merwe were among 17 people granted amnesty for the 1983 bombing of the SA Council of Churches headquarters, Khotso House

The pardon will shield De Kock from civil claims in connection with the case.

The former hit squad leader is still awaiting the outcome of amnesty applications for eight murders and a host of other crimes for which he is serving two life sentences and 212 years in jail.

Yesterday's ruling could also have legal implications for former state president PW Botha. Despite his denial that



Eugene de Kock ... granted amnesty

he had anything to do with the bombing, the amnesty committee accepted testimony that Botha and his State Security Council approved the operation.

The task was given to De Kock's Vlakplaas C10 unit to carry out.

The committee found that all 17 applicants complied with the requirements for amnesty by making full dis-

closure and by having political motives

They were pardoned for the crimes of public violence, malicious damage to property and the unlawful possession of arms, ammunition and explosives. Nobody was killed or injured in the explosion

The applicants were Gen Gerrit Erasmus, Brig Willem Schoon, Paul Erasmus, Douw Willemse, Charles Zeelie, Brood van Heerden, Izak Bosch, Japie Kok, Larry Hanton, Snor Vermeulen, Hendrik Kotze, George Hammond, Michael Bellingan and Wal du Toit

Meanwhile, the committee also pardoned former Bophuthatswana policeman Bernstein Menyatsoe for the murder of three Afrikaner Weerstandsbeweging members Jacobus Uys, Alwyn Wolfaardt and Nicolaas Fourie outside Mafikeng in March 1994

VLOK, DE KOCK OFF THE HOOK

TRC bombshell amnesty rulings

THE TRC AMNESTY COMMITTEE has pardoned members of left- and right-wing forces in a long-awaited report on several controversial incidents of political violence

Two dramatic decisions yesterday, the Truth and Reconciliation Commission granted amnesty to former Viakpias police commander Eugene de Kock and 14 others for the 1988 bombing of Khoiso House, while the killer of three AWB members during a 1994 right-wing incursion into the former homeland of Bophuthatswana also received amnesty.

The ruling is particularly significant because it marks the first time apartheid's chief assassin has been pardoned for any of his crimes, for which he is serving several life sentences.

Former law and order minister Adriaan Vlok, former police chief Johann van der Merwe and 14 other policemen were also pardoned by the amnesty committee for their role in the bombing.

And former KwaZulu-Natal security operative Mike Bellingan, who is awaiting an amnesty committee decision on a lengthy prison sentence he is serving for murdering his wife, was among others granted amnesty for the Khoiso House incident.

The committee said in its judgment that amnesty had been granted to all the applicants for public violence and malicious damage to property and the unlawful possession of arms, ammunition and explosives for the bombing Khoiso House.

They were also granted amnesty for defeating the ends of

Amnesty granted

AMNESTY was granted to the following people for their involvement in the bombing of Khoiso House:

- Adriaan Vlok, Johann van der Merwe, Gerrit Erasmus, William Schöon, Eugene de Kock, Wolf du Toit, Paul Erasmus, Douw Willemsse, Charles Zeelie, Andries van Heerden, Izak Bosch, Jacob Kok, Larry Hanton, Nicolaas Vermeulen, Hendrik van Niekerk Kotze, Gerit 88, Hammond and Michael Bell.

Onlanetse Bernstein, Melyatsso was granted amnesty for the killing of three AWB members in Matiker in March 1994.

justice by, among other things, spreading misinformation about the possible involvement of anti-apartheid activist Shirley Gunn in the explosion, and any other offence directly or indirectly linked to the explosion.

Evidence was led before the committee that Vlok discussed the plan to bomb the building with Van der Merwe, who was then head of the security police. They submitted a report to then-state president P W Botha and the matter was discussed by

Pardons

From Page 1

applied for amnesty. They were the ones who did it and gave the details. They took the legal route and were given amnesty and we must live with the TRC's findings. But what about the people who did not apply for amnesty? This went as high as the highest statesman I am challenging the courts to get those people to come forward and allow the law to take its course," she said.

In his reaction, ANC spokesperson Smuts Ngonyama said the party hoped the amnesty decision had been well considered, "with the aim of taking our country forwards with respect to reconciliation."

The ANC would have to study the judgment before arriving at a more informed view.

"Generally, we respect the position of the amnesty committee," he said. Meanwhile, former Bophuthatswana policeman Ontlanetse Bernstein Menyatsso did not shoot his victims out of malice or for personal gain, the TRC ruled.

"The committee found that the events which led to the general chaos and violence which reigned in Matiker that day were clearly politically driven."

Fanie Uys, Alwyn Wolfaardt and Nicolaas Fourie were part of an AWB strike force that had entered the former homeland to support former Bophuthatswana president Lucas Mangope against a popular uprising. Menyatsso had been "distressed" by the invasion — Staff Writer, Sapa

Call to prosecute the 'big fish' who spurned amnesty

17 let off for Khoiso House bombing

ARMS CARRIERS

In the wake of amnesties being granted for the Khoiso House bombing, the state is being urged to prosecute apartheid "big fish" who spurned the process.

Victims of the bombing in 1988 have accepted the Truth Commission's decision to grant amnesty to 17 of those responsible for blasting the SA Council of Churches headquarters.

They include apartheid's chief assassin, Eugene de Kock, former law and order minister Adriaan Vlok, former police chief Johann van der Merwe and 14 other policemen.

Former Umkhonto weSizwe (MK) operative Shirley Gunn, whose life was almost ruined after she was framed by security police for the crime, said she accepted the finding, although it was "a bitter pill to swallow."

There were other "big fish" who had not applied for amnesty, electing not to honour the spirit of reconciliation. The law should now take its full course with them.

Although she did not mention names, Ms Gunn appeared to be referring to P W Botha and other members of the State Security Council at the time. Evidence was led before the committee that Vlok discussed

Cop who killed AWB men on TV goes free

Johannesburg — The Bophuthatswana homeland policeman who killed three right-wing white invaders in full view of the world's TV cameras, has won amnesty.

The killing occurred during the 1994 invasion by elements of the Afrikaner Weerstandsbeweging seeking to prop up the regime of Lucas Mangope.

Former policeman Ontlanetse Bernstein Menyatsso did not shoot the trio out of malice or for personal gain, the Truth and Reconciliation Commission said in a statement released in Johannesburg.

"The amnesty committee found that the events which led to the general chaos and violence which reigned in Matiker that day were clearly politically driven."

The three AWB men, Fanie Uys, Alwyn Wolfaardt and Nicolaas Fourie, were shot dead on March 11, 1994, at close range and in full view of television cameras, as they lay wounded next to their car in Matiker.

Mr Mangope was toppled later that month for resisting the re-incorporation of his homeland into South Africa. Menyatsso confessed to the killings.

The TRC said he had been distressed by the invasion. The situation was volatile as an AWB convoy of vehicles drove through the streets of Matiker. AWB members were shooting at people alongside the road, and soldiers and police returned fire.

AWB leader Eugene Terre'Blanche today expressed shock and disappointment at the TRC's decision. — Sapa

Son's anguish at TRC hearing

Mom's murder recalled

AURELIA DYANTVI

He was only five years old when a mob attacked his mother and set her alight in front of TV cameras in one of the most gruesome murders South Africa has ever seen, in an incident that shocked the world.

It was July 29 1985, the place was Duduza township and the victim was Maki Skosana.

This week Ms Skosana's son, Thabiso, sat quietly at the Truth and Reconciliation Commission hearing in Pretoria as the truth trickled out about the National Party government's role in the events leading to her murder.

Twelve former security policemen and "askaris" - African National Congress cadres turned police informants - are seeking amnesty for the death of flight members of the Congress of SA Students on the East Rand on June 25 1985.

The Cosas members were killed by booby-trapped handgrenades supplied by former askari Joe Mamasela. This event triggered a

vicious rumour linking Ms Skosana to Mamasela, eventually leading to her murder.

Nine people convicted of her murder were released in 1991 as part of a deal between the ANC and the NP to release political prisoners.

He listened attentively to each speaker as if his life depended on their words. When the name Maki was mentioned he would sit upright on his chair and stare. For him, this hearing is a journey of discovery.

Thabiso comes across as a cool township teenager sporting the latest fashion trends, but deep down he is still mourning.

Even though the incident happened 14 years ago, Thabiso still misses his mother. His soul yearns for the warm and loving woman who used to embrace him and kiss him good night.

"I've got fond memories of my mom and I still remember the last time I saw her. I was staying with my granny in Soweto and mom brought me a beautiful tracksuit

Every year she used to throw me a birthday party and even now on my birthday when I look at photos of the parties it breaks my heart," he says.

His family has protected him from all the facts and he has refused to watch the much publicised video footage of his mother's murder, but now he thinks he's old enough to find out on his own.

"When I was young I was aware of what happened to her and people in the township talked about it for a while, but as time went by it became a closed book and I think people were just trying to forget about it. I've always been bothered by it as I was growing up, but now the feeling has become intense," he

says.

"A week doesn't pass by without me thinking about her. Those people destroyed what was too precious to me, a mother."

There are many things that are happening in my life which I would have loved to share with her, but now I've had to decide everything on my own.

I believe that if my mom was alive I would have been studying Marketing Management this year instead of sitting at home.

I couldn't get what I wanted like my peers and even now I've got dreams but there's no one to encourage me. They've made my life difficult and I'm angry," he says, fighting back tears.

"From what I've heard here today it is evident that she was innocent and so far no one has come up with tangible reasons for what led them to do such a cruel thing to another human being," says Thabi.

Ms Skosana's death is believed to have been a case of mistaken identity.

Days before her lynching she had heard about the rumour implicating her in the handgrenade murder.

Determined to prove her innocence and not give credence to the rumour, she decided to joined hordes of mourners attending the funeral of the comrades. That proved to be a fatal mistake.

(252)

RAY 7/9/99

TRC pardons cop for AWB killings

CP 8/8/99

(252)

FLASHBACK The fateful day when these men lost their lives after being shot and killed by Ontlameitse Bernstein Menyatsoe

By DAN DHLAMINI

A FORMER Bophuthatswana (Bop) policeman, who shot and killed three wounded armed Afrikaner Weerstandsbeweging (AWB) members was this week pardoned by the TRC's amnesty committee

This killing follows the shooting to death of over 50 and the maiming of several other Mafikeng residents by the AWB five years ago in Bop

Ontlameitse Bernstein Menyatsoe shot dead three AWB militiamen, Fanie S Uys, Alwyn Wolfaart, and Nicholaas Fourie, in a widely televised moment while they were trapped outside their car, begging for mercy on March 11, 1994

However, AWB leader Eugene Terre'Blanche and his cohorts, who allegedly shot dead over 50 civilians in Mafikeng on the same date in a bid to protect former Bop president Lucas Mangope and to rescue the "sovereignty" of Bop, have not applied for amnesty

Attempts to contact Menyatsoe, who is currently stationed at Thaba Nchu police station but lives in Botshabelo, drew a blank as he was said to be off-duty for the weekend

Menyatsoe surprised everybody when he bravely stood up to be counted by accepting responsibility for the killing of the AWB men and by so doing rescued another former Bop police sergeant, Phillemon Nare, who was a prime suspect in the murder of the men

Had Menyatsoe not come forward and claimed responsibility for the murders, Nare would have been charged and perhaps found guilty of a crime he did not commit

When he appeared before the Tebutt Commission earlier, Menyatsoe said he had perceived the situation in the former homeland at that time as "a state of war"

In a written submission handed in to the Tebutt Commission, which probed the killings in Bop, by his legal representative Thomas Bokaba, Menyatsoe was quoted as saying "I was enraged by the attempts on my life and the indiscriminate shooting of defenceless and innocent members of the public I see myself as an ordinary policeman who (was) obliged, when duty called, to defend human lives and to prevent anarchy"

The TRC's amnesty committee

spokesman Phila Ngqumba said the panel was satisfied that the crimes committed by Menyatsoe were acts associated with a political objective and that he made a full disclosure of all the relevant facts

Ngqumba said the spouses, children and parents of the three dead men had been referred to the reparation and rehabilitation committee for consideration

The instructing attorney in Menyatsoe's amnesty application, Tshepiso Ramphela who was then working for Lawyers for Human Rights (LHR), said Menyatsoe was delighted this week when the news that he had been granted amnesty was broken to him

Menyatsoe was successfully represented by advocate Ronnie Hendricks of Dansville-Mafikeng in his amnesty application "I am also happy for Menyatsoe It has been a stressful five years for him and his family and the TRC's amnesty committee decision was good for the process of reconciliation He will surely work harder now to prove that he was a capable policeman who has the interests of the community at heart," said Ramphela

How Basson's global empire was exposed

(292) ST 8/8/99

A PARTHEID chemist Wouter Basson's American lawyer was forced to turn on him and tell South African investigators how he had helped build a multimillion rand financial empire which was used to launder allegedly stolen money

Justice Department investigators obtained a court order in the US forcing the lawyer, David Webster, to tell all he knew about the financial empire of the man dubbed "Dr Death" for his role in developing chemical weapons

This week investigators acted on the information, attaching properties in Britain, Pretoria and Paarl, in the Western Cape, and identifying millions of rands in shareholdings and foreign bank accounts for seizure

The testimony, given to Justice Department investigators in November last year, helped discover how Basson allegedly salted away more than R44-million in a web of companies in England, Switzerland, Belgium and Luxembourg

Basson has always denied allegations that he stole the money from Project Coast the former government's chemical and biological warfare programme which he headed

But Webster, based in Florida, in the US, revealed how he helped Basson form three companies registered in the Cayman Islands, which served as the holding group for a labyrinth of smaller companies that made up Basson's financial empire

He also told how Basson appointed him to represent his interests as a shareholder in these companies effectively concealing the South African's involvement in the businesses

Webster's testimony supported expert fraud investigator Dawid Fouché's belief that Basson was behind a web of front companies overseas and in South Africa, known as the WPW/Wisdom Group of Companies, which was allegedly used to launder money misappropriated from the state

His evidence was a turning point in the seven-year case that has been pursued across three continents

As a result, SA investigators were able to trace assets worth about R10-million which were attached in terms of a restraining order obtained on Tuesday by the Asset Forfeiture Unit under Bulelani Ngcuka, the National Director of Public Prosecutions

Swiss bank accounts have been

A key figure in the apartheid chemist's empire helped reveal how he allegedly stole R44-million, writes CELEAN JACOBSON



frozen and British authorities raided a cottage in Berkshire The US is to institute its own asset forfeiture process against the Florida-based holding company WPW Investment Incorporated

Fouché visited the US three times to get Webster to disclose his relationship with Basson

Following a request to a US federal attorney that Webster be made to testify in a deposition, he was subpoenaed to give evidence under oath Webster tried unsuccessfully to challenge this in a Florida court

In an ironic twist, Basson will struggle to have his assets returned to him

If he wants to contest this action he will have to reverse his denials of links to the companies made during his ball application in 1997

The 48-year-old cardiologist at Pretoria Academic Hospital goes on trial in October on 67 charges of fraud and theft, six charges of murder and 11 charges of conspiracy to murder

Basson is linked to the deaths of about 200 Swapo members and the attempted murders of high-ranking ANC members

While on business abroad increasing the state's chemical warfare capacity, Basson allegedly built up a personal empire that stretched from the Cayman Islands to Croatia and included luxury homes in Florida and Belgium and two aircraft

An espionage expert, he allegedly executed a brilliant plan to channel millions of rands meant for Project Coast into his private companies and bank accounts

But close co-operation with US, Swiss and British authorities helped SA investigators untangle the web of companies Basson used to evade detection Only a quarter of his empire has been identified however and the full extent of his activities is still not known

Tipped-off that the Berkshire

An espionage expert, he is accused of executing a brilliant plan to channel millions of rands into private companies and bank accounts

cottage would be sold ahead of the trial Ngcuka moved quickly to have Basson's assets frozen

In the application to the Pretoria High Court, the state argued that there was "a very real risk" that Basson may try to dispose of his assets

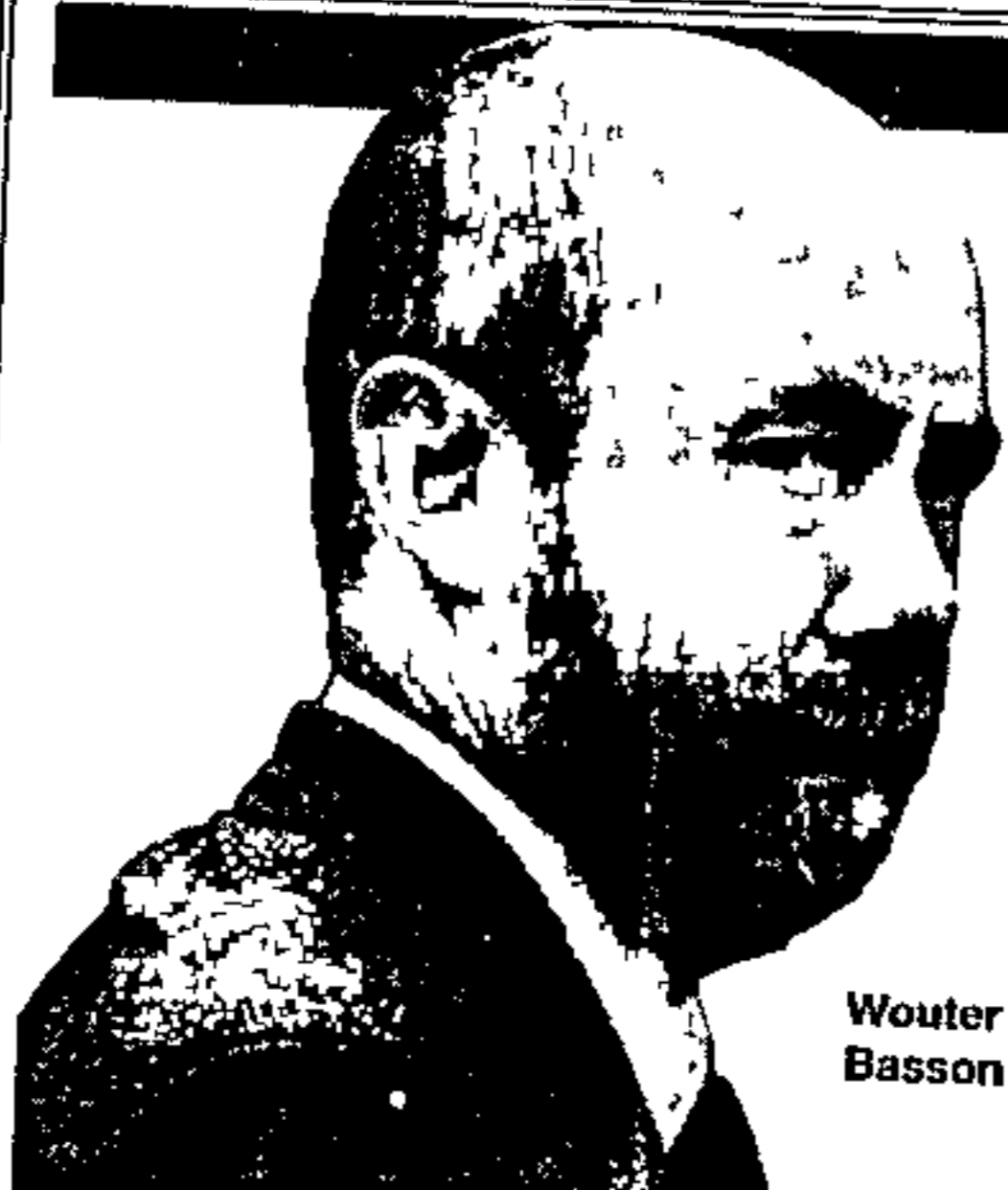
"It is clear that the actions of Basson on the evidence available to the state constitutes money laundering," Ngcuka says in an affidavit

A series of affidavits and the 200-page indictment against Basson is testimony to the paper chase that was relentlessly pursued by criminal and fraud investigators

Fouché's affidavit shows how the SADF used front companies to conceal their involvement in the highly controversial Project Coast This allowed Basson to deceive the top brass of the defence force and make his fortune

DR DEATH'S EMPIRE

Where the money went



Wouter Basson

PROPERTY



UK house - worth about R3-million



Pretoria house - worth about R100 000



A farm in Paarl - bought for about R712 000

- Flat at Lake Ivanhoe, Florida, US bought in 1992 - sold for \$215 000
- Luxury guest house in Arcadia, Pretoria, worth R10-million - sold
- Two farms, Wag-'n-Bietjie/Witbank, bought for about R1,2-million - sold
- Corporate lodge at Fancourt near George, bought for about R1,4-million

- Two flats in Brussels, Belgium - sold
- Interests in a golf course in Belgium - sold

AIRCRAFT - sold

- King Air bought for \$973 000 in 1988
- Jetstar II bought for \$3,2-million in 1990

What they say he took

AMOUNT	TRANSFERRED TO	DATE
R6 097 457	Private account, UK	Mar 1988
R5 570 000	Business account, Luxembourg	April 1988
R4 028 400	Private account, UK	May 1988
R363 811	Private account, UK	Jan 1988
R200 000	Business account, UK	Feb 1989
R1 620 000	Private account, Luxembourg	Jun/Nov 1989
R292 583	Business account, UK	May 1990
R48 440	Private account, UK	Sep 1991
R149 630	Private account, UK	Nov 1991
R44 000	Business account, UK	May 1990-Jun 1991
R6 168 025	Private account, Switzerland	Oct 1990
R130 000	Private account, Switzerland	Feb 1990
R7 000 000	Private account, Switzerland	April 1992
R7 143 000	Private account, Croatia	Nov 1992
R6 470 000	Illegal sale of SADF property	

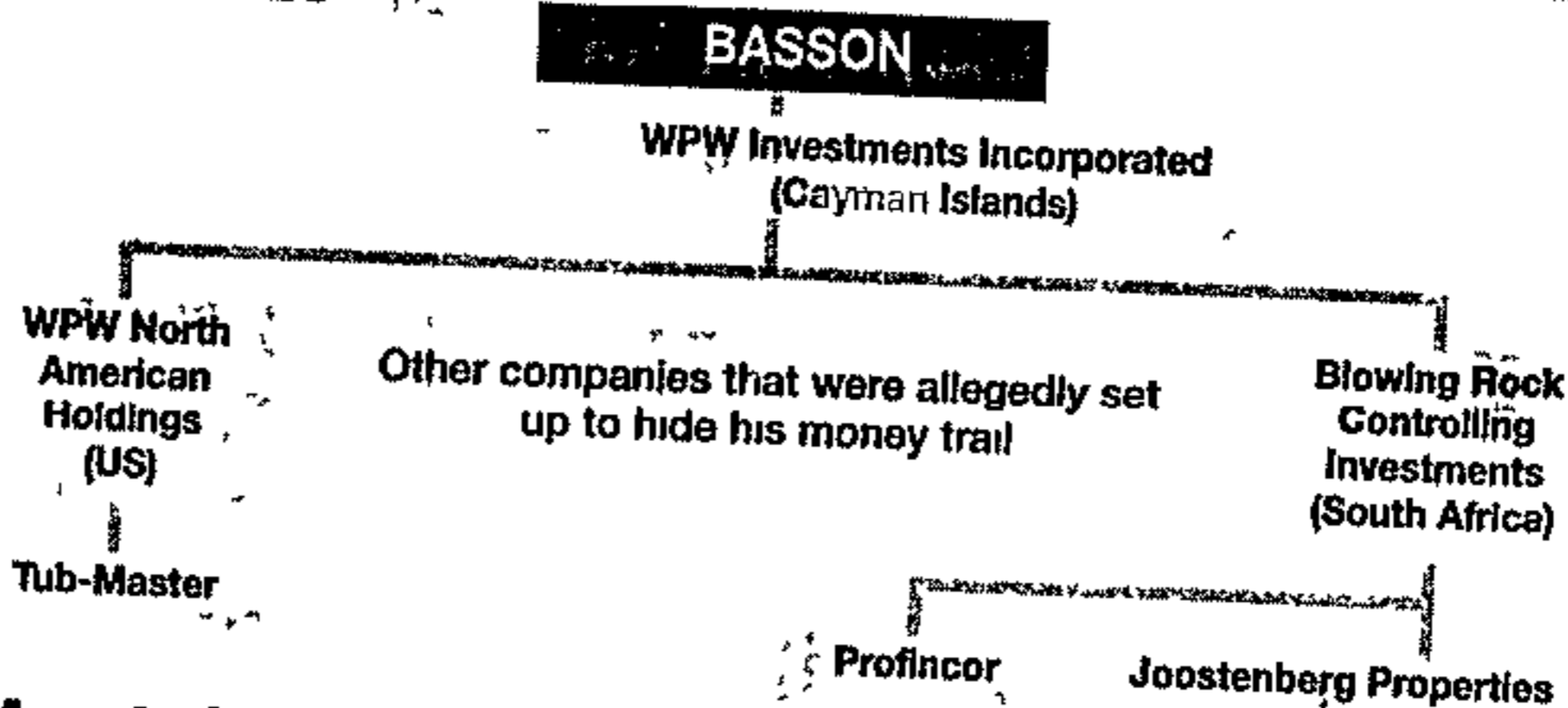
Total: R44-million

BANK ACCOUNTS

R1,4-million - Sun Trust Bank in Orlando, Florida, US

Unknown amount - Barclays Bank, Berkshire, UK
R300 000 - Credit Suisse, Switzerland

COMPANIES



Assets identified: R10-million

SOURCE: Affidavits indictment, interviews GRAPHIC: Shahn Irwin

BLAME it on the Appeal Court's cruelly constructed antique chairs but wandering to another subject which suddenly seemed more interesting.

Debate on the democratic fundamental of parliamentary free expression raged across the courtroom, sparked by two of South Africa's most prominent politicians who took each other on and then pursued their dispute to the highest court. However the ironic contrast between the identity of the protagonists and those in court to resolve the conflict proved a distraction from even so crucial a legal question.

Many people regard feisty politicians Frene Ginwala and Patricia de Lille as role models who demonstrate that women can get to the top in politics or any other profession they choose.

And yet not a single woman was involved in ending the legal dispute between them, which arose when De Lille a prominent member of the opposition Pan-Africanist Congress, repeated allegations that senior ANC members had been in the pay of the former government.

A parliamentary disciplinary committee suspended De Lille from the House although she had apologised. She challenged the suspension in court, with Ginwala the Speaker of Parliament defending the case.

The legal teams on both sides were all male. So were the five Appeal Court judges, who are now writing the judgment on the issue.

It would be difficult to imagine a parliamentary body, charged with debating or deciding an issue of comparable weight on which there was not a single woman.

The law is an ass when it comes to women

As we celebrate Women's Day, CARMEL RICKARD reports on the judiciary's lack of 'gender transformation' (Aha) ST & 18/99

In the new Parliament 119 — almost a third — of the 400 MPs are women. At the very top there are 16 women Cabinet ministers and deputy ministers, slightly more than 38 percent of the total posts. Compare this with the judiciary, where women hold 12 of about 190 seats — a paltry six percent.

The contrast which proved so distracting in the Ginwala-De Lille case brings these figures to life and clarifies just what the statistics mean — women are doing far better at getting to the top in politics than in law.

It hasn't always been so. After a poor beginning the law gave women a slight head start but lost out to politics somewhere along the way. In 1912 the case of Madeline Uha Wookoy came before Acting Chief Justice Sir James Rose Innes in the Appeal Court. She was asking that she be allowed to register as an attorney.

Cape Supreme Court Judge President Christian Maasdorp had already agreed to allow her registration but the Law Society questioned his decision and took it on appeal.

Judge Rose Innes decided the dispute turned on whether the "persons" referred to in the law as able to qualify as attorneys meant men and women or just men. He concluded that only men were "persons" in the context of the Charter of Justice.

Much of his argument was based on the role women were permitted in Roman times and under Roman-Dutch law, and he quoted from one of the standard works on Roman Dutch law.

Nearly the whole of womanhood is less suited for matters requiring knowledge and judgment than men [therefore] women are excluded from holding any office or dignity relating to the government of a people and its affairs.

If the legislature had meant women to be included as "persons" he concluded the lawmakers would have said so. Wookoy was sent packing.

Eleven years later women were officially allowed to be admitted to the legal profession — eight years before white South African women got the vote in 1930.

others? Where is the outcry when women are overlooked for promotion?

The Judicial Service Commission which interviews and selects judges, sets a poor example. The last commission included just three women among its core 23 members. Four members of the new com-

mission have not been named, but of the 19 so far announced just two are women. A third has been appointed as an alternate to one of the male commissioners.

And the highest courts do little better by way of example. It is well established that an acting appointment serves as a

By 1994 at the official end of apartheid politics had produced a handful of women MPs. A Cabinet minister and a deputy minister while just two women had been appointed as judges — Leo van den Heever, now retired in 1969 and Jeanette Traverso three months before the 1994 elections.

The new Constitution with its demand that politics and the judiciary be representative of colour and gender, has provoked a significant change in the makeup of Parliament and the Cabinet but the same cannot be said of the Bench.

Several of South Africa's dozen female judges say they are concerned about how few women have made it to the judiciary. Between 1994 and 1996, nine women were appointed. Since then, the number has dropped to barely one a year.

It's almost as though gender transformation has dried up, says one woman judge, pointing to the fact that both times vacancies have arisen on the Constitutional Court since its establishment in 1994 not even one woman has been so much as nominated for consideration.

Black men have fared far better through judicial transformation than women of any colour. In 1994 there were two women judges and one black male judge. Since then black men on the Bench have increased to 35 and women to 12 (four are black and eight white).

None of the 16 higher courts is still all-white but by far the majority — 10 — are still all-male. Most notably, there are no women on the Appeal Court, the Labour Appeal Court or the High Courts of Pretoria, Grahamstown, Port Elizabeth, Bloemfontein, Kimberley, Mafikeng, Bisho and Umtata.

Among the 35 black male judges, promotion has been extraordinarily rapid since 1994 and eight now hold senior positions including the Chief Justice, several judge presidents and deputy judge presidents.

Not one woman holds a senior position within the judiciary. And no woman judge has so much as been nominated by outside organisations or her male colleagues on the Bench to fill any of the senior positions which have become vacant since 1994. In that time senior positions on the Constitutional Court, the Labour Appeal Court and the High Courts in Durban and Cape Town have been filled, yet no woman judge has been asked to stand.

Kate O'Regan would have made a serious contender for Constitutional Court deputy president and Judge Traverso for deputy president of the Cape Town High Court for example. But the view seems to be that, unlike their "last-tracking" black male colleagues, women must "wait their turn."

Despite the greater number of women in politics, there are some respects in which Parliament — like the courts — has yet to adjust to the reality of women's lives. Constitutional Court Judge O'Regan says the structures of both institutions are "geared against women."

They need to learn from the "working world" that bringing up children is everyone's responsibility. Parliament still sits in the evenings, she points out. "It is structured for men who will come home to children who are already clean and fed."

But at least Parliament has sorted out the question of women's loo. Symbolically, perhaps, several of the old High Court buildings and the Appeal Court still have "judges only" toilets, which are clearly intended for the use of men only. Women judges must use the facilities labelled "secretaries only."

Most of the 12 women judges say joining the Bench has significantly changed their domestic lives. For some, it offers regular working hours compared with the erratic life of an advocate. For others it has meant relocate for others it has meant re-locating family — husband and children.

The Labour Court is permanently on circuit, so that its members such as Judge Ena Reveles, must move from city to city, spending two weeks in each. She says "it's quite difficult, with half of every month spent in another place."

Her male colleagues can often take their wives with them. "But if I were married to a husband with a regular job and if we had children, I might not have taken up this post."

Other women judges on courts with a regular circuit programme, such as Judge Steynaz Meer of the Land Claims Court, must construct a complex system to ensure their families function smoothly while they are away.

Many reasons are given for so few women having been appointed to the Bench — such as that, until recently judges have been drawn from the ranks of advocates only, whereas most women in the law have tended towards teaching or the attorneys' profession.

There are other reasons less often acknowledged. A number of women lawyers — judges among them — are just too cautious on the issue of women's advancement in the law. They take the view that it is inappropriate even to dream of higher office. They are reluctant to put themselves forward and sometimes decline nomination. And whereas there is a powerful lobby working for the advancement of black male lawyers, no one with any serious clout has taken up the issue of appointing women.

Where, for example, are the women's organisations when female candidates are interviewed?

Who is actively seeking possible female candidates for nomination and lobbying powerful legal bodies such as the General Council of the Bar, the Law Society and the National Association of Democratic Lawyers, to include women on their lists or support the nomination of women by

kind of apprenticeship for potential candidates, and a judge is now rarely given permanent appointment without at least one acting period. Yet neither the Constitutional Court nor the Appeal Court — the highest and most influential courts in South Africa — has appointed a woman in an acting capacity

since 1994.

According to one of the three Appeal Court judges who heard Wookoy's case in 1912, it was impossible to say that the discrimination practised in anti-colour against women had become obsolete.

Eighty-two years later, can it be that he's still right?



KATE O'REGAN

In the new Parliament, 119 of the 400 MPs are women — almost a third. Compare this with the judiciary, where women hold 12 of about 190 seats.

Legal Aid Board in crisis

By Ido Lekota

YEARS of lack of proper administration and filing systems in the Legal Aid Board have opened the body to abuse with lawyers hired to represent the poor defrauding it of millions of rands in false claims

The board was established in 1961 to provide access to legal representation for the poor. But such service was provided on a limited scale with limited funding. Since the new dispensation in 1994 the Government has a constitutional obligation to provide legal representation to citizens who cannot afford to pay a private attorney.

Last week chairman Judge Mohamed Navsa told the media that the board was in a financial crisis, due to the high rates the board had to pay private attorneys hired by it to represent poor people.

He indicated that in the previous financial

year the bill for attorneys' fees was R416 million against a budget of R233 million.

The situation was further compounded by the false claims made by attorneys which ran into millions, he said.

The scam, Judge Navsa said, included double claiming, claiming for VAT while not registered and using inflated rates to claim.

Judge Navsa said the board was pursuing criminal prosecution against the attorneys and their cases would be referred to the National Director for Prosecution Mr Bulelani Ngcuka.

He said the cases would also be taken up with the professional bodies of which the attorneys were members.

The judge also acknowledged that there were backlogs in attorneys' payments but the board now had the situation under control.

Since the beginning of this week the board had already paid out R3,863 861 in lawyer's fees, Judge Navsa said.

This was because since the appointment of the acting chief executive officer in May this year, there has been a move to address the many years of administrative inefficiency which led to such backlogs.

Judge Navsa said the only way to ensure the poor continued to have access to legal representation was through the expansion of the public defender services. He therefore supports Justice Minister Penneil Maduna's plan to establish justice centres.

These would be run by attorneys appointed by the board as salaried employees and could also provide much needed work for newly qualified law graduates.

Judge Navsa said the board has already drafted a provisional budget of R500 million to accelerate the establishment of such centres.

The pilot project will include the establishment of five centres in urban areas and four in rural areas.

Source: Star 9/8/99

(262)

Necklacing 'part of shebeen war'

MYOULSI GOPHE

STAFF REPORTER

A woman whose younger sister was necklaced and burnt to death in 1985, says the amnesty given to her killer should be reviewed.

Lindiwe Sebhana accused Mzoxolo Stokwe of telling "blatant lies" during his hearing before the Truth Commission, when he said he and his comrades burnt her sister, Ntsiki Glydis Sebhana, because she was a police informer.

Mr Stokwe, now a captain in the National Protection Service in Cape

Town, applied for the amnesty and was granted it late last month in Port Elizabeth after the commission said it was convinced the killing was politically motivated.

Ms Sebhana was necklaced and set alight by a group of Congress of SA Students in Jansenville near Port Elizabeth. At the time Mr Stokwe was the regional chairman of the youth organisation.

Phula Ngqumba, a spokesman for the TRC, said Captain Stokwe met requirements for amnesty by fully disclosing the incident and showing that politics were behind it. But Lindiwe Sebhana argues that

Mr Stokwe and his comrades were bribed by an unnamed woman to carry out the attack against Ms Sebhana, as part of a business battle between two shebeen owners.

She said the woman and Ms Sebhana had both owned shebeens and were also selling dagga at the time. "We (the family) have no problem forgiving him, but we need him to tell the truth."

But Captain Stokwe has dismissed the allegations, saying he applied for amnesty for no other reason other than to disclose the truth.

The family is asking the TRC to reconvene the hearing.

APR 9/8/99

(252)

'TREATED COURTS WITH CONTEMPT'

Gays' battle takes another step

IF the government wants to stop discrimination based on sexual preference, why is it appealing against a High Court decision to give gay couples the same status as married ones? **JUDITH SOAL** reports.

AFTER a protracted legal battle, six South African gays and lesbians take to the highest court of the land tomorrow to challenge legislation which excludes their partners from living and working in South Africa.

In February, these gay and lesbian couples won their case in the Cape High Court, where Judge Dennis Davis ruled that the Aliens Control Act, which stops foreign partners in same-sex unions from receiving permanent residence rights, was against the Constitution.

"The Constitution seeks to promote a society in which diversity of identity is respected and protected," Davis said, on behalf of a full bench. "The act prefers cer-

tain forms of life partnership over others ... this cannot be justified."

He criticised the Department of Home Affairs' treatment of the case, saying it was "tardy" and "disregarded the rules of the court".

"Where there is an obligation to treat the applicants with the same concern and respect due to married persons, such an obligation should be performed without delay. The department should have expedited the matter, not delayed it," he said.

The judgment was welcomed by the Gender Commission, gay organisations and the couples concerned, but in March the cabinet decided to appeal against it. At the time they said it gave greater rights

to same-sex couples than heterosexual partners from different countries.

The Department of Home Affairs would not comment on the matter yesterday, saying it was sub-judice and up to the Constitutional Court to decide.

The case will also have implications for Muslim and Hindu marriages, which are not recognised by South African law.

If the court rules that excluding partners who are not legally married from preferential immigration rights is against the Constitution, Home Affairs will have one year to change its policy.

Yet over two years ago the government assured the National Coalition for Gay and Lesbian Equality that it was "in the process of" amending the laws to recognise same-sex unions and that foreign partners would be allowed to stay in South Africa until this was formalised.

"The sad history of this case is that les-

bian and gay couples have been harassed, detained and threatened with deportation for the past two years," said the coalition's Zackie Achmat. "This is typical of the high-handed and bureaucratic bullying of all immigrants and refugees."

The coalition will ask the Constitutional Court to order Home Affairs Minister Mangosuthu Buthelezi, Deputy Minister Lindiwe Sisulu and the director-general to pay the costs of the case personally.

"We believe the ministers and director-general have acted in bad faith. They have treated the courts with contempt, they have purposely disregarded the Constitution and they have caused tremendous anxiety and pain to many people. It is wrong that the taxpayer should foot the bill and (pay) enormous costs because of the lack of vision, commitment and competence of individual state officials," a statement said.

THE DMS DIPLOMA IN • Photocopying

More flak for TPRC

Maduna to end judges' allowances

(2/12) MEXASHI
ETI/18/99

THE Truth and Reconciliation Commission report — adopted "with all its imperfections" by ex-president Nelson Mandela last October, after it had been heavily criticised as having "demonised" the liberation struggle — continues to receive flak from human rights activists and academics.

In a recently published book, *The Truth about the Truth and Reconciliation Commission*, author Anthea Jeffrey claims that victims' statements were full of hearsay and in some 17 500 instances victims told of gross violations against people other than themselves.

Human Rights Commission chairperson Barney Pityana recently said the commission had not revealed anything that was not known by those who fought against apartheid.

Yesterday, Wits vice-chancellor Colin Bundy described the TRC report as "a structurally fragmented historical account" that sought to reconcile and accommodate fundamentally different and ultimately "irreconcilable functions".

Speaking on "The Beast of the Past: History and the TRC" at a three day conference sponsored by the University of Cape Town's faculty of humanities, Bundy said it was impossible to make much sense of the TRC unless one related it to the political settlement reached between 1990 and 1993.

He said the TRC was not merely a legal by-product of the political settlement, but in a more fundamental sense, it was a crucial element of that settlement.

"And to take one further step back in time, any account of the settlement necessarily depends upon the circumstances which led to it."

He said the apartheid state had been unable to re-impose its order from above, and the opposition forces had been unable to seize power from below, and both had come to a "reluctant recognition" of this stalemate. And having both conceded, under pressure, that a negotiated settlement was the only viable option, they had clung to the process together like "two spent swimmers".

Tutu's "rainbow metaphor", Bundy said, reflected the readiness of the two forces to "orbit around postulated common interests and destinies".

Assets law is deeply flawed, says judge

(2/12) Pule Molebeledi

DURBAN — The Prevention of Organised Crime Act would provide fertile ground for litigious disputes on almost all of its provisions, Durban High Court Judge Noel Hurt said yesterday.

Delivering reasons for the order he granted two weeks ago that the state return assets worth R600 000 seized from KwaZulu-Natal policeman Piet Meyer, Hurt said provisions of the act should not be construed as applying retrospectively.

Meyer, the suspended head of KwaZulu-Natal's organised crime unit, had his assets seized by the asset forfeiture unit in the office of the national director of public prosecutions on the basis that they were the proceeds of a protection racket.

However, Hurt said yesterday that clarity on the drafting of the act fell short of its predecessor, the Proceeds of Crime Act, which he described as an "elegantly" drafted piece of legislation.

He said many of the provisions in the Prevention of Organised Crime Act were novel to SA's legal system but were similar to certain provisions in other countries, notably the USA.

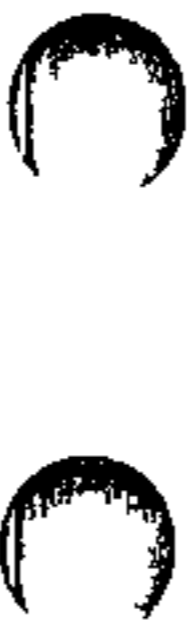
He criticised the drafters of the act, saying the wording of some of its definitions was "confused", "obscure" and "one of them unrecognisable".

"There are what I can describe only as omnibus provisions relating to conflict between insolvency and winding up laws on the one hand and confiscation orders on the other," Hurt said.

The drafter of the legislation had in most instances tried to spread his net so wide that it would prove difficult and sometimes impossible, for the court to apply the literal meaning to the words. There was serious doubt about whether the drafter's zeal would not have put paid to the constitutionality of the statute, or at least large parts of it.

Hurt also criticised the legislation for not defining a class of defences available to people who had not been engaged in unlawful activities.

One of the drafters of the law who asked not to be identified said Hurt's decision would be one of many judgments that would "fine-tune" and "clarify" the novel aspects of the legislation. This was only the beginning of a long process of shaping the legislation.



Maduna seeks advice on judges' allowances

(2/12) Taryn Lamberli and Sapa

JUSTICE Minister Penuell Maduna is seeking legal advice in order to have three judges in the former Ciskei and Bophuthatswana homelands stripped of secondment allowances which they still receive despite the 1994 incorporation of the homelands into SA.

The judges are still receiving allowances of 25% of their salaries, which are in excess of R300 000 a year, Justice spokesman Paul Setsetse said yesterday.

Setsetse said Maduna was "seriously concerned" about the issue and had instructed the department to obtain legal opinion and to draft legislation to terminate the benefits.

Setsetse said concern had been raised about the constitutionality of terminating the allowances because the constitution provides that judges' remuneration could not be reduced.

"The Judicial Service Commission and the justice portfolio committee in Parliament have already, on more than one occasion expressed their serious concern on the issue."

"Even the judges who do not receive these kinds of allowances and benefits are unhappy about the inequality which exists," Setsetse said.

Meanwhile head of the special investigating unit, Judge Willem Heath has welcomed proposed

legislation which will strip him and two of his colleagues of sizeable allowances that they receive in terms of outdated agreements during the apartheid years.

They first received the allowances as judges seconded to the former homelands.

Heath said in an interview yesterday he had been pushing since 1996 to have legislation passed in Parliament which would do away with these allowances.

Heath said he had been pushing for the cancellation of the huge allowances for a period of more than three years.

"Since 1996 I have written and

met the former Justice Minister Dullah Omar, asking that they change the legislation and remove the allowances. I'm excited to see the wheels are finally turning."

He said he had moved out of his state-owned home and returned his state-owned car in 1995 when he was appointed as head of the Heath Commission, the forerunner to the special investigation unit.

He said other judges seconded to the homelands before 1994 had fought for retention of their allowances by relying on a provision in the constitution which states that the dispensation cannot be altered without legislation.

Maduna's spokesman Mr Paul Setsetse said the tax-able allowance amounted to about 25 percent of a judge's salary. A judge earns in the region of R300 000 a year — Sapa

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Setsetse said the implementation of the act required the co-operation of various role-players including the departments of justice, education health and welfare as well as the SA Police Service. A committee had been established to ensure proper planning and co-ordination he said.

"An important aspect for the successful implementation of the act is the training of all functional-ies which include members of the SA Police Service, magistrates and officials of the court and welfare," Setsetse said.

He said the act would go a long way in eliminating domestic violence and tackling the needs of women and children.

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By Mokgadl Pela

Mapogo insists that the sjambok works

(272) Sowetan 12/8/99

The killing of eight businessmen in separate incidents in the Sekhukhune district in Northern Province in 1996 was the turning point in the attitude of local traders towards crime

They decided to come together and form themselves into a unit that was to become known as Mapogo a Mathamaga, with the declared purpose of rooting out criminal elements and ensuring that justice is done

It was formed on August 25 1996 in Jane Furse, with Monhle Magolego as its founding president Since then the feared group has established 92 branches countrywide

General secretary Titus Mashilo said businessmen who were members of the Nebo Chamber of Commerce felt that "when united we would be able to defeat even the most brutal and sophisticated of criminals"

He attributed the growth of the movement to its quick and effective methods of bringing culprits to book

At the same time, Mashilo expressed a wish to meet Safety and Security Minister Steve Tshwete to discuss their differences with Government over the movement's methods

Mashilo said his organisation was intent on operating within the law and it was necessary to harmonise their views with those of the Government

He said Mapogo wanted to 'give this new Government a chance and for now we intend arresting suspects and handing them over to the police'

We will, however monitor cases to ensure that corruption does not occur and that dockets are not mysteriously lost,' Mashilo said

He added that it was unfortunate that some people focused on the alleged excesses of Mapogo, and ignored their positive achievements

"No one can doubt we have brought about safety and security in many communities since our formation Criminals now know that the honeymoon is over," Mashilo said

His comments come in the wake of the much-publicised trial of 12 Mapogo leaders in the Groblersdal Magistrate's Court in connection with two murder and several assault cases

The group has also been linked to the alleged kidnapping and torture of Constable Noah Nkadameng of Groblersdal

Mapogo leaders feel the media have been 'demonising' them

Said chairman Thomas Moeng 'They portray us as vicious, heartless people who are eager to unleash punishment at the slightest provocation'

The media disregard our countless positive results, such as restoring respect for the elders among the youth, reducing armed robbery, car hijackings, burglary, rape and murder and stabilising society



Members of Mapogo leaving Groblersdal magistrate court

PIC LEN KUMALO

On the contrary, he said, Mapogo believes in the rule of law and wants an orderly society

'We believe criminals should be interviewed about the motives for their acts before being punished We also work with the police in many cases to let the law take its course

Moeng admitted that suspects were sometimes "manhandled during interviews", but said this was due to the frustration of those who wanted to extract information from them

There are pictures on the walls of their newly built offices in Diepsloot, north of Johannesburg, of men being sjambokked for suspected crimes One picture is captioned "We sjambok criminals"

Moeng said "When criminals are apprehended and disarmed, they are as harmless as doves They scream at the top of their voices proclaiming their innocence, especially at the sight of a

sjambok'

He said the Diepsloot branch of the organisation was launched recently after several incidents of robbery, rape, car hijacking and burglary as well as attacks on businesspeople

According to Moeng those affected approached the movement in Jane Furse for advice and leadership A branch was subsequently launched in Diepsloot

Moeng said the large number of people who turn up for their weekly meetings indicated Mapogo's effectiveness as a crimebuster He added that if crime disappeared, there would be no need for Mapogo

"But as things stand, we feel helpless as our Constitution seems to give more rights to criminals than to the victims of their dastardly deeds," said Moeng

"The only logical thing is to form ourselves into a cohesive structure like

Mapogo and send a strong message that crime will not be tolerated in Diepsloot"

Mapogo deputy secretary Welhemina Moabelo said what her organisation did was nothing new in the African tradition 'Whipping has always been used as a form of punishment to discipline wayward folk. So what is the hue and cry about?'

Moabelo advised the media to look at discipline in the context of African culture "so as to judge us fairly"

However, police spokesman Senior Superintendent Phuti Setati warned Mapogo "If they commit crimes under the pretext of preventing it they will face the full might of the law"

He urged Mapogo to work with "legally recognised structures like community policing forums, which are in existence all over the country"

In response to the recent wave of punishment allegedly carried out by

Mapogo members, police vowed to act ruthlessly against them if they took the law into their own hands

Setati said Mapogo and those who operate along similar lines should instead support police efforts to prevent crime "For instance, Business Against Crime cooperates with us to prevent crime"

Setati said the police had the capacity to investigate all criminal cases, and added that Northern Province alone had 90 police stations

But Magolego insisted when Sowetan visited him during a branch meeting in Lydenburg "As long as the police fail to apprehend criminals Mapogo will remain a viable alternative

"We are in a country where criminals run the show Before the police expect us to disband, they should come up with an alternative that is more efficient and speedier than our methods"

Govt in bid to close loophole in crime Act

(34) (272)

An amendment to close a loophole in the legislation allowing the state to seize assets built up through organised crime is to be fast-tracked through Parliament, officials said yesterday

The change is meant to deal with two embarrassing High Court rulings that forced the National Director of Public Prosecutions to return the assets of an alleged drug dealer and those of a policeman said to be running a protection racket

In both cases the judges said the Prevention of Organised Crime Act could not be applied to offences committed before it was promulgated last year Yesterday, as Members of Parliament settled into their offices for the coming session, Justice Department and parliamentary officials were checking a draft of the amendment, which is expected to be formally introduced to Parlia-

ment today,

The department's director of parliamentary legislation, Mr Johan de Lange, said the Bill would be dealt with as an urgent matter in terms of the new rules of Parliament

This meant skipping the normal process of publishing - in the Government Gazette - a notice of intention to table the Bill, and then publishing either an explanatory memorandum or the Bill itself De Lange assumed it would be referred to a parliamentary committee soon

A parliamentary official said that as no new justice committee had been constituted yet, it was likely that the Speaker would refer the Bill to a special ad hoc committee De Lange said the High Court judgments had revolved around a "purely technical" issue which was hampering the national directorate in exercising its duties

Earlier this month, Judge Noel Hurt ordered that the state return assets of R600 000 which were seized from KwaZulu-Natal policeman Piet Meyer on the basis that they were the proceeds of a protection racket

Giving reasons yesterday for his ruling, Hurt said the Act should not be construed as applying retrospectively and also criticised other sections of the Act, saying some of its definitions were contorted, obscure or unintelligible

Alleged Cape Town drug dealer Gavin Carolus succeeded in April in his application for the return of confiscated assets and the unfreezing of four bank accounts The Bill will make it clear that the Act covers offences that took place before its commencement and will ensure that criminals do not try to frustrate forfeiture orders by giving away assets as gifts - Sapa

Maduna toys with merger of top courts

Mungo Soggot

MHC 6-12/18/99 (252)

Minister of Justice Penuell Maduna wants to explore the viability of merging South Africa's two highest courts — the five-year old Constitutional Court in Johannesburg and the Supreme Court of Appeal in Bloemfontein.

Maduna referred to a possible merger of the two courts at a recent meeting in Johannesburg of the General Council of the Bar, the national body that represents advocates countrywide. Although there has been much debate in legal circles about a possible rationalisation of the two courts, this is the first time the government has indicated it is prepared to consider such a radical move.

Advocates present at the meeting said that Maduna discussed the strikingly different workloads of the two courts.

The 11 strong Constitutional Court has a considerably lighter case load than the Supreme Court of Appeal. The Constitutional Court is, however, far better resourced than the Bloemfontein court, which is staffed by 17 judges. Maduna noted that a merger would allow better use of the judicial talent in the Constitutional Court.

Maduna's representative, Paul Setsetse, said this week the minister had no firm plans regarding a possible merger of the two courts — a move which would involve an amendment to the Constitution.

Setsetse said Maduna had asked the Department of Justice to explore how best to use "our scarce resources in the courts", adding that the fusion of the Supreme Court of Appeal and the Constitutional Court was one of several possible changes to the

structure of the courts that Maduna wanted to consider.

Setsetse said Maduna would not do anything without consulting "all the role-players and getting people's comment on his view".

Maduna's remarks are likely to fuel a debate that started during the constitutional negotiations preceding the 1994 election. Key legal players, including representatives of the Bloemfontein appeal court (then known as the Appellate Division), suggested a joint court at the time. But proponents of a separate Constitutional Court won the day, arguing that the development of a constitutional dispensation had to be entrusted to a new court that had no links to the old order.

Some of the lawyers who formerly proposed a joint court now openly admit they were wrong, having been won over by the success of the Constitutional Court. "The Constitutional Court has proven itself. It has a credibility unparalleled by any other court in the country," said one advocate who was previously in favour of a combined court.

He said that the main rationale for a separate Constitutional Court — that the development of constitutional jurisprudence should not be left to "unreformed" old-order judges — will remain apt for some years to come. The Supreme Court of Appeal still includes judges who presided over some of the most reactionary judgments in apartheid case law. Some lawyers argue, however, that a merger would help bury some of the last remnants of the apartheid judiciary.

Chief Justice Ismail Mahomed, who was formerly deputy president of the Constitutional Court, is understood to be open to the idea of a merger. Judge Mahomed is the only



Joining up Penuell Maduna (top) is looking at merging South Africa's two highest courts. Ismail Mahomed is understood to be open to the idea.

member of the Supreme Court of Appeal who is not a white male.

The judges on the Constitutional Court enjoy considerably better resources than their common law counterparts, and this has fuelled resentment among their colleagues in other courts. Although it is arguable that, as the highest court in the land, the Constitutional Court needs the best resources, the relative luxury in which its judges operate stands in sharp contrast to the decaying state of the rest of the justice system.

One parliamentarian and lawyer involved in the constitutional negotiations said the issue is a "dead duck".

"It is the kind of theoretical point lawyers like discussing, but I don't think it is feasible politically. It took us a year to negotiate the hierarchy of courts. If he [Maduna] does go forward on this, I hope he canvasses widely."

S Africans no more reconciled as result of TRC, says editor

MXOLISI MOKGASHI

DAILY NEWS editor Kaizer Nyatumba has warned that unless tensions in the new South Africa are handled carefully, the concept of a "rainbow nation" will prove to have been a very "useful marketing tool" which was nevertheless a charade.

Speaking at a conference on the Truth and Reconciliation Commission (TRC) in Newlands yesterday, Nyatumba said it is his firm belief that South Africans could not be said to be much more reconciled now as a result of the TRC.

He maintained that "fault lines" between sections of the population are developing daily in the country. Nyatumba argued that the two individuals

who could have helped improve the standing of the TRC in the eyes of the public were President Thabo Mbeki and former state president F.W. de Klerk.

"Unfortunately, where these gentlemen could have helped improve its image, they were the very people who helped dent its image when they challenged the TRC's findings," Nyatumba observed.

He said South Africans, by and large, had failed to become reconciled — despite the "wonderful and very moving examples" of reconciliation that had taken place between victims and perpetrators of violence as a result of TRC hearings.

"But such reconciliation has not found resonance across the country," he said.

"extremely ambitious" for the ANC government to have hoped that the TRC would assist with the reconciliation process.

The former vice-chancellor of the University of the North, Njabulo Ndebele, likened the TRC process to a survival game between a lion and a rabbit.

He told an allegorical tale about a lion that caught a rabbit in the act of stealing food in a trap laid in a cave by the lion, whereupon the lion pounced on the hapless thief and prepared to eat him.

The lion, Ndebele suggested, had been stealing all along, albeit within an enabling code of legitimacy imposed on him. But the power of the black majority had risen steadily, leading to the negotiations which finally led to the election of 1994.

"The contours of a lion are emerging once more, and the rabbit, uneasy that he may be pounced upon, can see the value of the story of a collapsing cave," he added.



GUEST SPEAKER: Former University of the North vice-chancellor Njabulo Ndebele

Boraine lashes out at cheap rhetoric of critics

THREE former TRC kingpins have spoken candidly on the process in which they were involved — and how they now regard the exercise with the benefit of hindsight. MXOLISI MOKGASHI reports.

THREE top former functionaries of the TRC — Alex Boraine, Dumisa Ntsebeza and Charles Villa-Vicencio — have dismissed harsh criticism of the commission levelled by some academics, human rights activists and political commentators.

Speaking yesterday during the second session of a three-day University of Cape Town-sponsored conference on the theme "After the Truth and Reconciliation Commission — Reconciliation in the new millennium", former TRC vice chairperson Boraine referred to much of the criticism as being "cheap rhetoric" that was often based on "a rather romantic understanding of reconciliation."

He said the reconciliation referred to in the TRC's title should be viewed in the context of the "blood spilt throughout the country on the eve of the new dispensation." Boraine cited the example of the parents of slain American football student Amy Biehl.

They are now involved in the financing of a youth club founded by their daughter's killers in Gugulethu.

He described this as the kind of "restorative justice" the TRC had

"It is true — most whites do not like or trust blacks. And likewise, most blacks are deeply suspicious of whites — with some cause."

"We should not feel guilty about this because this is a result of divisions imposed on our society," said Boraine. "We've got to get away from this feeling and move away from this prejudice."

Archbishop Desmond Tutu's concept of a "rainbow nation", he argued, had been badly misunderstood by those who tended to see this as a factual description rather than a future ideal.

Villa-Vicencio said the key questions to ask were whether the TRC report promoted memory in a helpful manner, and to what extent it had uncovered at least "some truth".

He described truth as "that holy ingredient Albert Camus defined as being mysterious as if inaccessible but regarded as 'worth being fought for eternally'."

Villa-Vicencio referred to "the curse of a good memory" and said the "brooding presence of memory" was such that it refused to allow the need to know what happened, who was responsible and why it hap

to be located in the National Archives, for all to scrutinise and use."

Ntsebeza, who headed the TRC investigative unit, said certain assumptions were made when Parliament debated and enacted two pieces of legislation on the TRC.

First, it was assumed that reconciliation would be "a product of truth-telling."

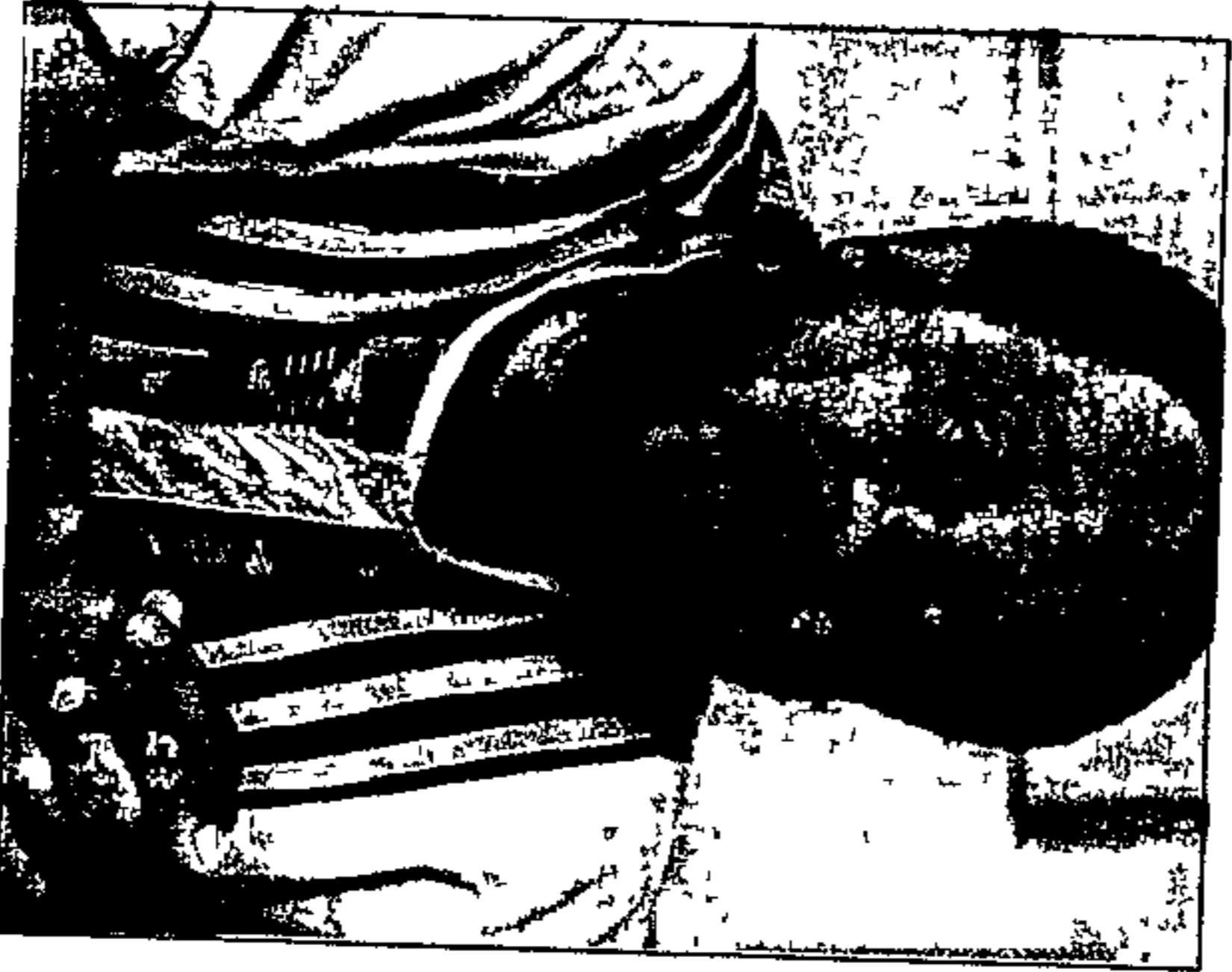
Second, it was assumed that the truth told would be "the whole truth in its usefulness."

Third, it was assumed that once the victims got to know the truth about what had happened to their loved ones, to themselves and to others close to them, they would be able to come to terms with the pain and suffering caused by the perpetrators. Knowledge, it was assumed, would compensate for the pain that had been caused.

"It seems to me that (these assumptions) are the backdrop against which we should measure the successes or failures of the TRC as far as the process of reconciliation is concerned," said Ntsebeza.

He pointed out that some victims of political violence had been healed by being exonerated from blame, as in the case of individuals who had been falsely accused of being enemy agents.

As an example of this, he cited the case of Maki Skosana. She was necklaced and killed



TRUTH-SEEKERS: Former TRC officials Dumisa Ntsebeza (above), Alex Boraine (top right) and Charles Villa-Vicencio (right) are among those who converged on the University of Cape Town for a three-day conference on the TRC

'Single-bullet' killer granted amnesty

ERIC MTAZAZALLA

A MAN who lined up seven alleged police informers in a row so that he could kill them with his single bullet was granted amnesty by the TRC yesterday.

Mncedisi Oats, Jodwana was granted amnesty after spending nine years in prison for the murder of Pieter...

organisation which operated in Grahamstown. The youths were believed to be police informers and were taken to a farm at Mankay Flats in the area where they were severely assaulted.

In his testimony before the amnesty committee, Jodwana said he was acting in his capacity as a member of the ANC and the



Wealth gap 'has to be addressed'

MXOLISI MOKGASHI

DUMISA NTSEBEZA, former TRC head of investigations, says there will be no reconciliation as long as historical imbalances between the beneficiaries of South Africa's "racial capitalism" — mainly whites — and its victims — mainly the black working-class and the rural poor — remain unaddressed.

There will always be a powder keg ready to explode at the slightest provocation for as long as there is this " yawning gap between the haves and the have-nots", he said.

Ntsebeza was outlining his views at a three-day conference on the TRC attended by commissioners, academics, politicians and other interested parties.

He observed "It is perhaps in the context (of this yawning gap) that the TRC process has failed victims (of injustice). It never, through its reparations and rehabilitation policy, speeded up the process of even interim reparatory measures to victims in a way that they could relate to the granting of amnesty to offenders."

However, he was sceptical of those who believed they had ready answers for the notion of reconciliation. "Reconciliation is not an easy concept to handle. It is confusing, confused, complex and traumatising — (especially) for those on whom a call was being

cheap rhetoric of critics

THREE former TRC kingpins have spoken candidly on the process in which they were involved — and how they now regard the exercise with the benefit of hindsight. **MXOLISI MOKASHI reports**

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Speaking yesterday during the second session of a three-day University of Cape Town-sponsored conference on the theme "After the Truth and Reconciliation Commission — Reconciliation in the new millennium", former TRC vice-chairperson Boraine referred to much of the criticism as being "cheap rhetoric" that was often based on "a rather romantic understanding of reconciliation". He said the reconciliation referred to in the TRC's title should be viewed in the context of the "blood spilt throughout the country on the eve of the new dispensation". Boraine cited the example of the parents of slain American Fulbright student Amy Bleil.

They are now involved in the financing of a youth club founded by their daughter's killers in Gugulethu. He described this as the kind of "restorative justice" the TRC had aimed to achieve. Boraine said it was disturbing to hear the "liberal" criticisms some people had made against the TRC, as if national reconciliation were something that could be achieved overnight. "This is sheer nonsense and cheap rhetoric," he said.

"It is true — most whites do not like or trust blacks. And likewise, most blacks are deeply suspicious of whites — with some cause. We should not feel guilty about this because this is a result of divisions imposed on our society," said Boraine. "We've got to get away from this feeling and move away from this prejudice."

Archbishop Desmond Tutu's concept of a "rainbow nation" he argued, had been badly misunderstood by those who tended to see this as a factual description rather than a future ideal. Villa-Vicencio said the key questions to ask were whether the TRC report promoted memory in a helpful manner, and to what extent it had uncovered at least "some truth". He described truth as "that lofty ingredient Albert Camus defined as being 'mysterious as if inaccessible' but regarded as 'worth being fought for eternally'".

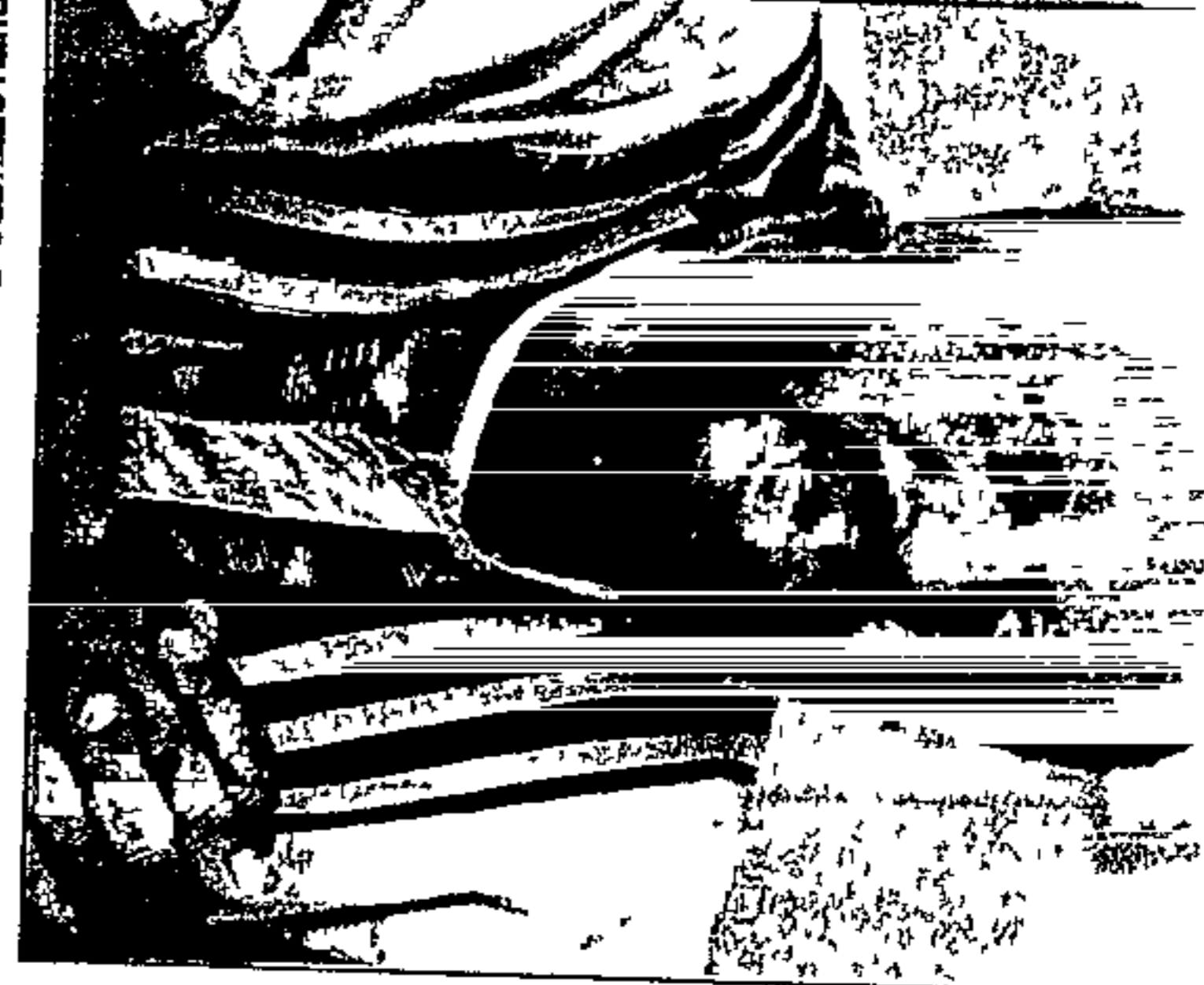
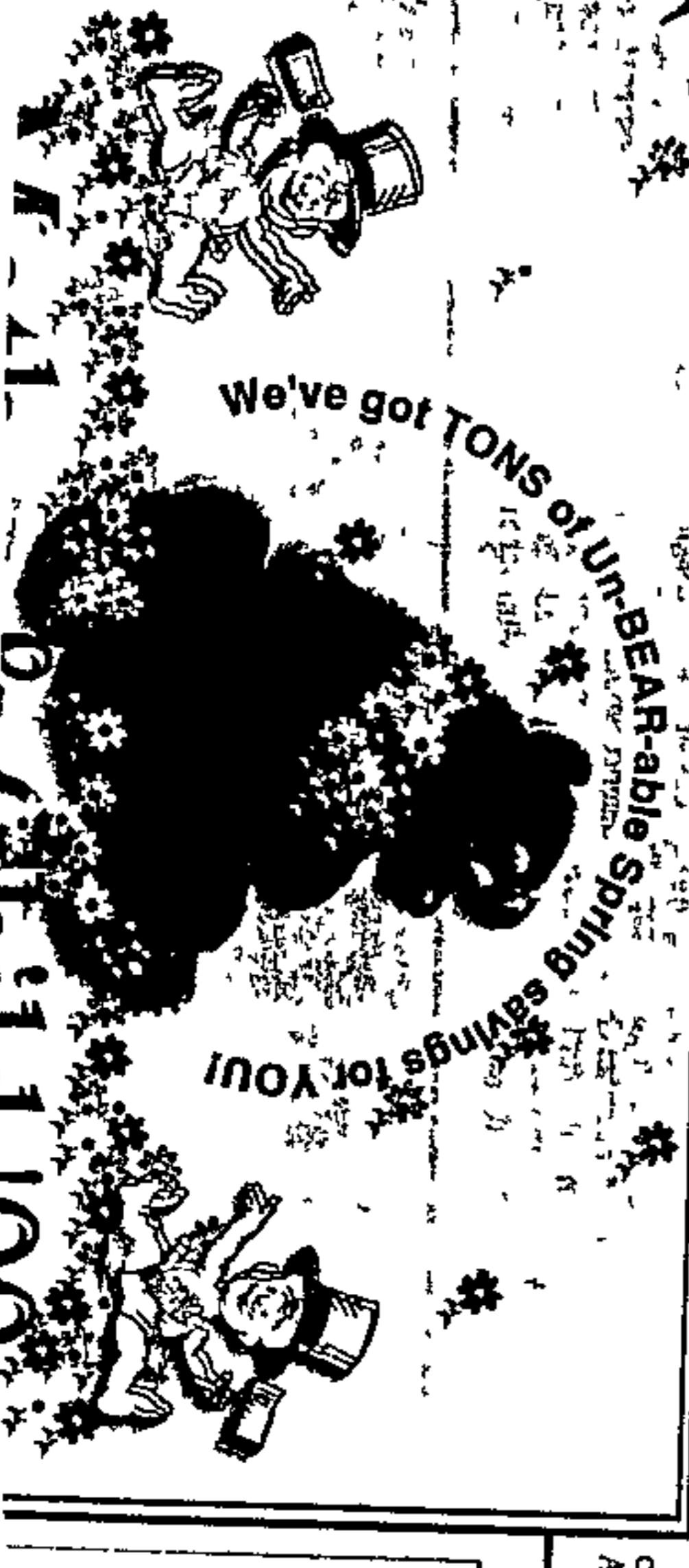
Villa-Vicencio referred to "the curse of a good memory" and said the "brooding presence of memory" was such that it refused to allow the need to know what happened, who was responsible and why it happened, to go away. "Chimes can never be safely fixed in the historical past — they remain locked in the eternal present." Perhaps the most important contribution the TRC had made to the national memory, and to historians and others in search of the truth, he said, will be "a well-stocked archive to be located in the National Archives, for all to scrutinise and use".

Ntsebeza, who headed the TRC investigative unit, said certain assumptions were made when Parliament debated and enacted two pieces of legislation on the TRC. First, it was assumed that reconciliation would be "a product of truth telling".

Second, it was assumed that the truth told would be "the whole truth in its usefulness". Third, it was assumed that once the victims got to know the truth about what had happened to their loved ones, to themselves and to others close to them, they would be able to come to terms with the pain and suffering caused by the perpetrators. Knowledge, it was assumed, would compensate for the pain that had been caused. "It seems to me that (these assumptions) are the backdrop against which we should measure the successes or failures of the TRC as far as the process of reconciliation is concerned," said Ntsebeza.

He pointed out that some victims of political violence had been healed by being exonerated from blame, as in the case of individuals who had been falsely accused of being enemy agents. As an example of this, he cited the case of Vanki Shosana. She was exonerated and killed because it was believed she had led members of the Congress of South African Students (Cosas) to "horrible deaths".

The youths had blown up themselves in an operation involving the throwing of booby-trapped hand-grenades supplied by apartheid mass-murderer Eugene de Kock.



TRUTH-SEEKERS: Former TRC officials Dumisa Ntsebeza (above), Alex Boraine (top right) and Charles Villa-Vicencio (right) are among those who converged on the University of Cape Town for a three-day conference on the TRC.

'Single-bullet' killer granted amnesty

ERIC NTABAZALLA

A MAN who lined up seven alleged police informers in a row so that he could kill them with his single bullet was granted amnesty by the TRC yesterday.

Mncedisi Oats Jodwana was granted amnesty after spending nine years in prison for the murder of Peli Colleen Vaalryn, the only one of the seven who was fatally wounded. He was also convicted for the attempted murders of Mofegzi Donyeli, 13, Xolani Yoli, 12, Kharwulezele Jali, 15, Bhaya Sidwell Vaalryn, 14, Mncedisi Stoffie, 13, and Ayan-da Peli Bekwa, 12.

He was given a 20-year sentence for the murder, while five other accused were acquitted due to a lack of evidence. On October 31, 1986, seven youths were collected from various places by a group of ANC members and members of a youth



WIDESPREAD SCOURGE **'has to be addressed'**

MXOLISI MOKASHI

DUMISA NTSEBEZA, former TRC head of investigations, says there will be no reconciliation as long as historical imbalances between the beneficiaries of South Africa's "racial capitalism" — mainly whites — and its victims — mainly the black working-class and the rural poor — remain unaddressed. There will always be a powder keg ready to explode at the slightest provocation for as long as there is this " yawning gap between the haves and the have-nots", he said.



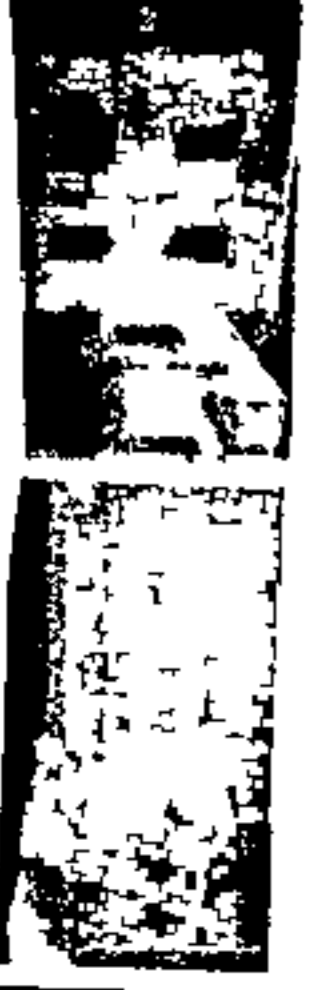
organisation which operated in Grahamstown. The youths were believed to be police informers and were taken to a farm at Manley Flats in the area where they were severely assaulted.

In his testimony before the amnesty committee, Jodwana said he was acting in his capacity as a member of the ANC and the youth organisation, under the command of a woman called Mkeley, who was a senior member of the ANC and a highly regarded leader in the community. Jodwana's lawyer Peter Williams said that it seemed he (Jodwana) reasoned that the bullet would penetrate and probably kill all the alleged informers if he were to discharge the bullet while they stood in a row. Vaalryn was at the front of the row when the shot was fired. He was killed instantly. In the amnesty application, Williams said "Clearly the incident was driven by political motives".

At the time, police informers were regarded as legitimate targets. "While it was suggested that the victims were not informers, the applicant maintained throughout his testimony that he had seen them in the company of the police and was convicted at the time that they were indeed police informers." Jodwana conceded that he had no knowledge of anyone being arrested or harmed by the police as a direct result of information provided by the victims. According to Williams, the amnesty committee would determine whether the youths were informers. "We are pleased with the result of his amnesty application because his actions complied with the Truth and Reconciliation Commission Act.

Are you a "winner" for conservation?

These projects are



Do you know of anyone who should be awarded for projects in the conservation of our cultural, natural,

HIGH COURT ROLL

- Third Division
- Case No 36
 - Rules 11(d)
 - M C Mlamusi vs A Heywood — sequences
 - C A vs L Aderdorf, H v F Blouw, G M vs E — A Gray, M A vs G L C-gyan, G W vs T A Gordon, N J vs M S Gogonya, H M J vs D Khumbushile S J vs M, Gogonya vs B Aherbach (Pty) Ltd — by application
 - L Dorman vs B Aherbach (Pty) Ltd — by application
 - Corporate Computers CC vs General Hydrate Services CC — liquidation
 - V M Joseph vs Trevino Media CC — liquidation
 - J B W David vs Balia Roma (Pty) Ltd (V/a)
- Standard Bank Lesotho Ltd vs E A T
- Dhoroana
 - Everett — motions owing
 - N A vs L Festus — substituted service
 - R Gelder — curator ad litem
 - M Olong — curator ad litem
 - A J vs J F Tolson — interdict
 - Gemco SA (Pty) Ltd vs Farmers Direct Marketing CC — declaration order
 - Lebozshaghe C vs D Mearns, S M A vs P C Newman, M J vs C L Pohobany, K vs S W Rood, J vs J Saunders, B vs E S Wessels, H vs S K Williams
 - Rule 43
 - S L vs F J W Bronkhorst
 - J C vs H W Kuper
- dedition
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 - Veri Kankshene Ombete & 4 others — review
 - I P Winkler & 2 others vs De Minister

TRC did 'almost the impossible' - Boraine

And no one can say any longer they did not know

ARG 12/8/99

DAVID VOTAR



FEATURE WRITER

assessations were fairly well confined to the big cities and that they targeted certain prominent people, but everywhere we went, we found torture was a way of life for the police, a method of getting convictions that's why our police find it so difficult today

"I think that changed my attitude and fired my concern to root this damn thing out and to make doubly sure that it didn't happen again."

Accountability and culpability are not simple notions. Dr Boraine said his experience on the commission had made him realise that the apportioning of blame was sometimes problematic and tricky.

"I admit that a few years ago when one saw the enormity of the apartheid implementation and what it did to people, I wanted people to pay for that. I would have loved to have seen people have their day in court - not merely those who pulled the trigger or who used the knife, or tortured, but the politicians who devised the system with their gloves on and who pulled the strings behind the scenes

"But as I listened and I listened to perpetrators, I began to feel a great sense of pity for many of them because they were often victims themselves

"I hadn't seen it that way and I had to go through this experience to perhaps be a little more understanding, a little more forgiving"

"And that of course redoubles the need for accountability of politicians who sent so many of these young men to do these things"

What about those politicians and leaders who were ultimately responsible for the commission of atrocities but who themselves escaped blame?

They would have to live with their own consciences, said Dr Boraine. And that would be punishment enough.

Now that the TRC had done its job, no one could any longer say he did not know what was happening. That, perhaps, was the commission's greatest achievement.

For the next three years, Alex Boraine has been appointed a visiting professor at New York University, where he will lecture on societies in transition and the resolution of conflict.

Sharp criticism has been levelled at the Government for its failure to spell out how it intends to act. It is all on recommendations of the Truth Commission

The most pressing issue is reparations for victims - but an academic conference has heard that since it received the TRC report last October, nobody has the faintest idea what the Government's intentions are

TRC vice chairman Alex Boraine told delegates at a conference hosted by the University of Cape Town's humanities faculty on "Reconciliation in the New Millennium" that he was "particularly disturbed"

Noting the report had been presented to the Government with aplause

"I do not want to blame the Government, and I am sympathetic to the demands on the state, but the silence is deafening. We need to hear, so that we can bring some closure"

Calls from the conference floor for a strongly worded message to be sent to the Government on this issue were greeted with applause

This was part and parcel of the TRC's mandate to ensure transparency and accountability

"We need to know what the report would 'not be stuck in the bottom drawer'"

The TRC had been promised what it is going to do

"We and the public must demand of the Government that it is going to do"

On the future of the TRC's immense archives, Ms Burton said "We need to know what are regarding the archives"

"Will it be stuck away in the national archives with a 50 year embargo, or will it be open?" she asked

Staff Reporter
A group of angry citizens marched on Parliament to protest against the impending restriction of law abiding gun owners

The protesters yesterday voiced their concerns about the proposed rights of law-abiding citizens to obtain and use licensed firearms for personal and family defence," said Peter Hammond of the United Christian Action

The march was also supported by the African Christian Democratic Party and the Democratic Party to place such restrictions upon the lives, it seems highly irresponsible country and threatening all our

Dr Boraine said "To this day, the wider public and I have no idea whatsoever what the Government is going to do with the 40 pages of recommendations in the TRC report"

Fellow commissioners Mary Burton echoed his sentiments

"I think the TRC did almost the impossible and how it differs from other similar commissions

"We, I think, did almost the impossible holding together victim hearings and perpetrator hearings that is totally unique

"That amnesty was (granted) not with the stroke of a pen and a general amnesty but was an amnesty with certain very clear criteria, above all having to make individual application and not (as a) group and appearing before a commission in public and having to give a full and not just partial account"

He also looks at what other societies in conflict can learn from the TRC

Does he believe the TRC did have something of value for such societies?

"Yes I do, and not only because I was so intimately involved with the commission I've just come from Serbia where I was working with a team of people in relation to Kosovo - and the first thing they say to me is 'Won't you please come to talk about the South African experience'"

He said accountability was essential for reconciliation and the ability to transcend the past

"I am saying - and I have said so consistently for three or four years - you can only turn the page once you have read it. You can't simply turn the page to ignore what was written there.

"It needs to be read to learn from it so that we don't make mistakes again

"We learnt from others and I think we may have something to teach others, however modest, and I think it's our job to make that known."

How had the experience of sitting on the commission changed him personally?

"I had thought - and remember I had been involved in politics and public life - that the torture, the dirty tricks and the

Angry marchers take gun-law protest to Parliament

ACDP vice president Louis Green said "What is most alarming is that renewal will be at the discretion of the safety and security minister and this draconian power should not be given to the minister"

Dr spokesman on safety and security David Garnett of the Department of Safety and Security, who refused to comment on the proposed Bill would be unacceptable for the country as the security Graham Macintosh said

State lashed for silence on report

Special writer **MICHAEL MORRIS** reports from the 'Reconciliation in the New Millennium' conference at the University of Cape Town

about the Government's "dear" ending silence

"On reparations to victims, we still have not the slightest idea as to whether the Government accepts the recommendations or not

AR 12/8/99

HUMAN RIGHTS — 1

PITYANA LEADS THE CHARGE

The HRC chair's contentious ideas on race, press and amnesty

(21/2) PM 13/8/99

Human Rights Commission chairman Nyamako Barney Pitjana is a man with a penchant for controversy, judging by the public furore his statements on a range of issues have set off in the brief history of the commission.

One of the founding leaders with Steve Biko of the Black Consciousness Movement 30 years ago, Pitjana first attracted national attention in post-apartheid SA in 1996 when he labelled Dennis Davis, an outspoken opponent of apartheid, "a racist". The epithet was used during an acrimonious television debate on the appointment of the original human rights commissioners, most of them black.

An ordained priest and a lawyer, Pitjana was again in the public spotlight late last year when he announced that the HRC planned to investigate racism in the media. The decision followed complaints of "subliminal racism" against the *Sunday Times* and the *Mail & Guardian* from the Black Lawyers Association and the Association of Black Accountants.

Vigorous reaction from and in the media ensued. Though not without supporters in the media for his decision, Pitjana found himself under heavy verbal fire.

Leaving aside criticism of him for launching a general investigation instead of focusing on the specific allegations, Pitjana was accused of

□ "Prejudging the issue" (he spoke about investigating racism in the media, not whether it existed),

□ "Threatening journalists" (he warned that the HRC had the power to subpoena witnesses), and

□ Undermining press freedom.

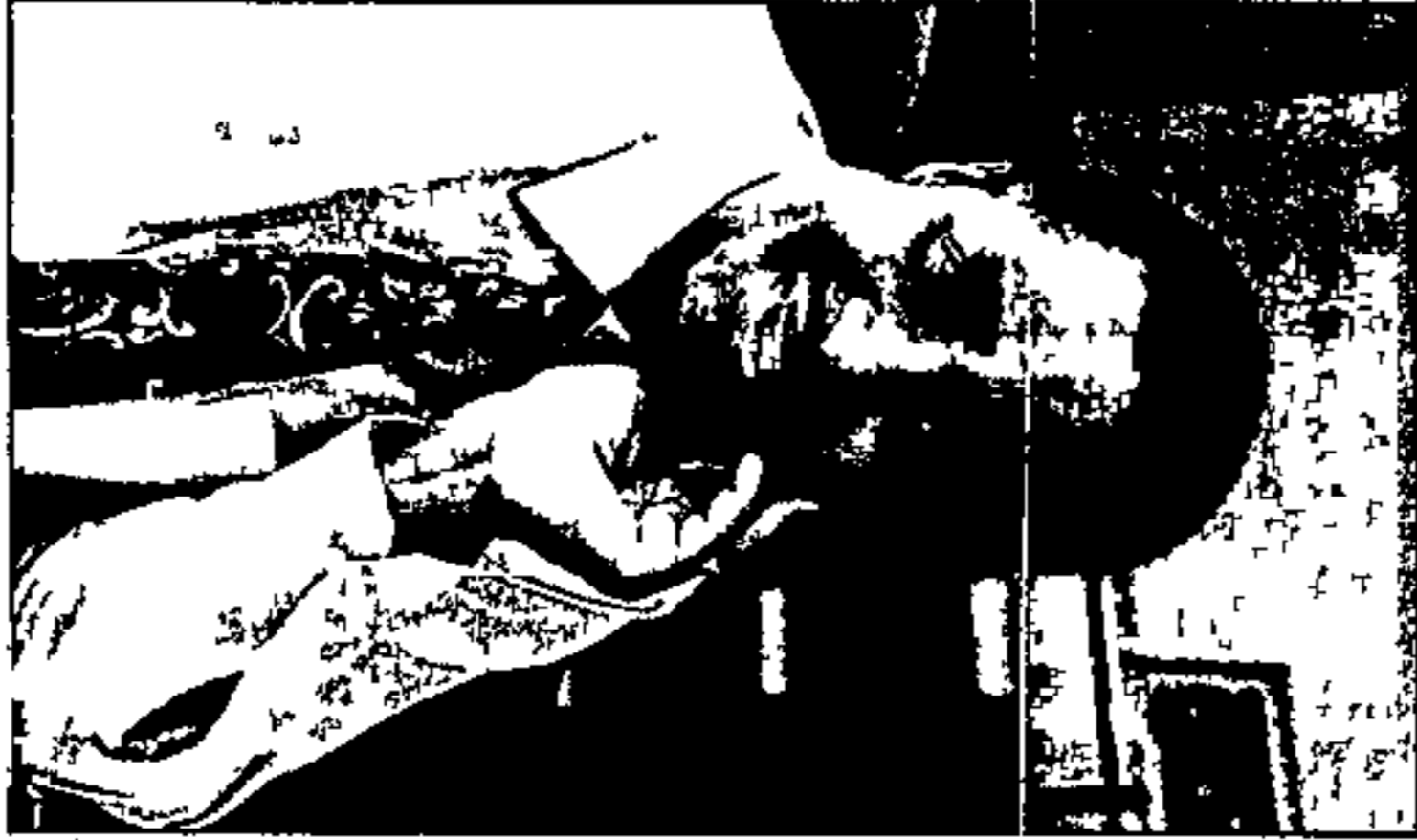
Undeterred Pitjana, a former director of the World Council of Churches' Programme to Combat Racism, went ahead and an interim report is due next month and public hearings are scheduled for October.

A vocal defender of the HRC's independence against potential government encroachment Pitjana has campaigned for the HRC to deal directly with parliament on its budgetary allocation (R15 9m this year) instead of having to

work through the Justice Department. "An independent institution should be able to represent itself for budgetary purposes, he says. "When resources are channelled through a government institution, it gives civil servants a lot of power. If the HRC is linked to the Department of Justice the step from that to being under the Department is a short one."

Right now Pitjana (54) is in the firing line for mooted a moratorium on prosecutions against those who failed in their applications for amnesty from the Truth & Reconciliation Commission for their involvement in gross violation of human rights or those who did not apply for amnesty. His stand in a speech delivered in his private capacity to the Provincial Synod of the Church of the Province of SA, has drawn criticism from Amnesty International and lawyers for Human Rights.

His plea for a moratorium however is not unqualified. He is not seeking to curtail the discretion of the Director of Public Prosecutions to indict people for politically motivated crimes if he believes he has a solid case against them. Still less is he calling for a law providing for a general amnesty. But he is opposed to the idea of a special unit with "enormous resources for the prosecution of people for offences committed during political conflict in the past. Apart from its focus on the future when SA should be building for the future he fears that it will lead to a "political



Barney Pitjana call for moratorium on Truth Commission prosecutions

work through the Justice Department. "An independent institution should be able to represent itself for budgetary purposes, he says. "When resources are channelled through a government institution, it gives civil servants a lot of power. If the HRC is linked to the Department of Justice the step from that to being under the Department is a short one."

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which hunt" and hinder reconciliation. If that route is taken, the process of prosecution of delving into the past will become "interminable", Pitjana warns. If we use the law or are perceived to use the

law as an instrument of revenge. I think that ultimately we discredit the law. Talking in a modulated tone and carefully, Pitjana says "in the atmosphere and environment where there is so much bitterness someone needs to show the way to a different approach to the pain and hurt we have been through."

Pitjana contends that the money spent on the special unit to investigate politically motivated crimes should be diverted to combating crime today and, perhaps, to improving reparation payments to victims of past human rights abuses.

He believes most South Africans want to see those who commit "heinous crimes" in present-day SA prosecuted vigorously and, if convicted, kept in jail for a long time, even if it means reallocating resources from the past to the present.

Pitjana disagrees with those who contend that his stance on past crimes will encourage the emergence of a culture of impunity. It is the weakness of the criminal justice system in relation to crime in SA today that does so, he says.

The person who is being hijacked today whose home is burgled, who is being shot at in school and elsewhere, doesn't link

what is happening to him to the fact that former Police Commissioner Johan van der Merwe was not prosecuted for what he did in 1988." Pitjana contends. Coincidentally, the day after the FM spoke to Pitjana, amnesty was granted to Van der Merwe, former Law & Order Minister Adriaan Vlok and former Vlakplaas commander Eugene de Kock for their role in the 1988 bombing of the Khoiso House headquarters of the SA Council of Churches.

In the amnesty hearing, De Kock said former President P W Botha sanctioned the bombing of Khoiso House. Whether the frail octogenarian should be prosecuted is a moral and legal conundrum which National Director of Prosecutions Bulelani Ngcuka might well refer to Pitjana.

Patrick Lawrence

"If we use the law as an instrument of revenge, we discredit the law"

(11/2) 11/13/8/99

REGULATING 'HATE SPEECH' COULD CREATE A MINIFIELD

Onus could shift to accused to disprove racist intent

There can be no comparison between the freedom of expression enjoyed by the average citizen today and the enforced silences — including the banning of utterances, and house arrest — under apartheid. The fundamental entitlement is underpinned by the 1996 Constitution, in Clause 16 of the Bill of Rights. This, among other things, guarantees freedom of the press, artistic creativity, academic freedom and freedom of scientific research.

Nonetheless, perhaps recognising that SA is a cauldron of historic animosities and enries, the constitutional architects saw fit to place limits on freedom of expression. These exclusions are specified as "propaganda for war, incitement of imminent violence, and advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to do harm".

Existing legislation further curbs freedom of expression — it does not include the right to produce or pass on child pornography, for example. However, there is no constitutional requirement that what is generally termed 'hate speech' be prohibited by law. This makes the Freedom of Expression Clause different from the Equality Clause.

Where legislation enforcing equality must be enacted within three years of the adoption of the Constitution (see *Current Affairs* August 6)

Indeed, the Equality Clause and the proposed Promotion of Equality Bill specifically require the codification of affirmative action a species of inequality whereby the historically disadvantaged are preferred in a number of spheres. Jean Redpath, parliamentary analyst of the Institute of Race Relations points out the contradiction: "Discrimination is regarded as automatically unfair on equality grounds. At the same time discrimination in order to promote the achievement of equality will be regarded as fair."

Closer scrutiny of the framework document for the Equality Bill suggests that hate speech may well fall within its ambit as well — notwithstanding a cautionary clause to the effect that the mooted law may not "unjustifiably derogate from the rights to freedom of religion, belief, opinion and freedom of expression".

Redpath believes that such a restriction lurks in the section dealing with freedom of the media. And the wording, as it stands, is far-reaching: "Neither the State nor any person may discriminate unfairly directly or indirectly against another in respect of the media by making utterances or causing to be published propaganda, ideas or theories based on unfair racial stereotypes, or promote inequality of persons within the various categories, or which justify, promote or incite hatred or prejudice against others on account of race, ethnicity, gender or religion, or which cause or encourage discriminatory practices."

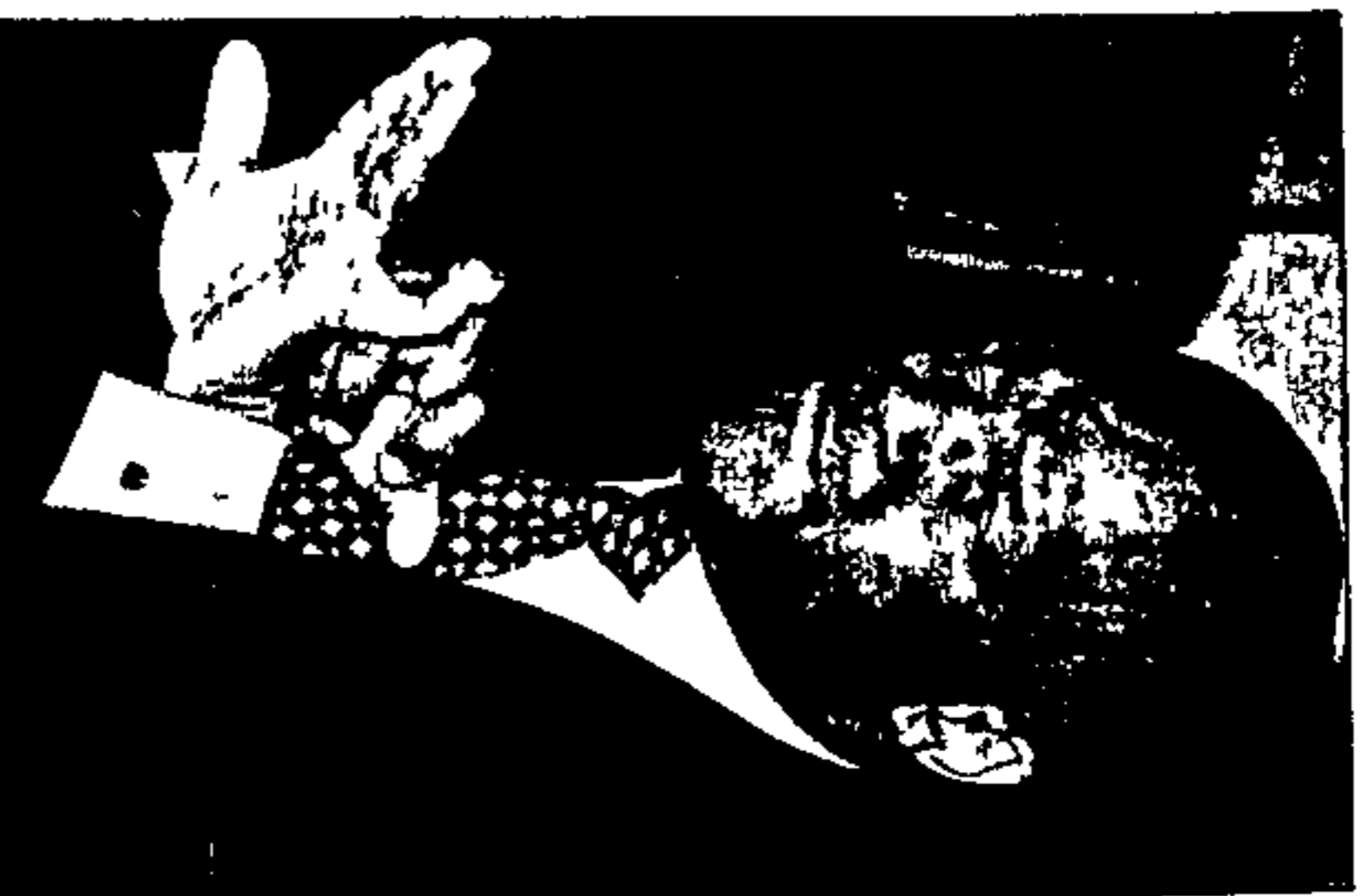
Should this net of prohibition make its way on to the statutes, it would of course present a minifield through which any editor or talk-show host would have to tread most carefully. A robust Letter to the Editor, for example, and any prosecution under the Equality Act (assuming it achieves the status of legal writ) would see the onus of proof on the accused, who might then have to disprove a subjective allegation.

There are examples of this having happened elsewhere. According to the Freedom of Expression Institute, "In a case in Denmark in 1985, two television journalists who conducted an interview with a group of white rightwing extremists were charged and convicted of complicity in making the racist statements public. Though this judgment — made in terms of the International Convention on the Elimination of All Forms of Racial Discrimination, to which SA is a signatory — was eventually overturned by the European Court of Human Rights, the journalists' fight was to prove that "the aim of the broadcast did not have a racist intent" and was a report on an issue of public interest. Last month, Justice Minister Penttil-Maduna announced that Cabinet had ratified the 1976 Convention on the Suppression & Punishment of the Crime of Apartheid — and there are a number of other "conventions" from which could flow legal frameworks, and even laws, further limiting constitutional freedoms.

It may never happen. But depending on how strongly the hate clause is eventually framed in the Equality Bill, the outcome could be a boon to lawyers and an increased case load for the Constitutional Court. This would be similar to experience in the US, where a number of "hate crime" statutes have introduced extra penalties for criminals whose offences were motivated by race hatred. President Bill Clinton wants an extension of these laws to take in offences inspired by antipathy to sexual preferences, gender and disability.

Michael Furmento, an American attorney who has worked in the civil rights field, feels matters have gone too far. Writing in *The Weekly Standard* — a US journal of political opinion — he states: "Where, in all this, is the First Amendment? That guarantee of our freedom of speech wasn't drafted to protect expressions like 'Have a nice day'?" Rather, its purpose was to protect speech some people don't want to hear and believe others shouldn't hear. Most Americans understand this arrangement. I get to express my thoughts whether other people like them or not, and so do you."

The framework document for the Equality Bill suggests that those who drafted it — a joint committee of the Justice Department and the Human Rights Commission — are not in agreement with the US trade-off on freedom of expression.



Panaji Maduna Cabinet has ratified international conventions against apartheid

Jean Redpath, parliamentary analyst of the Institute of Race Relations

>>> Discrimination is regarded as automatically unfair on equality grounds. At the same time the achievement of equality will be regarded as fair <<<

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By Claire Keeton
Feature Writer

Hofmeyr

Sowetan 13/8/99

(34)

(252)

a man with a mission

The asset forfeiture unit expects to make its first deposit this month with money confiscated from a known drug dealer as nobody has opposed the seizure according to the unit's special director Willie Hofmeyr. Although the amount of R145 700 is small change for crime syndicates, the deposit is a symbolic victory for the unit, which has had to hand back the property it seized in two cases since June.

The first case of seizure was against alleged drug lord Gavin Carolus in Cape Town in June while the second was against KwaZulu Natal policeman and alleged racketeer Piet Meyer in late July.

The decisions forcing the unit to return the assets were made on the technicality that the law does not apply to crimes committed before its promulgation.

"This does not make sense. What rights do criminals have to the assets when they are the proceeds of crime," Hofmeyr says.

The office of the National Director of Public Prosecutions, under which the unit operates, is appealing the decisions.

The Pretoria-based unit anticipated legal challenges but not the problem with retrospectivity since the United States and other foreign courts have interpreted their laws of seizure to apply retrospectively.

Hofmeyr says South African law, which allows the seizure of assets under the Prevention of Organised Crime Act, was influenced by American law which does not explicitly state that it is retrospective.

But he is sure that Parliament will amend the law in record time with the tabling of the Prevention of Organised Crime Second Amendment Bill in Parliament yesterday.

Hofmeyr says the required changes could be passed and implemented by the end of the month.

The Minister of Justice has indicated that the amendment will be dealt with as speedily as possible. Parliament will treat this matter with the utmost urgency, he says.

Hofmeyr says the law is an invaluable weapon in the fight against organised crime and they will go ahead with asset seizure undeterred by setbacks.

Last week the unit attached assets to the value of R44 million belonging to Dr Wouter Basson. He is believed to have misappropriated millions from the apartheid government while heading its secret biological warfare programme.

"Asset seizure is a very new concept in law and a complex procedure, which raises constitutional issues.

"Throughout we expected a lot of litigation. Many cases now will be end-



GRAPHIC JO NHLAPO

lessly litigated and may only be finalised in two to three years," says Hofmeyr.

"We are geared to fight legal challenges. We will fight all the way to the Constitutional Court. We are confident we will win."

He explains that asset seizure is essential for eradicating organised crime since it erodes the profits of syndicates, making it less attractive for them to operate in South Africa.

"Most of them are in it for the money. Few serious syndicates are into killing for the sake of it," says Hofmeyr. Crime syndicates are

involved in areas like car hijacking, drug dealing, smuggling and money-lending.

"It is very important to take away the assets - the bank accounts, houses, cars, bars and nightclubs.

"If we don't, it's so much easier for someone else to step into the shoes of the boss if he is arrested."

Hofmeyr says it is very difficult to put the bosses in jail because they use footsoldiers and are seldom directly involved in crime.

While syndicate heads may not be deterred by prison, however, they are harmed by the seizure of assets which

belong to them. "If it becomes less profitable, it makes it more difficult for them to commit crime," he says.

Appointed late in May, Hofmeyr had minimal staff or infrastructure until this week - three lawyers, one chartered accountant, no secretary and a barely furnished office - when two more lawyers and an administrator were appointed.

Despite its limited capacity, Hofmeyr says the unit had to start work immediately. "We needed to test the law early on to send a message that crime does not pay."

He says the unit is looking for assistance from the private sector particularly in this interim period. If companies are willing to do their own investigation and legal work - with the unit coming in at an advanced stage to check the findings - it enables them to process more cases.

"One of the areas we could cooperate with the private sector on is bank robberies and heists," says Hofmeyr.

Hofmeyr says South Africa had to build up international cooperation agreements after 1994, before which they hardly existed.

Now countries like Switzerland recognise South African court orders while other countries like the US institute their own cases for asset seizure on request from South Africa.

In fact, asset forfeiture specialists from the US department of justice (which seizes about R3 000 million a year from criminals in the US) helped South Africa to set up its unit.

Tossing waste into a cardboard box which is his dustbin, Hofmeyr says cheerfully "Our budget is almost approved. Within two to three years, we will raise more money than the unit costs and be financially self-sufficient."

A mousepad on Hofmeyr's desk proclaims "Law enforcement is the principal objective of forfeiture." That perfectly sums up his mission.

Ramphela attacks

romantic view of SA

ARC 13/8/99 (252)

'Blacks and whites need to look in the mirror'

Outspoken University of Cape Town vice-chancellor Mamphela Ramphele has delivered a strong attack on "romantic" views of South Africa's transformation, challenging justifications for amoral conduct by "oppressed" people

Corruption among black people was too often justified on the basis that they occupied the "moral high ground" as victims of apartheid

"We justify too much the acts of those who were oppressed, but are corrupt," she warned

Equally, she challenged whites to ditch the myth of superiority, cautioning that unless this humiliating fallacy was confronted head on, South Africans "cannot talk about a shared society"

If the constitutional democracy was to succeed, all South Africans would have to "have the courage to stare at ourselves in the mirror and stop pretending that we can simply talk ourselves into being the rainbow nation and a true democracy"

Dr Ramphele, the pre eminent figure of the Western Cape's academi

MICHAEL MORRIS



SPECIAL WRITER

ic establishment, delivered her vigorous assault on racial and political taboos of the new South Africa in the closing session of the three-day conference, "After the TRC Reconciliation in the New Millennium", hosted by UCT's humanities faculty

Much of the debate at the conference has sought to clarify the outstanding challenges posed by the need for furthering reconciliation, reinforcing a culture of morality, and consolidating the constitutional foundation of democracy

In the spirit of candour that has marked the discussions, Dr Ramphele directed frank criticism at what she believed were threats to the new democratic order

Highlighting continuing corruption - which South Africa could not

afford because it was undermining allegiance to the constitution - she said "In part, I see the problem as being those seeing themselves as occupying the moral high ground

"This relates to the culture of the 1980s, which contains an innocent, romantic view of oppression (that) 'there must be something good about you, it creates saints' "

In the light of this, all South Africans "should stare at themselves in the mirror and ask what has been the effect of oppression in our approach to morality"

"The TRC has shown what has happened to the oppressors, but what happened to the oppressed? And I think the same processes that degraded the morality of those in the oppressor camp have had an impact on others "

A major threat to the building of a moral culture was the "growing inequality between the haves and the have-nots but a growing group of haves are black people who display no difference in their approach to material possessions than their white counterparts"

Time to act on TRC, state told

SPECIAL WRITER

The Government has been urged to tell the public what it intends to do to complete the Truth and Reconciliation process, left hanging since the TRC report was handed in almost a year ago

Academics and other delegates at a conference on the TRC closed the three day debate with a crisply worded statement calling for a long awaited answer from the Government to 40 pages of recommendations in the commission's report

Dismay was expressed that there had been no word from the Government on its intentions

Among the most pressing recommendations are those dealing with payment of reparations to thousands of victims of apartheid abuses. The conference statement asks the Gov-

ernment "to find an appropriate role for all citizens to contribute towards concrete forms of reparation"

The statement concludes "The conference wishes to stress that the true success of the TRC rests with the response to its findings of both the Government and citizens, and with our will to effect restorative actions"

The conference yesterday focused on law, corruption and morality, and the inequalities and poverty that stem, in large measure, from apartheid inequities

Judges Willem Heath and Richard Goldstone, the big guns in the war against corruption and administrative abuse in South Africa, were among the speakers. Mr Justice Goldstone - a Constitutional Court judge, and recently appointed to investigate atrocities in

Kosovo - acknowledged that redressing an imbalance in resources was a prerequisite for reconciliation

"The question is, how practically can we eradicate that unstable, unfair and unjust situation? The nettle that must be grasped is the removal of inequities within the constitutional framework "

The costs of democracy were high, but the cheaper alternative was repression

The challenge was to find solutions that were consistent with the rule of law

Mr Justice Heath said that in a developing country, corruption was "a violation of the most fundamental rights, because it deprives people of housing, maintenance, education and medical treatment, and unless you can provide these, you do not have a true democracy"

commandments for good gover

"We are quite prepared to work of the next century by the provision of their budgets, in the launching of with central government, but we of training, information technology, new products and in providing direc-

TRC neglected education abuses?

NALEDI PANDOR, chairperson of the National Council of Provinces, has criticised the Truth and Reconciliation Commission (TRC) for failing, in its attempts to hear the whole truth about past gross violations of human rights, to focus on how these violations occurred in education

Presenting a paper on "The Challenge of Educating the Nation", Pandor said the immediate question arising from this omission was "why did the commission choose not to hear from the education sector?"

A focus on education, she said, was necessary and important, particularly as one aim of the post-apartheid government was to

ensure that every young person enjoyed the right to education

"Any attempt to measure the educational significance of South Africa's momentous enterprise of seeking truth and reconciliation has to confront and reckon with what was 16 years ago decried by the Anglo American Corporation Chairman's Fund as 'the straining of the social fabric

Hearing after hearing in the TRC told of the awful experiences of the victims of apartheid

Would a confession of the apartheid education crimes, Pandor asks, have helped to lay the foundation for a process of redress that would stand as a direct challenge to what remains of this edu-

cation policy, and would those who burnt down classrooms and schools have come forward to help us understand this particular crime against humanity?"

She said the silence that has been permitted on this particular form of violation was "stunning in its intensity"

Former head of the TRC's investigation unit, Dumisa Ntsebeza, agreed that this was a serious omission, which he attributed to the short time the TRC was given to complete its business

He blamed Parliament for cutting the commission's budget by 25% and Finance Minister Trevor Manuel who accused the commission of overstaying its mandate

TRC has 'unfinished business'

By MXOLISI MEXASHE

A THREE-DAY conference on the TRC ended at the University of Cape Town on Thursday with participants convinced that there is still a lot of "unfinished business." South Africans have to confront to deal with the baggage of the past.

The conference, with the theme "After the TRC. *Reconciliation in the new Millennium*", attracted eminent scholars from many institutions in the country, high-powered judges (Richard Goldstone and Willem Heath included), former TRC commissioners and former commissioner of the Chilean Truth Commission, Jose Zalaquett.

It came at a time when the TRC had been bombarded from left, right and centre, including a claim by the chairperson, of the Human Rights Commission, Barney Pitso, that the TRC did not come out

with any revelations that had been unknown. That has been described by critics as a "wild assumption".

Harsh criticisms were poured out candidly at the conference - such as Wits vice-chancellor Colin Bundy's comment, describing the Commission's report as a "structurally fragmented historical account". The tone was, however, more sympathetic to what the TRC stood for, than the totally dismissive reflections in Anthea Jeffery's book, *The Truth About the Truth and Reconciliation Commission*, for instance.

In his paper, *The Beast of the Past History and the TRC*, Prof Bundy acknowledges that the Commission and its former chairperson, Archbishop Desmond Tutu, committed themselves to nation-building, but asks the question "Will the report in the longer term help build a single nation, or will it legitimise a

lop-sided structure - two nations disguised as one, a hybrid social formation consisting of increasingly deracialised insiders and persistently black outsiders."

Former vice-chairperson of the TRC, Alex Boraine, described such critique as "cheap rhetoric based on a rather romantic understanding of reconciliation." Charles Villa-Vicencio and Dumisa Ntsebeza concurred.

Lest their word was received with skepticism by their critics, an outsider, Njabulo Ndebele, sketched an analogy of the TRC scenario and the circumstances that led to its establishment with the allegorical tale of a survival game between a lion and a rabbit.

He concluded that "The TRC was one mechanism to resolve difficult dilemmas. By no stretch of imagination did it offer a permanent solution. Rather, it allowed the country to cross a particular river of

time and circumstance".

"Seen in this light the negotiated settlement appears to have delivered the disposition to live with unresolved tensions by seeking to ensure that the poles of tension do not fester into wounds, but instead enter into controlled engagements in which fixed positions are progressively abandoned until a comfortable, if imperfect solution, is accepted as a working position," observed Ndebele.

That view was underscored by Ntsebeza and Constitutional Court Judge Albie Sachs in their assertion, supported by Judge Goldstone, that so long as there is a "yawning gap between the haves (mainly white) and the have-nots (mainly black), reconciliation between the two is a pipe dream.

This clearly remains the biggest "unfinished business" of all.

By Claire Keeton
Feature Writer

Parliament must act on reparations

submitted 16/8/99 (252)

REPARATIONS to people declared victims by the Truth and Reconciliation Commission are not primarily about money. They are about human rights and justice in post-apartheid South Africa.

This means Parliament has an urgent responsibility to respond to the TRC's recommendations, released in its final report last October – particularly those around long-term reparations for the victims of gross human rights violations.

Virtually all political leaders have said this is important but there is a problem with resources, said the chairperson of the Reparations and Rehabilitation Committee, TRC commissioner Hlengiwe Mkhize. At the very least people's basic needs must be met.

Justice Minister Penuell Maduna was preparing for the matter to be tabled in Parliament this session, his spokesman Paul Setsetse said on Friday.

Parliament will have to decide on long-term reparations as it is a national issue. They must finalise them and provide clear guidelines, whether through legislation or regulations, he said.

Although the issue of reparations was debated in Parliament earlier this year, progress has been slow since then and disrupted by the elections and the Cabinet reshuffle.

I would like to see Parliament decide on just reparations, said Thandi Shazi from Khulumani, a victim support group.

They must make sure that people who were victimised and whose lives are still in tatters have something to rebuild their lives.

While over 4 500 victims have been given urgent interim reparations – an average payment of R 3 500 a person – most of the 20 000 or so victims who made representations to the TRC do not know what to expect.

The average survivor does not know what is going on, said Brandon Hamber of the Centre for the Study of Violence and Reconciliation. The CSVR has done extensive research around the TRC and supported victims since the TRC began its work in April 1996.

Hamber said it was critical to clarify the principles around reparations, before taking into account pragmatic restraints.

The principle is that victims are entitled to some form of reparations or compensation. It is there – in the TRC's recommendations, in the Con-



stitutional Court judgement and in international practice," he said.

"We haven't yet heard an unequivocal commitment from the Government that people have a right to reparations to truth and to justice and already we are negotiating away rights on the grounds that society can't afford reparations."

Reparations, truth and justice were linked in the TRC process in which access to the truth and justice were inevitably limited.

"Despite some of the Truth Commission's best efforts, many victims still do not have the full story and this (delay around reparations) compounds their sense of being let down by the process," said Hamber.

Mkhize agreed that many victims came to the TRC to find out what had happened to their loved ones – specifically where they were killed or buried –

and not all their questions had been answered.

"These questions can't be dropped through saying the TRC has a limited lifespan. We mutated these practices, we have a degree of responsibility to bring closure," said Mkhize, speaking as a clinical psychologist.

"What do we do with people who have showed us their scars?" she asked, describing victims left as orphans or without breadwinners, and those with health and education disabilities.

Mkhize said Government had adopted a development-centred approach towards victims. An inter-ministerial task team is responsible for taking an integrated approach towards victims requiring services.

She said the TRC was meeting with leaders in Government on a regular basis before the elections, formulating policy and plans around how to deal

with outstanding tasks.

TRC commissioner Yasmin Sooka said a meeting with newly appointed Maduna had proved encouraging. She said he had taken aboard the concerns of the commission and would communicate these to the Cabinet, which needs to take decisions.

Aside from long-term reparations, one of the commission's major concerns is who or what structure in Government will be responsible for work like investigations and exhumations, if the TRC closes down at the end of the year.

Staff are resigning from the commission on a daily basis now, without passing on their expertise.

Sooka said over the past few months the TRC had been concentrating on "cleaning up" the victim database, so that they now have a full list of victims.

She said the job of concluding findings and finalising all reviews would be finished by the end of August and the summaries of victims' findings would be done by October. November has been set aside to identify uncompleted tasks.

Meanwhile, the TRC is assessing and allocating urgent interim reparations (UIRs), with assistance from the Department of Welfare. The process – which is time-consuming and labour-intensive – should be finished by October.

It has accelerated from the approval of 50 applications in April to 662 in May and 517 in June, to over 2000 in July. Another 3000 cases are ready to be sent to the President's Fund this month. More applications for UIRs will be brought to the TRC via amnesty hearings, which had identified a further 3 194 victims by July.

60 self-defence unit members get amnesty

THE truth commission's amnesty committee granted amnesty yesterday to 60 members of the self-defence unit in Thokoza and Kati-hong on the East Rand.

The applicants were granted amnesty for their involvement in political conflict between members of the African National Congress and Inkatha Freedom Party (IFP) the commission said.

All the applicants were pardoned for having collected money for purchasing of firearms and ammunition and supplying them to unit members. They got amnesty for killing and attempting to kill IFP members and police during clashes.

The panel also granted amnesty to the applicants for unlawful possession of AK-47 and R4 rifles and other arms and ammunition. The applicants got amnesty for conducting unlawful patrols and barricading streets and for inciting Phola Park squatter camp residents to attack

IFP members.

The committee found their acts were associated with a political aim and that they had made full disclosure of all relevant facts in the circumstances leading to the conflict.

Evidence was led before the committee that between 1990 to 1994 most of the unit members applying for amnesty took part in patrols and barricades. An integral part of activities was to search residents and confiscate illegal arms to control influx of firearms and other dangerous weapons into the community.

An attack on an IFP march in September 1991 shattered the relative peace at the time. It was established later that a police agent ordered the attack launched by Phola Park unit members. About 22 people were killed and 23 hurt.

The attack led to retaliatory attacks and general violence and it is estimated that between 2 000 to 3 000 people lost their lives — Sapa

Three former policemen retract bid for amnesty

PRETORIA — Three former security policemen seeking amnesty for the murder of three suspected robbers at the Carusel casino near Hammanskraal in 1992 have withdrawn their applications, the truth commission said yesterday.

Commission spokesman Mbuliso Sompettha said the men's reason was that they believed that they had committed no crime.

Johannes Swart, Ben Burger and Johannes Petrus Hannekorn had applied for amnesty for killing Dillon Moses Mayiza, Sibusiso Mbattha and Mazunha Moyo, all from Alexandra in Johannesburg.

Sompettha said testimony regarding the killing of four other suspected robbers in Nelspruit in March 1992 would be heard tomorrow afternoon.

Amnesty applicants in the matter include convicted killer Eugene de Kok — Sapa

Acts of racial brutality

South African 17/8/99

SINCE the beginning of the year, and particularly during the past two months, South Africa has witnessed a steady increase in barbaric acts of racial brutality.

These are usually perpetrated against defenceless blacks and coloureds by white, Afrikaans-speaking farmers and policemen in various parts of the country.

The puzzling thing is that beyond the initial and immediate expressions of moral indignation and condemnations, political parties in general and political leaders in particular have remained quiet.

It is only the media that regularly bring this ugly contemporary reality to the public.

The contrast with the responses of politicians to the brutality meted out to white farmers in the recent past is mind-boggling. When white farmers were being killed and brutalised by black criminals, we were treated to the regular rantings and ravings of right wing politicians who presented this as a national crisis, arguing that the killings were a coordinated political attempt to carry out an ethnic cleansing campaign against all Afrikaners in South Africa.

These fantastic orgies of racially motivated moral panic were even entertained at the highest levels of state — inside then president Nelson Mandela's office.

Mandela regularly used to receive high-powered delegations of so-called Afrikaner leaders, intellectuals, priests and politicians who wanted to convince him that Afrikaners were in danger of being exterminated.

There was even a high-level investigation by national intelligence, ordered by Mandela, to look into the stories fed to the public by right-wing politicians that the farm killings were politically motivated rather than mere individual acts of crime.

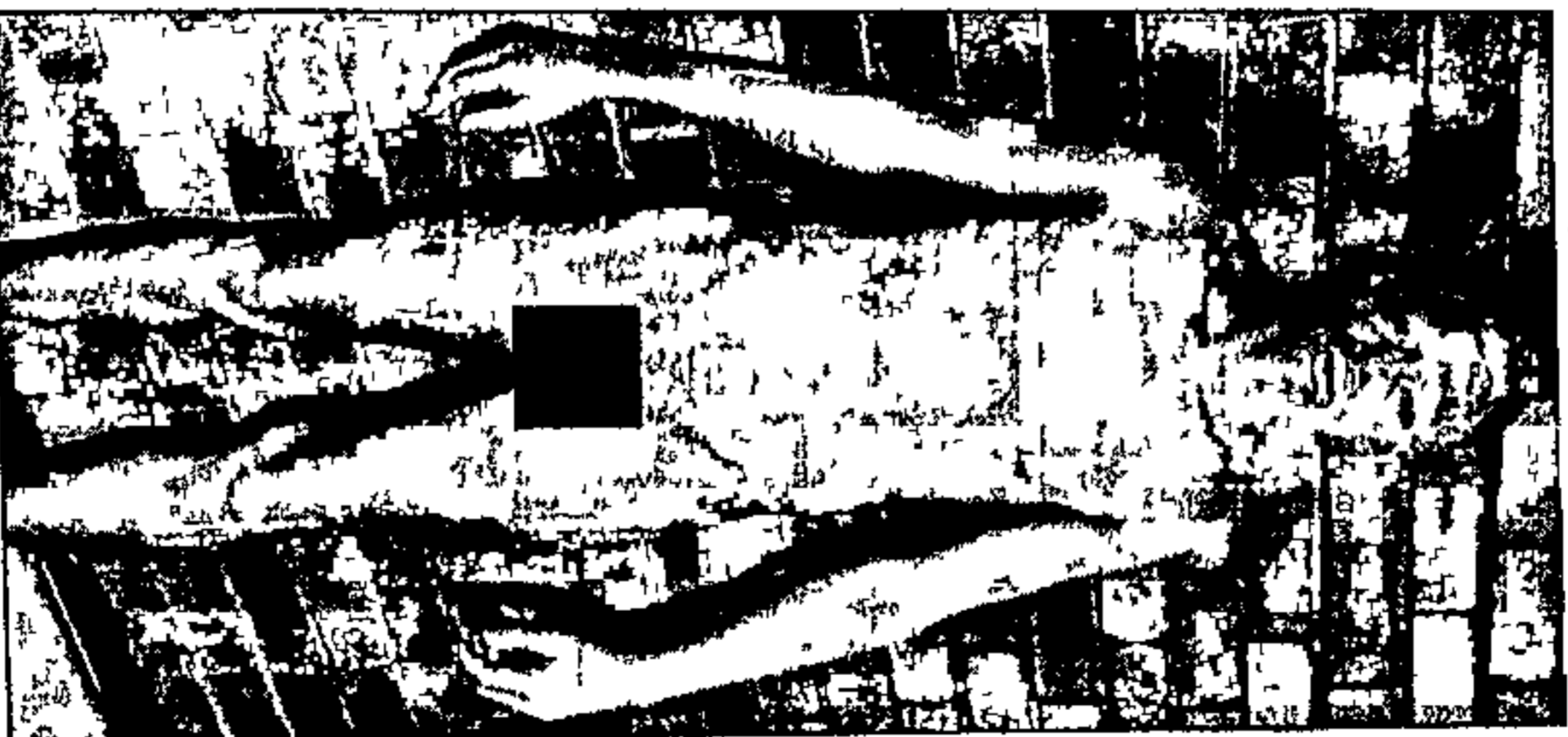
Why is this sort of approach not applied to the brutality meted out to blacks and coloureds? We have seen various acts of brutality by white Afrikaans-speaking people in Mpumalanga — ranging from covering defenceless farm labourers in toxic paint, to shocking them with welding machines.

Last year a group of white Afrikaans-speaking policemen were captured on a BBC television programme while beating up defenceless crime suspects.

Afrikaner parents at a high school in Vryburg in North West assaulted and intimidated black children last year because they did not want blacks in the school.

And just last week a horrific case of brutality was reported. A white Afrikaans speaking policeman in Paarl allegedly emptied the contents of a bottle over a drunk homeless person and set him alight.

Attacks against blacks have not received the same attention as the killing of white farmers. Is SA really committed to reconciliation, asks **Thabo Rapoo**



A farmworker after he was coated with silver paint as punishment for allegedly trespassing on a white-owned farm in Mpumalanga last month. PIC REUTERS

This, apparently, amused his colleagues — who allegedly stood by, watching the man roll around on the ground in an attempt to extinguish the flames.

Such incidents do not depict a normal society. They provide a picture of a society full

of perverts and pathologically twisted individuals.

It is ironic that the more this nation openly talks about reconciliation, banishing racial intolerance, awareness of basic human rights and the rule of law, the more these acts continue unabated.

Perhaps this country is still too immature socially, culturally, institutionally and politically to enforce the observance and enjoyment of these high ideals that are synonymous with First World democracies.

But what is the alternative? A free-for-all racial and ethnic confrontation in which the winners take all?

This is too ghastly to contemplate and maybe this is what keeps us hoping that one day, just one day, things might be all right.

However, most victims and potential victims of acts of brutality may not have the luxury of time to wait while the nation collectively hopes that it will soon stumble on to a solution to racial brutality.

Surely the utterances of reconciliation and tolerance coming from the Truth and Reconciliation Commission or anyone else are hardly worth anything if they are not accompanied by concrete acts of enforcement.

It is even worse if those entrusted with the responsibility of protecting the public are the very people perpetrating acts of brutality against them.

Is it any wonder that today we have a booming private security industry, vigilante groups such as People Against Gangsters and Drugs and Mapogo a Mathanaga, and commentators all over the country taking the law into their hands to fight brutality with brutality?

What if this takes a new and ugly turn and racially exclusive private security companies and private vigilante groups are formed to fight acts of racial brutality against defenceless victims?

The Freedom Front has long encouraged farmers to form groups of armed commandos and private militias to protect farmers. Is it time for black farmworkers and defenceless members of the public to also defend themselves against racial brutality?

(The author is a researcher at the Johannesburg-based Centre for Policy Studies.)

Anti-crime Act under review

7/18/99

CRUCIAL amendments to legislation providing for the seizure of assets believed to have been obtained through criminal activity could be passed by the National Assembly by next Wednesday. Re-elected chairman of the justice portfolio committee Mr. Johnny de Lange told his committee at its first meeting yesterday that a special ad hoc committee was to receive a departmental

briefing on the Prevention of Organised Crime Amendment Bill yesterday afternoon. This committee would then discuss the justice committees of the National Assembly and the National Council of Provinces would take over the deliberations on the measure from this afternoon. Parties would be able to discuss the proposed amendments internally this morning.

De Lange said he had told the executive the Bill should be ready for passage by the National Assembly next Wednesday. Following the overturning by the courts of two cases of the seizure of assets of high-profile alleged criminals, the legislation is to be amended to make it retrospective to before January 21 this year when the original Act came into force. — Sapa

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Amnesty for 60 SDU members

Sowetan 17/8/99 (252)
THE Truth and Reconciliation Commission's amnesty committee granted amnesty yesterday to 60 members of the self-defence unit (SDU) in Thokoza and Katlehong on the East Rand

The applicants were granted amnesty for their involvement in political conflict between the African National Congress and Inkatha Freedom Party

All applicants were pardoned for having collected money to purchase firearms and ammunition and supplying them to members of the SDU and for killing and attempting to kill IFP members and police.

The panel further granted amnesty to the applicants for unlawful possession of arms and ammunition, for conducting unlawful patrols, barricading streets and inciting Phola Park residents to attack IFP members.

The committee found their acts had a political objective and that they had made full disclosure.

Evidence was led that between 1990 and 1994, most SDU members who applied for amnesty participated in patrols and barricades. An integral part of their activities was to search residents and confiscate illegal firearms.

The objective SDU members explained, was to control the influx of firearms and other dangerous weapons.

The turning point was the attack on an IFP march in September 1991, which shattered the relative peace prevailing at the time.

The attack was launched by Phola Park SDU members during a march by the Thokoza IFP branch to Thokoza Stadium. About 22 people were killed and 23 injured in the attack.

It subsequently transpired at the Goldstone inquiry hearing that a police agent gave an order for the attack.

The attack led to retaliatory attacks and general violence and it is estimated that between 2 000 to 3 000 people lost their lives - Sapa

Shake-up for SA courts

mtc 13-19/8/99 (af2)

Mungo Soggot

Senior judges are considering a radical plan by the Department of Justice to overhaul the judiciary that could, among other things, eliminate the separation between magistrates and judges.

The plan would allow for the seamless promotion of magistrates to the high court or Supreme Court of Appeal. If the proposed changes go through, they will represent the biggest revolution in the history of the South African judiciary.

The proposed shake up is contained in a draft White Paper on the judiciary that has been circulated to some judges for discussion. The document, drawn up by the Department of Justice's policy unit, says "There is no longer good reason for the dichotomy between judges and magistrates.

"Magistrates play as important a role in the administration of justice as judges do. They deserve the same respect that is accorded to judges and the expectation of attaining appointment to the bench of the high court if they prove to be good judicial officers."

The report suggests magistrates have been unfairly accorded a lower "status" and that they have in the past been "perceived to be lacking in independence."

It says "Over the years the public images of judges and magistrates have been very different in that the status of magistrates has been much lower than that of judges and that they have not enjoyed the reputation for excellence and independence that judges have."

The proposals are being greeted with concern by some high court judges and lawyers, who argue that many magistrates are ill-qualified and unfit for the high court, and that the plan is therefore founded in naivety. There have also been mutterings that the magistracy remains staffed by many who were among the apartheid regime's most notorious collaborators.

The General Council of the Bar

(GCB), the national body that represents advocates, gave a mixed reaction to the report this week, which it has not yet formally received for comment. Chair Jeremy Gauntlett, SC, said the GCB was in favour of any move to make the magistracy more independent, but expressed concern about whether funding existed for such ambitious, and possibly unworkable, plans.

"This is particularly because the paper contemplates a career judiciary not one that draws (as it does now) on the skills and experience of private practice. Unfortunately, we have yet to be consulted on this," Gauntlett said.

The former minister of justice, Dullah Omar, indicated during his tenure as minister that he was in favour of scrapping the separation between magistrates and judges. The discussion document circulating was drawn up when he was minister. It marks the first time such a proposal has been formally presented for discussion.

It is unclear where the new Minister of Justice, Penuell Maduna, stands on the matter, but officials in his office said this week he was perusing the document.

The document suggests that the merger of the judiciary and the magistracy would be an integral part of the Department of Justice's drive to make the judiciary more racially representative. It notes that the judiciary has historically been staffed only by white, senior advocates and that "past policies and procedures pertaining to the appointment of judicial officers produced a judiciary which is generally conservative. This is a picture which needs to change."

The report suggests a merger would make the justice system as a whole appear more efficient and committed to upholding the Constitution.

"It is important that the entire judiciary should be perceived to be administering justice in a skilled and efficient manner."

It says that the main historical justification for separating the magistracy and the judiciary — that magistrates did not need formal legal



Overhaul The Department of Justice has plans to remove the separation between magistrates and judges. PHOTO: SIDDIQUE DAVIDS

qualifications — has fallen away.

"In recent years, no magistrates have been appointed to the bench without a university degree that would qualify them for legal practice."

The report notes that in terms of 1997 legislation, the LLB is the only such degree.

It says one of the main problems with the separation of the two benches is that magistrates have concentrated on criminal law, whereas high court judges have focused on civil law.

"The consequence of this is that the standard of civil adjudication in the magistrate's courts is generally not as high as it should be," the report notes, adding that magistrates who develop an expertise in civil law often leave for private practice.

Magistrates preside over about 90% of criminal cases in South Africa, but can only deal with civil cases involving up to R100 000.

The justice department also proposes

● absorbing the body that selects magistrates, the Magistrates Commission, into the Judicial Services

Commission, the panel of politicians, lawyers and judges that controls appointments to the judiciary.

● changing the way judicial officers are addressed, signalling that "his lordship" (the way in which a high court judge is addressed) is an elitist anachronism — the report suggests calling all judges and magistrates "justice (surname)" or just "judge", and proposes calling all court buildings "court houses", and

● setting up a judicial training institute "to serve the education and training needs of all judicial officers."

The airing of the discussion document coincides with moves on the part of the Ministry of Justice to investigate the feasibility of merging the Supreme Court of Appeal in Bloemfontein and the Constitutional Court.

Maduna's office confirmed last week that he had ordered research into a possible merger of the two courts, but this week the minister sought to downplay his interest in the controversial proposal.

Laugh it out of court, PAGE 26

Questions of the Ellis Park bomb

Piers Pigou

Until a few weeks ago the African National Congress never unequivocally admitted responsibility for the bomb that exploded near Ellis Park on July 2 1988, killing Clive Clucas and Lunus Mare and injuring another 30 as they left the stadium following a rugby game.

An incident which clearly "crossed the line" in terms of ANC policy this attack had all the trappings of a mission designed to invoke terror among the civilian population.

Not so claim four Umkhonto weSizwe (MK) amnesty applicants who last month told the Truth and Reconciliation Commission (TRC) that they simply wanted to send a message to whites that the conflict was in their own backyard and that they could also die.

They wanted whites to tell their government to stop killing people in the townships. The bomb, they insisted, was not intended to kill or injure. It was timed to detonate at 5pm when the match would still be on. No one would be hurt and thousands of white spectators would get the message.

The applicants claimed the operation was planned and sanctioned by MK chief of staff Chus Hanzi. Ellis Park stadium, they claimed was a legitimate target.

The unit consisted of four cadres: the commander Lester Dumakude, second in-command John Dube, and two junior cadres Aggey Shoke and Harold Matshididi. They reconnoitred the area for a place to park the car bomb during the week before the match, and picked an area close to the stadium that appeared uninhabited.

Dumakude, with the assistance of the other cadres, secured materials to make the bomb. They assembled 48kg of explosives, "many" limpet mines and two full 18kg gas cylinders in the boot of the car, with three different timing devices. Two were set for 5pm and the third was a remote.

Dumakude and Matshididi drove the stolen BMW to a spot on Upper Meyer Street, 50m from the stadium's north east exit. Matshididi was dropped off. Dumakude parked, activated the bomb by reattaching some wires and got out of the vehicle.

He noticed two men approaching him and then showing interest in the BMW. "They were acting as if they were part of the [security] system," Dumakude told the amnesty committee.

He didn't see anyone else on the road. If he didn't act now, many more people would die, he said.

Knowing the "security men" would be killed, he triggered the radio signal and the bomb exploded. He met up with Matshididi and they hurried back to their rendezvous outside Checkers in Hillbrow. Mission accomplished.

The applicants say they are sorry that two civilians died and others were injured, but this was not their intention. If they had wanted to kill civilians, one applicant testified, they would

have driven the vehicle into the stadium. As for the other injured they did not know other spectators were on the street and were hearing for the first time that the game had already ended.

The four claim they fulfil the requirements of the TRC Act and should therefore be granted amnesty.

It is understandable on face value how some people could accept this as a plausible story. On closer examination, however, the versions presented are littered with improbabilities and impossibilities seemingly contrived and at times conspicuously dishonest.

At earlier hearings in 1998 Shoke and Matshididi testified they had already met in Hillbrow when the bomb exploded. Dumakude's subsequent version that he and Matshididi were present at the site of the blast was a massive contradiction.

Matshididi, however, told the amnesty committee under re-examination last week that he had previously been mistaken and that Dumakude's version was correct. To account for his apparent lapse in memory he asked the committee to take into consideration that the incident took place 10 years ago and he that hadn't had the chance to talk with his former colleagues.

Is it really possible that Matshididi has such a bad memory of this event? Could he really not remember that he was so close to the detonation?

The applicants claimed that the area was uninhabited, yet the bomb caused serious damage and injuries to houses and people living in the area. When Dumakude set off the bomb he says he had a clear view of the BMW.

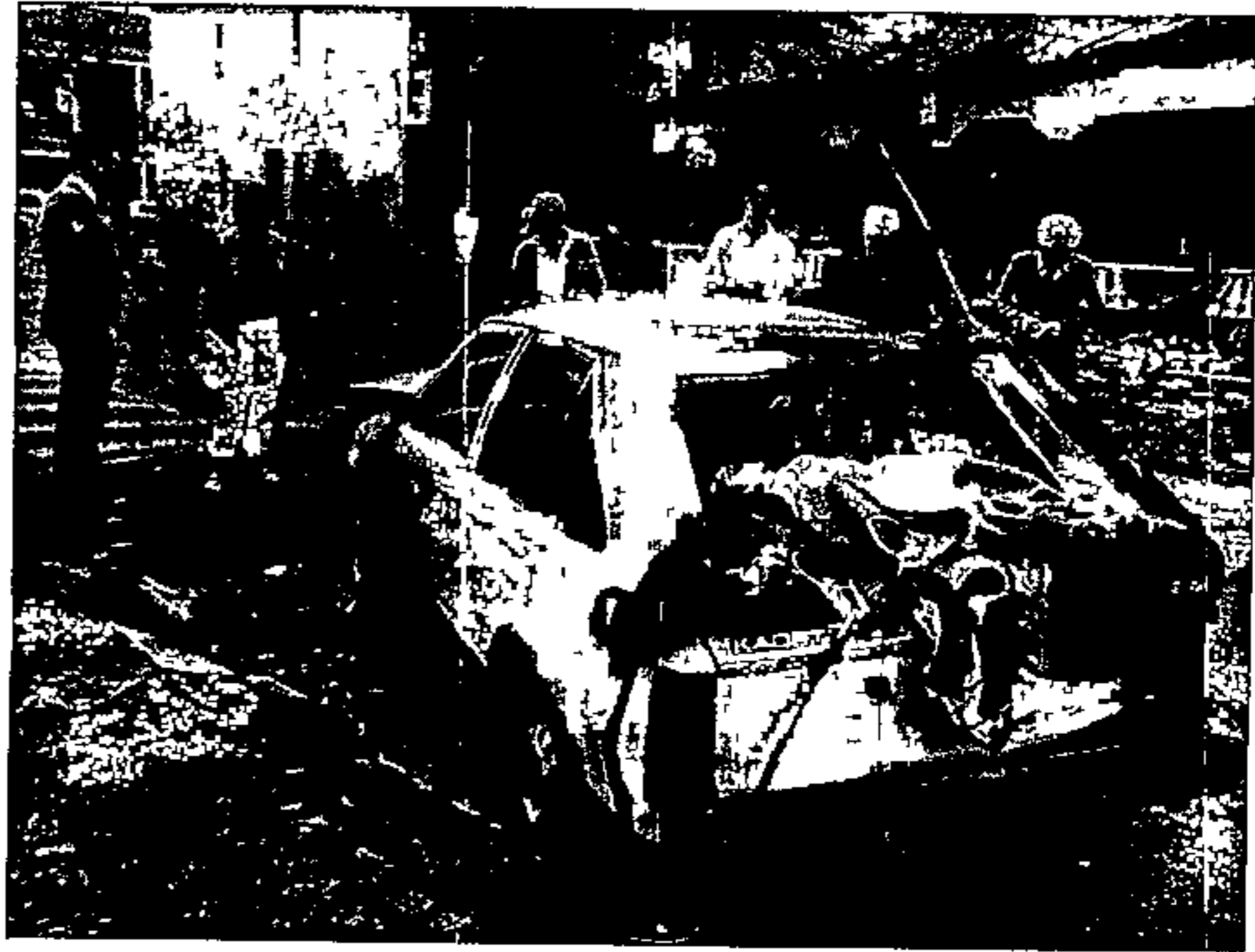
He maintained he saw no one else on the street except the two who died, despite the fact that 11 people were injured in the vicinity between the explosion and where he stood, some within a few metres of him. He claimed he was focusing on the two who died, but was unable to provide a description of either man.

When asked why the device was not set for 4.30pm if all he wanted to do was warn people, Dumakude said that they did not want to disrupt the rugby game. Dube who provided the intelligence for the timing insisted the newspapers had shown the game would still be on at 5pm.

A simple phone call to Ellis Park would have told him that the match would be over by then. Spectators had enough time to leave the stadium following the final whistle and walk several hundred metres, when the bomb exploded.

Hundreds of people were on their way out of Ellis Park and walking into or towards Upper Meyer and adjacent streets. Dumakude must have seen this. If he did not intend to kill, he certainly had no real control over the situation at this stage.

The hearing heard expert testimony that once limpet mines were activated they could only be stopped by an elaborate operation. Dumakude's explanation that more people would have been killed if he did not detonate the bomb when he



Blasted A mangled car is evidence of the force of a car bomb which exploded outside the Ellis Park stadium on July 2 1988. Four MK cadres are applying for amnesty for the blast in which two people died and 30 were injured. PHOTO: THE STAR

(252) MTG 13-19/8/99
did is ironically true.

Once the device had been activated there was no turning back. If he had not triggered the remote many more may have been hurt with a later detonation from the limpet mines. No explanation was provided when asked why such a powerful and deadly bomb was used, and why it was so necessary to plant the bomb so close to the stadium if it was only intended as a message.

The legitimacy of this operation is also questionable. The ANC last week admitted that "After thorough consultation and research we are satisfied that [this] was an ANC operation carried out by members who are now before you."

No acknowledgment was given to Dumakude's claim that Hanzi helped plan or authorised the mission, raising the question of who else within senior ANC and MK circles was aware of it or participated.

Former rugby boss Louis Luyt, however, told the amnesty committee that he had been in talks with the ANC a month or two before the bombing, and had signed a statement with Thabo Mbeki calling for the release of Nelson Mandela and for political negotiations.

A few weeks after the bomb, Luyt flew to Harare to meet senior ANC leaders. "Mr Mbeki made it quite clear he didn't know who authorised [the attack], if indeed it was the ANC."

ANC leaders undertook to look into the matter. In August 1988 the ANC's national executive committee issued a statement in which it "expressed concern" about the spate of attacks in which civilians were targeted.

It admitted its cadres were responsible for some of these, and blamed Pretoria for others. Ellis Park was not mentioned.

Luyt said he assumed and personally thought that they were not responsible. Mbeki had told him it "could not be acceptable to them."

The ANC statement reaffirmed that it was "contrary to our policy to select targets whose sole objective is to strike at civilians. Our morality as revolutionaries dictates that we respect the values underpinning the humane conduct of war."

The ANC responded to Luyt's testimony charging that his "personal views on the Ellis Park bombing are irrelevant to the TRC hearing. What needs to be determined in this case, is whether the Ellis Park bombing was politically motivated or not."

But Luyt's observations are germane. The operation did not conform to the ANC's policy regarding civilian targets. The ANC told the TRC "it was expressly not the policy of MK to use methods involving the killing of civilians", but acknowledged that cadres did violate policy.

They submitted a range of circumstances and examples in which such deviations did or might have occurred. No explanation was provided for Ellis Park.

The Ellis Park bomb, whatever the applicants' stated intentions, was an act of terror. As with many other incidents during this period there was no 'real' security component to the target.

Dumakude's suggestion that the deceased acted as if they were plain clothes security men, in the context of people leaving a game of rugby and walking towards him, appears conveniently contrived. If their intention was not to kill, what transpired can only be described as a monumental act of incompetence. Or was it a deliberate attempt to kill civilians?

Either way, the public has a right to know at what level this major policy deviation was authorised. Dumakude was a very senior cadre, in charge of MK's elite special operations unit. Unlike many others inside the military underground he had a "hotline" to the leadership.

If as he testified Hanzi had prior knowledge and had in fact authorised the operation, who else inside MK headquarters and the command structure of special operations was involved? Were the ANC's political leadership kept in the dark or were they complicit in violating their own policy and then denying it?

Or are Dumakude and his colleagues simply another group of lying amnesty applicants?

Piers Pigou was an investigator for the Truth and Reconciliation Commission.

Bill will alleviate suffering of terminally ill

The End of Life Decisions Bill should not be delayed by a premature debate on euthanasia, cautions Selma Browde

It is of utmost importance that the recommendations of the South African Law Commission with regard to terminally ill patients have the force of law as soon as possible.

They should go a long way towards relieving the unnecessary suffering endured by too many terminally ill patients.

The draft Bill is not a 'euthanasia Bill', as it is so often mistakenly called -- it is entitled the End of Life Decisions Bill 1999, and is an annexure to the report of the law commission.

The Bill consists of eight clauses. Only one deals with active voluntary euthanasia, and in such a manner that it gives three possible options as the basis of discussion.

The other clauses deal with end of life decisions that comply with moral and ethical principles. These are the substance of the Bill, and should not be delayed in Parliament by a premature debate on euthanasia.

There should be absolute clarity on the issues involved. At the moment there seems to be much confusion, aggravated by the use of the term "passive euthanasia".

This term is commonly used to describe the withholding or withdrawing of life sustaining treatment. Cessation of curative treatment or of futile artificial measures to prolong life is not euthanasia.

Euthanasia is an active process, and there is no such thing as passive euthanasia. The word "euthanasia" is an emotive one, and causes confusion. The phrase "passive euthanasia" should be removed from the literature on the topic.

The important message that needs to be brought to the attention of the medical profession and the public is the distinction between euthanasia and palliative care. The distinction is one of intent.

Today the accepted definition of euthanasia is "the intention to end the life of a patient in order to relieve unbearable suffering", whereas the intention of palliative care is to relieve suffering and distress.



Death wish: American Bill White, who has survived on a ventilator since 1967, has asked hospital staff to discontinue treatment. In South Africa this would be illegal. PHOTOGRAPH AP

Confusion among doctors and nurses regarding what is morally and legally acceptable practice often results in reluctance to administer the necessary medication to a dying patient who may suffer a tortured death without relief of pain, or even worse, struggling to breathe.

There is no code of ethics or legal precedent that prevents doctors and nurses acting in a compassionate and humanitarian manner.

Why, then, is legislation necessary? And why do doctors often find it difficult to make these decisions?

The answer, paradoxically, lies in the extraordinary advances in the science of medicine over the past 50 or 60 years which have enabled doctors to prolong life. This often means prolonging suffering, and sometimes even causing it.

In the excitement of the ability to cure disease far beyond any previous expectations, the thrust of the teaching became curative. The approach at medical schools worldwide

became disease-oriented, not patient-oriented. Doctors and nurses are not adequately trained in the methods of relieving pain and symptoms which have developed over the past two decades, nor are they trained to consider that the anxieties and other emotions of the patient are of primary importance.

It is essential that all health practitioners be trained in the relatively new branch of medicine known as palliative medicine. This is defined as medical and nursing care of the patient intended to alleviate suffering but not to cure. It includes not only physical suffering of pain and symptoms, but also emotional, psychosocial and spiritual suffering of the patient and the family.

It should be incorporated with the curative management of all patients at all stages of any disease, but in the terminally ill palliative care becomes the major or the total management. It is ideally a team effort and is concerned with the quality of life.

The ethical principles of palliative care include the right of an individual to make de-

isions for himself about treatment and care and whether any treatment or artificial means of prolonging life should be continued.

The draft Bill makes provision for this. It also legalises the 'living will' -- a document signed by an individual in advance stating choices regarding withholding or cessation of artificial measures prolonging life should they ever be in a situation where they are unable to express their choice verbally.

A cardinal principle of palliative care is known as double or secondary effect. It is most important to understand this principle which is accepted today by medical ethicists, the various religions and the common law.

This refers to relieving the suffering of a dying patient by giving whatever doses of the appropriate medications are necessary to relieve the suffering, even if it hastens the moment of death.

The myths about morphine still prevalent in medical and non medical circles, are responsible for much unrelieved suffering.

Morphine is not addictive when given for pain as pain is an antagonist to morphine. When given correctly for illnesses such as cancer, Aids or other protracted conditions, it does not cause respiratory depression and death.

Palliative medicine specialists state that once a patient has been on morphine for 24 to 48 hours, one can give as much as is needed (the ceiling dose is unlimited) without danger of killing the patient. This is borne out by the fact that when euthanasia has been performed, various lethal substances were used, but never morphine.

There would be very little call for euthanasia if palliative care were incorporated in the teaching of all health professionals. The Palliative Medicine Institute established in Gauteng in September last year for education and training in palliative care, is involved in getting it into the mainstream of medicine, both hospital and home based.

It is intended to be a national resource centre for anyone in the country requiring information or material.

The task of those concerned with alleviating the suffering of the terminally ill will be made far easier when the Bill finally becomes law.

Professor Selma Browde is the founder and medical director of the Palliative Medicine Institute.

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Bill will curb media

mtg 13-19/8/99

(252)

Barry Streek

A legal nightmare is about to be visited on South Africans in the form of a draft law which will severely curtail press freedom and put the onus on individuals to disprove charges of discrimination made against them

It will also outlaw affirmative action advertisements and give men the legal right to join all-woman groups

The draft Promotion of Equality Bill proposes setting up equality divisions or courts in each of the provinces as well as an equality tribunal, which will not be bound by rules of evidence and will be empowered to act "without regard to technicalities and legal forms"

It also gives the overstretched South African Human Rights Commission large additional responsibilities, including the power to ask for temporary orders, implement rulings and initiate conciliation proceedings

The draft Bill has been submitted to Minister of Justice Penuell Maduna by the drafting committee chaired by Justice Johan van der Westhuizen, the former head of the Centre of Human Rights at the University of Pretoria

The Bill was to be submitted to Parliament this year and it was on the department's legislative programme for this year, according to Ministry of Justice representative Paul Setsetse

It has been drawn up to give effect to the provision in the Constitution that national legislation must be enacted to prevent or prohibit unfair discrimination within three years of the adoption of the Constitution

The confidential "framework document" on the proposed Bill says legislation is "now required to promote equality, prevent and prohibit all forms of discrimination and to make provision for the advancement and protection of persons previously disadvantaged by unfair discrimination"

The purpose of the Bill is "to promote substantive equality" by preventing and prohibiting unfair discrimination, making provision for remedies by victims of unfair discrimination, providing for positive measures for the elimination of unfair discrimination, educating and raising awareness about "the nature and meaning of equality" and ensuring that South Africa meets its international obligations to outlaw and redress unfair discrimination

Prohibited grounds include discrimination based on race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, domestic and family responsibility or status, birth, social and economic status, nationality and any other ground

Many of the clauses in the draft Bill are aimed at different sectors of society. It attempts to define discrimination in employment, education, health care, land, housing, accommodation, insurance, pensions, goods, services, facilities, associations, partnerships, clubs, the professions and the media

The state and "any person, natural or juristic", will be bound by the law

One of the major problems with the 126-clause draft Bill is that it tries to encompass everything, and even includes a provision that if its provisions conflict with any other law apart from the Constitution, the provisions of the new Act will apply

So, when it comes to the media, the Bill's provisions are so wide that it will clearly restrict what can be reported. For instance, the media will be prevented from "violating the privacy of another on any of the prohibited grounds by publishing information without permission or regard to their dignity or in a manner that suggests discrimination which has the effect or is perceived to have the effect of discriminating

against another on any of the grounds specified"

The media will also be prevented from "making utterances or by publishing or causing to be published propaganda, ideas or theories based on unfair racial stereotypes, or promote inequality of persons within the various categories or which justify, promote or incite hatred or prejudice against others on account of race, ethnicity, gender or religion, or which cause or encourage discriminatory practices"

So, if someone were to say at an election meeting that "white liberals" were responsible for the economic situation or "black criminals" were responsible for the attacks on farms, these statements could not be published without contravening the proposed measure

No club, its committee or management will be allowed to unfairly discriminate in determining who to admit, who to refuse membership to or by the way members are recruited or processed. No club may discriminate in conditions of membership by denying or limiting access to any benefit arising from membership

Barring membership to a club on grounds of race or sex is out. Single-sex book clubs better look out!

In regard to employment, no person or organ of state will be allowed to discriminate "against anyone in any manner" by "advertising in a manner which unjustly excludes or disadvantages potential applicants from any group". That clause alone would rule out any affirmative action advertisements

No one will be permitted to discriminate "by creating informal barriers to equality of access to employment opportunities". So, even informal affirmative appointments by excluding people because they are white males would also be illegal, according to these stipulations

The last word on the Promotion of Equality Bill is, clearly, a long way off

ENGLISH ONLY PROPOSED

Cape judges in conflict

ET 19/8/99 (GMR)

TENSIONS between judges have surfaced over several issues pertaining to the transformation of the bench

MOTSHIDISI MOKWENA and RONALD MORRIS report

THE Deputy Judge President of the Cape, Justice John Hlophle, has urged the government to make English the only language of record in courts.

Judge Hlophle made his call yesterday at a time of simmering tensions between some judges in the country. Among the issues provoking controversy is that some judges have criticised the appointment of two Transkeians as acting judges in South African courts because of the difficulty they will have with Afrikaans.

Another is the appointment of Dumisa Ntsebeza, who lives with his family in Cape Town, as an acting judge in Transkei. Ntsebeza has written a letter to Cape Judge President Edwin King in which he complained of not being allocated certain work.

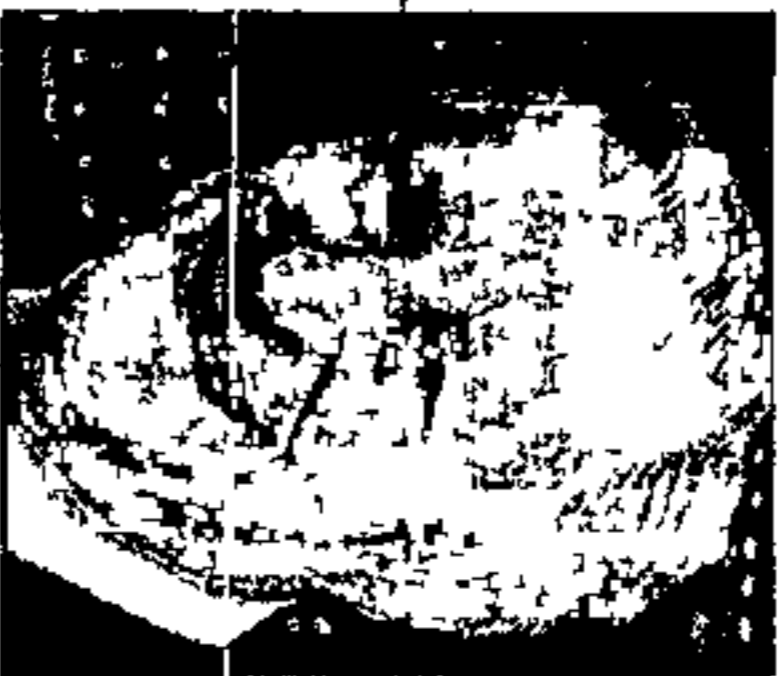
Copies of the letter were sent to Chief Justice Ismail Mahomed and the President of the Constitutional Court, Arthur Chaskalson, both of whom sit on the Judicial Service Commission which, among other things, interviews judges seeking permanent appointments.

Judge King declined to comment on the contents of the letter. Justice Hlophle said the language issue is very sensitive but that all the three main languages in the Western Cape must be promoted and treated equally.

"I am the only permanent judge in the Western Cape who understands Xhosa. Xhosa speakers are not properly represented in the judiciary. Knowing Afrikaans is obviously an advantage but (not knowing) it should never be a dis-



NEW POST Dumisa Ntsebeza



JUDGE PRESIDENT: Edwin King

Judges divided

(GMR)

From Page 1
condition of anonymity, said the fact that white judges were still being appointed was because of a shortage of suitably qualified people from other races. The majority of judges are white and male and come from advantaged backgrounds, the judge said.

"What can you do about it when an African cannot speak Afrikaans? However, using language as an excuse to keep the Cape Bench white is a real problem. Instead of accelerating the process (of transformation), it might just delay it."

The judge confirmed that Ntsebeza was not given much work and did not sit in criminal trials or the motion court. "However, I do not think it was a deliberate attempt to keep Ntsebeza out of these cases."

The judge did not believe Judge King had done anything to undermine colleagues of colour. "But what I cannot understand is the economics of bringing two acting judges from Transkei and sending Ntsebeza to Transkei."

ET 19/8/99

Asked to comment on this, Judge Hlophle said the judge president did not appoint judges, the minister did. It was not unusual for acting judges to be deployed in places where they do not reside.

Another judge said Judge King, who has expressed a desire to have his term in office extended, should retire this year.

"The honon must be handed over — the sooner the better. A crisis may develop if that is not done. We're going through a difficult time. We have to adapt."

Commenting on criticism that women — especially black women — are still under-represented on the bench, the judge said that in order to address this problem the Judicial Service Commission may consider appointing Judge Jeanette Traverso — for many years the only woman on the Cape bench — as deputy judge president.

Justice Hlophle said it is up to the commission to make any such appointments. He added that it would be inappropriate for him to make any suggestions of possible candidates. He would abide by the commission's decision and would work with any candidate selected.

Legal Aid Board fights

Cash chaos

(25/2) RKF 19/8/99
POLITICAL CORRESPONDENT

The Legal Aid Board is trying to pick up the pieces after an auditor-general's report exposed serious financial management shortcomings, including the loss of more than R1-million embezzled by an employee.

This emerged from an auditor-general's report for the year ending March 31, 1997, tabled in Parliament yesterday.

The embezzlement involved fraudulent withdrawal of about R1-million by an employee from the board's account at the Corporation for Public Deposits. About R84 583 interest was also lost because of the fraud, the report said.

Litigation between the board and the corporation was continuing at the time the auditor-general's report was compiled in March.

The report said the board's debtors system could not be relied on, and the completeness and accuracy of amounts disclosed for debtors, legal costs and bad debts written off could not be verified accurately.

Internal checking of financial transactions, the bank and cash systems, and the account administration systems were not reliable.

The auditor-general's report said the board had violated various provisions of the Legal Aid Act, including failing to get the approval of the minister of justice for the appointment of consultants.

The report noted that the board disagreed with this finding.

Other shortcomings exposed included failure to arrange fidelity insurance for staff handling cash and cash related transactions, lack of clarity on the independence of the internal auditor, and uncertainty about whether the board's computers were Y2K compatible.

The report said a new board had been appointed in October last year, and in line with recommendations by the Public Accounts Committee this board included members with financial expertise.

Other steps were being taken to correct the situation.

Tshwete under fire over moves to control guns

(25/2) RKF 19/8/99
POLITICAL CORRESPONDENT

Safety and Security Minister Steve Tshwete has tried in vain in Parliament to get critics of draft gun control legislation to hold their fire.

In a mini-debate in the National Assembly yesterday, New National Party leader Martinus van Schalkwyk challenged Mr Tshwete to clarify the status of the draft Arms and Ammunition Amendment Bill available on the internet, and apparently shown to some gun lobbyists.

Mr Van Schalkwyk said it seemed the drafting committee had been hijacked by representatives of Gun Free South Africa, without the views of respectable legal firearm owners being taken into account. It also had been said that the drafting process was being sponsored by the British government.

While the British government was friendly, it was inappropriate for the legislative drafting process to be sponsored by a foreign government.

Claims had been made that the draft legislation did not exist, and yet it was being debated in every newspaper and on every radio station, with Government officials defending it.

Mr Van Schalkwyk queried where these officials had obtained their mandate to defend the legislation. He quoted senior Safety and Security official Bernie Fanaroff as saying the anti gun legislation proceeded from the mandate the African National Congress had secured in the election.

There were many legal gun owners on all sides of the Assembly, and, "We never discussed this bill in the election," Mr Van Schalkwyk said.

Current firearm legislation was effective, with strict rules requiring training certificates, proper gun safes and a waiting period.

"We do not have a problem of legal guns in South Africa. We have a problem of illegal guns."

He urged Mr Tshwete to ensure that the process of drafting firearm legislation was transparent, and that the emphasis shifted to illegal guns.

Mr Tshwete said there was "no such bill on my desk" and nor had any legislation on the subject yet been put to the Cabinet.

However, he confirmed that discussions were in progress and, to criticism that the drafting process had not been transparent, said the New NP leader's questions and comments would not have been possible had the process not been transparent.

TRC finances under a cloud

Auditor-General raps 'shortcomings'

(25/2) RKF 19/8/99
POLITICAL CORRESPONDENT

The Auditor-General's office has found a series of shortcomings in financial management by the Truth and Reconciliation Commission, the Legal Aid Board and the National Youth Commission.

The TRC deficiencies include failure to secure thousands of blank letterheads pre-printed with the signature of Archbishop Desmond Tutu, according to a report tabled in Parliament yesterday.

Deficiencies in control of spending included several cases of non-compliance with value-added tax regulations, failure to attach supporting documentation to cheque payment authorisation forms, and violations of the limits placed on the use of cellular telephones.

"The commission did not make use of flight incentive schemes, resulting in an estimated saving of at least R76 000 being lost to the commission."

Corrective steps had been taken on these issues, the Auditor-General said.

For the second financial year running, there had not been effective control of pur-

chases made on the commission's credit cards.

"An audit trail did not exist between the schedule of private purchases by the users of the cards, the deposits for private purchases, receipts issued and the certificates signed by the cardholders."

It was therefore again not possible to trace all the payments to a specific account. Certified Dinets Club statements to indicate which purchases were made for private purposes could also not be produced for the cardholders concerned.

The Auditor-General said that during the audit it had been found that the TRC had pre-printed letters with the signature of Archbishop Tutu, to be used to communicate the commission's findings to about 27 000 victims.

But these had not been safely locked away or pre-numbered, and their issuing was not controlled through a register, meaning that anyone could get access to the letterheads.

Other deficiencies included lack of control of aspects of personnel expenditure and related human resources activities.

Costs could decide language

(252)

MOTSHIDISI MOKWENA
and **RONALD MORRIS**

SOUTH AFRICA, like other Commonwealth countries, could find itself driven by cost considerations to a single language of record in the courts, the General Council of the Bar, the advocates' national umbrella body, said yesterday

Jeremy Gauntlett, SC, the council's chairperson, said the language issue was very sensitive and that it was a pity that there was public judicial conflict about it

Gauntlett was commenting on a row that erupted after Deputy Judge President of the Cape, Justice John Hlope, said all three main languages in the Western Cape must be promoted equally

Judge Hlope also said the time had come for Parliament to legislate to make English the only lan-



ROW. Justice John Hlope

guage of record in the courts

Judge Hlope said this when a colleague suggested that two Transkeians appointed acting judges in the Cape might have difficulty understanding Afrikaans

Gauntlett said SA might find itself driven by considerations of costs to a single language of court record

"But this has other implications. More resources spent on interpreters, and (until then) regard for the language needs of particular areas. There is no quick affordable fix," he said.

Norman Arendse, SC, convenor of Advocates for Transformation (AFT) in the Western Cape and the body's national deputy chairperson, said AFT had already raised the issue of language as a barrier to entry into the advocates' profession. This concern applied equally to appointments to the bench

"In a society as diverse as ours, it is imperative that we display tolerance towards each others'

□ Turn to Page 3

ET 20/8/99

Court language

(90)

□ From Page 1

linguistic difficulties. The fact that some people (whether judges or members of the public) insist that only one language be used, constitutes or amounts to a display of racial or cultural tolerance

"However, given the Justice Department's current lack of resources, the call for the use of the English language only is understandable, and probably justifiable. Clearly, however, a person's inability to speak or understand one of the 11 official languages should not disqualify that person from acting as a judge, or magistrate, for that matter"

Meanwhile, opposition parties yesterday criticised the call by Judge Hlope to make English the only language of record as "outrageous" and said it made no sense and would limit access and understanding

Tertius Delport, Democratic Party spokesperson on justice, said the courts needed to balance the needs of the communities they served and that multi-lingualism

should be encouraged among legal practitioners, judges, clerks and others engaged in the administration of justice

Sheila Camerer, New National Party justice spokesperson, said that by attacking Afrikaans, Judge Hlope had merely demonstrated his prejudice against the language

President Thabo Mbeki had recently assured Afrikaners that neither their language nor their culture were under threat

"The NNP supports transformation of the bench and very necessary affirmative action, but getting rid of Afrikaans has nothing to do with transformation," she said

Paul Setsetse, spokesperson for Justice Minister Penuell Maduna, said the minister supported the position that none of the official languages should be marginalised

"There is a constitutional obligation that all official languages should be given the proper recognition. In view of the department's limited resources, it would be necessary to have one language of record in court and clearly that would be English. There is, however, no policy or decision on this"

Apla, ANC supporters get amnesty

Business Day Reporter

THE truth commission granted amnesty yesterday to four African National Congress members for killing Grahamstown lawyer Alistair Weakley and his brother Glen at Port St Johns in the Transkei four years ago

Phumelele Hermanus, Mlulamli Maxhayi, Lungile Mazwi and Fundisile Guleni were also granted amnesty for the attempted murders of Keith and Thomas Rumble, and Thomas O'Keefe (252)

The commission's amnesty committee found that the killings of the Weakley brothers had a political motive and were related to the assassination of SA Communist Party leader Chris Hani. The committee also found that the applicants satisfied the requirement of full disclosure.

The dependants of the deceased and those injured in the attack were declared victims by the committee and referred to the reparations and rehabilitation committee for consideration.

The applicants testified that they attacked the group of holiday makers in April 1993 in retaliation for Hani's murder three days earlier.

Three Azanian Peoples Liberation Army (Apla) members from Fort Beaufort were also granted amnesty for robbery and for killing Giovanni Francescato late in 1992. BD 20/8/99

The group also received amnesty for the unlawful possession of a shotgun and ammunition believed to have belonged to Francescato.

The three — Siphon Mabuthi, Kiko Winile Veveza and Mzwamada Yengeni — claimed that they were carrying out orders of an Apla commander to attack white houses in town and repossess weapons for use by Apla cadres.

GETTING IT RIGHT

MIRRYENA Deeb is CE of the Pharmaceutical Manufacturers' Association, not a representative

Sanlam recognises gay relationships

Tim Cohen

CAPE TOWN — The recent decision by the pension funds adjudicator to grant pension rights to the surviving member of a gay relationship has prompted Sanlam review its benefit structures and recognise gay relationships

Sanlam employee benefits CE Nick Christodoulou, says "de facto spouses" of the same gender or "common law marriages" will be recognised with immediate effect and without cost to the client

However, gay partners must have been in a relationship of at

least six months and must formally request Sanlam to recognise the pension rights of their partners.

The request to be recognised will, like a marriage certificate, provide the insurer with proof that a relationship exists.

The catch is that the consequences are also the same. If there is no formal request, Sanlam will "exercise the contract", in other words, it will not recognise the pension rights of a person claiming to have been in a de facto spouse

Christodoulou said a guide on amendments which funds should implement to protect themselves

from potential damage claims arising out of equity issues was being sent to trustees.

The 2 000-plus funds under Sanlam's administration will be informed of the changes that will ensure their rules comply with developments in the industry. The guide will prepare trustees review fund rules, practices and procedures

The Bill of Rights and recent determinations of the pension fund adjudicator had necessitated this step. "We foresee that these amendments will change the face of the retirement fund industry as we know it," Christodoulou said

(300)

(252)

BD 20/8/99

Four granted amnesty for slaying Grahamstown lawyer

The Truth and Reconciliation Commission has granted amnesty to four ANC members for killing Grahamstown lawyer Alistair Weakley and his brother, Glen, in Transkei in 1993.

Amnesty was granted to Pumelele Hermanus, Mlilani Maxhayi, Lungile Mazwi and Fundisile Guleni for the murder of the brothers on the grounds that the applicants had a political motive.

The four were also granted amnesty for the attempted murders of Keith and Brett Rumble and Thomas O'Keefe, who were travelling with the Weakley brothers at the time of the attack.

The men were returning from a fishing trip at Port St. Johns when they were ambushed. The Weakley brothers were killed but the others escaped.

The applicants said they had acted in retaliation for the assassination of South African Communist Party leader Chris Ham on April 10, 1993. - Sapa

(252) ARG 21/8/99

IN COURT

Biological warfare expert claims he cannot afford to meet his 'financial obligations'

Basson opposes bid to seize assets

Wouter Basson, the former head of South Africa's chemical and biological warfare programme, opposed the State's court order yesterday to seize his assets, saying it was unnecessary as he had no interest in the bulk of them.

Dr Basson told the Pretoria High Court he could not afford to keep the bulk of his assets as the State had frozen his bank account.

"The freezing of my bank account into which my salary as a cardiologist is paid every month means that I cannot meet any of my financial obligations," he said.

He accused the State of using the seizure procedures and the right of a curator to question him about his assets to obtain information about his defence "through the back door".

He claimed this affected his right to silence and a fair trial.

Counsel for the Director of Public

ARL 21/8/99

(292)

Prosecutions, however, argued that the State sought the order to prevent Dr Basson from getting rid of his assets, pending a decision by a criminal judge on whether they should be forfeited to the State.

The decision would follow completion of the trial, which was expected to run for two years.

In an affidavit, Dr Basson admitted he created and owned front organisations and companies throughout the world on behalf of South Africa, and that the channels used for payment were "highly unconventional".

"This might seem suspicious especially when looked at from an armchair and without taking into account the difficulties and dangerous circumstances under which the project was handled," he said.

Dr Basson denied that he had misappropriated funds provided by the government to enrich himself, despite owning the companies.

He said as project officer for the South African Defence Force (SADF), he maintained a front as a businessman for more than a decade and also established in South Africa one of the most sophisticated biological and chemical warfare capabilities in the world.

During the apartheid years he regularly visited Iraq, Iran and Moscow, travelling under false identities created by Military Intelligence, but with official passports issued by the home affairs department, he said.

"The warfare capability created for the SADF, through a project called Coast, was of the highest quality. Certain companies are presently world leaders in certain areas on the strength of the project's research," he said.

Dr Basson faces charges of fraud, theft and murder.

His trial begins in the Pretoria High Court on October 4. - Sapa



ENRICHED Wouter Basson has admitted he created and owned front organisations throughout the world on behalf of South Africa

<p>Births</p> <p>ALBRICK-SMITH Kathryn and Jeremy are pleased to announce the birth of a new baby girl, Alexandra, on August 17th 1999.</p>	<p>Deaths</p> <p>B. O'CONNELL Sad and Grand-dad will sadly missed and at rest. Rest in peace. Mordun and Astor.</p> <p>BARKWAY Margie passed away peacefully on August 19th 1999. After an illness of 18 months. Rest in peace. You will be missed. Family.</p>	<p>Deaths</p> <p>CLARKE George our beloved Granddad died on Monday the 16th of August. He was 81 years old. He was a kind and gentle man. We love you so much. Family.</p> <p>CLARKE George Young, far-remembered, passed away peacefully on August 19th 1999. He was 81 years old. He was a kind and gentle man. We love you so much. Family.</p>	<p>Deaths</p> <p>COSTELLO Vince a special friend for you and your family. He was a kind and gentle man. We love you so much. Family.</p> <p>COSTELLO Vince a special friend for you and your family. He was a kind and gentle man. We love you so much. Family.</p>	<p>Deaths</p> <p>DAVIDS Sadly missed and at rest. Rest in peace. Always remembered by your family.</p> <p>DAVIDS Sadly missed and at rest. Rest in peace. Always remembered by your family.</p>	<p>Deaths</p> <p>GOMES Joe will always be in our thoughts. Rest in peace. Always remembered by your family.</p> <p>GRILL George beloved brother and uncle. Rest in peace. Always remembered by your family.</p>	<p>Deaths</p> <p>JOSEPHS Eva our loving mother passed away peacefully on August 19th 1999. She was 81 years old. She was a kind and gentle woman. We love you so much. Family.</p> <p>JOSEPHS Eva our loving mother passed away peacefully on August 19th 1999. She was 81 years old. She was a kind and gentle woman. We love you so much. Family.</p>	<p>Deaths</p> <p>LLOYD Samuel Henry, aged 87 years, passed away peacefully on August 19th 1999. He was a kind and gentle man. We love you so much. Family.</p> <p>LLOYD Samuel Henry, aged 87 years, passed away peacefully on August 19th 1999. He was a kind and gentle man. We love you so much. Family.</p>	<p>Deaths</p> <p>O'CONNELL Bernie To our loving Granddad. Rest in peace. Always remembered by your family.</p> <p>O'CONNELL Bernie To our loving Granddad. Rest in peace. Always remembered by your family.</p>	<p>Deaths</p> <p>SHORT Addie our dear sister and Grandmother. Rest in peace. Always remembered by your family.</p> <p>SHORT Addie our dear sister and Grandmother. Rest in peace. Always remembered by your family.</p>	<p>Deaths</p> <p>VAN DER MOLEN John and Mary, your Grandparents. Rest in peace. Always remembered by your family.</p> <p>VAN DER MOLEN John and Mary, your Grandparents. Rest in peace. Always remembered by your family.</p>	<p>Found</p> <p>ST. VINCENT'S 31st August 1999 A black and white male dog, approximately 1 year old, was found on the road near the school. If anyone has information, please contact the school.</p>
<p>BOSMAN / FROST Richard and Ann are thrilled to announce the birth of their beautiful baby girl, Elizabeth, on August 19th 1999. She weighs 3.5kg and is 48cm long. Elizabeth is a beautiful baby and we are so lucky to have her. Family.</p>	<p>BARKWAY Margie passed away peacefully on August 19th 1999. After an illness of 18 months. Rest in peace. You will be missed. Family.</p>	<p>CLARKE George our beloved Granddad died on Monday the 16th of August. He was 81 years old. He was a kind and gentle man. We love you so much. Family.</p>	<p>COSTELLO Vince a special friend for you and your family. He was a kind and gentle man. We love you so much. Family.</p>	<p>DAVIDS Sadly missed and at rest. Rest in peace. Always remembered by your family.</p>	<p>GOMES Joe will always be in our thoughts. Rest in peace. Always remembered by your family.</p>	<p>JOSEPHS Eva our loving mother passed away peacefully on August 19th 1999. She was 81 years old. She was a kind and gentle woman. We love you so much. Family.</p>	<p>LLOYD Samuel Henry, aged 87 years, passed away peacefully on August 19th 1999. He was a kind and gentle man. We love you so much. Family.</p>	<p>O'CONNELL Bernie To our loving Granddad. Rest in peace. Always remembered by your family.</p>	<p>SHORT Addie our dear sister and Grandmother. Rest in peace. Always remembered by your family.</p>	<p>VAN DER MOLEN John and Mary, your Grandparents. Rest in peace. Always remembered by your family.</p>	<p>Found</p> <p>ST. VINCENT'S 31st August 1999 A black and white male dog, approximately 1 year old, was found on the road near the school. If anyone has information, please contact the school.</p>

Hitting the supercrooks where it hurts most

South Africa's new civilian law enforcers are more interested in bank statements than bashing down doors, RAY HARTLEY writes

BT 22/8/99

(34)(272)

WILLIE Hofmeyr, the head of the Justice Department's new Asset Forfeiture Unit, is typical of the government's new-generation crime fighter

Out of fashion is the brawny, threatening, brandy-and-Coke-powered model, which used to knock down doors in pre-dawn raids and then torture confessions out of the usual suspects

Hofmeyr is far more likely to wind his way through the rush-hour traffic in a Volvo to act on a court order entitling him to seize the possessions of a suspected criminal

Thin, bespectacled and with a voice that has a reedy but persistent tone, he has begun supervising the removal of the garish interior decorations that he believes the criminal classes have been purchasing with the proceeds of their crimes

Hofmeyr's main weapon has been the Organised Crime Act, which has entitled his unit (with the permission of the courts) to seize any goods he believes to have been obtained with dirty money

Hofmeyr's unit falls under the office of National Director of Public Prosecutions head Bulelani Ngcuka, the top civilian in the new policing order

Ngcuka's other weapon will be the soon-to-be operational "Scorpions", an "FBI-style" unit of prosecution-driven crime fighters who will use intelli-

gence and investigation to tag the big fish at the top of the crime food chain.

The new crime-fighting structure, which has taken off since President Thabo Mbeki took office in June, is a response to two challenges — one from the criminal underworld, and the other from within the police force — that have emerged since democracy took root in 1994

The first challenge arose with the tumbling of apartheid-era isolation South Africa suddenly found itself naive and exposed in a world where international criminal syndicates operated more or less like big businesses, moving money and resources to places where the best takings were to be found

Post-apartheid South Africa, isolated for decades from global crime-fighting trends, became a destination of choice. It had none of the legal fire walls against money laundering, and it was desperate to accept international investments

The second challenge came from within the police force, which was underpaid and susceptible to petty bribes. More alarmingly, it emerged that the senior ranks of the police included several people who were themselves involved in serious crimes

The government is now creating a new, high-powered parallel police force that will take over the detective and intelli-

gence functions of the old order. The leaders of this force are mostly civilian, or, as in the case of Frank Dutton, the head of the Scorpions, senior policemen who have proven themselves to be trustworthy. Taken to its logical conclusion, the present restructuring will see the uniformed police reduced to bobbies on the beat, involved in visible policing, public-order control and combating petty crime

The best of the old order's detectives will be cherry-picked for integrity and honesty and assigned to the new civilian-controlled structure, where they will operate alongside prosecutors to improve their investigation-to-conviction ratios

The philosophy of the new civilian-controlled police will be much changed from the present ambulance-chasing style

Instead of deploying massive resources to convict criminals, the force will seek to make it too risky and complicated for crime syndicates to operate by closing down their capacity to launder their money or to benefit from their crimes by purchasing life's little luxuries — 4x4s, impressive houses and wads of foreign currency

As Hofmeyr puts it "Over the past five years there has been a greater realisation that you have to get at the money. The major way to get at the syndicates is to disrupt the

money flow"

Ultimately, should planned money-laundering legislation be passed, Ngcuka, Hofmeyr, Dutton and Percy Sonn, who heads up the Investigating Directorate Organised Crime, will have access to every transaction with a South African bank involving more than R50 000, with a stiff penalty for those who break deposits into smaller amounts to conceal their criminal origins

The million or so bank transactions that take place each day will be recorded by a new Financial Intelligence Centre, which will be funded by part of the money recovered

Those who are able to tell the courts how they came by their windfalls will face prosecution for tax evasion if a check with the South African Revenue Service reveals that they have not shared their good fortune with the tax man

Like businessmen, says Hofmeyr dryly, the crime bosses will have to deal with "increasing costs and increasing risks". The theory goes that they will get stressed out and leave for greener pastures

With his trademark nervous chuckle at the end of the sentence, Hofmeyr adds, almost as an afterthought "We are out there. We are going to get you." The message is simple: don't steal it, and, if you do steal it, don't spend it — the money police are watching

Strict new gun law may go on scrap heap

Opponents believe fresh talks on bill ordered - but Tshwete denies measure now on back burner

ADRIAN HADLAND
PUNJAB EXPRESS

The introduction of strict new firearms control legislation stirred up even more controversy this week after claims the planned bill had been scrapped.

Intended to place severe restrictions on gun ownership in a bid to bring down the high levels of violence and stem the flow of illegal weapons used in crime, the legislation has generated heated debate since it was first mooted last year. Reports today, which quoted gun

industry and government sources, said that Safety and Security Minister Steve Tshwete had halted work on the bill altogether.

It is still in the drafting stage and was expected to be shown to the Cabinet soon before being released for public comment.

But a spokesman for Mr Tshwete denied this morning that the legislation had been put on a back burner. "The bottom line is that the process has not been stopped," the spokesman told the Cape Argus. Anti-gun-law lobbyists and some opposition parties, such as the New National Party, remain convinced

that a new round of consultation has been ordered on what is already the eighth draft of the bill.

A New NP spokesman said he believed the bill would still become law, but that another round of consultation with gun shop owners and anti-control lobbyists had been ordered.

New NP leader Marthinus van Schalkwyk today welcomed "any development that points to the draft gun control bill being reconsidered". "The drafting and consultation process that preceded the draft bill was fundamentally flawed and did not take full cognisance of the view-

points of key stakeholders," said Mr Van Schalkwyk, who has taken a public stance against the bill.

"Instead of targeting the problem of an estimated 4 million illegal guns, the draft bill would have criminalised regulated and responsible gun ownership," said Mr Van Schalkwyk.

Other sources confirmed last week that Deputy Safety and Security Minister Joe Matthews had already begun calling interested parties to tell them the bill had been put on hold and that new inputs were required. Gun shop owners and profession-

al hunters have complained that the bill, if enacted in its current form, would cause millions of rands in foreign exchange and thousands of jobs in the game farming, arms dealing and hunting sectors to be lost.

The South African Gun Owners' Association Western Cape chairman, Jerry Dalman, said he was pleased with the latest development but warned that his association was not going to "release the pressure". "It's a welcome step but you never know what else the politicians could pull out of their hat."

But the official in charge of drafting the bill, Director Riek de Carus of

the SA Police Services legal division, said today he had not been instructed to drop work on the gun control bill.

"As far as I'm concerned, it's business as usual," he said. "The Democratic Party welcomed the news that there would be further discussions and consultations on the bill."

The Safety and Security Ministry, however, insists that the progress toward enacting a new gun control law is continuing.

A ministry spokesman said Mr Tshwete was expecting the latest draft policy document to reach him

this week, after which it would be passed on to the Cabinet for approval.

Gun expert John Ross of Guns and Bows, an arms and ammunition outlet in Bellville, questioned the Government's motives in introducing the bill in the first place.

"The existing act is a fantastic document, it should just be implemented properly," said Mr Ross.

"The act provides for the punishment of people who lose their guns, it prevents people with criminal records from getting gun licences and it controls the use of firearms by lawful owners."

Good intentions not substitute for good laws

THE proposed firearms control bill has sparked considerable debate and controversy in recent weeks. Demonstrations have been held against the bill before its publication and its content has been treated as if it were fact.

It is in the hope of providing a positive contribution to the debate that I set out my views on the kind of firearms bill which I believe would be beneficial to the country in tackling the issue of gun control. We must be informed by the facts rather than by our emotions.

SA today is an armed society, born of the frontier mentality of the original white settlers, the fears and antagonism of our diverse communities which were fuelled by colonialism and apartheid and the subsequent tragic conflicts both within our country and across our borders. Illegal weapons abound throughout our land — the lethal cast-offs of previous and

SA gun control legislation should target criminal elements, writes Velaphi Ndlovu

ongoing conflicts. They are cheap and easily obtainable in SA, where they are used to deadly effect by criminals who bring terror to our streets. It is within this context that we must debate the issue of gun control.

The motivation of those who propose draconian restrictions on the right of law-abiding citizens to bear arms should not be maligning, for their intentions are good. However, good intentions are no substitute for good laws and many of the proposals of the gun control lobby would make very bad law indeed.

Draconian restrictions on the right to bear arms may be effective in certain European countries, but SA is not Europe and the nature of the problem confronting us is entirely different. The foremost challenge that faces SA is to tackle the vast armoury of illegal

weapons in criminal hands. Introducing onerous new requirements on those who hold firearms legally, as certain campaigners propose, would do nothing to confront this matter.

It would simply represent a dream come true for every criminal in SA and a nightmare realised for every law-abiding citizen. The lawful gun owner would be harassed whilst the criminal continued to wander the streets with his weapons. It does not take a genius to work out that it would be law-abiding South Africans who would comply with legislation requiring the surrender of firearms whilst criminals laughed all the way to their next bank heist, burglary or murder victim secure in the knowledge that one of the few protections which are afforded to decent citizens was curtailed.

Such an approach offers no solution to

our problems. If South Africans are to break out of the cycle of armed violence in which we find ourselves, then our laws must be aimed at the criminals and not at those who legally own firearms.

The Inkatha Freedom Party recognises this fundamental reality and has consistently urged the government to take tough action against those who possess illegal firearms and those who seek to introduce weapons of war from neighbouring states and those members of the public who fail to keep their weapons securely or who use them negligently against others.

We have called upon the ruling party to institute a systematic and countrywide search and seizure operation to confiscate guns held illegally. We have demanded that fines and sentences for the possession of illegal firearms should be increased drastically and

that the police should act immediately to confiscate all guns from known criminals. We hope that these proposals will gain recognition when legislation is finally presented to Parliament. Nor do we reject improvements to the current licensing system for legally held firearms.

We believe that there is scope for increasing the fee for gun licences and requiring proper training for licence applicants in the use of firearms.

Legislation that reflected this sensible approach would gain the support of all right-thinking South Africans. It would be both practical and enforceable and would represent a major step forward in our common crusade to remove guns from criminal hands once and for all. Let us hope that reason will prevail.

The author is the IFP safety and security spokesman in Parliament. The article was written before indications last weekend that the gun-control bill had been scrapped.

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Charging windmills will not deter graft

Lesotho Highlands project officials are fighting corruption, says Ronnie Kasrils

(34) BD 23/8/99

TWO recent articles in Business Day tackle the wider issue of corruption against the backdrop of the criminal case brought against a former CE of the Lesotho Highlands Development Authority in Maseru, Lesotho.

Such public debate on corruption is too important to be used as a vehicle to rehash theories and charge ideological windmills which, unfortunately, is what George Dor does in his article. I will not engage in arguments about the merits of Phase 1B of the Lesotho project since that has already been done extensively in your columns, among many others. Rather, we should focus on some of the key issues about corruption.

First, wherever decisions have to be made about large purchases influences are brought to bear legally and extra legally. We need to build systems to deal with this pressure and to keep procurement processes clean.

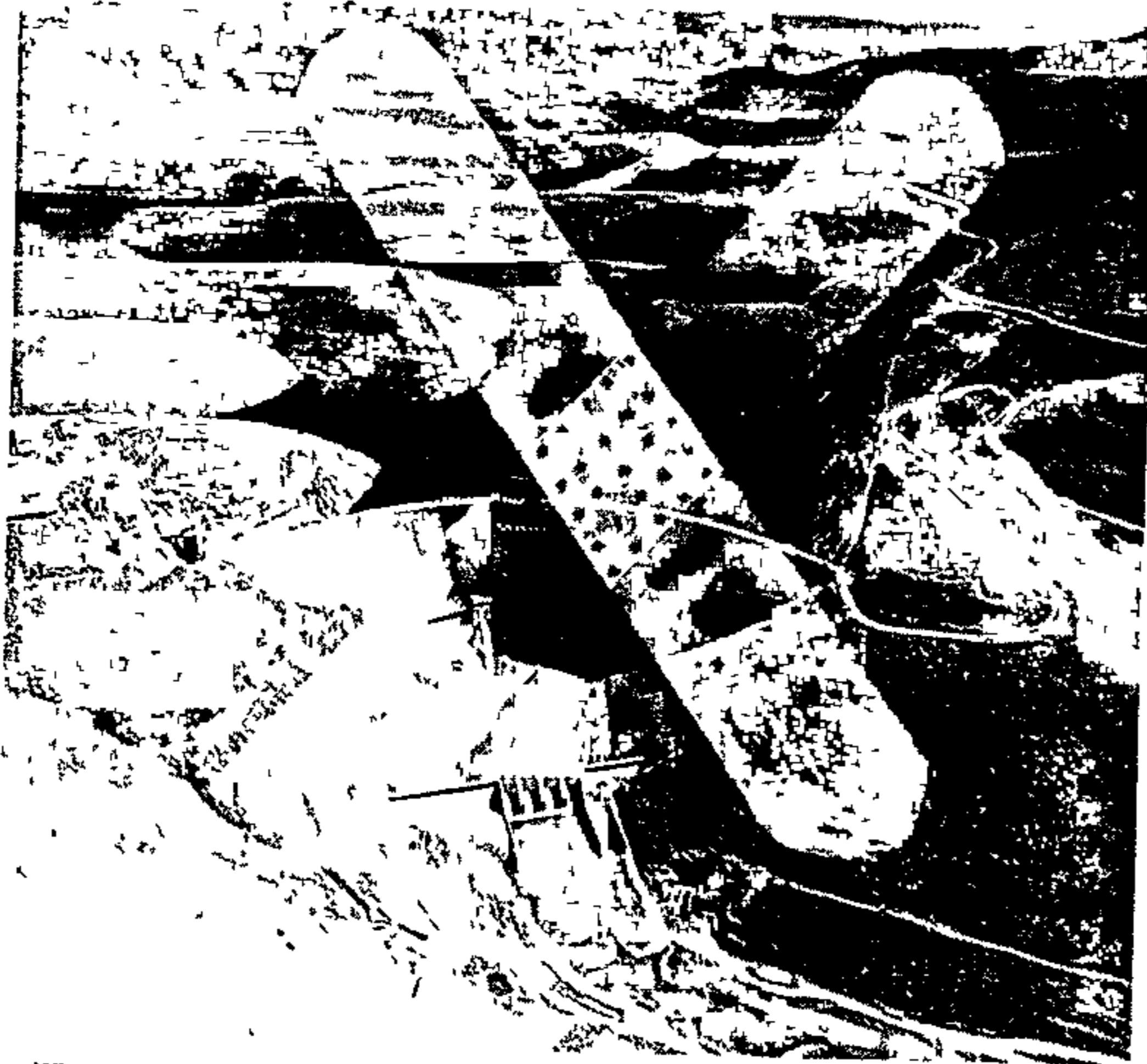
Second, opportunities for corruption occur not just at procurement but throughout the management of our activities.

Our best management systems will only be effective if we create a climate of integrity with which they can operate.

Third, corruption is not about public private debates as Dor suggests. Bribery and corruption occur wherever opportunities for personal gain take precedence over basic ethical principles, whether in the private realm or the public, in construction or in defence.

The fact that bribes have until recently been legitimate tax deductions for most European businesses highlights this.

Dor's remark that my response to the Lesotho case "may have sounded tough, but was totally inadequate" and his questioning of the integrity of the officials concerned shows a sad lack of insight. Does he really



Whatever the criticism, the project remains a fine example of successful regional co-operation

think my predecessor was unaware of the matter?

Both the Lesotho and SA officials who have worked on this as on all other project matters have shown exemplary resolve

in tackling corruption and there has been no withholding of information from the relevant ministers in either country. Besides, ministers have information not just from their own officials but

from each other and from independent sources.

The process that led to the recent charges has been taking place since 1994. It was precisely the "adequate measures and tra-

ditions of international accountability" that Stiaan van der Merwe calls for in his article, which picked up Masupha Sole's seemingly petty noncompliance with internal procedures.

The pursuit of this trail led to the suspension of Sole and his dismissal in 1995. The authorities could have left it there as both public and private organisations often do, to avoid the hard work and bad publicity involved in following up corruption. So, the very decision by SA and Lesotho to proceed with a civil case was exceptional. It was during this long, drawn out court case that evidence was obtained of substantial amounts of money in offshore accounts.

Sole had denied the existence of such accounts under oath, but, through international co-operation, information to the contrary was uncovered. As soon as firm evidence was received in June this year, the Lesotho director of public prosecution instituted criminal charges.

The legal process will now follow its course. Dor should beware of joining a lynch mob. Some of the companies mentioned in the summons have said that they did not make payments directly to Sole, but to their agents in Lesotho. The legal process relies on proven facts and these will doubtless emerge. Until then there must be a presumption of innocence. The available evidence implicates some parties involved in Phase 1A of the project.

Where contracts are still in progress, contract provisions and other sanctions will be applicable to any company found guilty of misconduct.

Where contracts have been completed, the proper authorities will consider legal action to

recover damages. Future sanctions against companies involved in corrupt practices will also be considered.

That is vital to the creation of a climate within which corruption cannot thrive. We will take further guidance from governments and international organisations, including nongovernmental organisations like Transparency International, although this must be dealt with as a matter of policy, not as an ad hoc incident. The tender process will continue to follow recognised international procedures.

All engineering and construction contracts already contain clauses against corruption providing severe penalties in the event of proven bribery.

The implementing authorities have further strengthened controls to ensure that no individual can influence decision making on his or her own.

Audit structures are firmly established in the management of the project and its governance will be further improved with the strengthening of the board of the development authority. So corruption does not threaten to tear the Lesotho Highlands Water Project apart (as the Business Day photo caption reads).

We have confronted the scourge of corruption in a very practical way. We have shown in a very practical way our commitment to making our sector and our countries "islands of integrity" to use the Transparency International phrase.

Those who are not blinded by self-indulgence or prejudice may join us in celebrating our successes and sharing our resolve to do better still.

The project will continue to fly the flag of successful regional co-operation in Africa.

The author is water affairs and forestry minister.

Tshwete halts work on firearms law

(25a) (34)

BD 23/8/99

Process of drafting and public participation was 'deeply flawed'

Wyndham Hartley

CAPE TOWN — Safety and Security Minister Steve Tshwete has scrapped controversial new firearms control legislation following a "deeply flawed" process of drafting and public participation, it was learned yesterday.

Tshwete, after debating the new law in the National Assembly with New National Party (NNP) leader Marthinus van Schalkwyk last Wednesday, was put on the spot when told a draft of the proposed legislation was available on the internet and that safety and security secretariat officials had been defending the measures in public before the draft had even reached the cabinet.

Sources close to the drafting process said late yesterday that the way in which the department went about drafting new gun control legislation was a lesson in how not to proceed.

Interest groups have been left completely in the cold while a high-powered team worked to try to compose a new gun law.

Following revelations that money from the British government has been paid for the drafting of domestic legislation.

Van Schalkwyk said the developments were most "welcome" and showed the value of parliamentary pressure and what could be achieved if the public joined hands with politicians sharing their views. It was important that legal gun owners stood up for their rights and "do not become the victims of ill-considered campaigns targeting the legal owners instead of the criminal illegal gun owners."

Democratic Party spokesman James Selfe welcomed the news and said he hoped this indicated that the focus would be on mopping up the vast number of illegal weapons in SA.

Chris Evans of the SA Gun Owners' Association (SAGA) and Alec Holmes of the SA Gun Forum, asked to comment on speculation in the gun industry in Cape Town, said there had been some discussion with Matthews. They declined to comment until such time as Tshwete had made a public statement.

The draft law has been the subject of much controversy in recent months with SAGA and others indicating that they thought it was simply a way to disarm legal gun owners.

Newly licensed black gun owners have also featured prominently in radio talk shows complaining that after being denied the right to carry arms under apartheid, this was happening to them a second time. The draft of the law available on the internet provides for limitations on the number of guns which can be owned and demands psy-

chrometric testing and vastly increased fees before a licence can be acquired.

There have also been complaints from arms dealers and professional hunters that the proposed law would smash the industry and that millions in foreign exchange would be lost, as well as thousands of jobs in the game farming, arms dealing and hunting sectors.

Tshwete told Parliament that, while there were drafts in circulation, "there is effectively no bill." Nothing was before the cabinet and until such time as it was there was no proposed law.

He also told Parliament that the fact that Van Schalkwyk referred "to discussions taking place outside this Parliament" in the National Assembly debate was enough of a statement on its transparency.

He labelled Van Schalkwyk's claims as "absurd" and demonstrated "lopsided thinking." He called on the NNP to exercise more patience.

While it was not clear yesterday what the process will now be, it is clear that if the drafting of new gun laws is to go ahead it will have to start afresh with a completely new programme of consultation and participation by industry stakeholders.

A spokesman for Tshwete said last night that the minister denied the process had been halted.

He said the minister would be given a copy of the final draft policy document this week. If he approved the draft, it would be forwarded to the cabinet. If the cabinet approved, it would be released for public comment.

IPP criticises draft legislation Page 11

REGISTRAR CALLS FOR COST CUTS

High Court judges told to tighten belts

CAPE HIGH COURT judges are embroiled in a controversy over a strongly worded letter, suggesting how spending can be cut and written by the registrar of the court to the Judge President of the Cape Court Reporter MOTSHIDISI MOKWENA reports

ET 23/8/99

HE Registrar of the Cape High Court, Henrie Heyman, wants judges to stop making international telephone calls, to cut back on the use of assessors in "straightforward, everyday" murder cases and to take notes while sitting on the Bench to reduce the cost of written transcripts.

ET 23/8/99

Mr Justice Edwin King, that he reduce spending on Circuit Courts and witness fees.

ET 23/8/99

Heyman said that the Criminal Procedure Act provided that "an accused arraigned before a superior court should be tried by a judge of that court sitting with or without assessors".

Judges

From Page 1

"totally inadequate" R173m for the 1999/2000 financial year.

Heyman listed a number of items on which savings could be made. Describing Circuit Courts as an "expensive commodity", he said R453 000 had been spent on subsistence and transport claims for judges and other court personnel over the past year, excluding the expenses incurred by transcription staff and the R824 074 spent on government transport.

On the subject of acting judges, Heyman said he did not know why Cape Town lawyers could not be appointed as acting judges.

ET 23/8/99

Apart from salaries, employing one acting judge from out of town cost the state about R33 000 a month, including plane tickets, car and allowances.

He said the telephone account for the Cape High Court in June was R46 708, 43.

Witness fees were another factor that contributed to high costs. Heyman blamed the pro deo counsel system where advocates needed to be in court for only three hours to earn R1 800 a day. This meant witnesses had to go to court over several days.

"They insist on unnecessary postponements just to prolong the duration of the case," Heyman said.

"One advocate who acted in the Flower Gang matter admitted

that he pocketed R400 000 last year for appearing in this case."

Heyman also noted that witnesses called were entitled to a fee for attending court on a specific day — even if not called to testify — and if that person was from outside Cape Town he or she had to be put up in a hotel. He suggested that if the court sat for at least five hours a day, more witnesses could be called, which might reduce court days by a third.

He recommended a system similar to that in Swaziland, where a conference preceded criminal trials to determine, among other things, how the accused would plead. This could cut costs in half, he said.

Heyman's suggestions did not prove popular with three Cape

High Court judges appointed by Judge King to investigate them.

The accusation that judges failed to keep notes was described as "disconcerting" by Judges Fritz Brand, Jeanette Taveroso and Dennis Davs.

On the subject of assessors, the trio of judges said "As far as we know, the policy is to make use of assessors whenever possible, not only in the High Court but also in Magistrate's Courts, to ensure that the Bench is representative."

"We are not sure what you mean by 'straightforward, everyday' murders. Could you please enlighten us?"

They queried how Heyman arrived at his figure of R1,2m for transcription services, and whether the question of the

Circuit Court had been discussed at national level. It was important that people who lived in rural areas also had access to the courts, they said.

The trio pointed out that in terms of their conditions of service, judges were entitled to laptop computers.

The regional head of the Justice Department, Hisham Mohamed, told the *Cape Times* yesterday that justice officials were recently asked to come up with cost-cutting measures to avert serious budget problems. He did not necessarily agree with all Heyman's proposals, he said, including that to cut back on Circuit Courts.

Justice Ministry spokesperson Paul Setsetse said "The department is operating with scarce

resources and it is important that we communicate to all officials the need to use these resources efficiently. We acknowledge that judges are professional people who have to use resources like telephones, but these must be used in a responsible manner."

Setsetse added that the move was not meant to cause a rift between the department and judges and that it should be and understood in its proper context.

"The department is not trying to be difficult or critical of judges and restrict them from performing their duties, but we have an administrative responsibility to ensure resources are used properly and that resources are being used for the proper administration of justice."

Proposed gun law draws fire again

252 (34)

By Claire Keeton

THE controversy around new gun control legislation flared again yesterday, with conflicting reports about the role played by Safety and Security Minister Steve Tshwete in the policy-drafting process.

The Minister's spokesman, Mr André Martin, has denied press reports that Mr Tshwete had intervened to stop the drafting process. Instead he said the process was going ahead and the Minister would be given a copy of the final draft policy document this week.

"Once he approves it, it will go to Cabinet. If Cabinet approves it, it will be released for public comment," Mr Martin explained.

He was responding to press reports that the Minister had scrapped existing policy and instructed his deputy, Mr Joe Matthews, to tell all interest groups that the legislation had been halted.

The new legislation, when finalised will tighten up gun ownership regulations and is meant to clamp down on the proliferation of illegally owned guns.

Secretary for Safety and Security, Mr Azhar Cachalia, said he had met with both the Minister and his deputy yesterday and said that the reports were false.

"There is a draft document (known as the eight draft of the Firearms Control Bill) that has been circulated on the Internet not by the

Government or the department

"The Minister and I have not approved this document. It is nonsense to respond to it."

Mr Tshwete emphasised there was "no Bill nothing of the kind" on his desk or before Cabinet, when New National Party leader Mr Marthinus van Schalkwyk confronted him with the document in Parliament last Wednesday.

However, he confirmed that there were policy discussion documents circulating and at the appropriate moment the relevant Bill would be placed before Parliament.

In response to the NNP's concern that the British government had funded the drafting, Mr Cachalia said the British International Department for Development Aid had supported their work.

"This is nothing unusual, they are supporting development (in South Africa)."

Van Schalkwyk said yesterday that the NNP would welcome intervention by the Minister to stop the drafting process and make it more consultative.

"It is quite clear that the draft Bill circulating at the moment confuses responsible, legal gun ownership with criminal, illegal gun ownership," he said.

"The fact that the drafting process has been hijacked by people who are also opposed to legal, responsible gun ownership in a quest for a so-called 'gun free South Africa', has resulted in a biased process," the political leader said.

ONE GUN PER PERSON

Tshwete goes ahead with draft gun laws

SAFETY AND SECURITY Minister Steve Tshwete is studying the controversial draft gun-control laws. Political Correspondent **ANDRÉ KOOPMAN** reports

ET 24/8/99 (252) (34)

DESPITE opposition party and media claims to the contrary, the Minister of Safety and Security Steve Tshwete is moving on with the process of enacting a much stricter gun control law, his spokesperson, André Martin, said yesterday.

Martin was reacting to newspaper reports yesterday that Tshwete had scrapped controversial new draft firearms control legislation because the drafting and public participation process had been "deeply flawed".

Martin said yesterday "The process is going ahead."

Tshwete had been given a final copy of the draft policy document this week, and if he approved it it would be taken to the cabinet for approval and then released for public comment.

A spokesperson for the NNP said in a statement yesterday: "The fact that Minister Steve Tshwete denied that the draft Firearms Control Bill would be halted until further consultation points to a sudden U-turn in his approach."

Proposals for the new legislation have been criticised by gun owners who claim they will criminalise legal owners.

The proposals were, however, heartily welcomed by advocates of a gun-free South Africa.

In terms of some of the proposals considered, gun owners would have to re-apply for their licences and would have to pay a licence fee of R500, instead of the current R50.

Each gun owner would also be restricted to one weapon.

Limits on heavy calibre guns have also been proposed and people showing an inclination to violence would be barred from owning firearms.

NP leader Marthinus van Schalkwyk said yesterday in a statement it was quite clear that the draft that was being circulated confused responsible, legal gun ownership with criminal, illegal gun ownership.

"The hijacking of the drafting process by people who are also opposed to legal, responsible gun ownership, in a quest for a so-called 'gun-free South Africa', resulted in a biased process," Van Schalkwyk said.

The outcome of this process would effectively have been to outlaw gun ownership for ordinary self defence and would have

severely restricted participation in hunting and other shooting sports, he said.

The SA Gun Owners' Association (Sagoa) claimed that the proposals would threaten the arms retail and manufacturing industries.

But SAPS deputy director Berni Fanaroff has steadfastly defended the proposals over the past few weeks. He has said it is not possible to control illegal guns without increasing the controls on legal guns and their owners — because most illegal weapons start out as legal guns.

The DP's spokesperson on Safety and Security, Graham McIntosh, said yesterday the process of formulating the new law had not been transparent, nor had there been adequate time for submissions before it went to cabinet.

"Despite several formal requests, the DP has not yet been furnished with an authoritative version of the proposed legislation," said McIntosh.

From the information available, the proposed legislation appeared to be "unduly restrictive against owners of legal firearms, and does not address the real problem — that of illegal weapons."

"Moreover, some of the proposed control measures are hopelessly unrealistic and unworkable," McIntosh said.

Battle for new gun law heads for high noon in the House

POLITICAL STAFF

The bitter skirmish over proposed gun control laws appears poised to move to the corridors and committee rooms of Parliament.

The final draft of a new firearms control policy document would be put to Safety and Security Minister Steve Tshwete this week, his office said, and if he was satisfied with it he would present it to the Cabinet for approval.

Questioned in Parliament last week about reports of strict firearms control legislation in the offing, Mr Tshwete said there was no bill before Parliament.

Reports that the initiative to drastically limit private gun ownership had been "scrapped" heightened those opposing the proposals as misdirected and impractical.

But Mr Tshwete's office this week denied the reports.

The drafting process would go ahead, and if the legislative proposals were approved by the Cabinet they would be subject to public comment before being forwarded to Parliament, where it was expected public hearings would be convened by the committee dealing with the bill.

Graham McIntosh, Democratic Party spokesman on safety and security, said the drafting process so far had not been transparent and there had not been enough time for submissions prior to the plan being put to the Cabinet.

In spite of several formal requests, the DP had not seen an "authoritative" version of the proposed legislation.

"From the information available, the proposed legislation appears unduly restrictive against owners of legal firearms and does not address the real problem, that of illegal weapons."

He said the DP had over the years made various proposals aimed at ensuring that firearms were owned only by responsible and law-abiding citizens.

"A policy that seeks to remove firearms from law-abiding citizens without dealing with the scourge of unlicensed firearms is misdirected and grossly irresponsible," Mr McIntosh said.

Marthinus van Schalkwyk leader of the New National Party, decried what he termed Mr Tshwete's "U turn" in denying media reports that the draft proposals were to be halted.

Njongonkulu Ndungane, the Archbishop of Cape Town, said yesterday that new legislation was "urgently required to restore the safety and security of our people and to affirm the value of human life and dignity."

He called on the Government to proceed with the bill.

'Govt will consult all parties on gun law'

Wyndham Hartley (252) (34)

CAPE TOWN — Safety and security secretary Azhar Cachalia says government will consult all stakeholders, both for and against gun ownership, before new firearms control legislation is finalised.

He insisted that the policy document currently in circulation was just a draft.

Cachalia said yesterday the process of producing legislation for the control of guns in SA had not been halted. He said the document circulating on the Internet was not draft legislation.

Cachalia said neither he nor Safety and Security Minister Steve Tshwete had approved the document. Draft legislation became a bill only after it had been approved by the cabinet for submission to Parliament.

New National Party leader Marthinus van Schalkwyk said "The fact that Tshwete denied that the draft bill would be halted until further consultation, points to a sudden U-turn in his approach."

Democratic Party spokesman Graham McIntosh welcomed the halting of the bill. He said any policy that sought to take guns from law-abiding citizens without first dealing with unlicensed ones was "at best misdirected and at worst grossly irresponsible."

A working document from the leader of government business, entitled Draft legislation in progress, and dated early August, records that a Firearms and Ammunition Control Bill was in the process of being drafted and would be tabled in Parliament in mid-August, an indication that government was planning to introduce the legislation without public participation. Business Day has a copy of the document.

Gun Free SA chairman Sheena Duncan said stricter gun control laws were urgently needed. She agreed that the drafting process had been flawed and that public participation was needed to ensure that ordinary people were heard.

BD 24/8/99

Maharaj opposes policemen's amnesty applications

DURBAN Former transport minister Mac Maharaj yesterday dismissed the amnesty applications of five former security branch policemen as "concocted" stories and opposed them on the basis of his insider knowledge.

Maharaj, former internal commander of Operation Vula, addressed the TRC's amnesty hearings here, and questioned the circumstances surrounding the abduction, detention and secret murder of two Operation Vula

operatives 11 years ago. The amnesty committee heard that Charles Ndaba and Mbuso Shabalala were "arrested" in Durban on July 7, 1990, shot dead a week later and their bodies thrown in the Thukela River.

Five former Port Natal security branch policemen — Major Hendrik Botha, Major Salmon du Preez, Colonel Laurence Wasserman, Lieutenant Casper van der Westhuyzen and their commander, General Johannes Steyn — are

seeking amnesty for their involvement in the crimes.

Botha told the committee last week that he recruited Ndaba as an informer in the late 1980s. Ndaba was a uMkhonto we Sizwe commander in Swaziland in charge of military activities in Natal.

Presenting evidence on behalf of the Ndaba and Shabalala families yesterday, Maharaj punched holes in Botha and Steyn's evidence by presenting three sets of damning articles compiled in 1988

by Wasserman and Botha. In the articles, which were circulated to over 14 security branch groups countrywide, Ndaba was listed as one of the most wanted men in the country, but his name did not have a "PN" reference number used to identify police informers.

Maharaj disputed evidence that Ndaba had told policemen about the presence in the country of Operation Vula's top command, saying the policemen had made false disclosures. — Sapa

ET 24/8/99 (252)

Ex-chemical warfare chief suspended

By Jimmy Seepe

FORMER apartheid chemical and biological warfare expert, Dr Wouter Basson - who won a provisional court action against the Asset and Forfeiture Unit which was ordered to return his assets - has been suspended by the Department of Defence.

Department spokesman Mr Puso Tladi told *Sowetan* that Basson, who had been allowed to continue his practice at the Number One Military Hospital at Voortrekkerhoogte, Pretoria, was served with a formal suspension order by the department recently.

However, the department decided to suspend him with full pay.

The decision to suspend Basson followed a public outcry after it was found he continued to practise even though he was facing serious charges which included the manufacture of chemicals that were meant to render black women sterile.

The former apartheid chemical expert is expected to appear before the Pretoria High Court again today to hear whether the case against him will be thrown out of court by the acting judge.

Basson's trial on charges of theft, fraud, murder and conspiracy is expected to start in the High Court on October 4.

Last week, Pretoria High Court Judge Pierre Roux stunned representatives of the Asset Forfeiture Unit when he provisionally suspended the seizure of Basson's assets and ordered them to be returned to him.

Yesterday the unit's head, Mr Willie Hofmeyr, told *Sowetan* he was hopeful that the judge would act in their favour when they return to court today.

However, legal practitioners are not hopeful that the unit will succeed following last week's ruling by the judge even though the matter was not before the court.

Roux said the interim order violated Basson's constitutional rights, which included his right to a fair trial.

Roux expressed doubts as to whether the interim court order should have been granted in the first place.

He was especially concerned that counsel for the Director had apparently failed to reveal to the judge who granted the order that there had been a prior agreement in which Basson admitted that he had no interest in the bulk of the assets which the state wanted to seize.

Roux described the Prevention of Organised Crime Act as so wide that it covered "just about anything". Hofmeyr told *Sowetan* yesterday that they were surprised by the judge's decision as Basson's lawyers had gone to court not to call for the suspension of the order against their client.

Apartheid mastermind

He said Basson's lawyers had asked the unit to allow the judge to allow for the suspension of one account to allow the former apartheid biological mastermind to continue paying his accounts and interests.

We together with Basson's representatives, were stunned when he decided to suspend everything against him and not allow a legal debate on the matter between the advocates.

"We thought we were still arguing the case between ourselves," Hofmeyr said.

On Monday Hofmeyr held an urgent meeting with the Director of Public Prosecution Mr Bulelani Ngcuka to discuss the High Court decision.

wants its R2,9-m back

former head of the South African Service, has been told to repay the million spent on a printing company that employed his wife and was brother of a SACS employee - was contained in a letter dated and made public yesterday. It was Netshtenzhe, head of the Government and Information System, SACS Section 34 of the Exchequer Act, we to recover the amount of R2,918'400 - the then head of SACS, in contraventions of the State Tender Board, company Quality Press (Pty) Ltd."

the necessary arrangements to pay debt within 30 days of receipt

nor Kotane could be contacted for comment, and it could not be whether Kotane had complied with Sapa

for medical students

will be implemented for medical students did not admit more black students. Minister Dr Manto Tshabalala-Msimang at a parliamentary briefing that one priorities would be to speed up of training institutions in the health places for people from historically-backgrounds, especially women and areas. "In five years, after our we continue to detect hesitations of higher learning," she

kills himself

in a Brits child prostitution court suicide at the weekend, North West Du Plessis (29) jumped to his death floor of a block of flats in Brits at on Sunday night, police spokes- Erica Roos said from Rusten-

hit the roof of a furniture shop

Du Plessis was one of two late trial of a couple who allegedly prostituted aged 11, 15 and 17 - Sapa

for attempted murder

OLD matric pupil was arrested for after a fellow pupil was shot and Monday at a Dersley Park school in East Rand, police reported.

Gouws yesterday and a 20- was hit in her upper left arm - hospital and was in a serious

The serial numbers on the by filed off Sapa

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Heath unit 'needs more money'

SOUTH Africa's anti-corruption watchdog appealed to Parliament yesterday to help it find more funds or risk curtailing its investigations into fraud and maladministration in the national and provincial governments.

"It becomes extremely difficult to operate within present constraints. We are restraining our activities to minimise cash flow," finance manager of the Heath special investigating unit Mr Herman Coetzee told Parliament's finance committee.

"To continue in the way we're supported, we have to get additional funding from the Government or look at alternative sources of funding," he said.

Judge Willem Heath, who heads the unit, said if the organisation was to operate within its current budget, it would have to turn down some of the cases referred to it.

He said the unit handled up to 100 000

cases at any one time, putting immense pressure on its 55 investigators. The unit had already lost staff because their salaries were no longer competitive.

For the financial year ended March 31, the unit was allocated R16,89 million by the Government, compared to a requested budget of R33,6 million.

The latest audited figures show the unit recovered cash and assets worth R60,37 million and prevented losses to the Government of R1,33 billion between the beginning of 1998 and the end of March this year.

"It is much better to prevent loss by the unit than to try and recover it afterwards," Heath said.

He has repeatedly clashed with Finance Minister Trevor Munnik over the funding of the body. Additionally, the judge and his unit have made many enemies in the

Government by exposing corruption.

Heath's unit investigated then Health Minister and current Foreign Affairs Minister Nkosazana Zuma on charges that she mismanaged Government funds over her support of the controversial anti-Aids play *Sarafina 2*. Zuma and her department were cleared in April.

The judge said that if the Government could not afford to give the unit more money, a cut of the money it recovers, it should look at allowing the body to raise funds from alternative sources, like donations from abroad or the private sector.

However, Parliament would have to amend current legislation to allow the body to raise its own money. Finance committee chairwoman Ms Barbara Hogan asked Heath to hold talks with the Department of Justice to investigate it would be possible for the issue to be resolved. Sapa

Court seeks media help as Legal Aid Board chaos halts trial

SAPA AND STAFF REPORTER

A request by the Cape Town Regional Court for the media to help a lawyer contact the Legal Aid Board has revealed an apparent red tape snarl-up at the board.

Last week a lawyer on a legal team representing 12 men and a woman accused of fraud involving R3-million in an emeralds scam asked to be withdrawn from the case

after attempts to contact the Legal Aid Board over his outstanding bill of R23 000 had failed.

Yesterday magistrate A J Ferrera refused lawyer Abre Basson permission to withdraw from the case after the board gave an undertaking to pay the bill by Monday.

But just as the hearing seemed set to resume after being bogged down for more than a week by the legal team's financial woes, striking interpreters brought it to a halt again.

Mr Basson told the court he ran a one-man practice and was no longer willing to give his professional attention to the case without at least an indication from the board about when he could expect a cheque.

According to attorney Wallace Roux, who represents two of the accused, the board owed five of the six attorneys fees of R132 000.

The lawyers were given a week to resolve their difficulties with legal aid authorities. But when the trial

resumed on Monday, no progress had been made.

A new rule at the Legal Aid Board that banned telephonic discussions with legal aid officials, and demanding communication in writing, had caused the delays.

Mr Basson said the board had ignored faxes asking for his fee, and claimed there was no way of communicating with the board.

On Monday, the proceedings were adjourned again when Mr

Ferrera instructed that the Pretoria-based board be contacted again on behalf of the legal team.

After attempts to contact the board through its fax line for more than an hour failed, Mr Ferrera asked the media to intervene.

He said, "If we cannot make contact with the Legal Aid Board via fax or telephone, it will be have to be done through the media."

He said the trial had already lasted for 32 days and 67 hours of

testimony had been recorded.

Although Mr Basson represented only two of the accused, the implications for all the accused would be serious if the court permitted his withdrawal, said Mr Ferrera.

He said Mr Basson's clients could, if the withdrawal, continue without representation but this would mean a delay of at least six months.

Mr Basson told the court yesterday that he had finally received a written undertaking from the board.

NATIONAL

BUSINESS DAY, Wednesday August 25 1999 3

NNP concerned over officials' part in bill

Wynham Hartley

CAPE TOWN — New National Party leader Marthinus van Schalkwyk said he had raised questions in the National Assembly with the view of exposing how a non-governmental organisation was contracted to draft new firearms legislation and how they were paid.

Van Schalkwyk also expressed concern about the fact that two senior public servants — Safety and Security Secretary Azar Cachalia and Public Protector Selby Bagwa — served on the advisory board of the Institute for Security Studies which was contracted by government to draft the gun control legislation.

Van Schalkwyk aims to expose NGO's role in drafting firearms legislation

He said he had been unable to obtain a list of who from the institute was on the drafting committee, which was apparently a secret. He said it was unacceptable for Bagwa as the public protector to serve on an institute which was being paid to do government work. Bagwa, investigating was ruled out by the obvious conflict of interest, Van Schalkwyk said.

Van Schalkwyk said his questions in the National Assembly were designed to discover whether or not foreign funding had been accepted from anti-gun countries other than Britain to fund the drafting of

the bill. He had also asked Safety and Security Minister Steve Tshwete whether the British funding went through the safety and security secretariat or whether it was paid directly to the institute. He asked whether the secretariat facilitated the British funding and whether there were any "strings attached".

Tshwete is also being asked whether SA taxpayers' money is being paid to the institute and whether he could confirm that the institute was being paid R3m in a parallel campaign, the Conservative Party in Britain would ask questions in the House

of Commons about the British funding of the bill.

Cachalia provides guidance and advice to the institute along with the chairman of the Gun Free SA campaign Sheena Duncan and about 14 others. He confirmed last night that he served on the board but said if a conflict of interest had arisen he would have recused himself. He said in his capacity as secretary he had signed an agreement between the institute, his department and the United Nations Development Project that the institute would deliver a "document" partially funded by the UN

document. Cachalia said either this week that the process of producing new firearms control legislation had not been halted by Tshwete's intervention, or that the draft Firearms and Ammunition Control Bill existed. The document at the centre of the controversy a "draft policy document".

Duncan, however, in an e-mail to members of the Charter for Gun Control on July 25 says that "the safety and security secretariat contracted the institute at the end of 1998 to run the process of drafting new legislation for firearms control. No interest groups were included in that drafting committee which was wise as the drafting committee had to translate the policy documents into legislation".



Guilt is not the point for vigilante group

Mapogo a Mathamaga draws strength from social trends that arose in the dying days of apartheid, writes Jonny Steinberg

IN MARCH 1997, in the small Sekhukune land village of Mphanama, a group of about 40 men brandishing sjamboks and wearing T-shirts of the newly formed vigilante outfit Mapogo a Mathamaga beat to death a man accused of robbing a local trader.

The following morning local youth organised a boycott of all businesses owned by Mapogo a Mathamaga members. They turned delivery vans back and a shop belonging to a Mapogo a Mathamaga member was burnt to the ground. That afternoon about 70 older men drove the youth off the streets and stood guard while delivery vans entered the village.

Residents could have been forgiven if they were overcome by a feeling of déjà vu. Eleven years earlier, in 1986, the streets of Sekhukune land's villages had also been filled with warning men. Mapogo a Mathamaga is relatively new and claims to be growing beyond the province's borders. Initially a very local vigilante group, it is becoming a gathering point for a range of people disaffected with the state and its limited ability to deal with crime.

The police say Mapogo a Mathamaga is dangerous and that it uses illegal methods. The courts are trying its leader on murder charges. Even if convicted how easy is it going to be to put this genie back into the bottle?

In 1986 as in 1997, youths were pitted against vigilantes hired by local businessmen. Then, the young weaved home-made African National Congress and SA Communist Party flags. Businessmen including John Magolego, who was later to become a National Party and United Democratic Movement candidate in the 1994 and 1999 elections, recruited vigilantes to fight them.

Today, Magolego is president of Mapogo a Mathamaga and is again waging war on the young — this time in the name of order. And the young fight back with blind rage.

"The notion that Mapogo has a sophisticated intelligence network is nonsense," says former Northern Province safety and security MEC Seth Nthal. "We are talking of small towns and villages where people know each other. If a crime is committed Mapogo will not try to get to the bottom of it. They will go to a known criminal and beat him." Finding the guilty one is not the point

of the exercise says a Sekhukune land businessman who asks not to be named. The point is to put on a public display of order. The point is to take someone young and unemployed, someone with no wife, someone who may well put food in his mouth by stealing from someone like me and to make him beg for mercy."

Why target the young specifically? Once again the answer lies in recent history. The Sekhukune land uprisings of 1986 were as much a revolt against the mores of elders as a battle against the apartheid state.

Rejecting the chieftancy as a reactionary institution, the young began to assume social and political functions reserved for chieftly courts and family elders. Bands of youth sat in judgment on middle-aged men for abandoning their wives. Elderly men and women were accused of witchcraft, locked in their homes and burned to death.

"Youths performing these functions turned the world upside down," says a provincial government official, who prefers not to be named. "For all their problems, the chieftly courts did preside over matters of the heart and soul. Losing these institutions to mobs of youngsters was like losing one's soul."

There is a breakdown of age-old forms of youth socialisation in Sekhukune land says Peter Delius, whose book, *Allon Amongst the Cattle*, charts the history of the area from the 1930s to April 1994. "The youth were educated on a massive scale for the first time. They saw their uneducated elders as jealous, jealous and witchcraft are closely associated. The path from one to the other is short."

The youth of Sekhukune land live in one of the poorest and most job-starved regions of the country.

"The young are educated but cannot find jobs. Nor do they have sufficient livelihood to get married. There is an entire generation of people who cannot establish themselves as adults. The result is that the young are an unstable and dangerous category. The young ask, 'who am I? And the old ask, how do we control them?'"

Mapogo a Mathamaga's members are mainly of small rural businessmen. "It was easier in the past," says Delius. "If one had many cattle one leaned them out. Those old ways of



Vigilante groups have grown as the state has failed to protect citizens from crime. Graphic: RUBEN DAVIN

dealing with wealth discrepancies are not easily translatable to new forms of wealth, like that of the shop owner. Everyone is strapped for cash. Everyone asks to buy on credit. When do you cut them off? These things are undefined."

Mapogo a Mathamaga's public symbolism is revealing. When the group opens a new branch, Magolego rides in to town with a large entourage of sjambok-wielding supporters. His first stop, ceremonious and drawn-out, is at the local chief's house. After lengthy consultation behind closed doors he emerges clasping the chief's hands.

"There is something eerie about that ceremony," says the provincial official. "Ostensibly Magolego is helping resurrect an old form of order and civility. But his mobs bastarde and divilify what the chieftly courts did in their heyday. Then a court would mediate between a wife and an adulterous hus-

band. Now, the wife calls Mapogo a Mathamaga and its henchmen go out and beat the man up."

In the past 18 months, Mapogo a Mathamaga's influence has spread. Magolego's claims that the organisation is establishing a presence in the urban areas of Gauteng appears greatly exaggerated. But Northern Province and Mpumalanga farmers have joined in their thousands, the bright Mapogo a Mathamaga stickers on their farm gates warning that those who cross them face a mighty and gruesome response.

"It is simply an act of desperation," says the provincial official. "Farmers were getting slaughtered in their own yards. The police seemed ineffectual and here was this legendary organisation that finds criminals like magic and beats the living daylight out of them." Nthal has harsher words for white farmers who join Mapogo a Mathamaga.

"Mapogo has become an excuse for a racist backlash among white right-wingers. Mapogo has given them a legitimate discourse. They can now call blacks criminals and feel they have a reason to beat people."

Nthal believes that Mapogo is both bigger and more ephemeral than either Magolego or any infrastructure.

"Mapogo has become a legend which means different things to different people. Magolego is not in control. When there is a Mapogo incident, it is not clear that Magolego's network even knew about it. The thing has snowballed out of his control."

The night before Nthal was interviewed three white men in Potgietersrus pulled a black policeman off the road and beat him senseless. "I will bet you anything you like there were Mapogo stickers on the back of their cars," Nthal says. "Anything you like."

Court sets aside Basson asset order

DD 26/8/99

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Stephané Bothma

PRETORIA — The Pretoria High Court accused the office of the national director of public prosecutions yesterday of being "less than frank" and of withholding evidence in an application for the seizure of property belonging to Wouter Basson.

The court set aside an order for the seizure of property allegedly obtained with money stolen by Basson, SA's germ warfare mastermind.

Judge Pierre Roux made a punitive cost order against national director of public prosecutions Bulelani Ngcuka as a "form of judicial disapproval" for bringing a "hopeless application" before the court.

Less than two hours later Ngcuka strongly criticised the ruling and said he had already given instructions for an urgent appeal. "I want that property and will get it even if it means going to Parliament to amend the constitution," Ngcuka said. He did not elaborate.

An interim order seizing Basson's alleged assets was granted in terms of the Prevention of Organised Crime Act by acting judge Nellie Cassim on August 3. According to Roux, no admissible evidence was produced to support it.

The urgent application to seize Basson's assets was brought after he was charged with 67 counts of fraud involving at least R45m relating to the period when he was in charge of SA's top-secret chemical and biological warfare programme code-named Project Coast.

The assets seized included his home in an upmarket Pretoria suburb, a Cape farm, loan and bank accounts in the US and the UK, a R3m holiday cottage in the UK and a Swiss bank account.

Roux said Ngcuka and some of his staff failed to inform the court that Basson had offered to cede his rights to some of the property.

"It would appear that the applicant (Ngcuka) was less than frank in his affidavit and that there was an attempt to bolster his case on the merits," Roux said. He had relied on double-hearsay and opinions of others to draft his affidavit in support of the application. "His affidavit is quite inadmissible."

Roux said Ngcuka's staff had a clear duty to disclose Basson's offer to the court.

He also criticised the act, saying it was so convoluted that it created an untenable situation. He found the act came into operation only on January 21 this year, while Basson's alleged crimes were committed many years before.

"I find nothing in the act that proves that a crime committed before January 1999 can be visited with an added penalty," Cassim had erred in granting the interim order, he said.

Ngcuka said although there were areas in which the act could be clarified and improved, he believed the court misdirected itself by finding that the criminal forfeiture provisions in chapter 5 of the act were not retrospective.

He denied that Basson made any offer to his office.

Lack of prosecutions highlighted

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Heather Hogan

Less than half of all crimes reported result in prosecution, while three quarters of crimes prosecuted result in a conviction

According to the Nedcol/Institute for Security Studies *Crime Index* update, there are two factors by which the performance of the criminal justice system can be judged

One is the number of cases solved sufficiently by police for prosecutors to decide to prosecute, and the other is the number of cases which go to court and result in successful prosecutions. The report found that the justice system was failing miserably in the first instance, but doing "surprisingly well" in the second

Only 24,5% of murders, 17,7% of rapes, 17,5% of assaults with intent to do grievous bodily harm, 6,4% of housebreakings, 4,2% of robberies, 3,1% of car thefts and 2,8% of carjackings handed over for a decision to prosecute in 1998 were prosecuted

According to the report, the number of prosecuted cases resulting in convictions was "dismally low". Only two out of every 13 murders, one out of every 11 rapes and one out of every 53 carjackings resulted in a conviction

The trouble seems to stem from witnesses and victims refusing to proceed with cases. This is especially common when the victim and offender know each other. Last year 53,5% of cases of assault with intent to do grievous bodily harm and 38% of rape cases were withdrawn

In cases where police were the main witnesses, a high number of cases ended up in court, including 86% of drug offences and 88% of drunk driving offences. More than half of those cases resulted in a conviction

Prosecutors only take on cases where "there is a reasonable prospect of obtaining a conviction". The report credits the three-quarter conviction rate after prosecution to this factor. About 90% of drug related crimes, 80% of housebreakings, 75% of car thefts, 67,2% of carjackings, 63,9% of murders and 50,4% of rapes resulted in convictions

"It is at the pre-prosecution stage where one of the criminal justice system's main weaknesses lies," states the report. "There is an above-average chance that accused persons will be punished for their crimes once the courts decide to prosecute them. However, for the unscrupulous crime pays, as most accused persons are never caught or prosecuted"

SA can set anticorruption example

Government cannot tackle scourge on its own, Judge Willem Heath says at Business Day's business achiever of the year award ceremony

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The power and success of any emerging democracy lies in its economy. A sound financial basis will result in a strong sociopolitical and socioeconomic environment which in turn can support a system that enshrines strong democratic principles.

SA is no different. Since the transition to democracy, SA has emerged as the powerhouse of southern Africa. Nowhere has this been more evident than in our interactions with neighbouring countries. Our international ties are also indicative of the respect and admiration we enjoy with first-world countries and their recognition of SA as a leader in sub-Saharan Africa.

On a local level, the realignment of the cabinet after the elections has shown a commitment to service delivery by government. President Thabo Mbeki has appointed his cabinet to enhance delivery and promote democracy and good governance.

US Vice-President Al Gore in the electronic journal of the US Information Agency, Economic Perspectives, said the following:

"There is no question that as we move into the global information age, foreign corrupt practices threaten to undermine both the growth and the stability of our global trade and financial system. Nowhere are the consequences more evident than in emerging and developing economies. The financial crises in Russia and Asia have clearly been deepened as a result of cronyism and corruption. As emerging economies open their doors to foreign investment and trade, corruption tends to thrive. At worst it can impede the ability to attract overseas capital, it can damage economic development and reform and it can hinder the growth of democratic institutions."

There is no doubt that corruption has a profound effect on the financial position and the economy of a growing country. The strength of a country's economy is directly proportionate to factors such as

imports and exports and to the quality of government administration and to the level of corruption.

Corruption hurts everyone. It deepens poverty, it distorts social and economic development, it erodes the provision of essential public services and it undermines democracy. Instead of fair competition based on price quality and innovation, corruption leads to competitive bribery. This harms trade and deters new investment.

In the 1998 Transparency International Corruption Perception Index, four African countries — Uganda, Kenya, Nigeria and Tanzania — appear within the last 13 of 85 countries surveyed.

Africa as a developing continent, faces a major problem not only with corruption but even more so with the perception of corruption. In the same index, the first African country to appear is Botswana, ranked 23, followed by Namibia at 30 and SA at 32 out of 85 countries.

There is a growing consensus among developed and developing countries alike that the fight against corruption advances national and economic interests. Combating corruption is now one of the highest priorities on the agenda of both international development agencies and leading organisations.

I believe that combating corruption effectively and sustainably is possible only with the involvement of all stakeholders. These include the state, civil society and the national and international private sector. Government cannot tackle corruption effectively on its own other than in highly authoritarian and potentially abusive ways.

We must build systems that combat corruption. The three most important aspects in the fight against corruption are

- Raising awareness about the costs of corruption,
- Promoting good governance delivery-driven and clean administration, and
- Strengthening the justice sector. Corruption is present in every



JUDGE WILLEM HEATH

country in the world. The only difference is that some countries have managed to control it more effectively than others. One of the principle ways of doing this is to raise the awareness of the private and the public sector with regard to the cost of corruption. Both the public and the private sector are on the receiving end of fraudulent schemes and the effects are clearly evident in the economy.

By raising awareness we can educate people to the fact that cor-

ruption leads to lack of delivery, inaccessibility to basic services, unavailability of education, training and medical services, and lack of funds for pensions, welfare grants, and housing. All these elements affect the poorest of the poor and lead to an increase in crime.

Examples currently being investigated by the special investigating unit include the following:

- In housing subsidy cases, the cash recovery to date has been R3 286 000. This amounts to 219

subsidies. The monthly amount recoverable through acknowledgements of debt is R22 685. At present 122 cases are involved. The unit has received 21 default judgments involving R315 000 and six more cases are due to be heard next week in the special tribunal. In addition to this, a summons is to be served on a contractor next week to the value of R608 040 — equivalent to 40 subsidies.

In pension cases, 1 048 state employees have allegedly drawn a pension as well as a salary. The value of potential recoveries is R53m. On an average pension of R500 a month this would mean that 9 397 persons could have received a pension every month for 12 months.

The legislation establishing the unit was one of the first acts of Parliament towards a clean administration. In so many cases, we find people are deprived of their rights because a corrupt official in collusion with the private sector is trying to make a "quick buck" or become involved in major syndicate activities.

The promotion of good governance and a delivery-driven and clean administration is essential to the survival of democracy. It is encouraging to see that the government has made great strides in this direction through the establishment of bodies such as the public protector, the Independent Directorate Serious Economic Offences, the National Directorate of Public Prosecutions, and the special investigating unit.

Also the improvement in transparency and the oversight in government through activities such as integrated financial management systems and training and technical assistance for audit institutions and anticorruption agencies have become essential in this fight.

Another essential ingredient is that the bodies created to fight corruption have the necessary independence and backing. Independence is vital to their credibility and integrity. It builds better watchdogs in society and creates a greater confidence in the country.

Corruption flourishes where institutions in the justice sector — including the judiciary, prosecutors, police investigators and the private bar — are weak and incapable of investigating and prosecuting criminal activity.

To address these problems it has become essential to look at drafting new criminal and anticorruption laws to support those already in existence, comprehensive training at all levels including the judiciary and improving the court administration to prevent tampering with records and reduce the delays experienced in hearing of cases.

By strengthening the justice sector and giving it the tools it needs, we will not only create the deterrent effect but also cultivate a new belief in our legal systems.

We have already experienced the deterrent effect that the unit has on corrupt practices. Often even before an investigation commences or is concluded — the unit receives calls or approaches to sign acknowledgements of debt or to admit corrupt practices. This amounts to good and clean administration.

The recent upheaval in developing country economies underscores the importance of transparency in public institutions and public decisions. Evidence also shows that countries with notoriously high levels of corruption risk marginalisation in a world of rapid economic integration. We cannot allow this to happen to our fragile democracy.

A massive investment in anticorruption campaigns will most certainly result in a substantive decline in corruption and a very visible economic growth and stability. SA does have the potential to manage corruption effectively and prove, not only to its neighbours, but to the entire world that it is setting the benchmark in combating corruption in the new millennium.

Heath is head of the special investigating unit. These remarks have been edited.

'Less criticism as results seen' We'll win in the end, says upbeat Ngcuka

PARLIAMENTARY BUREAU

National Director of Public Prosecutions Mr. Bulelani Ngcuka said yesterday his former leadership role in the ANC put him in good stead with IFP leaders and had not experienced problems in investigations into political violence in KwaZulu-Natal.

Speaking at a media briefing Mr Ngcuka said he might have been criticised in the beginning but now people could see the results of his work. He said the IFP were co-operating with the Directorate.

Mr Ngcuka said the number of criminal prosecutions of offenders were on the increase in the province. A thorny issue was that of prosecution of crimes resulting from the Truth and Reconciliation report.

He said he wondered every night whether South Africans wanted him to channel scarce resources to pursue TRC cases which were crimes of the past while they had a pressing load of current crimes to consider.

He said however he did not agree with Human Rights Commission chairman Barney Pitso that all prosecutions should be dropped for the sake of reconciliation.

Prosecutors

meeting targets

PARLIAMENTARY BUREAU

The overhaul of the prosecution services about a year ago was beginning to bear fruit as Government intensifies its iron fist approach to crime.

National Director of Public Prosecutions Mr Bulelani Ngcuka said yesterday that when his office was established a year ago he met every prosecutor to find out their grievances. He found they were suffering from low morale and low pay.

He then increased their salaries by 18% and held back a further three percent increase until September on condition that they met performance targets.

He said statistics gathered since April this year showed prosecutors were well on the way to meeting the targets and earning their three percent increase.



ADRIAN HADLAND
POLITICAL EDITOR

Prosecutions director says defeat in court is not the end of asset forfeiture law

National Director of Public Prosecutions Bulelani Ngcuka had been warned repeatedly that when he tried to persuade South Africa's judges to implement new laws against organised criminals, he would face an arduous, uphill battle.

After three court defeats in quick succession - the last one concerning apartheid chemical weapons expert Dr Wouter Basson in the Pretoria High Court earlier this week - Mr Ngcuka remains upbeat about the prospects and confident that, sooner or later, he will win the day.

But why is it that the judges appear so determined to block a law, in this case the Prevention of Organised Crime Act, which allows the state to confiscate any cash or assets which have obviously been obtained as a result of crime?

"The judges feel that this act is too drastic, that it's an affront to the rights of individuals," says Mr Ngcuka. "They've adopted a very narrow approach and there's a high degree of resistance."

The general sense among local judges, according to Mr Ngcuka, is that the penalties imposed are too severe, that property can be grabbed without a conviction and that some clauses of the act are possibly unconstitutional.

But a degree of judicial resistance has been a common feature in many parts of the world where laws of this kind have been passed.

In the United States, where the Bill of Rights is renowned for its ferocious protection of individual rights, 12 court cases were lost before the law was finally accepted by the Supreme Court.

Similar patterns have played out in Australia and in Italy. In all, though, judiciously eventually accepted that organised crime was a different kind of animal to the usual, run-of-the-mill act of illegality.

Organised crime is sophisticated, experienced and backed by state-of-the-art technology. Money and goods flow freely and quickly across international borders and from one bank account to another in a matter of hours.

For ordinary police officers, proving the ownership and source of a million rands in unmarked bills is a virtual impossibility. Until this act was passed, the money was inevitably handed back to the very criminals who stole it in the first place.

"The majority of people do crime because of the money," says Mr Ngcuka. "They think they can go and serve their sentence and then enjoy the money afterwards. We want them to go to prison without the luxury of enjoying the money when they're free."

In preparing the legislation itself, Mr Ngcuka brought in a number of international experts and top-rank senior counsel to examine each clause and give advice on the anticipated problems.

The head of the United States asset forfeiture unit came to South Africa along with Australia's attorney general.

So far, the law has been tested with varying degrees of success in High Courts in three jurisdictions, KwaZulu Natal, Pretoria and the Cape, with a further case pending in Umzimba.

"I hope the Eastern Cape will be more lenient," says Mr Ngcuka. Of the five cases, two have been successful and three - including the Basson case - have been over-ruled.

Head of South Africa's asset forfeiture unit Willie Hofmeyr says "Test cases are high risk, but we must test the law."

"Wherever legislation like this has been tried, there have been challenges, but the litigation has always, finally, been approved."

"Our concern here is that the judiciary has done nothing to educate themselves," he adds. "We have put a lot of effort into training prosecutors but you can't lecture the judges for an hour before the trial. There is a crying need for them to examine international precedents. All the measures in this



Expected obstacles, Bulelani Ngcuka

act have been used in other democratic countries. We haven't just pulled them from a hat."

Surprisingly, the one issue local judges have not seized on is the act's constitutionality. On the face of it, the law contravenes the constitution in several ways. It has an impact on the freedom to hold property, by confiscating it before a conviction has been obtained. It upends the right to remain silent by compelling respondents to prove their assets have been acquired legally, thereby opening them to further prosecution. And it



Undaunted, head of the asset forfeiture unit Willie Hofmeyr

presumes the accused are guilty. Ironically, the tendency of local judges - such as whether or not the law can be applied to events which happened prior to the law being passed - or because it is too "vague", rather than on constitutional grounds, which has caused a major problem for Mr Ngcuka and his team.

"We are struck," says Mr Ngcuka, "No judge has addressed this issue fully square. I don't have the authority to go to the Constitutional Court and say 'test this law'."

"The Constitutional Court will only do that if there is a case. They don't want to test acts in the abstract because there may be real implications that were not considered at the time."

In spite of all these difficulties and the prospect of a long series of court battles which may even do damage to the reputation of Mr Ngcuka, the national director remains determined to proceed.

"If we had lost these cases because it could be proved that the money had not come from crime,

that would be fine. But if there is uncontrollable evidence, it would be morally wrong to sit back." He and his team cling, in the meantime, to the clutch of court room victories they have achieved. One of these will result in R345 000 being paid into a special "crime fighting" account this week.

The money was found in the boot of known drug dealers earlier this year and the bills were marked with mandrax residue.

The cash was confiscated under the act and claimants were given the opportunity to step forward and prove it belonged to them. A few inquiries were made by phone, mostly by other known drug dealers, who claimed the money was from platinum exports to Ghana. They failed, however, to step forward and swear an oath to this effect.

The money is expected to be officially forfeited next week after a judge has signed the default order.

"It's a very good illustration of what the new law is capable of," says Mr Hofmeyr. "Previously, the police would have given the money back as there wasn't enough evidence."

Whether it takes five more court battles or 20, whether it requires a constitutional amendment or a new law to close the loopholes, Mr Hofmeyr and Mr Ngcuka, are ready and willing to persevere.

"People may laugh and say we are humbling fools," says Mr Ngcuka of his latest defeat in the Wouter Basson trial. "But I'm going to go back. I'm going to get that property. We shouldn't say that, just because someone stole the money last year, or the year before, that we shouldn't be able to move in and take it back."

The issue is both a moral one and one of necessity. Laws like the Organised Crime Act are being used across the world and are acknowledged as the only real weapon available to countries to fight organised crime. It is a question of sending out the right signal and letting criminals know that wherever, whenever, they defrauded the country's citizens of their property, they will be brought to justice.

"We believe the majority of people want us to do something about crime," says Mr Ngcuka.

ARL 27/18/99

I inherited a mess, says Legal Aid Board judge

AKU 27/8/99

(252)

R800 000 a day now being paid in outstanding fees

YUNUS KEM
Staff Reporter

New Legal Aid board chairman Mr Justice Mohammed Navsa has described as "chaos" what he found when he stepped into the job, with four out of 10 files missing and no apparent management systems in place.

He told about 100 Cape Town lawyers at a workshop yesterday that he had inherited a "mess". The board had been inundated with summonses from lawyers waiting to be paid.

Judge Navsa, who was in the city for the 21st celebrations of the law faculty at the University of the Western Cape, told the lawyers about the problems facing the board in trying to sort out seven years' of unpaid accounts.

"I found when I took over that there were no management systems in place, four out of 10 files were lost and there were documents uncatalogued," said Mr Navsa. In one office there were 8 000 files and in another 4 000. He blamed staff spending their time using telephones when they were supposed to be processing files.

The backlog stretched back to 1992, and Judge Navsa admitted to receiving "tons of summonses" from lawyers the board owed money.

In a bid to ease the backlog, the board decided to take staff off the telephone lines, and so lawyers could not reach them.

"Telephone records show that staff are spending six hours a day on the telephone when they are supposed to process files. Lawyers are also becoming too chummy with people on the telephone - a license for corruption," said Judge Navsa.

The good news, said the judge, was that people were getting paid and every file that was "ripe and ready" was being processed.

"By August 19 we had paid R10.9-million at an average rate of R800 000 a day. The board is not being dilatory, and will pay its outstanding debts," said Judge Navsa.

The dramatic increase in the number of legal aid cases since 1991 was also a factor contributing to the backlog. In 1990/1991, the board issued 35 410 instructions. By last year that number had increased to 208 000 and the board expected this year's case load to exceed 223 000 cases.

Judge Navsa said fraud on the part of lawyers contributed to the problem, but he vowed to stamp it out.

"I will not allow the taxpayer to be ripped off. The policing systems have begun and people will be prosecuted."

He said the board intended expanding legal aid through the extension of the public defender's office by opening five urban, two rural and two small rural centres to make legal aid more accessible to the poor.

New insurance law to benefit Muslim wives

CLIVE SAWYER
Punta Correspondent

AKU 27/8/99

(252)

Laws on compensation for occupational injuries and on unemployment insurance are to be rewritten, in part to extend benefits by recognising the legitimacy of Muslim and customary law marriages.

No official figures are available about how many people are married by religious or customary law without having their unions endorsed by state marriage officers.

Current legislation in both areas dates back several years and has been subjected to several amendments.

Also in the pipeline for the committee's scrutiny is a review of laws on occupational health and safety.

Salhe Manie, newly elected chairperson of Parliament's portfolio committee on labour, said some aspects of the legislation were not in line with the constitution.

Plans are to consolidate this legislation into a coherent, user-friendly act of Parliament.

Scheme to fast track justice

Business and government launch project to alleviate overcrowding in Pollsmoor

(21/2) AR 6 28/8/99

LENORE OLIVER

The government and big business have launched a major programme to "fast-track" awaiting-trial prisoners in an attempt to alleviate overcrowding in prisons.

The national Awaiting Trial Prisoners Project was launched at Pollsmoor prison yesterday by Safety and Security Minister Steve Tshwete, Justice Minister Penell Maduna and National Director of Prosecutions Bulelani Ngcuka.

Funded by Business Against Crime, the oil giant Engen and the government, the programme was piloted in several other centres in South Africa, and the results have prompted expansion nationally.

Engen contributed R250 000 for the Pollsmoor leg of the programme but total costs could not be established because the project was ongoing, spokesmen said.

Countrywide, there are about 58 000 awaiting-trial prisoners, who cost taxpayers about R150-million a year. A total of 20 500 have been granted bail but cannot afford to pay it. Thirteen thousand have been granted bail of less than R1 000.

Correctional Services Minister Ben Skosana said overcrowding was a security risk and could undermine the entire criminal justice system.

"To counter these problems, an integrated approach for the management of awaiting trial prisoners has been drawn up."

Involving awaiting-trial prisoners with a view to finalising them in the shortest possible period.

It will specifically deal with pre-trial issues such as bail, formulating charges, preliminary hearings and remands, and is intended to improve the overall efficiency of the justice system.

All cases will be reviewed on an individual basis by a case review team comprising investigators, prosecutors and correctional services officials, said Mr Skosana.

Mr Ngcuka said prisoners were overcrowded because some prosecutors spent only two hours a day in court.

Prosecutors did not "properly apply their minds" when deciding whether to oppose bail and tended to oppose every bail application irrespective of the nature of the charge.

He said the option of conditional release on bail instead of monetary bail was underutilised.

"Prosecutors take a very long time to finalise matters. Court rolls are congested because prosecutors do not spend enough time at court."

Prosecutors did not do their jobs properly because of low morale, which was prompted by poor salaries and lack of resources.

"All of this means the courts do not function properly and this contributes to the intolerable levels of overpopulation in our prisons," Mr Ngcuka said.

But he had met the government and prosecutors to explore the possibility of linking prosecutors' salary



SHAKE ON IT Willie Scholtz of Business Against Crime, Justice Minister Penell Maduna and Safety and Security Minister Steve Tshwete at Pollsmoor prison yesterday during the launch of the new scheme to 'fast-track' awaiting-trial prisoners. Picture ANDREW INGRAM

increases to performance targets.

There had been improvements in prisons where the F-Jet project had been introduced and prosecutors had increased the time they spent in

court, he said.

"What attracted me to this project was that it allowed us to make a strategic intervention to begin to address the crisis," said Mr Ngcuka.

"Prosecutors can now sit down

with police and prison officials and review each and every case where an accused is in custody and make decisions as to how these cases can

be resolved speedily."

Mr Maduna said the government was determined to address problems in the justice system urgently and systematically.

Training is essential for judges in changing SA, says American expert

JEAN LE MAY

Regular training for judges is more essential than ever now that South African society is being transformed to give its citizens greater individual rights, says Ladume Thomas Lange, a district court judge from Minnesota in the United States.

Judge Lange, who has been on the bench since 1986, is an experienced public defender and is involved in training lawyers in trial advocacy and human and civil rights law. She told Saturday Argus she had visited South Africa five times before, and was "most impressed" by the way the courts were "slowly but surely" being transformed in the civil rights field.

Her most recent visit, as a guest of the US Information Service, was to enable her to "look at the judiciary and the judicial capacity", she said. "Keeping up with new developments in the law is absolutely necessary if a judge is to apply it fairly and justly," she said.

"Most judges have very full schedules and trying to keep informed of all the new laws and regulations would be almost impossible if there were no continuing education programme."

In an interview with producer John Orr on the Sahn radio programme *Law Report*, Judge Lange said "training is always essential, in any judicial system."

"There are just too many laws and too many regulations that individuals should be aware of, so training is mandatory in the US for judicial officers."

"We are allowed five full days of judicial education every year, as well as other opportunities to participate in a further five days of specialised education in topics of our own choice, such as evidence or environmental law or business law."

She said judges were required to visit a prison every six years. In addition, the entire state judiciary met twice a year when the courts closed for two weeks "and all the judges in the state gather for uniform education programmes."

"Training sessions for judges were introduced in South Africa last year by former Justice Minister Dullah Omar. Mr Justice Fritz Brand of the Cape High Court told Saturday Argus that courses were held in Pretoria for new judges every year. In addition, there were courses for existing judges every year and occasional seminars on specific subjects by judges or other legal experts."

The courses were well attended and judges believed they were very beneficial, "although we had to sell the idea at first", said Judge Brand.

Paul Seiseise, spokesman for Justice Minister Penuell Maduna, said training was funded by Canadian sources.

However, there is still a great deal of scepticism among senior lawyers about the training.

"In my view, it is presumptuous to suggest retraining an expert."

Asset seizures have recently been reversed on the grounds that the act is not retrospective.

But there has been criticism from some legal quarters recently that

ended High Court judge, "said one man. "The whole question is linked to whether the High Court is being transformed' quickly enough. I see the recent argument about the use of Afrikaans as a spin-off from the same issue."

However, he conceded that training sessions "might be useful" for magistrates, adding that in the American legal system officers who were appointed judges were the equivalent of magistrates in this country or were even occasionally lay persons, as in Britain.

But there has been criticism from some legal quarters recently that

judges are "not keeping up with the law."

In particular, it has been hinted that some judges are not prepared to accept innovations, such as the power given by the Prevention of Organised Crime Act to attach assets before a conviction has been obtained.

Asset seizures have recently been reversed on the grounds that the act is not retrospective.

The act is being amended during the current session of Parliament, but a lawyer, who asked not to be named, said, "It's the judges who need to be changed, not the law."

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Maduna introduces a unified justice drive

By City Press Reporter

A NEW Integrated Justice Initiative, supported by a R250 000 contribution from Engen, was launched on Friday to speed up the finalisation of criminal cases of awaiting trial prisoners.

Speaking at the launch of the Integrated Justice Management System for Awaiting Trial Prisoners at Pollsmoor Prison, Justice Minister Penuell Maduna said the Government is determined to address, in an urgent, yet systematic way, the problems currently being experienced in the justice system.

The Awaiting Trial Prisoners project brings together government and business in a powerful crime fighting partnership. This partnership is unique and is often greeted with envy and amazement around the world.

"Engen's support and involvement in this important Awaiting Trial Prisoners project through Business Against Crime is highly valued and I commend their leadership and commitment to making South Africa a safer place," he said.

Minister for Correctional Services, Ben Skosana, said the cost of unsentenced prisoners also is estimated at R1,3 billion per year. The overcrowding of prisoners presents a security risk and has the potential to undermine the entire criminal justice system.

"To counter these problems, an integrated approach for the management of awaiting trial prisoners has been drawn up and through newly formed review mechanisms, all cases of awaiting trial prisoners will be reviewed with the view of finalising cases in the shortest possible period."

Reviewing cases and taking corrective action where necessary will form a vital part of the Awaiting Trial project, specifically dealing with pre-trial issues such as bail, charge formulation, preliminary hearings and remands, and will improve the overall efficiency of the justice system.

Engen CEO, Almorie Maule, said the company enjoyed strong links with Business Against Crime and was pleased to support the Awaiting Trial Prisoners project which



FLASHBACK . Safety and Security Minister Steve Tshwete (left), Justice Minister Penuell Maduna and Correctional Services Minister Ben Skosana (right), during one of their visits to the overcrowded prisons

would add to the quality of life of many South Africans.

"The Engen BAC partnership allows an important project to be kick started and will assist with the overall process of improving the efficiency of the justice system - this is in keeping with Engen's central nation building platform."

"Importantly, as much of the initial contribution of R250 000 has come from Engen's Leisurelink loyalty programme, ordinary South African motorists have contributed towards the project and in the process, made a real difference in the fight against crime."

Engen will continue to make on going contributions funded from motorists' Leisurelink petrol points.

The first phase of the project was dealt with last year and it culminated in a range of implementation recommendations that include, inter alia, a project aimed at reducing the time an offender spends in prison as an awaiting trial prisoner.

The project mainly focuses on improving co-operation between the key role players representing the different departments at an operational level.

Trial prisoners are being kept in prison for extended periods of time. Some of these are detained for petty cases, yet are unable to pay the small amounts of bail set.

On June 1, 1999, there were 53 921 awaiting trial prisoners. Of these, 20 911 were granted bail but could not pay their bail - 13 312 of these persons were awarded bail of less than R1 000.

By reducing the custody period for each person awaiting trial, South Africa could save up to approximately R60 per day per person - the cost of keeping one awaiting trial prisoner in prison for a day.

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Justice system goes on trial

By DESMOND BLOW

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THE OUTCOME of the appeal by the Eikenhof Three, which begins in the supreme court of appeal in Bloemfontein tomorrow, could open a can of worms and destroy the reputations of not only prominent policemen but also prosecutors, attorneys general and judges.

Should the three be acquitted it would throw the South African legal system in disrepute, because their case is similar to scores of other cases where the accused were found guilty of murder and executed despite evidence that they had been tortured into confessing.

And according to defence attorneys who have made reports to advocate Jan Munnik former police reporting officer, these practices are still continuing in the new democratic South Africa.

The conviction of the three ANC activists in 1994 for the massacre of a mother and her son and another child was based largely on the confession of Sipwe James Bholo and Boy Titi Ndweni, made to major Charles Landman of the Brixton murder and robbery unit.

Their protests in court that they were innocent and made false statements under torture were rejected by the then deputy judge president D J Curlewis.

Curlewis, known as the "hanging judge" because he sentenced no less than 16 people to death in cases over a short period said

There is unfortunately an idea prevalent in certain quarters that as long as the police are continually maligned, that will be accepted as true.

Curlewis found that major Charles Landman, who with his veld span was alleged to have tortured the two youths, had conducted the investigation well and had not abused anyone.

He sentenced Bholo and the third accused Zipho Samuel Gavin to three death sentences each. Ndweni was sentenced to 17 years because of his youth.

The death sentences were later commuted to life after the ANC came to power and executions were abolished.

Curlewis made his judgment despite evidence suggesting that the PAC was responsible for the murders.

In 1997 the PAC applied to the Truth and Reconciliation Commission for amnesty for the three murders.

The PAC said the killings had been committed by four Apla members and the three ANC cadres were innocent.

Curlewis' judgment, which had seemed plausible at the trial now seemed biased and outrageous. There was also the fact that a reward of R250 000 from tax payers' money was paid to an unknown informer. It now appears that this was paid for false information.

Efforts by City Press in 1997 to discover to whom the money was

Press understands that the appellants' legal team will request the State to disclose to whom the money was paid.

City Press was told in 1997 that if an informer wished to remain anonymous, a police officer with whom he dealt could collect it on his behalf.

During the trial of former Vlakplaas commander, Eugene de Kock, it was revealed that he and his men had often shared money paid out to "informants".

Some of the vital evidence dismissed by Curlewis included the fact that the third accused, Zipho Gavin, who had not "confessed", was not arrested by the police but had surrendered to them in the presence of the ANC.

Counsel for Ndweni at the trial, Harold Knopp, argued that it was odd that the only suspect not alleged to have been tortured, did not make a confession. He believed the intervention of the ANC and the resulting publicity had saved Gavin from torture.

All three accused had alibis and documentary proof as to their whereabouts on the day of the murder. Curlewis rejected this and a score of defence witnesses who swore that the three had not been in Wesselbron at the time.

Some state witnesses claimed they recognised one or two of the accused as the culprits, despite evidence that the murderers' heads had been covered by balaclavas and knitted caps.

D'Oliviera, who prosecuted the three in 1994, will also come under scrutiny in the appeal. D'Oliviera has denied that members of the police obtained false testimony. In papers already before court it has been asserted that witnesses were intimidated by political parties.

No single right has priority over another

By ANDRE KEET

THE SA Human Rights Commission (SAHRC), as the national institution tasked with the promotion and protection of fundamental rights and freedoms, is obliged to critically examine popular viewpoints on human rights when these rights are seemingly in conflict or competition with each other.

The present industrial action by educators and other civil servants (a total of 800 000) against the state's decision to unilaterally implement salary increases, is the result of a deadlock in salary negotiations between public sector unions and government. Threats and counter threats have been thrown around by government and unions, creating the real danger that the crisis might deepen, with tragic consequences for service delivery, labour stability and the general impact on the socio-economic and political life of South Africans.

On a very mundane level we can argue against the strike since it certainly poses questions for basic service delivery and socio-economic rights. However, the SAHRC has the responsibility to step back and reflect on the complexities of the issues at stake brought about by the nature of a society regulated by a constitution and human rights provisions such as ours. The government

and the unions try to justify their actions on the basis of human rights principles.

The complexities of the present situation are self-evident. The right to strike and other forms of industrial action are guaranteed in the constitution. However, there is no doubt that such actions will impact negatively on basic service delivery. That is, they will impact negatively on the employment of certain socio-economic rights such as education and healthcare.

These rights inevitably invoke popular concern when they are not protected, and the state anticipated this reaction. Emphasising principles of fiscal discipline, accelerated transformation and basic service delivery, the government has succeeded in gathering popular support for its stance. On the other hand, the state's unilateral termination of salary negotiations resulted in historic industrial action since it is the first time that all 12 public sector unions have embarked on joint action. It is difficult to fully dismiss the concerns of 800 000 workers (almost 70 percent of all civil servants) and their right to strike as a means to address those concerns.

These workers represent families and have extended responsibilities beyond their individual needs. It is equally difficult to dismiss the fiscal constraints under which government operates and the negative impact industrial actions have

on service delivery. Moreover, from a human rights perspective there are legitimate concerns that strike actions compound the socio-economic rights deficit we are already experiencing. For instance, one can effortlessly comprehend the negative spin offs teacher strikes will have on an education system that is already in crisis. As was the case in the past strike action has severe negative consequences for teaching and learning, especially in township schools.

Given these realities, of which all role-players are certainly aware, the SAHRC calls for a balanced approach in labour negotiations. There are obligations on both sides. The state's obligation is to facilitate salary negotiations within the framework of standard procedures and to refrain from unilateral decisions and implementation since it will always have the potential as a catalyst for industrial action.

Since the state is ultimately responsible to respect all the rights involved in this equation, it should be circumspect in its engagement with labour negotiations. On the other hand unions should be mindful that when, in the process of exercising their rights to industrial action there are negative consequences for the enjoyment and protection of other rights, more creative ways are called for to resolve impasses.

Our constitution and Bill of Rights place de

manding responsibilities on all of us. They provide justifiability and legitimacy for these and other disputes. In this sense the constitution demands from us the responsibility to be balanced when we deal with human rights conflicts and disputes. In this instance, it requires from all role-players to conduct labour negotiations within a framework that can anticipate and prevent any kind of human rights violations.

In fact, labour negotiations can and should be employed to promote, protect and attain human rights. This is applicable to both the state and unions. The SAHRC, as the custodian of all human rights in this country, urges unions and government to put processes in place that can facilitate labour negotiations without placing human rights at risk.

In conclusion, the SAHRC is of the view that no single right has priority over another. When rights are in conflict they continue to carry equal importance and weight. However, when the exercise of one right results in negative outcomes for the other, it demands the exploration of ways and means to prevent such a situation. The welfare of our people and development of our children should be the guiding principle for all our actions.

Andre Keet is senior education and training officer at the SAHRC.

Justice system goes on trial

Turn to Page 27 From Page 1 This was accepted by the judge. The judge discounted the fact that several children taken to identify parades had failed to identify any of the accused. The reputation of former Transvaal attorney general Jan

D'Oliviera, who prosecuted the three in 1994, will also come under scrutiny in the appeal. D'Oliviera has denied that members of the police obtained false testimony. In papers already before court it has been asserted that witnesses were intimidated by political parties.

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Ngcuka welcomes testing of new crime prevention act

NATIONAL Director of Prosecutions Bulelani Ngcuka is bracing himself for another legal tussle - and the likelihood that more eggs will land on his face - before the legal machinery is in place to seize and keep the ill-gotten gains of criminals.

Since the Prevention of Organised Crime Act became law in January this year, Ngcuka has had a bumpy ride. The seizure of two bundles of assets went smoothly, but those of an alleged kidnaping gang in the Transkei hangs in the balance.

The courts have also agreed with three challenges to the law - which allows the state to take civil action to seize assets used to commit a crime or which are the proceeds of crime - by alleged criminals.

The act's provisions mean that evidence which may not be strong enough to secure the conviction of a suspect can nevertheless be used as the basis for seizing assets. The state only has to prove that it is probably likely that these assets were obtained through crime.

The basis for the three rulings against forfeiture was technical - that two sections of the act did not apply retrospectively to the period before the act became law in Jan-

uary this year. First, Gavin Carolus, a Cape businessman who has admitted running an illegal shebeen and a taxi fleet for escort agencies won back the right to his properties, cars, cash and jewelry. Judge Andre Blignaut said the act lacked retrospective force - and that there could be "no deduction that the property, cars or close corporations had been obtained or retained through illegal activities."

Next, Durban detective and alleged crooked cop, Piet Meyer, obtained a similar ruling in terms of his luxury vehicles and furniture. Still less savoury was the victory of apartheid chemist Wouter Basson, whose legal counsel got the courts to rule that yet another section of the act was unsound.

These loopholes are to be plugged by parliament, which is set to amend the act this week, with President Thabo Mbeki on standby to sign the amendments into law by next weekend. This means that in just over a week Ngcuka's assets forfeiture unit could be once again knocking at the door of apartheid chemist Wouter Basson and seizing some R44 million of his assets.

But Ngcuka and Willie Hofmeyr, who heads the Assets Unit and was a key architect of the controversial law, anticipate still more legal battles - not least the as yet untested question of whether the law is in line with the constitution.

Experience in countries like the United States, Italy and Australia indicates it will take time before the law meets with approval from the judiciary.

The logic behind seizing assets thought to be the proceeds of crime or the means of commissioning crime is simple. It is a way of undermining that crime does not pay. Moving in advance of a trial is intended to prevent alleged criminals hiding their ill-gotten gains. This would mean that convicted criminals would no longer have such assets to look forward to on their release from prison.

Ngcuka said although measures to allow assets' forfeiture were in line with international trends to combat organised crime they were new to South Africa and it was inevitable that judges would feel uneasy with a law that seemed sweeping and drastic.

Adding to such unease was the perception that forcing an alleged criminal to disclose his assets flew in the face of the right of an accused to remain silent.

Hofmeyr has been at pains to emphasise that the forfeiture measures were civil, not criminal. This week he said it was wrong to argue that the act was at odds with legal tradition.

He said where a person's liberty was at stake - as in a criminal trial - a case had to be proved beyond reasonable doubt.

However, civil courts relied on the balance of probabilities to decide whether "arranges should be awarded. Similarly, decisions on assets seizure relied on balance of probability. Hofmeyr says the act is not a case of double jeopardy -

someone being punished for a crime by losing his assets and then running the risk of being punished again if convicted in court. Instead, it simply enabled the state to intervene and prevent anyone being in possession of the proceeds of crime far from fearing a challenge to the constitutionality of the act - for example on the right to hold property - Ngcuka would welcome it.

"From our side we would like the question resolved once and for all, but we do not have the authority to test it in the Constitutional Court," he said.

Ngcuka said if a problem did arise, the constitution would have to change. It could not be allowed to be an "albatross."

Ngcuka's determination to be in a position to seize criminals' loot stems from concern about the high crime rate and claims that crime has become big business in South Africa with syndicates, often inter-

national, targeting the country. Measures such as assets seizure and anti-racketeering laws have proved valuable in countries such as the United States, Italy and Hong Kong in dealing with gangs such as the Mafia and the Triads.

The Public Prosecutions Directorate hopes that a strengthened law will help it tackle, for example, local hijacking syndicates, Nigerian, Ibo-controlled heroin traffickers and Cape Flats gang bosses, many of whom are accused of having links with organised crime as far away as South America and south-eastern Asia.

By 1996, organised crime was estimated to account for a turnover of R41.1 billion in South Africa - a time when the opening of the economy and borders had joined with an apartheid era history, where unemployment in the townships was matched by the illegal activities of many members of apartheid forces.

Researchers argue that this scenario made it easy for criminals to emerge on a wide scale, while the very factors that South Africa uses to attract investors - infrastructure, a developed financial system, potential markets internally and a gateway to other African countries

- have made the country attractive to organised crime seeking to move illegal drugs and weapons and to launder money.

Ngcuka set up several specialised investigative units to look at urban terror in the Western Cape, political violence in KwaZulu-Natal, vehicle hijacking in Gauteng and apartheid era human rights violations. And now the unit dubbed "the Scorpions" is to tackle priority crimes.

A holistic approach, teamwork, performance targets, hand-picked investigators and the fast tracking of key cases through the justice system are key aspects of these units' approach to combating organised crime.

Ngcuka says there is often a direct link between criminal activities such as hijacking, gun smuggling and the illicit drug trade. In many recorded instances, cars are taken out of the country and exchanged for weapons and drugs, which are then brought back into the country.

According to his investigators, a key element in such criminal networks is corrupt officialdom - at border posts, home affairs offices, traffic departments and the like

Crime forfeiture act gets revised

By ZOLILE NGAYI

AMENDMENTS to the controversial Prevention of Organised Crime Act will be brought before Parliament this week after the act underwent much needed surgery.

Emerging will be a piece of legislation that states clearly that the act is meant to apply retrospectively. A technicality which has caused the National Directorate of Public Prosecutions much embarrassment as it was forced to return properties allegedly acquired as the proceeds of criminal activity.

However, members of the ad hoc committee dealing with this legislation have not only applied them

Hasty change to remove technicality forcing assets to be returned

selves to the issue of retrospectivity but also to other provisions of the act in order to ensure that, should its constitutionality be challenged, it should be sound.

The act, rushed through Parliament earlier this year, has already been used on six occasions, and on three of these judges ruled that properties seized should be returned to their owners because the act did not apply to alleged crimes committed prior to its promulgation in January this year.

Though this has been addressed with the new amendments, legislators are still concerned about the constitutional validity of the act. Johnny de Lange, chairman of the ad hoc and justice committee, has repeatedly stated that he would be happy if the legislation is challenged in the Constitutional Court as soon as possible.

The problems with the legislation on the forfeiture of criminals' assets would remain until its constitutionality had been tested. National Director of Public Prosecutions Bulelani Ngcuka said this week

Unfortunately he did not have the authority to go straight to the Constitutional Court and ask it to look at the act.

"I would really love to get this thing sorted out so we know where we stand," he told a media briefing in Cape Town.

In separate rulings, three High Court judges have overturned seizures under the Prevention of Organised Crime Act, saying it does not apply to alleged crimes committed before its promulgation in January this year.

Ngcuka said none of the judgments had squarely addressed the issue of constitutionality, and had focused instead on other aspects, such as retrospectivity.

He had been guaranteed that the Second Amendment Bill - which will change the act to make it clear that it applies to crimes committed before it came into force in January this year - would go through the National Assembly next Wednesday.

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tember 2) and to President Thabo Mbeki for signature on Friday (September 3). By Monday (September 6) it would be promulgated and come into operation.

Ngcuka said judges were wary of the idea of being able to seize property without a criminal conviction. His office thought it might be a good idea for them to have workshops with judges from other countries who had dealt with similar legislation.

The head of the directorate's assets forfeiture unit, Willie

Hofmeyr, said overseas advisers had warned there would be tremendous resistance to the legislation from the judiciary.

The directorate would continue fighting the cases in court, because it felt it was vital to persuade the judiciary that the law's wide measures were necessary if organised crime was to be effectively combated.

"It is a matter we are going to have to fight out in the courts over the next year or so," he said.

The forfeiture of criminals' property after a judicial decision based on a balance of probabilities was perfectly consonant with what happened in the civil courts every day

Eight women will be interviewed later this year as possible judges, an all-time record number of female candidates. CARMEL RICKARD has been talking to the small band of women judges whom those appointed will join

THE women judges in South Africa's higher courts could now form a jury — since May, they make up a dozen "good women and true". As with most juries, however, they have little in common with one another. Some are married, some divorced, and others are single parents. They differ on politics and on women's issues.

several stress they are judges "who just happen to be women", others dispute there is necessarily any tension between being a woman and being a judge. But most of all, they differ in their backgrounds and how they got to be lawyers in the first place.

Judge Yvonne Mokgoro's story, for example, is the stuff of South African legend. Entangled in a pass law raid, she was held for a weekend in the Kimberley police cells. A lawyer hired by her husband came to court. He had the charges dropped, and she was freed. Her "saviour" was Robert Sobukwe, newly released from Robben Island and banished to Kimberley.

When she thanked him, Sobukwe challenged her to become a lawyer. "I still remember what he said," Judge Mokgoro recalls. "He told me, 'Law is not just for men. Women can also do it. Let's start with you.'"

Fired up by his words, she changed her university registration from social work to law. Now, decades later, she's one of two women judges on the Constitutional Court.

Several of the other judges seemed destined for journalism and changed to law only by chance, while Judge Lucy Mallula's decision to opt for law was inspired by literature.

Studying the play *A Man for All Seasons* at school, she was attracted by the high principles of the play's hero, Thomas More. She decided to become a lawyer, as he had been, and was eventually admitted as the first black African woman to join the Bar. But however they got into law, all these women have personal experience of the difficulty of combining career, domestic life and, in some cases, the fallout of apartheid.

Judge Jolyon Knoll, for example, could be a role model for many single-parent women lawyers who wonder whether it is really possible to get to the top.

With the birth of her first child 14 years ago, she stopped practicing as an advocate. As a single parent with three children, she must have been tempted to forget about law as a career, never mind the judiciary. With a combination of luck and hard work, however, she crafted an unorthodox route to the top.

Most young women take their constitutional rights guaranteed to gender equality for granted, but the milestones of women's advancement in the



A CASE IN POINT. Judge Thokozile Matilda Masipa



GOOD JUDGMENT. Judge Yvonne Mokgoro



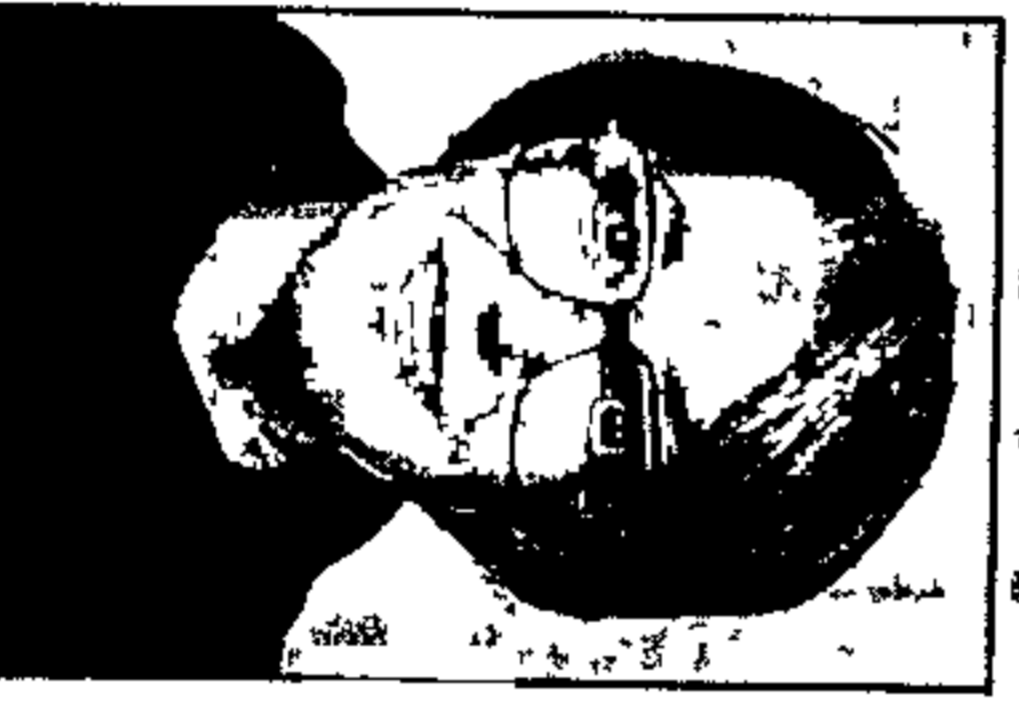
TRIALS AND TRIBULATIONS: Judge Kate O'Regan



LAYING DOWN THE LAW. Judge Kathy Satchwell



Judge Lucy Mallula



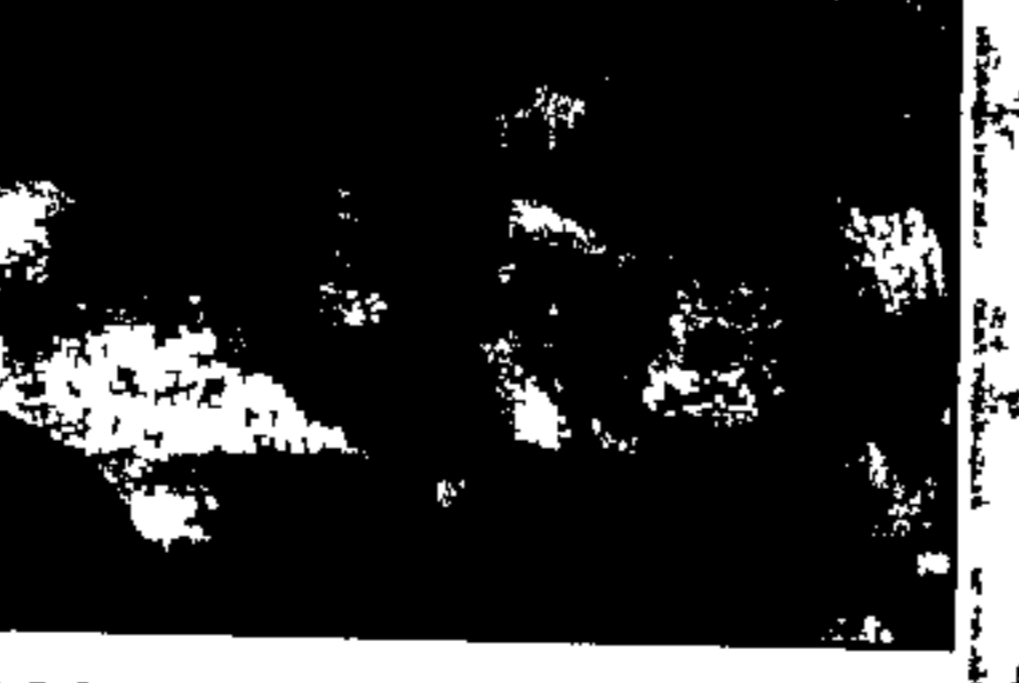
Judge Geraldine Borchers



Judge Jolyon Knoll



Judge Vivienne Nles-Duner



Judge Suretta Snyders

The Doughnty Dozen

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(972)

time on the Bench. This was Judge Jeanette Traverso, the second woman silk at the Bar. A student at Stellenbosch University, she helped get the campus affiliated to the National Union of South African Students and started a student newspaper, *Forum*. However, it was banned from the campus, and her vacation job with *Nationalist* was sacking because of her political activities.

When she joined the Bar, no one could tell her what to wear in court at the time advocates wore starched wing collars that attached to special shirts. The

would have been far too humbling. "So every lunch time I'd take a con and run into town to the loos at Stutzaards."

For their male colleagues, the appointment of women to the Bench at times, such as during appeals, provokes an unusual form of culture clash.

Appeals are generally heard by more than one judge, and the tradition is for judges hearing an appeal to proceed into court in order of seniority, with the most senior first.

This has sometimes caused awkwardness for those male judges more comfortable with allowing women through doors

few have got it badly wrong. Judge Shehaz Meer relates an incident at a pre-trial conference where a lawyer with whom she had worked in the past kissed her, in his enthusiasm to greet her and acknowledge her appointment. "For a moment the preferable course to follow seemed unclear. To refuse myself, or for the other lawyers present to follow his example. Fortunately, no one else put much store by his faux pas, and the conference went ahead."

It is still something of a novelty for the public to find a woman presiding in court, but all 12 judges sense it.

when Judge Vivienne Nles-Duner sentenced a serial rapist and murderer, she ordered that some of his sentences would run consecutively, putting him behind bars for more than 500 years. This, she said, was the only way to ensure he spent the rest of his life in jail.

A couple of years ago, before the new minimum sentence laws, Judge Traverso made waves when she sentenced a rapist to life imprisonment. The case was sent back by the Appeal Court for her "reconsideration" of the sentence, but she reaffirmed her decision.

Back home, they all manage the domestic challenge of appointment in different ways. Take Judge Thokozile Matilda Masipa. Originally trained as a cashier, a journalist, an advertising copywriter, a magazine editor and a book shop manager. Only then did she turn to law, joining the Johannesburg Bar as an advocate when she was 44.

But in addition to her varied background experience, she has a domestic situation many of her colleagues might envy. She shares the chores of the household equally with her businessman husband and their adult son. Whoever gets home first cooks the supper (and many times that's not her). They don't employ anyone to help with the housework, so all three pitch in equally to make beds and clean the house.

Then there's Judge Kate O'Regan, for whom appointment meant relocating her family — from Cape Town to Johannesburg. Or Judge Ena Reveilas, who says that had she been married to someone with a full-time job, or if she had a child, she might well not have been able to take an appointment on the Labour Court, because it involves constantly being on circuit.

Judicial appointment affects more than one's domestic arrangements. It also impacts on personality. The Bar teaches advocates to be individualistic. Yet, as Judge Suretta Snyders observes, once on the Bench you must develop team-playing skills, "and that has to be good for your character."

It also leads to a type of "seclusion" — often a drift away from former legal colleagues, sometimes a seclusion of the mind as well.

Judge Kathy Satchwell mentions this as a particular discipline — not merely declining to discuss a controversial question with people at a party, but consciously leaving the question open in your mind.

For those whose personality or previous work demanded quick responses and an opinion on every current topic, this has not been easy.

But whatever the personal difficulties, all 12 judges function as role models. Those among them who have children say they believe it has been good for their offspring to experience their mothers' achievements and see for themselves that women can do whatever they want to do — and reach the top.

Judge Knoll's appointment thrilled her seven-year-old daughter. "But it is important for my boys too. They see it as totally normal for a woman to have such a profession. That's an important principle for their later view of women."

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came to court. He had the charges dropped, and she was freed. Her "savior" was Robert Soblenko, newly released from Robben Island and banished to Kimberley.

When she thanked him, Soblenko challenged her to become a lawyer. "I still remember what he said," Judge Mokgoro recalls. "He told me, 'Law is not just for men. Women can also do it. Let's start with you.'"

Fired up by his words, she changed her university registration from social work to law.

Now, decades later, she's one of two women judges on the Constitutional Court.

Several of the other judges seemed destined for journalism and changed to law only by chance, while Judge Lucy Mallula's decision to opt for law was inspired by literature.

Studying the play *A Man for All Seasons* at school, she was attracted by the high principles of the play's hero, Thomas More. She decided to become a lawyer, as he had been, and was eventually admitted as the first black African woman to join the Bar.

But however they got into law, all these women have personal experience of the difficulty of combining career, domestic life and, in some cases, the fallout of apartheid.

Judge Jolyon Kroll, for example, could be a role model for many single-parent women lawyers who wonder whether it is really possible to get to the top.

With the birth of her first child 14 years ago, she stopped practicing as an advocate. As a single parent with three children, she must have been tempted to forget about law as a career, never mind the judiciary. With a combination of luck and hard work, however, she crafted an unorthodox route to the top.

Most young women take their constitutional rights guaranteed right to gender equality for granted, but the milestones of women's advancement in the legal profession are surprisingly recent.

The first woman to take silk (in 1968) and to become a judge (in 1969) was Judge Leo van den Heever. By the time she retired in 1996, she was also the first (and so far the only) woman to serve on the Appeal Court.

After her appointment to the Kimberley High Court, it would be another 26 years before a woman would again serve full-

A CASE IN POINT: Judge Thokozile Matilda Masipa



GOOD JUDGMENT: Judge Yvonne Mokgoro



TRIALS AND TRIBULATIONS: Judge Kate O'Regan



LAYING DOWN THE LAW Judge Kathy Satchwell, Judge Lucy Mallula, Judge Geraldine Borchers, Judge Jolyon Kroll, Judge Vivienne Niles-Duner and Judge Suretta Snyders

The Doughnty Dozen

would have been far too humbling. "So every lunch time I'd take a coin and run into town to the loos at Stutlandford's."

For their male colleagues, the appointment of women to the Bench at times, such as during the National Union of South African Students and started a student newspaper, Forum. However, it was banned from the campus, and her vacation job with National Peas lasted only a little longer. She was sacked because of her political activities.

When she joined the Bar, no one could tell her what to wear in court at the time, advocates wore starched wing collars that were attached to special shirts. The smallest were far too big for her. Then there was the problem of where to change as the only court robing rooms were for male advocates.

But more embarrassing was her earlier experience in the magistrates courts as the only woman they had ever had on the staff, she was made to feel out of place. It was so bad that she never plucked up the courage to ask where the toilets were — it

few have got it badly wrong. Judge Sheinaz Meer relates an incident at a pre-trial conference where a lawyer with whom she had worked in the past kissed her. In his enthusiasm to greet her and acknowledge her appointment. "For a moment the preferable course to follow seemed unclear. To refuse myself, or for the other lawyers present to follow his example. Fortunately, no one else put much store by his faux pas, and the conference went ahead."

It is still something of a novelty for the public to find a woman presiding in court, but all 12 judges sense the reaction is generally positive.

Judge Geraldine Borchers says she doubts that women judges deal with cases — even those involving violence against women — in a significantly different way from their male colleagues, although their emphasis or understanding would differ. But that does not mean criminals should expect a gentle touch.

Earlier this year, for example,

time on the Bench. Jeanette Traverso, the second woman silk at the Bar. A student at Stellenbosch University, she helped to get the campus affiliated to the National Union of South African Students and started a student newspaper, Forum. However, it was banned from the campus, and her vacation job with National Peas lasted only a little longer. She was sacked because of her political activities.

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when Judge Vivienne Niles-Duner sentenced a serial rapist and murderer, she ordered that some of his sentences would run consecutively, putting him behind bars for more than 500 years. This, she said, was the only way to ensure he spent the rest of his life in jail.

A couple of years ago, before the new minimum sentence laws, Judge Traverso made waves when she sentenced a rapist to life imprisonment. The case was sent back by the Appeal Court for her "reconsideration" of the sentence, but she reaffirmed her decision. Back home, they all manage the domestic challenge of ap-

pointment in different ways. Take Judge Thokozile Matilda Masipa. Originally trained as a social worker, she has been a cashier, a journalist, an advertising copywriter, a magazine editor and a book shop manager. Only then did she turn to law, joining the Johannesburg Bar as an advocate when she was 44.

cut. Judicial appointment affects more than one's domestic arrangements. It also impacts on personality. The Bar teaches advocates to be individualistic. Yet, as Judge Suretta Snyders observes, once on the Bench you must develop team-playing skills, "and that has to be good for your character."

It also leads to a type of "seclusion" — often a drift away from former legal colleagues, sometimes a seclusion of the mind as well.

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ST 29|8|99

(272)

Nats open fire on draft gun law

JANET HEARD

(252) (34)

THE National Party has requested a special debate in Parliament to raise questions about the process which led to the "seriously flawed" draft firearm control legislation.

NP leader Marthinus van Schalkwyk warned competitive shooters at the Milnerton Shooting Range yesterday that specialist firearms

would be outlawed under the proposed controversial legislation.

"From the outset, there has been confusion between targeting illegal owners with people who own guns legally," said Van Schalkwyk, who has thrown his weight behind the pro-gun lobbyists in their outrage over the proposed Firearms and Ammunition Control Bill.

The NP wished to debate the "lack of consultation, the lack of

transparency and the role of foreign government funding in the draft process. The draft was clearly not well thought through, and we need answers," he said.

Safety and Security Secretary Azhar Cachalia insisted this week that the controversial document in circulation was not draft legislation but a policy document.

He said all stakeholders would be consulted before the legislation was finalised.

ST (cm) 29/8/99

CAROL PATON

Financial disorder in Justice's house

THE Department of Justice has been singled out by Auditor-General Henri Kluever as being in a financial shambles.

In his report on the accounts of government presented to Parliament's public finance committee this week, Kluever expressed "an adverse opinion" on the Justice Department, implying "a very serious state of affairs, which should raise serious concern".

The department committed unauthorised expenditure of R157-million — and personnel expenditure, income, loans, thefts and losses, among other things, could not be properly verified.

The deputy Director-General in charge of the department's finances, Hassan Ebrahim, admitted there were serious problems.

"We understand the nature of the problems and we have already

set in motion a number of steps to solve them," said Ebrahim.

He said that most of the 550 courts in the country, which conducted hundreds of thousands of money transactions daily — such as fines, bail and maintenance — were not computerised and used manual accounting systems.

"It's a basic and simple problem of having archaic systems. All our systems are still manual so it takes us three months before we know what has been spent."

He contested claims by deputy Auditor-General Shauket Fakie that the department's finances had deteriorated over the past financial year.

He said that the department and the courts had been under

tremendous pressure since 1994. Eleven provincial and homeland justice departments had been consolidated into one department. Court personnel were unskilled and new legislation had given the courts a range of new tasks.

Ebrahim said 23 of the busiest courts had been targeted for new computerised information systems, money had been set aside to train staff, and professionals from the private sector had been asked to help the department.

On the state of government finances more broadly, Kluever said the government had made endeavours to formulate improved policies. However, "there was still room for improvement in financial management," he said.

(252) ST 29/8/99

Office is godsend for magistrates making bail decisions

Pre-trial services office, funded by billionaire George Soros, provides information on suspects, writes Taryn Lambert

FEW places in SA are as close to Hades as the bowels of the Johannesburg Magistrate's Court.

But right in the middle of the grimy cavernous building, a small office is trying to be more like a piece of heaven — closer to heaven for law-abiding citizens that is.

Eighteen months ago a dingy old section of the holding cells at the heart of the court building was transformed after 10 coats of paint, into a bright office filled with computers, comfortable office furniture and friendly faces.

It is the pre-trial services office a pilot project which was established by the Bureau of Justice Assistance and funded by philanthropist billionaire George Soros's Open Society Foundation.



A dingy old section of the Johannesburg Magistrate's Court has been transformed into the pre-trial services office. Port Elizabeth and Pretoria. Even at the level of aesthetics, they are already making a difference. Although most people are accustomed to a clean and bright working environment, they are luxuries in this country's magistrates' courts. Situated between the iron-barred entrance to the holding cells, where prison vehicles and police vans off-load newly arrested suspects, and the cells themselves, this pleasant office is where offenders taken to the court in downtown Johannesburg meet justice for the first time.

The office provides a comprehensive system of information on suspects to help magistrates make informed and rational bail decisions. At the press of a button, the office supplies the judicial officers with details of the previous convictions, financial status, family ties and employment situation of bail applicants.

For the first time in SA courts, the information obtained from suspects is stored on computer and linked to the charge sheets and criminal records centres' data bases.

These are the essential details needed in making an informed decision on whether to release an accused or to keep him inside until he goes to trial.

The judiciary has been criticised for putting dangerous criminals out onto the streets while the prisons overflow with petty offenders who cannot afford to pay bail.

Many bail mistakes have been made because there was no reference system in place to help magistrates keep track of who they had given bail to, for what reason, and for what amount.

Director Michelle India Baird, a criminal law specialist from the US says there was an outcry in the media over bail around the time the bureau was established in May 1997.

Bail ranged haphazardly from R100 to R20 000.

"New legislation was being introduced by government but we realised that it would not change the day-to-day decisions by magistrates, so we decided to design a system to help them make better decisions."

When the bureau decided to embark on the project, Baird says she automatically assumed that the courts had a case tracking system in place. But, she laughs there was no such thing.

The idea was to provide a national data base of information on people accused of crime, including criminal records of "wanted" people so that magistrates could decide who to keep inside and who to give bail to.

Dockets are less likely to be lost — resulting in cases being thrown out of court — and there is a semblance of order in the way bail is granted by magistrates.

Statistics showed prosecutors spent less than two hours a day in court. However, Ngcuka said that since he had visited the provinces and talked to prosecutors, a target of 4.2 hours had been set.

Target set to cut court backlog

MOTSHOISI MOKWENA

NATIONAL Director of Prosecutions Bulelani Ngcuka has given prosecutors six months to reduce the number of awaiting-trial prisoners by 10%.

Court rolls were congested because prosecutors did not spend enough time at court, Ngcuka said.

He was speaking at Pollsmoor Prison at the launch of the Integrated Management of Awaiting-Trial Prisoners by the Justice Department and Business Against Crime on Friday.

At the top of the list of performance indicators is the reduction of the number of awaiting-trial prisoners by 10% within six months.

It was also agreed that prosecutors would reduce the duration of cases — from the first appearance to their wrapping up — especially where the accused was in custody.

On average, an accused could spend between 18 months and three years awaiting trial and this cost the state a lot of money, Ngcuka said.

It was estimated, from available figures, that the state spent R150 million a year on awaiting-trial prisoners. There were 58 000 awaiting-trial prisoners and the prison population, as a percentage of jails' capacity, was 181%.

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Next week, Baird's Bureau of Justice Assistance will hand the entire project over to the justice department. The test for local officials will be to maintain the high standards established by the nongovernmental organisation.

Acting director-general for justice Vusi Pikor believes the system has had a major effect on the problems associated with bail and would like to extend the project to every court in the country.

Financial constraints mean that this will take time and will be done in phases.



Law firms hit by LAB pinch

GUSTAV THIEL CT 31/8/99

A LEADING Cape Town law firm is suing the Legal Aid Board (LAB) in the Cape High Court for refusing to pay outstanding fees for work done on behalf of the board.

The firm, Holmes Meyer and Associates, lodged the civil application last week in an attempt to force the LAB to pay them the outstanding amount of R163 000.

One of the firm's partners, Gerad Holmes, was an acting judge until July this year, and several Cape Town lawyers told the *Cape Times* that Holmes' standing might bring the point home to the LAB that firms need the money owed to them to survive.

Another partner in the firm, Eslin Meyer, told the *Cape Times* that "several law firms in the Cape face closure if the LAB doesn't pay them."

"I know of law firms who have dipped into their trust funds to carry on."

"Somebody had to take a stand against the LAB."

Meyer added that LAB staff had not been paid their salaries in full and were planning to protest.

The *Cape Times* reported earlier that the LAB owes lawyers in South Africa millions of rand.

The chairman of the LAB, Justice Mahomed Navsa, said past maladministration of the board contributed in part to the current financial crisis.

Navsa suspended the previous director of the board, Nic Pretorius, pending investigations of financial mismanagement.

Meyer says if the board does not sort out its finances, several law firms will have to close.

"Many law firms rely on that money for their survival."

Maduna attacks judges

There should be no holy cows in the quest for an efficient court system, says irate justice minister

Taryn Lambert

JUSTICE Minister Penuell Maduna launched a tirade yesterday against the state of the country's justice system including Constitutional Court judges, who he said "could work harder".

Maduna also criticised Judge Willem Heath, who had "embarrassed" him last week by going to the parliamentary finance committee with his "beggar's bowl". He hit out at advocates guilty of "gross unpatriotism" and even turned his fire on his own department for merely "pushing pen and paper" and not managing itself properly.

Maduna attacked the 11 Constitutional Court judges who, despite the fact that they have two researchers each and a three-month recess every year, dispose of less than 20 cases a year. He said the Supreme Court of Appeal in Bloemfontein handled 120 matters a year and had one researcher for all 17 appeal judges.

He also criticised judges who were involved with international work, singling out Judge Johann Kriegler — who is in East Timor heading a United Nations commission overseeing a vote on independence — and Judge Richard Goldstone, who has been invited to chair an international commission of inquiry into the Kosovo war.

"I have nothing against individuals approaching me for permission to do work abroad, but it shows they have a lot of time," Maduna said.

Maduna said he knew he would be accused of interfering in the independence of the judiciary, but "there should be no holy cows in the quest for an efficient court system". The independence of the judiciary was not "a little bush behind which they can hide".

Maduna's attack comes amid a long



Justice Minister Penuell Maduna... judges 'could work harder' Picture: BRETTELOFF

running debate on whether the Constitutional Court should be merged with the Supreme Court of Appeal.

He also accused the Legal Aid Board of paying defence advocates from Pretoria to defend suspects in the Vapi Tri-

angle when they could save transport costs by using Johannesburg lawyers.

He criticised the country's advocates for "whinging" when black lawyers were appointed to the judiciary but had not done anything to "expose"

black lawyers to high-profile or complex cases in the past. "Although apartheid at its crudest level said many things about what whites were not supposed to do, I do not know of one law which said whites could not train blacks as advocates," he said.

Most legal teams that appeared before the Constitutional Court, including those acting for former president Nelson Mandela and the current government, were "white-only teams". "This is an act of gross unpatriotism," he said.

Maduna was addressing the Pretoria Press Club and, after arriving 30 minutes late, launched into a lengthy explanation. He said he had been tied up in a series of meetings with his "entire" management team. "The department has never had a culture of management. Somebody senior always has to tell (the staff) what to do and if (they) are not told what to do, (they) simply do nothing and get paid for it anyway," he said.

General Council of the Bar chairman Jeremy Gauntlett SC said the council and Maduna were engaged in a consultative process on advancing nonracialism which he did not want to pre-empt. Heath said he would contact Maduna and was "surprised" that the minister had not known that the unit was short of funds. "I thought it was general knowledge by now," Heath said. He said Maduna had misunderstood the purpose of his meeting with the finance committee last week. "I was not begging for money. I was trying to create vehicles to collect money from the public as well," he said.

Constitutional Court deputy judge president Pius Langa was surprised to hear of the accusations but declined to comment until he had seen the address.

Cluever lambasted Page 3

Private investigator led five to certain death

Stephané Bothma

PRETORIA — A private investigator led five men to certain death at the hands of the notorious Vlakplaas unit because he believed they were armed robbers who passed their loot on to Winnie Madikizela-Mandela and the African National Congress (ANC), the truth commission's amnesty committee heard yesterday.

Ben van Zyl is one of 10 men applying for amnesty for the March 1992 murder of Tiso Leballo, Khona Gabela, Lawrence Nyalende, Glenyk Mama and Oscar Ntshoata in an ambush by Vlakplaas members outside Nelspruit. Leballo was Madikizela-Mandela's personal driver at the time.

The families of the deceased are opposing the amnesty applications, saying the murderers were using allegations of ANC involvement in robberies

as an "afterthought" to establish a political motive for their crimes.

Van Zyl claimed he was paid R7 500 for the information which led to the ambush although other evidence claims he in fact received R20 000.

The committee heard that on several occasions Van Zyl received large amounts of money from the Vlakplaas unit and also from other police units for information.

Former Vlakplaas commander Eugene de Kock, currently serving a life sentence for the Leballo murder, has also applied for amnesty.

Van Zyl told the committee, chaired by Denzil Potgieter, that he met Leballo "in the underworld" in 1991. Leballo worked at ANC headquarters at Shell House in Johannesburg at the time.

Leballo had said he robbed banks for Madikizela-Mandela and Van Zyl understood a percentage of the proceeds

of the crimes went to ANC coffers.

The information was passed on to Vlakplaas operative Dougie Holtzhausen who planned an operation that included supplying vehicles to the would-be robbers who were led to Nelspruit where four of them were shot dead by Vlakplaas and Pretoria murder and robbery unit members.

Their bodies were set alight and AK-47s and hand grenades were planted in their vehicle by Vlakplaas members. Leballo was later taken to a mine near Ohrigstad where he was shot before his body was destroyed by explosives.

"So far we have heard only a litany of lies. Now suddenly as an afterthought you are bringing in a political link to the murders," Ellem Frances, representing the families of the deceased, told Van Zyl. "Don't you think the families deserve the truth?"

The hearing continues today.

Justice minister attacks Constitutional Court

PRETORIA: Justice Minister Penuell Maduna slammed the Constitutional Court for inefficiency.

Addressing the Pretoria Press Club yesterday, Maduna said the resources that the country's top court enjoys are hard to justify when compared with those of lesser courts.

However, he brushed aside suggestions that this signalled an assault on the institutional shield of the Constitution. "You cannot afford the luxury of using scarce resources less than efficiently," he said.

Maduna cited the court's workload of about 17 cases a year — compared with more than 700 currently pending at the Supreme Court of Appeal — and the long periods of paid leave taken by some constitutional judges to justify his attack.

Turning to other issues, the minister promised to improve the country's court system and increase the number of black judges to make the judiciary more representative of South African society.

Maduna angrily dismissed suggestions that black lawyers sent to the bench are inexperienced as "whinging" and said the legal establishment had done little to prepare black lawyers to take on senior jobs.

"We are far from attaining the ideal of a judiciary that is truly representative. Many people whinge when blacks are appointed to the bar, but they never say what they did to prepare blacks for the bar."

Changing the complexion of South African courts is a serious priority, he said, as many blacks still mistrust a legal system used by the apartheid state to enforce white minority rule and put down the liberation struggle.

Maduna said there is a moral obligation to appoint blacks to the bench and attacked the white establishment for frustrating this objective.

"White attorneys never brief black advocates, even today. They have an obligation to create non-racist, non-sexist resources" — Reuter.

Courts should outlast fair weather

(2/12) BD 11/9/99

The special nature of constitutional law dictates that the country's top legal institution remains a separate entity, writes David Unterhalter

ONE important feature of our constitution is that it establishes two top courts. The Constitutional Court is the court of final instance in constitutional matters while the Supreme Court of Appeal is finally responsible for all other matters.

The appeal court hears appeals in constitutional cases, but the Constitutional Court has the final say. As a result the Constitutional Court established with the coming of the new constitutional order, stands at the apex of our hierarchy of courts.

It is the ultimate guardian of the constitution which defines the basic values of our law.

Some think this state of affairs should end and that our two top courts should merge.

While this may seem to be a matter of interest to lawyers but scarcely of wider concern, this is not so. How the values of the constitution are best safeguarded is something of concern to all who would like to see our constitutional order flourish.

The case for a merger makes two arguments the one pragmatic, the other a matter of principle.

The pragmatic argument runs as follows. The Constitutional Court is made up of eleven judges. All the justices hear each case.

The court is well endowed. Justices of the court have considerable research assistance and the case load is small.

By contrast the Appeal Court hears considerably more cases and enjoys fewer resources. Surely it would be better to merge the courts, distribute the appellate work of the courts more evenly and use the pooled resources more effectively?

The argument of principle is that the Supreme Court of Appeal should not have to suffer under a stigma of distrust.

On the contrary, the court has advanced the rights of the press and the right to be heard so as to secure administrative fairness.

Second, we do not want to institutionalise distrust.

Rather, an institution must be made to carry out its duties.

We divide powers to keep one branch of government in check from another. We do not divide powers within an institution on the basis that one component will not or cannot do its job.

Third, if any lingering doubts remain as to the legitimacy of the Supreme Court of Appeal, then the integration of the Constitutional Court would bolster the new merged court.

If we are then to justify the retention of the Constitutional Court as a separate institution, we must look elsewhere.

Two considerations are suggested an argument about the nature of constitutional decision-making and a prudential argument as to the value of numbers.

Constitutional review is a power of exceptional gravity. It permits an unelected court to strike down statutes that violate the bill of rights, even though these statutes reflect majority preferences in Parliament.

We must have an institution with the stature to ensure fidelity to the constitution. Fidelity is often not a popular value.

We hear repeatedly that the constitution makes it harder to deal with crime and we will hear variants of this argument in respect of other laudable policies that could be achieved more easily but for the constitution.

If we recognise that constitutional review is special, there are good reasons why the exercise of this power should be finally considered by a court specially constituted for this purpose.

Such a court can develop a confidence that it not always possible where smaller panels of appellate judges decide matters, as in the Supreme Court of Appeal.

Such a court can harness and concentrate expertise in a single area of law that would be diluted in an appellate court of universal jurisdiction. The size of the Constitutional Court also allows for different insights to be brought to bear in every case and diversity of opinion will usually improve the quality of judgment.

Finally, the size of the court protects the institution when it must take unpopular decisions, quite often against the immediate interests of the government of the day.

All of this makes for a court that enjoys stature and authority in the exercise of extraordinary powers.

There is also the prudential consideration. We should not design institutions for fair weather.

In the past and in the 1980s, there was evidence that judges in the Appeal Court were being selected to hear security cases because of their propensity to view such cases from a standpoint similar to the government's.

Whether this was so is not the point. It tells a cautionary tale. In constitution is tested, there must be no scope for gerrymandering the court. The size of the Constitutional Court and the requirement that all of the justices of the court must sit together in every matter militates against this danger.

We should thus keep the Constitutional Court as a separate institution. It is not a matter of cost benefit analysis but rather of keeping the institution best able to secure the constitution.

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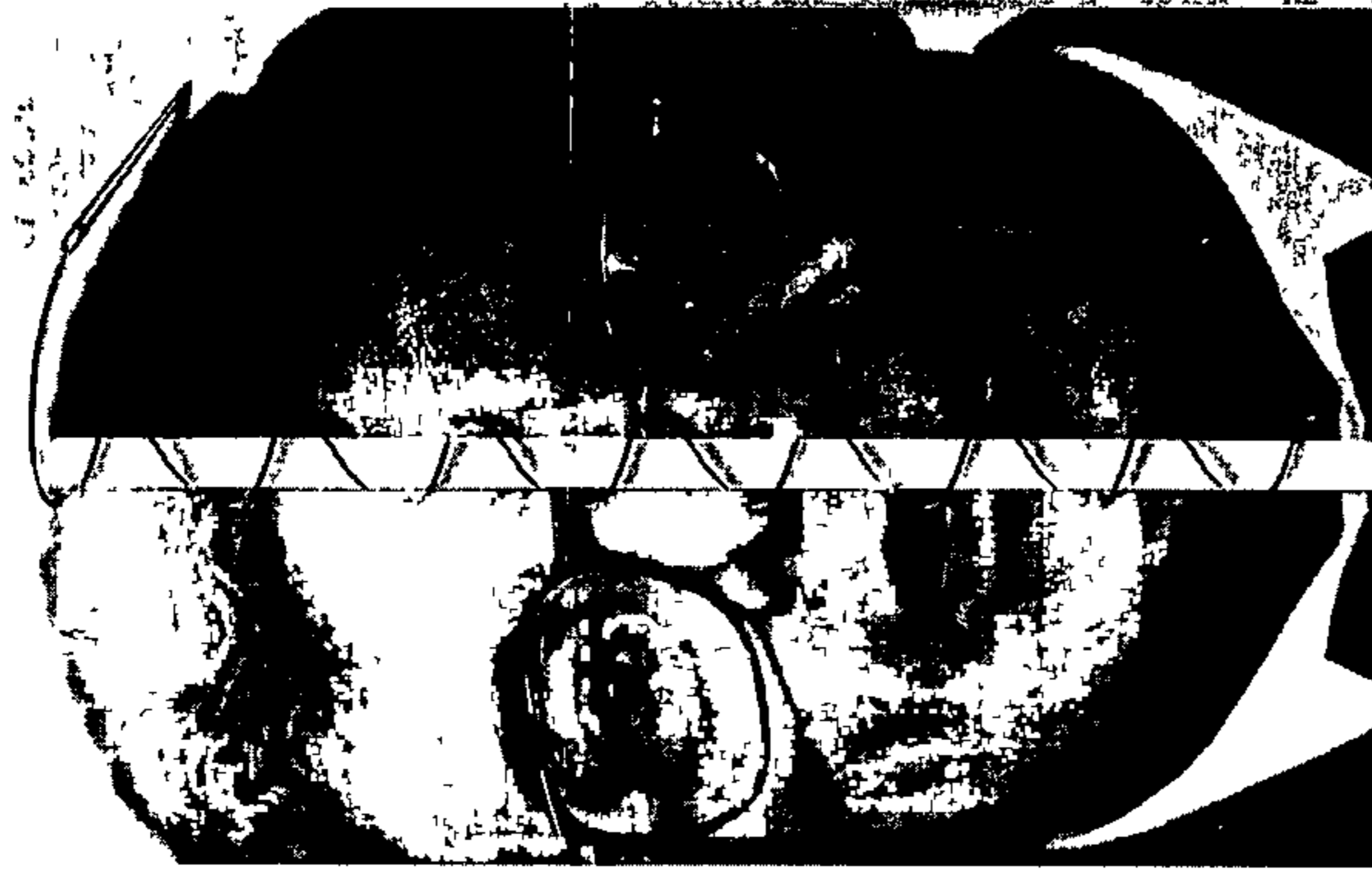
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Two men and the law: is there an argument for Chief Justice Iemali Mahomed, right, and Constitutional Court chief Arthur Chaskalson becoming one? Graphic: MATTHEW MOSS.

Unterhalter is a professor and the director at the Centre for Applied Legal Studies at Wits University.

For Gore the commission has lower levels of g-

PAC section head asks for amnesty

SECTION commander of the Pan Africanist Congress (PAC) armed wing told the truth commission s amnesty committee yesterday how a policeman was killed when his unit sprung a fellow PAC member from a Brakpan hospital in 1993.

Nqaba Daniel Xulu is seeking amnesty for his part in the murder of Const Daniel Khoza, who was guarding the PAC member, Makhosini Nkosi, at the Phosong hospital in Brakpan on January 11 1993. The Xulu said his unit had meant to kill Khoza. The policeman was shot dead when he surprised the PAC men in the ward while they were trying to free their colleague. Xulu said he and two other PAC members had entered the hospital through a back door in order to avoid the policeman at the front entrance.

When they arrived in the ward where Nkosi was being held, they took one of the policeman guarding him hostage.

Xulu said while he was cutting Nkosi free from the chain that bound him to the bed, Khoza entered the ward and the policeman was killed in the shootout that followed. Xulu said he did not know which of his colleagues killed the policeman.

The committee put it to Xulu that in the trial following the incident, the judge found that Khoza had been shot at while he was sitting on a bench outside the ward. Xulu suggested the bullet found in the bench had been fired after Khoza was killed as the men made their escape. He admitted his unit had planned missions to attack and kill policemen as part of the PAC armed struggle, but said this was not the aim of the raid on the hospital.

Xulu said he believed Khoza's murder was "justified", although he felt remorse over the incident. The committee suggested to Xulu that he was applying for amnesty only so that he could be released from Leeukop Prison, where he is serving a 10-year sentence for his role in the attack. —Sapa.

BD 11/9/99

Maduna dodges bullets in battle with judges

Apologies to Goldstone and Kriegler - but Mbeki says minister did not mean to attack judiciary

CLIVE SAWYER
POLITICAL CORRESPONDENT

By late yesterday, Mr Maduna was able to say "If I have the backing of the chief justice and the chief of state, it does not matter how many enemies I may have".

In reports yesterday morning, the recently appointed minister was quoted as telling the Pretoria Press Club that the annual recess given to judges should be cut back so they could do more work.

Constitutional Court judges Richard Goldstone and Johann Kriegler were, for example, abroad on missions for the United Nations.

Constitutional Court deputy president Pius Langa, reacting to the reports, asked Mr Mbeki to take action against Mr Maduna.

In a statement after his meeting with Mr Mbeki, Mr Maduna said he had called for rationalisation and transformation to repair the uneven distribution of resources.

These issues would be discussed further with judges, magistrates and others in the judiciary.

"I emphasised the point that the process of reviewing utilisation of our resources will help us to ensure

that scarce resources are utilised efficiently. The matter, however, will be discussed with all members of the judiciary," said Mr Maduna.

Earlier, Mr Maduna's comments provoked a storm of political reaction from opposition parties.

Tony Leon, Democratic Party chief and leader of the opposition, said Mr Maduna was supposed to be the protector of the constitution and South Africa's judges, not their chief adversary, as he had proven to be.

Mr Leon, speaking before the meeting between Mr Mbeki and Mr

Maduna, said he hoped the minister would be given the "severest reprimand" and would apologise to the judges.

Sheila Camerer, New National Party spokeswoman on justice and a member of the Judicial Services Commission, said Mr Maduna's carping about judges going abroad was difficult to understand, because he had given them permission.

"Instead of interfering with the Constitutional Court, a better-resourced institution than the Supreme Court of Appeal, the

answer should be allocate better resources to the Appeal Court.

But the President's office backed Mr Maduna, saying in an official statement after the meeting that Mr Maduna's comments had not been intended as an attack on any judge.

"The remarks were occasioned by the work he and other ministers are engaged in to ensure Government radically and urgently improve its capacity to deal with the challenges of crime and corruption." Mr Mbeki's office said Mr

Maduna "regretted" having mentioned the names of Judges Kriegler and Goldstone.

"He did not seek to question their integrity and therefore apologises for any harm his comments may have caused them."

Meanwhile, Sapa reports that Chief Justice Ismail Mahomed today confirmed he had sent a written statement to Mr Maduna yesterday to give statistical and other information about the load of the Supreme Court of Appeal, and the inadequacy of its resources to cope with the load.

Reaction split on appeal verdict of Eikenhof three

The ANC welcomes the decision, but one victim's mother remains cautious, writes Xolani Xundu

THE Appeal Court's decision yesterday to reopen the case of the Eikenhof three has been welcomed by the African National Congress (ANC), but accepted with caution by the mother of one of the victims.

ANC members Siphiwe Bholo, Boy Ndweni and Sipho Gavin, known as the Eikenhof three, were convicted by Judge David Curlewis in 1994 for the murders of Zandra Mitchell, her son Shaun, 14, and a 13-year-old friend, Claire Silberbauer in March 1993 at Eikenhof near Johannesburg.

Ndweni was sentenced to 17 years imprisonment while Bholo and Gavin were sentenced to death, later commuted to life imprisonment.

Pan Africanist Congress (PAC) military wing member Phila Dolo brought a new twist to the case when he applied to the truth commission for amnesty in 1997 for ordering the murders. He said the killings were an Azanian People's Liberation Army (APLA) operation and not conducted by the ANC.

The ANC then called for the convicted men to be released or retried in December last year they were refused bail pending the outcome of their appeals.

New evidence which came to light after the sentencing included witnesses to the killings who positively identified Apla members in police photographs as the attackers but failed to identify any of the three ANC members at an identity parade.

A witness who identified two of the three accused as the killers admitted he had been told by the police to do so.

Neither the court (at the trial) nor the defence counsel were at any stage informed about this, defence counsel David Soggot said at the bail hearing.

Referring to the lack of evidence against the three, Soggot said their fingerprints were not found in the vehicle used by the killers and none of the weapons used in the killings were found in their possession.

This is the basis on which the three brought their application to have the case reopened, and the Appeal

Court in Bloemfontein ruled in their favour yesterday. The court yesterday set aside the convictions and sentences of all three applicants on all counts. It ordered that the matter be remitted for trial to allow the men to call or recall some, or all, of the listed witnesses for examination or cross-examination, and to hear evidence.

Reopening the case means the trial court, the three men or the state can call further witnesses.

In its judgment, the Appeal Court said it hoped the proceedings would begin as a matter of urgency and be disposed of "as expeditiously as possible".

The judgment emphasised that success in the application did not guarantee the men's acquittal.

The final outcome of the trial would depend on the trial court's impression of the witnesses and its assessment of the facts.

Shirley Silberbauer, mother of one of the victims, said she was amazed to hear of the court's decision.

Speaking from Auckland, New Zealand, where she help them.

has since emigrated to, she said "There is nothing I can do about it. I do not want somebody who is innocent to suffer in jail. On the other hand, if they really did it then they can do it again to other children".

Silberbauer said she was surprised to learn that forensic evidence was not used in the investigation. "If forensic evidence was available then I think the job should have been done well. I find it difficult that in a country like SA, which is scientifically advanced, these things were not looked at in detail if they were, then these people are guilty," she said.

ANC spokesman Simuts Nkonyama said the organisation welcomed the decision to reopen the trial.

"We note the change of status of the three comrades from convicted prisoners to awaiting trial prisoners as a step in the right direction. The granting of bail should have been a right decision," he said.

The ANC would be "in touch" with the three's legal team to find out what the organisation could do to

One-man commission to probe college's 'illegal' initiation rites

TAMARA HALLAM
STAFF REPORTER

ARC 11/9/99

An independent one-man commission has been appointed to investigate the "illegal" student-orientation practices at Elsenburg Agricultural College.

The Human Rights Commission reported last month that initiation ceremonies at the college "violated the constitutional rights to human dignity, freedom and security of the person, privacy, freedom of association and right to property".

Chris van Staden, an administrator with the old Cape education department, has been appointed by the department of economic affairs, agriculture and tourism to conduct a full

investigation into the Human Rights Commission's findings.

He has been asked to evaluate the code of conduct and orientation of students, make recommendations about the best way to familiarise staff and students with the Bill of Rights, evaluate the college's pass marks and, if necessary, make recommendations about steps to improve them.

The commission's inquiry into initiation practices at Elsenburg College was sparked by a complaint from the parents of first-year student Stephen Barnard Annette and Alan Barnard.

said new students were forced to wear gumboots and overalls, shave their heads, call senior students "baas", were deprived of sleep, and were caned by senior students.



What has the TRC done?

ET 1/9/99 (272)

WILMOT JAMES

Despite the TRC's responsibility to those who had their lives disrupted during the apartheid struggle, many have not yet received any response

SOUTH AFRICANS came in their thousands to make statements to the Truth and Reconciliation Commission (TRC)

The statements had to be corroborated in case false claims were made. A selection of the people who made claims appeared before the TRC, in full glare of the public eye.

In case we forget, the people referred to here were human beings who suffered what in human rights jargon is called "egregious human rights abuses". In plain language it means individuals who lost loved ones because of murder or those who were maimed during the anti apartheid liberation struggles.

I specifically say human beings and want desperately to revert to ordinary language because of a regrettable tendency to sanitise horror in human rights discourse. I have come to particularly dislike the term "victim" because it obscures the human tragedy that befell this nation.

In a racialised society like ours, "victims" all too often are the faceless and nameless thousands of ordinary black people who bore the brunt of apartheid's security onslaught.

It is shorthand that all too easily, by linguistic sleight of hand, becomes a mere statistic. The fact is that every person who made a statement before the TRC, the so-called "statement-makers" — another bit of dehumanised jargon — bore the pain of experience and bared it for public record. Behind every statement stood a person like you and me, with a name, a family and a history.

I was astonished to recently learn that the TRC had never responded in writing to the individuals who made statements, reporting their findings to those who mattered most. It is an extraordinary lapse in administrative justice that we otherwise constitutionally demand of government.

Those who have access to and can wade through the TRC's five volume report — a minority — will find out something. But most who cannot



GRIEF-STRICKEN. Many South Africans who have had to bear the brunt of the apartheid struggle, are still waiting for responses to their statements from the Truth and Reconciliation Commission. Here Colleen Kruser, sister of victim Gary Kruser, breaks down. She is comforted by the mother of another victim, Colleen Williams.

afford the volumes, never mind read them, have no idea what happened.

It is important, therefore, for those letters to go out.

Volume six of the TRC report, which will contain annotations of the fates of all persons covered by the investigations, has yet to appear.

That it appears last, rather than first, is a reflection of some peculiar priorities, having gotten lost in the commission's wide mandate.

I was further alarmed that government has not responded to the TRC's 42-page long list of recommendations. In particular, the question of reparation remains unapprised.

The Reparations Committee has the power to frame policy — what is it?

— but no mandate to implement what it is they will suggest.

Government has an obligation to respond in some appropriate way to those individuals who had their lives disrupted and, more often than not, destroyed by murder.

Some children were left motherless or fatherless or both, other children do not have fully functioning parents.

As a poor- to middle-income country we do not have the funds to pay lump sums or provide pensions on a scale that might be necessary — as Germany, for example, has for the survivors of the Holocaust.

We nevertheless should try our utmost to do something beyond the symbolic.

We have a special responsibility to the apartheid's orphaned children and their children.

Their education and welfare should be guaranteed by the state and, if they chose to pursue degrees, by a partnership between the Department of Education and institutions of higher learning.

Finally, the voluminous material bequeathed to the TRC should probably be vested in the public archive, to be used by citizens and scholars in perpetuity — a living memorial to the past but also an investment in the historical literacy of future generations.

● Wilmot James is Professor and Dean of the Faculty of Humanities at the University of Cape Town.

Maduna 'regrets remarks'

David Greybe, Taryn Lambert and Sapa

BD 1/9/99 (252)

Mbeki's office says the minister did not seek to question judges' integrity

CAPE TOWN — Justice Minister Pequell Maduna apologised to two Constitutional Court judges yesterday and expressed his full confidence in the Constitutional Court, following a meeting with President Thabo Mbeki.

This followed Maduna's sharp comments about the Constitutional Court and the state of the justice system at a Pretoria Press Club lunch on Monday.

He singled out for criticism judges Johann Kriegler and Richard Goldstone, who were both involved in international work. "It shows they have a lot of time," Maduna said on Monday.

SA's Constitutional Court judges will work harder.

Maduna's apology was not announced by the minister himself, but in a statement by Mbeki's office. There was no explicit apology from Maduna.

Instead, after his meeting with Mbeki, Maduna hit the media which he claimed had "distorted" his comments.

According to Sapa he also said he had received strong support from Chief Justice Ismail Mahomed in Bloemfontein for his remarks.

However, Mahomed's office said last night "The chief justice confirms that he sent a written statement to the minister. Its sole object was to convey statistical and other information about the

load of the Supreme Court of Appeal and the inadequacy of its resources. It does not support nor deal with any other remarks reported to have been made by the minister."

Maduna said yesterday he had noted the "distorted reports in some media that, during my address, I came close to describing the judiciary as being incompetent, in particular judges of the Constitutional Court."

He wanted "to clarify exactly what (he) said", which was that his department was operating "with extremely scarce resources and that we need to find ways to use these resources in a

more efficient way."

Mbeki's office said Maduna "regrets having mentioned the names of judges Kriegler and Goldstone."

"He did not seek to question their integrity and therefore apologises for any harm his comments may have caused them. He also expresses his full confidence in the Constitutional Court and believes that other courts should be better resourced so that they are best able to carry out their functions."

Maduna said yesterday that he called Mbeki early in the morning when he learnt from a radio news bulletin that he was to be summoned.

Constitutional Court President Arthur Chaskalson did not react to Maduna's comments, but defended Kriegler's and Goldstone's international appointments.

He said Goldstone had accepted an invitation to chair an international commission of inquiry into the Kosovo conflict, after receiving the approval of Mbeki and Maduna. Goldstone would have to take leave but "apart from this, it will not interfere in any way with his duties at the Constitutional Court."

Kriegler was on long leave which had been due to him for many years. He was later approached to chair the electoral commission to supervise the East Timor elections, Chaskalson said.

KILLINGS: APLA MAN CONFESSED

'Eikenhof Three' convictions set aside

CT 1/9/99 (2/3)

GUILTY. That was the verdict the Supreme Court of Appeal in Bloemfontein handed to the criminal justice system yesterday when it set aside the convictions of the "Eikenhof Three" **FKILENTSIKELELO MOYA** reports

THE Appeal Court ruled that the state had ignored some testimony and failed to call witnesses in the trial of three Vaal men convicted of murdering Zandra Mitchell, her son Shaun Nel and his friend Claire Silberbauer in March 1993.

With the ruling, the Appeal Court sent a message that the court may have arrived at a decision hastily and in the process risked the miscarriage of justice.

The ruling means Boy Ndweni, Siphwe Bholo and Sipho Gavin are deemed to be awaiting-trial prisoners.

They will remain in jail and will have to apply for bail pending the finalisation of their case.

Their quest for freedom started two years ago when Azanian People's Liberation Army cadre Phylla Dolo confessed in a Truth and Reconciliation Commission amnesty application that his unit was responsible and the three, all ANC members, were innocent.

the parade and pointed the two persons out."

The Appeal Court found that the three pupils who witnessed the murders, Bennie Schoonwyk, 15, Piti Mthembu, 14, and Yvonne Msimango, 16, and adults Joseph Nkosi and his wife Regina Borose, were each shown about 300 pictures and each independently identified two men as the assailants.

The men were identified as Muzi Motha and Bulelani Xuma, who were known to the police as Apla operatives.

"Although there is some dispute in this regard, it would seem from a set of six photographs shown to them, Borose identified Motha as one of the attackers while Nkosi stated that he (Motha) resembled one of them."

"All five failed, at a later identification parade, to point out any of the applicants who were present on such parades," the judges said.

They also decried the fact that police had found and ignored two "secret reports" from an Apla safe house in Lesotho and knew as early as 1995, 18 months before Dolo made the confession, about Apla's involvement in the attack.

Wednesday September 1, 1999 SOWETAN

Eikenhof Three granted new trial

By Themba Molefe

AFTER five years of pleading their innocence of a triple murder, three African National Congress cadres won the right yesterday to have their trial reopened.

It took just three minutes for Judge J Smallberger to pronounce the decision, which was greeted with jubilation by ANC supporters outside the highest court in the land.

In the Supreme Court of Appeal in Bloemfontein Smallberger, assisted by JA Grosskopf and AJA Mpatu, set aside the conviction and sentences of the cadres known as the Eikenhof Three.

Boy Titi Ndweni (22), Siphwe James Bholo (29) and Sipho Samuel Gavins (27) have now been declared prisoners awaiting trial. They may now apply for bail on charges of murdering Zangra Mitchell (38), her son Shaun Mel (14) and friend Claire Silberbauer (13) at Eikenhof in 1991.

Azanian Peoples Liberation Army Commander Phylla Dolo has since taken responsibility for the attack and has been granted amnesty by the Truth and Reconciliation Commission.

In his judgment yesterday, Smallberger said the three were now free to call any further witnesses whose evidence they considered relevant to a "just determination of the issues between themselves and the state."

"We express the hope that, in the interest of the proper administration of justice further proceedings will commence as a matter of urgency and be disposed of as expeditiously as possible."

Gauteng ANC secretary Mr Obed Bapela addressed a crowd of about 200 supporters outside the court and declared the judgment as "the first stage of victory."

Ndweni's father, Mr Samuel Ndweni, told Soweitan simply "You met me two years ago, I was not smiling. I think this is the beginning of happiness."

Bholo's sister Nikiwe said, "I have always hoped that if one is innocent the truth will prevail. But I will celebrate when he is back home."

Mr Oupa Kulashe of Wesselsbron in the Free State was the most relieved of the relatives. He told Soweitan that apart from being emotionally drained, as a businessman he was almost financially ruined because it was he who ran between defence witnesses transporting them from as far afield as the Free State to the Circuit Court in Kempton Park every day in 1994. "I hope I'll now be vindicated."

The witnesses had testified that the Eikenhof Three were at Kulashe's home when the attack occurred.

Those who may be recalled to testify are included as a list of 15 witnesses. The names include political analyst Professor Tom Lodge, Apla General Letlapa Mphahlele and Captain PJ Brits.

Most importantly, evidence will be sought from Mr Bennie Schoonwyk, Yvonne Msimango, Regina Borose and Joseph Nkosi, because police refused to present them and their evidence to the court during the trial.

Attorney Mr Mohammed Rangera immediately flew back to Johannesburg to consult about bail applications.

Amended asset forfeiture law sparks lively debate

POLITICAL CORRESPONDENT

If the Asset Forfeiture Unit lacks a motto, perhaps it should be "If at first you don't succeed...". A significantly rewritten version of the law empowering it to seize the assets of alleged criminals, aimed at avoiding further rejection of the legislation by courts, was debated by the full National Assembly yesterday, but voting had to be postponed when a technical problem was found in the draft.

It brought an anti-climactic end to a lengthy debate in which Justice Minister Penuell Maduna and most parties advocated adoption of the revised legislation, with only the Democratic Party signalling its intention to vote against it.

In three recent cases, High Court judges overturned separate sets of asset seizures on the grounds that they had been made before the act came into force on January 21. The new version seeks to make the legislation retrospective.

Mr Maduna said judgments had created the impression that people who committed offences before the commencement of the act were entitled to the benefits of their crimes.

He said it had always been Parliament's intention to make attachment of property retrospective. "It should be borne in mind that the relevant provisions of the act do not create a new offence retrospectively. It merely provides for new remedies in terms of which action can be taken against property."

Johnny de Lange, head of the portfolio committee on justice, criticised judges who had overturned the seizures by saying they had interpreted the law as having the opposite intention to that conceived by Parliament.

Tertius Delport, opposing the bill on behalf of the DP, said his party welcomed and supported the amendments aimed at removing uncertainty about retrospectivity of the act.

But some of the amendments would erode judicial discretion and ANC

Sheila Camerer, speaking for the New National Party, said "We would like to express the hope that this time we have got it right, although we are not overconfident that the next round of judges dealing with asset seizure under the act will agree. This is ground breaking and complicated legislation and yet once again it has been steamrollered through Parliament with insufficient consideration by a gung-ho

ARK 2/9/99 (252)

Judges reprimanded criminals in asset seizure ruling — ANC

BD 2/9/99 (252)

David Greybe

CAPE TOWN — The African National Congress (ANC) accused three judges yesterday of granting "amnesty" to anyone in possession of proceeds of crime before January this year.

Johnny de Lange, ANC MP and chairman of the justice portfolio committee, said in Parliament he was "stunned by the approaches adopted and the attitude displayed by judges Blignaut, Hurt and Roux" who found recently that tough new legislation for seizing criminals' assets was not retrospective.

The conclusions arrived at by the three judges "are the direct opposite of what Parliament and the (various) role-players intended", De Lange said during the second reading debate in the National Assembly of the Prevention of Organised Crime Secondment Amendment Bill. "The courts should be careful not to frustrate the wishes of Parliament," De Lange said during the debate to approve the bill to tighten the original Prevention of Organised Crime Act of January this year.

All parties except the Democratic Party (DP) supported the bill. It was scheduled to be passed by the National Assembly last night, but a technical hitch was picked up at the last minute which will be rectified this morning.

The National Assembly will meet today to vote on the bill, after which it will be rushed to the National Council of Provinces for debate and adoption, a source said last night. President Thabo Mbeki remained on "standby" to sign it into law tomorrow.

The asset seizure unit, which together with the ANC has been accused by the main opposition parties of steamrollering the bill through Parliament is understood to be ready to act on the new law as early as next week.

The second amendment bill will change the act to make it clear that it applies to crimes committed before it came into force in January this year. All parties support the new retrospectivity clause, described as "overkill" because of attempts to put its interpretation beyond any legal doubt.

As none of the three recent judgments against the unit addressed the issue of constitutionality, that issue

was still to be addressed by the courts.

De Lange said the ANC had expected that the legislation, aimed at "the crème-de-la-crème of mobsters and gangsters" would become the subject of every conceivable constitutional and legal challenge. It would take some years, and (on) some aspects, even a decade, before we would have judicial clarity on all aspects of this legislation."

DP MP and justice spokesman Tertius Delport said the DP could not support the bill because certain amendments curtailed the discretion of the courts. The DP called for these amendments to be deferred for further consultation and advice.

The DP felt that the amendments would "erode the every essence of the rule of law."

Introducing the debate, Justice Minister Penuell Maduna said the three judgments had created the impression that people who had committed offences before the starting date were entitled to the benefits of their crimes.

It had always been the intention of Parliament to make the attachment of property retrospective, Maduna said.

CAPE ARGUS, THURSDAY, SEPTEMBER 2, 1999

New NP support for Maduna's court call

Long recesses add to problem — Camerer

ROBERT BRAND
PARLIAMENTARY BUREAU

The New National Party yesterday supported Justice Minister Penuell Maduna's call for a review of the High Court recess system to help ease the burden on courts.

Mr Maduna was forced to apologise after saying earlier this week judges used their lengthy recesses for activities not related to judicial duties.

He singled out Constitutional Court Judges Richard Goldstone and Johann Kriegler, who were abroad on United Nations assignments.

The New NP and the Democratic Party yesterday introduced motions in the National Assembly calling for Mr Maduna to be censured.

But in a separate statement, New

NP justice spokesperson Sheila Camerer said the minister's "ill-considered attack on the Constitutional Court" should not be allowed to obscure some important points he had raised.

The New NP agreed the High Court was "grossly overburdened and under resourced", Ms Camerer said, but the answer was not to "interfere with the excellent functioning of the Constitutional Court" to remedy the situation.

The issue of lengthy court recesses should also be re-examined, Ms Camerer said. High courts are in recess more than three months out of the year.

"This has been raised from time to time over the past 10 years.

The New NP believes that it is not inappropriate to look at this issue again, particularly in view of the

present enormous burden on the courts and the shortage of resources for the criminal justice system."

Chief Justice Ismail Mahomed yesterday confirmed he sent a written statement to Mr Maduna to give statistical and other information about the load of the Supreme Court of Appeal, and the inadequacy of its resources to cope with that load.

Mr Maduna claimed earlier he had Judge Mahomed's support for his belief that the higher courts should be rationalised.

He said the Supreme Court of Appeals was vastly under resourced in comparison with the Constitutional Court.

Chief Justice Mahomed said Mr Maduna was correct to contend that given the volume of work in the Appeal court, the court was substantially under resourced.

R1m embezzled from Legal Aid Board — report

ZELDA VENTER

PRETORIA. Altogether R1 million was embezzled by a Legal Aid Board employee who made fraudulent withdrawals from the board's account.

This is one of many irregularities that came to light in the latest annual report of the board for the year 1996/97, which was released yesterday.

Many unresolved financial problems were raised in the report by the auditor-general, including bad debts and unreliable internal checking and control measures.

The report said that according to an estimate done in 1992, work totalling R55 million was done in respect of legal services rendered on behalf of the board, but for which no accounts have been sent to the board.

As the board has to comply with generally accepted accounting practice, a provision for this liability is necessary and will result in the

board being underfunded, the report read.

Some of the other key findings of the auditor-general included that there were significant shortcomings in the internal checking and control of the financial transactions, resulting in insufficient procedures which could lead to some transactions not being recorded accurately.

The bank and cash system was unreliable and bank reconciliations were incomplete. Furthermore, no regular reconciliations were done in respect of the moneys deposited at the Corporation for Public Deposits.

Another irregularity raised was that the account administration and the computer systems were unreliable.

There were also several issues in relation to the financial statements regarding deviation from generally accepted accounting practice, which include the alteration of comparative figures and disclosure of fixed assets.

The board did not comply with various sections of the Legal Aid Act. Legal opinions were obtained in respect of certain sections of the act, which indicated that the board should in fact obtain approval from the Minister of Justice to appoint consultants and that all moneys should first be paid into the bank account of the board.

The board disagrees with the opinion and has requested the Chief State Law Adviser to review this opinion.

The board also did not always comply with the Legal Aid Guide and other policies of the board, the report said.

A new board was appointed by the Minister of Justice in October last year, the report said.

The newly appointed board, which includes people with financial expertise, has taken several steps to solve the problems.

The effectiveness of the steps will be evaluated in the next audit, the report said.

CT 2/9/99

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Second chance for Eikenhof 3

By Themba Molefe

The continued plea of innocence by the African National Congress cadres known as the Eikenhof Three has begun to pay dividends after their status was changed from convicted prisoners to that of prisoners awaiting trial by the

Supreme Court of Appeal in Bloemfontein this week.

The relief was evident among the families, friends and ANC supporters on Tuesday after Judge JW Smalberger set aside the murder convictions and sentences of Siphwe James Bholo (31), Siphso Samuel Gavin (29) and Boy Titu Ndweni (22), all of the Vaal

They had initially been sentenced to death for the murders of Zandra Mitchley her son Shaun Nel (14) and Clare Silberbauer (13) at Eikenhof, south of Johannesburg, in March 1993. However, the sentences were commuted to life after the Constitutional Court abolished capital punishment.

While it has been five long years for the three, it has also been a traumatic period for their immediate families.

But even though their alibis were rejected by the trial Judge David Curlewis in the Heidelberg Circuit Court, Smalberger significantly found there was no other evidence linking them to the attack.

Their hopes were, however, spurred when on July 22 1997, more than four years after the attack and three years after their conviction, the Azanian People's Liberation Army (Apla) issued a statement claiming responsibility for the Eikenhof murders.

In fact, at the behest of former Mpumalanga premier and ANC national executive committee member Mathews Phosa, an investigation revealed that Apla commander Phila Dolo had submitted applications for amnesty to the Truth and Reconciliation Commission (TRC) in December 1996 and February 1997.

Smalberger said that in addition to other acts, Dolo said in an affidavit "I also ordered the Eikenhof ambush where three people were killed."

Dolo also confirmed in yet another affidavit that he subsequently received a report from four trained Apla members relating to the attack.

In his judgment Smalberger said Dolo and another Apla cadre, Siphso Polite Xuma, also known as Bulelani Xuma, will have to be called when a list of witnesses is recompiled.

An even more important aspect Smalberger raised was that five prospective witnesses in the immediate vicinity of the killing made sworn statements to police between one and four days after the attack.

Three of them were school children aged 14 to 16. Each was individually shown a set of about 300 photographs, and each independently identified the same two people as being among the attackers.

Both men were known to police as Apla members.

Of the other witnesses, a

woman identified one of the Apla members as an attacker, while her husband said one of the Apla members resembled one of the attackers.

All five witnesses failed to point out any of the Eikenhof Three at later identification parades.

Smalberger said the fact that at the time Apla had not claimed responsibility for the attack, and an apparent lack of knowledge or appreciation by the defence counsel that at least three witnesses identified the Apla members, provided a reasonably sufficient explanation for the matter not having been pursued to the full by the defence.

Smalberger said in the view of the appeal judges, it was important that facts concerning the photographic identification of Apla members and the failure by witnesses to identify the Eikenhof Three at three parades should have been brought to the attention of the trial court.

Whether anyone was at fault in not doing so was a matter the appeal judges preferred not to comment on as the full facts of the matter were not available to them.

On Dolo's claim that he was responsible for the Eikenhof attack, Smalberger said a person would normally be

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While the ANC welcomed the judgment on Tuesday the relief was also more evident among the immediate relatives of the three young men. To them the end of the trauma of waiting is in sight.

In its statement the ANC which initially handed the three to the police, said "We note the change of their status from convicted prisoners to that of prisoners awaiting trial as a step in the right direction."

A happy Mrs Miriam Gavin told *Sowetan* from her Evaton home that she had given up hope of seeing her son alive again after he was sentenced to death.

She recalled how her family requested the ANC to hand her son over to the police after "months of harassment".

This was in the belief that the three, who had claimed they were in Wesselsbron in the Free State at the time of the incident, would convince the police of their innocence, she said.

"They (police) used to come here in the middle of the night kicking doors open in their raids. The black policemen did not hesitate to call my daughter a bitch," said Gavin.

Also while the three were self-

Judge JW Smalberger's judgment at a glance:

- Set aside conviction and sentences of Boy Titu Ndweni, Siphwe James Bholo and Siphso Samuel Gavin, effectively declaring them awaiting-trial prisoners and eligible to apply for bail.
- Ordered the reopening of their trial and the recalling or calling all or some of the 15 or even more witnesses previously ignored by the state.
- Former Azanian People's Liberation Army commander Phila Dolo, who confessed to ordering the Eikenhof attack, and Apla soldier Siphso Polite Xuma, also known as Bulelani Xuma, may be called to testify, and
- The success of the application for a retrial does not guarantee acquittal but will depend on the trial court's impression.

sceptical of a claim of responsibility made nearly four years after the event, in circumstances potentially non-prejudicial to the maker (already serving a maximum jail sentence and with an amnesty application pending).

More particularly, this would be the case where such a claim was subject to conflicting reports, characterised by vagueness and inconsistency open to serious challenge and, furthermore, unconfirmed on oath by any of the alleged participants in the Eikenhof attack.

Said Smalberger: "However, we are not called upon at this stage to decide whether or not Dolo's claims are true or not."

"There are special features arising from the circumstances of the Eikenhof case that would justify the reopening of the case."

Smalberger said the dictates of fairness required that all relevant information bearing on the men's guilt or innocence should be placed before the trial court so that it could determine the true facts.

defence unit members the application before the Appeal Court was brought on the basis of new evidence and that the state withheld evidence that the perpetrators had been identified as Apla soldiers and not ANC.

Significantly, therefore, the next logical step according to the Eikenhof Three's attorney Mr Mohamed Randerera, is a bail application as the case has now been referred back to the trial court - presided over by Judge Piet van der Walt who replaced Curlewis at the defence's insistence.

Smalberger has ruled that the three should call or recall some or all of 15 listed witnesses for examination or further cross-examination.

Smalberger emphasised that the trial court, which last November again denied the three bail, should deal with the matter expeditiously.

Said the ANC: "The lives of these young men have been in limbo for years. Further delays in the resolution of this matter will prolong their trauma and that of their immediate families."

Apartheid victims ignored - TRC

By Ido Lekota

The Truth and Reconciliation Commission has expressed concern that the Government will eventually forget about the plight of those who were victims of human rights violations during apartheid.

This concern arises from the fact that the Government has seemingly been dragging its feet in implementing recommendations made by TRC almost two years ago on the kind of reparation the victims should receive.

The recommendations included an

interim relief payment ranging from R2 000 to R3 500. This was mainly aimed at assisting victims to access services such as counselling.

The final reparation package included various provisions such as disability grants, education grants and building clinics and memorial sites.

Speaking to *Sowetan* yesterday TRC reparation and rehabilitation committee chairwoman Ms Hlengiwe Mkhize expressed concern at the fact that the commission would be closing up shop in November before the final reparation package is implemented.

"Our fear is that the minute we close

up shop the Government will forget about the victims. Why don't they, for example, take advantage of our existence and start putting systems in place for the implementation of the reparation process."

Mkhize said the TRC was well aware that even in terms of the United Nations protocol, people did not receive monetary compensation for their involvement in the liberation struggle.

She said the reconciliation process seemed to have benefited the perpetrators of human rights violation who were granted amnesty.

"The reparation process should be

implemented as a counter-balance to the amnesty process," she said.

Mkhize called on the Government to make a political decision of ensuring that businesses that benefited from apartheid contribute to the reparation process.

Yesterday Justice Ministry spokesman Mr Paul Setsetse said the recommendations were being worked on by the department's policy unit.

They would be discussed by the interministerial committee, presented to the Cabinet and eventually brought to Parliament for a final decision.

However, sources in the ministry

said that the Government was concerned about the financial implications of the proposals.

It is estimated that it would cost the taxpayers at least R3 billion to implement the recommendations.

Setsetse revealed that R100 million was budgeted for interim relief during the 1998-99 financial year and this has increased to R200 million for 1999-2000.

So far more than R8 million has been paid out in interim relief from the Presidential Relief Fund, but more applications were still being assessed. Setsetse said.

(252) Sowetan 3/9/99

ASSISTANCE FOR MAGISTRATES

Justice Dept takes over pre-trial project

ET 3/9/99

A PILOT PROJECT aimed at keeping dangerous criminals in jail and helping magistrates make better-informed bail decisions was yesterday handed over to the Department of Justice **ERIC NTABAZALILA** reports. (2/72)

THE project, called the "Pre-trial Services", was run by the Bureau of Justice Assistance as a joint five-year project of the South African Department of Justice and Vera Institute in America.

Similar projects were introduced in Johannesburg and Durban, and more are expected to be launched in courts around the country.

Director of the Bureau of Justice Assistance, Michelle India Baird, said that after a suspect has been arrested, his or her details and photograph are taken and stored in a databank.

If the accused is released on bail, the Pre-trial Services office helps to supervise and enforce bail conditions, making sure the suspect does not threaten witnesses and returns to court when expected.

There are more than 40 Pre-trial Services officers around the country who are trained to track suspects through the justice system and to provide court-based

services to witnesses and victims.

The Pre-trial Service offices would be connected to the police's computerised record system, allowing courts immediate access to the criminal histories of the suspects and records of their previous convictions.

Accepting the handover of the project, Justice Minister Penuell Maduna said it was the first time that police had allowed any other organisation or individual unrestricted access to use of the system. It was also the first time that prosecutors could have access to the previous convictions of every accused person before a bail decision is made.

"The Pre-trial Services system shows that the justice system's various components, previously accustomed to working in virtual isolation, can collaborate effectively. This system will free investigating officers to spend more time conducting and gathering evi-

dence necessary for convictions. In this regard we are spending much energy and many hours in the creation of a national justice information system. We desperately need this system," said Maduna.

Communities stand to see justice being done under the new system as community police forums would receive notification of bail conditions along with photographs of the accused released on bail immediately after the court's decision.

Mitchells Plain chief magistrate Simeon George said "This project has cemented community involvement in the day-to-day functioning of the Mitchells Plain magistrate's office."

"The staff at Mitchells Plain Magistrate's Court have not lost sight of our core function, which is to run our courts effectively and efficiently. The Pre-trial Service has enhanced our capacity in this regard. To my mind, co-ordination and co-operation between all stakeholders in the criminal justice system is the single most important factor in ensuring the sound administration of justice."

The information and photograph would also be forwarded to Correctional Services for prison warders to find accused people who are in custody more quickly and ensure that the right suspect came back to the right court.

Before the introduction of the system, Bureau of Justice Assistance discovered that about 33% of witnesses failed to appear at the Mitchells Plain Magistrate's Court.

It also found that 75% of prisoners in Pollsmoor have been granted bail but could not afford it. The number had dropped by half because the Pre-trial Services Officers provided magistrates with information about awaiting trial prisoners that enabled them to make better bail decisions.



HAND-OVER. Minister of Correctional Services Ben Skhosana and Justice Minister Penuell Maduna after receiving the Pre-trial Service in Mitchells Plain yesterday. **PICTURE: PETER BAUERMEISTER**

Leadership of the Cape Bench failed to address our concerns — judges

ET 3/9/99

(2/72)

MOTSHIDISI MOKWENA
COURT REPORTER

TWO acting judges from Transkei whose appointments to the Cape High Court Bench were criticised because of their inability to understand Afrikaans, believe the leadership of the Cape Bench failed to address their concerns.

Justice Mandisa Maya and Justice Humphrey Lusu said on Wednesday that the leadership of the Cape Bench should have condemned the action of

judges who on condition of anonymity made derogatory statements to the press regarding other judges.

"We feel that if there was ever an issue which called for the leadership's condemnation it was this one about language. Had the leadership addressed this issue it would have been resolved," judges Lusu and Maya said in a joint statement.

"The failure by the body of judges to publicly disclose the names of the culprits or to issue a statement dissoci-

ating themselves from the criticism creates a basis for the suspicion that there is a concerted effort to exclude black judges from this division. They should have taken it upon themselves to respond, since the criticism creates fertile ground for a language groups division on the Cape Bench."

The criticism of their appointment because they did not know Afrikaans was "misguided and ill-informed".

Judges Maya and Lusu's response follows a comment by one judge who

said, "What can you do about it when an African cannot speak Afrikaans?"

They were also responding to the claim that white judges were still being appointed because of a shortage of suitably qualified people of other races.

At the time, these remarks prompted Deputy Judge President of the Cape Justice John Hlope to urge the government to declare English the only language of record in courts.

The judges said "It is short sighted and narrow-minded to suggest that

one should not be appointed because one does not know a particular language. Judges have over the years been appointed to High Court divisions in the Eastern Cape, KwaZulu Natal and the Transvaal without them having a clue about Xhosa, Zulu or Sotho."

They pointed out that statements of this kind showed there were people in high office who still resisted change.

Afrikaans-speakers were a small part of the population and black professionals were expected to compromise

'Legal professionals must keep their noses clean'

(ana) ARG 4/9/99

KIM HELFRICH

Theft and "over-reaching" by the legal profession could never be condoned.

This was the reaction of Emil Boshoff, president of the Law Society of Transvaal, to the recent spate of allegations by apparently unscrupulous lawyers as regards, particularly, the Legal Aid Board and the Road Accident Fund.

He was confident existing rules of conduct for the legal profession were strong enough to deal with transgressors.

"We are looking at a type of 10 Commandments because our existing rules of conduct extend to reams of paper,

many of which are housekeeping matters," he told a briefing at the society's head office in Pretoria yesterday.

In terms of changes which might come about in the rules of conduct, Mr Boshoff said an area which had to be looked at was marketing, but "it must be remembered there is a very fine line between marketing and touting".

He said both the board and the fund were on the verge of bankruptcy and were now again facing "pretty serious allegations".

"Administration at the Legal Aid Board has been pretty chaotic," he said, adding that both organisations were looking hard at various ways of saving money - "admirable, under the

current circumstances".

As far as complaints about attorneys' conduct was concerned, Mr Boshoff said these would be fully and fairly investigated by the law society. "Where specifics are turned to complaints they will be investigated and both sides of the story will come out".

"The Law Society of Transvaal has five legal officials and three accounting investigators on its staff and all complaints to it will be fully investigated and heard by a disciplinary committee if needed. If it is necessary, finally, the society will go to the High Court to have a person struck from the roll," Mr Boshoff said.

He was critical of the accusations

levelled via the media against people such as the SA Rugby Football Union president Sias Nkanunu and IFF MP Koos van der Merwe.

"In some instances they were apparently totally unaware of what they had been accused of and it seems certain sections of the media have decided it's news".

"I cannot speak for Mr Van der Merwe but I'm sure he can deal with it. What was done to Mr Nkanunu was close to assassination," Mr Boshoff said.

He had "full confidence" in the society's ability to deal with errant members of the legal profession in the right way.

Straight to jail for 40 years for rapists

Definition of the crime is broadened in proposals

HENRY LUDSKI

A GOVERNMENT crack-down on rape will include 40-year mandatory minimum sentences for rape with aggravated circumstances, a radically revised definition of rape and compulsory HIV testing of sexual offenders

The new measures are aimed at putting thousands more sexual offenders behind bars. The SA Law Commission will hand proposals to Justice Minister Penuell Maduna on Wednesday. The proposed changes confirm a strong international trend towards redefining rape.

Maduna will be presented with the legislative proposals for a new Sexual Offences Act to replace legislation that has been in existence since 1957. The new law will pave the way for a dramatic increase in convictions, tougher sentences for offenders and greater protection for victims.

It is expected to come into effect next year and is also aimed at setting stringent sentencing guidelines for presiding officers to follow.

This will address a controver-

sial problem with sentencing at present, where presiding officers have wide discretionary powers. These have led to glaring and widely reported inconsistencies in sentencing.

This week, the SA Law Commission is also expected to propose an amendment to the Criminal Procedure Act, which will make provision for compulsory HIV testing of people arrested for committing sexual offences.

The liberalised and vastly expanded definition for rape will make South Africa's sexual-offences legislation among the toughest in the world. Law reformers are confident that it will cast the legislative net wide enough to catch a significantly larger group of offenders under the new definition of rape.

The proposed legislation is being driven by a powerful new force — women in ministerial positions who are using their clout to speed up change.

"It's an extraordinary proposal," said Cheryl Gillwald, the

deputy Minister of Justice.

South Africa has been branded the rape capital of the world. The statistics show that there is a rape every 26 seconds in South Africa and that one in three women will be raped.

The conviction rate in 1998 was less than eight percent.

'We can no longer sit on our hands. That makes us more culpable. We have to act'

"We can no longer sit on our hands because that makes us more culpable. We have to act," said Gillwald.

The South African reformers have looked to Namibia for guidance in coming up with a new definition for rape. Under existing law, rape is defined as unlawful penetrative sexual intercourse by a man with a woman without her consent.

If South Africa follows the Namibian example, as is expected, then the lack of consent by a woman will no longer be as central a factor as it is at present. Some offenders have been able to say victims had consented, when, in fact, they may have had no choice. The new proposals are expected to cover coercive

circumstances which will include the use of force, or threats of violence, the abuse of a position of authority, and the use of drugs and liquor to induce a woman to sexual intercourse.

It is also expected that an act of sexual penetration will no longer be restricted to vaginal intercourse, but will include anal and oral intercourse as well as simulated sexual intercourse. An act of sexual intercourse will cover the insertion of objects into body orifices.

The proposed new law will attempt to draw all sexual offences into one single Act. It will take into account recent landmark Constitutional Court judgments. These include the recent National Coalition on Gay and Lesbian Equality ruling which repealed the common-law offence of sodomy, and the 1996 Case and Curtis judgment on the possession of adult pornography (the court found that what you do in the privacy of your home is your business and your business only).

The next stage of the law reform will be the release of another discussion on the process and procedural issues relating to sexual offences. This is expected later this year.

ST 5/9/99

(252)(34)

We botched exhumations, TRC admits

ARG 7/19/99
STAFF REPORTERS (2/72)

Johannesburg - An internal investigation by the Truth and Reconciliation Commission (TRC) has confirmed that the remains of anti-apartheid activists which were exhumed and returned to their families for reburial were in many cases the wrong remains.

The TRC's reparations committee is seeking a meeting with Justice Minister Penuell Maduna to disclose to him that many of the 50 bodies exhumed during the commission's investigations may have been wrongly identified.

Fingers are pointing at a former senior investigator with the commission who allegedly failed to corroborate evidence from the amnesty committee which led to many exhumations.

Former TRC commissioner Dumisa Ntsebeza confirmed yesterday that "discrepancies" had been found in documentation used to locate and exhume bodies.

"There have been flaws, and there is a possibility, even a probability, that some of the bodies that were exhumed could be a case of mistaken identity."

The return of remains to families of activists killed in the struggle formed a major pillar of the reparations process.

De Kock paid dead man's salary 'to avoid inquiries'

Stephane Bothma
ed 7/19/99

PRETORIA - For six months after a turned African National Congress member, or askari was killed in a brutal attack by intoxicated Vlakplaas security policemen, unit commander Eugene de Kock paid his salary to avoid inquiries from the dead man's family.

Moses "Bruce" Nthelang, who was associated with Winnie Madikizela-Mandela before he changed loyalties and joined forces with the Vlakplaas C10 unit as an askari, was smothered to death with a rubber tube at the Vlakplaas canteen in July 1989.

De Kock started the attack on Nthelang by hitting him on the head with a billiard cue and slapping him for losing his weapon in a shebeen, the truth commission's amnesty committee heard yesterday.

"I was virtually beside myself with anger when I realised what the consequences of the askari's action could be," De Kock testified. He said he immediately suspected that Nthelang ex-robbery before getting rid of it.

De Kock is one of 10 Vlakplaas members applying for amnesty for the killing of Nthelang. The others are Douw Willems, Brood van Heerden, Izak Bosch, Johann Tait Leon Flores, Marthinus Ras Riaan "Balletjes" Bellingan, David Baker and Petrus Snyders.

The committee heard that after De Kock assaulted Nthelang and stormed out of the canteen to his office to calm down, other C10 members took over the "interrogation" of the askari, attempting to establish the facts about the weapon Nthelang was "tubed" — a process whereby the inside tube of a tyre is placed over the mouth and nose of a victim — by Van Heerden and others and died in the canteen.

De Kock was informed about the death and the body was taken to a privately owned farm near Zeerust and buried in a shallow grave after attempts to set it alight failed.

De Kock, who had established an internal intelligence section at Vlakplaas to keep an eye on the askaris, said there had been suspicions about Nthelang's loyalty to the unit for a while.

He said that should the askari have turned against the unit it could have created a massive security risk and exposed its activities.

Going Awol cost Askari his life

ARG 7/19/99

Pretoria - An Askari who was absent without leave from former security police base Vlakplaas was killed when he refused to explain his absence, the Truth and Reconciliation Commission has heard.

Former Vlakplaas commander Eugene de Kock told the commission's amnesty committee in Pretoria yesterday that Phemelo Nthelang died at Vlakplaas in 1989 while being interrogated, about his absence from the farm.

De Kock told the committee that Mr Nthelang did not report for duty at Vlakplaas for about a month, and when asked why would not say where he had been. He had also lost his service pistol.

De Kock said security police suspected that he had defected to the African National Congress.

De Kock and his team had just returned from an operation in the former Eastern Transvaal on the day of Mr Nthelang's death.

"I can still remember what we had a lot to drink," he said, and on our arrival at the farm we went to the canteen and had more drinks.

"We were playing snooker when two members of the unit approached me and said Mr Nthelang had been found by other Askaris (ANC members who defected to the apartheid police) at a shebeen," De Kock testified.

"They brought him to the canteen, where I questioned him about his whereabouts."

But all Mr Nthelang said was that he had lost his service pistol at the shebeen and "I hit him three times with a snooker cue," De Kock said.

He said other security police members fell on Mr Nthelang when he left the canteen, and that he later saw Mr Nthelang's body, which was then taken to a farm in Zeerust and buried. - Sapa

NATIONAL

Backlogs alarm prosecutor's office

pd 7/19/99

Taryn Lambert

IT WAS alarming that of an average backlog of 178 cases in each of SA's 310 regional courts, only 12 cases were finalised each month, deputy director of public prosecutions Charin de Beer said yesterday.

De Beer was referring to the results of a study of court management conducted by the office of National Director of Public Prosecutions Bulelan Ngcuka in conjunction with forensic auditors at KPMG.

The study was commissioned after the signing of a wage agreement between public prosecutors and government earlier this year.

In terms of the agreement the prosecutors, who had lobbied for better salaries, would receive a 9% increase in addition to the 6% they received in January.

Part of the additional increase would be paid if prosecutors met certain targets.

De Beer said the study on the regional and district courts was complete. An analysis of the high courts started last week.

She said an average of 34 cases were finalised in each of the country's 823 district courts every month, while there were 153 outstanding matters in each of those courts.

A total of 102 399 cases were outstanding in the district courts and 46 302 in regional courts, which had a conviction rate of 80% and 68% respectively.

Prosecutors' performance was measured in terms of court hours worked each day. Some of the "best prosecutors" worked between five and seven hours a day.

Prosecutors who could not afford to pay bail of less than R1 000 a month — a major factor in prison overcrowding — had been reduced from 10 817 to 8 244.

The unit's investigation of performance in the high courts prompted Ngcuka to schedule meetings with the judge-presidents in all the country's high courts.

Preliminary investigations had found that the high courts finalised 1 787 cases and 4 167 appeals last year, taking an average of six days to finalise a matter.

It was found that cases took an average of 520 days to complete, from a suspect's first appearance in the lower courts, 24 hours after being arrested, to sentencing in a high court. Ngcuka's office, which decides whether or not to prosecute a suspect, decided on 19 254 dockets where policemen were suspects last year and received a further 8 288 dockets which were potential high court trials.

Ngcuka said at the weekend that he would meet judges to discuss the high courts' "completely unacceptable" work rates.

Cases in high courts take an average 520 days to finish, study finds

Talks about courts' 'low work rate'

(25.2)

Southern 6/9/99

NATIONAL director of public prosecutions Mr Bulelani Ngcuka is to meet judge presidents throughout the country over the next few weeks to discuss what he says is the "completely unacceptable" work rate in high courts

Speaking on national television yesterday, Ngcuka said his directorate had done an audit of all the high courts in the country, and he had just been examining the results

"The situation is quite bad, and therefore what we agreed to do is that I must present the findings of this audit to the judge presidents in the various divisions," he said

He would do this over the next few weeks

"The situation as it is is unacceptable, completely unacceptable"

His statement follows Justice Minister Penuell Maduna's criticism earlier this week of the long recesses enjoyed by Constitutional Court judges, and what he said was the court's relatively low productivity

However, Ngcuka said the problem in the high courts was not "just the judges"

There was a need for better administrative arrangements, as in some areas there was no continuous roll where one case began as soon as another finished. Valuable time was lost in the process

"I want to discuss with judges ways and means of trying to address the system, particularly as it affects the criminal justice system. Obviously I would like to get more time in the courts"

Ngcuka said long delays in handing down judgments were not acceptable either. "But as I say, I want to present these findings to the judge presidents. I would like to have an opportunity of discussing this issue with them

first rather than to come and be seen to be lambasting them on television"

Ngcuka said his directorate had already looked at similar problems in the lower courts, which in some areas had been sitting for as little as one or two hours a day

To correct this, it had linked prosecutors' pay increases to productivity, and had said it wanted courts to sit for a minimum of 4.5 hours a day

Prosecutors had pulled out all the stops over the past few months, and this target was being met. The directorate was now turning its focus on high courts

"Again even there it's quite bad. We have divisions which did only 85 cases the whole of last year. Those divisions have got 10 courts, they've got more than 30 advocates who should have been working"

"If you look at that, each case takes on average six days to finalise. Why is it that the high courts have to finish only 85 cases? That's a big question"

Ngcuka also defended the controversial Prevention of Organised Crime Act, which allows seizure of criminals' assets, saying that far from being poorly drafted, it had been drawn up by a team of outside experts and approved by all political parties

It was a complex and new area of law. The resistance to it was worrying

He said when the amendment to the act was being debated in Parliament last week, a senior opposition politician had said Ngcuka had become a laughing stock as a result of alleged criminals' successes at overturning seizures

"That's a matter that hurt me because I have been trying to give it everything I can, my best shot," he said - Sapa

Man tells truth commission of assassination plot

8/19/99

8/19/99

Nomavenda Mathiane

FORMER self protection unit member Thulani Tsotetsi admitted he participated in an assassination plot to kill East Rand civic leader Sam Ntuli in September 1991.

Giving evidence at the truth commission's amnesty committee hearing at Palm Ridge near Eden Park on the East Rand yesterday, Tsotetsi admitted to killing people who had refused to join the Inkatha Freedom Party (IFP).

He also admitted to conspiring with people who "killed Ntuli, conspired to murder Thokoza resident Sis Toto and a Mr Ndaba, and attacking a tavern in Ngema section, killing five people and injuring eight.

Another applicant, Nicholas Chamane, also a member of the IFP-aligned self protection unit who is implicated in the Khumalo gang activities, denied East Rand IFP couple Abram and Gertrude Mzizi ever visited Khumalo.

He admitted however to Mzizi and his wife visiting him in prison "to inform me about the TRC and to advise me to apply for amnesty," he said.

Chamane refuted claims made by co-accused Themba Zimu, who the day before told the committee that the Mzizi couple attended meetings where Ntuli's assassination was planned.

Chamane said he shared a prison cell with members of the African National Congress



Inkatha Freedom Party MP Abram Mzizi at a hearing of the truth commission's amnesty committee at Palm Ridge on the East Rand, listens to former self-protection unit members implicate him in an assassination

Picture: TREVOR SAMSON

relatives of slain ANC supporters, including Sam Ntuli's wife.

After the hearing former taxi owner Meshack Sibeko said he found it difficult to look at the people who had brought so much pain in the township.

"I lost three taxis, my house was burnt to ashes and one of

my drivers was killed by the Khumalo gang," said Sibeko.

Agnes Madi said she lost her daughter Queen who was abducted in the presence of her boyfriend Bruce Khoza — taken to the hostel where she was gang-raped and later killed. The hearing continues today.

TRC report to govt

on exhumations
(2/2) 8/19/99
JOHANNESBURG The TRC confirmed yesterday it was writing a report to give to Justice Minister Penuell Maduna over the exhumation of bodies and alleged return of the wrong remains to families.

It was reported here yesterday that an internal investigation had confirmed that many of the 50 bodies of anti-apartheid activists which were exhumed and returned to their families for burial were wrongly identified.

It is suspected a former senior investigator with the TRC's investigative unit failed to corroborate evidence from the amnesty committee. It was this evidence which led to the many exhumations.

Only 10 out of the 50 bodies could be positively identified.

TRC spokesperson Phila Ngqumba said the commission's report to the minister would include information about completed and planned exhumations.

However, the TRC would consult with all affected families before it handed over the report, Ngqumba said.

Former TRC commissioner Dumsa Ntsebeza was quoted yesterday as saying that "discrepancies" had been discovered in documents the commission used to locate and exhume the bodies.

Some bodies were exhumed from prison cemeteries, but many were exhumed following evidence given by former security policemen.

The investigator's alleged lack of thorough cross-checking first came to light last year — Sapa

Real Eikenhof killer speaks out

Wally Mbhele (252)

The self-confessed perpetrator of the Eikenhof massacre, Phila Dolo, this week spoke out for the first time about his involvement in the shootings, accusing the police of knowing for a long time that he was responsible but deliberately putting the wrong people in jail

Dolo claims that the former commander of the Brixton murder and robbery unit, Charlie Landman, personally told him when he was arrested for another shooting that Landman knew Dolo was the man responsible for the Eikenhof massacre

Dolo was a commander of the Azanian People's Liberation Army (Apla), the armed wing of the Pan Africanist Congress

This week the Supreme Court of Appeal set aside the convictions and sentences of three African National Congress activists who were jailed for the Eikenhof killings. The court also ordered a retrial — which does not guarantee that the three will be acquitted this time

The three — Boy Titi Ndweni, Siphwe James Bholo and Siphso Samuel Gavin — were convicted and sentenced in June 1994 for the murder of Zandra Mitchely (35), her 14-year-old son Shaun and his 13-year-old friend Claire Silberbauer

The three were sprayed with AK-47 rifle fire on the morning of March 19 1993

Landman's investigation resulted in the conviction of the three ANC activists who have become known as the Eikenhof Three

"The police have been trying all the tricks in the book," said Dolo this week. "But I'm happy that their trickery has been exposed"

He says he now fears for his life as he suspects that "they" may be after him because he is going to be a key defence witness in the retrial of the Eikenhof Three

Dolo is applying for amnesty from the Truth and Reconciliation Commission (TRC) for the Eikenhof massacre. "I personally ordered that massacre, although the initial target was supposed to be a school bus carrying white children," he says

According to Dolo's lawyer, Lungelo Mbandazayo, the former Apla commander did not participate in the massacre. He only ordered it in his capacity as Apla's regional commander after receiving authority from the deputy

mtg 3-9/9/99
director of operations, Bulelani Xuma, who was also Apla's director of special operations

The Eikenhof incident, according to Dolo, fell under special operations and was led by a unit commander known only as "Kenny"

Police had Apla reports and ballistic test results which linked Dolo conclusively to the Eikenhof massacre, at least 18 months before he applied for amnesty. The AK 47 used at Eikenhof was the same one Dolo used in an attack on a police station in Diepkloof on May 28 1993 in which two policemen were killed

Dolo was arrested on May 30 1993 following the arrest of three members of his unit the previous night in Yeoville, Johannesburg. They were allegedly on their way to plant a bomb at a restaurant

One member of Dolo's unit — apparently a police informer — confessed about Dolo's whereabouts. A shoot-out between the police and Dolo ensued before he was arrested. He lost his arm as a result

Asked how he felt about the fact that the Eikenhof Three were serving jail terms for something they did not do, Dolo said he felt sorry for them but could not do anything as he would have had to face the hangman's noose himself if they were acquitted

"Had it not been for the opportunity offered by the TRC, I would not have come forward. I can't be blamed for being quiet for such a long time [four years]. It was not for me to go to the police and confess. I was not doing it to go to jail," he says

Mbandazayo says he did not initially believe Dolo when he told him about his involvement in the Eikenhof massacre

"I was shocked because I knew there were people convicted of the offence, and they had nothing to do with Apla and the PAC

"He [Dolo] didn't know whether he should apply [for amnesty] because he never physically participated in the incident. He'd only applied for amnesty in relation to the killing of policemen for which he was serving life sentence," says Mbandazayo

"I told him to apply. He referred me to Xuma and Letlapa Mphahlele [Apla's director of operations] who told me they were equally in a dilemma and were about to discuss it in Apla's high command structures"

It was at Mphahlele's house where documents showing Apla's responsibility for the Eikenhof massacre were seized during the po-



Coming clean: Phila Dolo has accepted responsibility for the Eikenhof massacre. PHOTOGRAPH: MBUZENI ZULU

lice raid — long after Bholo and Ndweni were each sentenced to death three times and Gavin was sentenced to an effective 17 years in jail

The convictions were based on confessions made to Landman by Ndweni and Bholo which they later claimed were extracted under torture

Landman's conduct was this week subjected to severe scrutiny at the appeal hearing by the counsel for the three, advocate David Soggot

Soggot questioned the wisdom of Judge Piet van der Walt's refusal to grant bail to the three last December while the state was not opposing it. This despite the fact that the judge had consulted former attorney general Jan D'Oliveira, who was the prosecutor in the trial of the Eikenhof three

In its ruling, the appeal court found among other things that preliminary security reports compiled after the Eikenhof attack concluded that Apla was to blame for the attack. In later reports, however, a different conclusion was reached

Five prospective witnesses who were in the immediate vicinity of the shooting made statements to the police between one to four days after the event. Three were each individually shown a set of about 300 photographs and each one independently identified Xuma and someone called "Motha" as being among the attackers. Both Xuma and Motha were known to the police as Apla members

"What is important," the court found, "is that the facts referred to should have been brought to the attention of the trial court"

Mbandazayo said Dolo would do everything to assist the Eikenhof Three in their bid for freedom and added that he will press the TRC to speed up his client's amnesty hearing

PERSPECTIVES

How to put Big Brother on a smart leash

SA must ensure privacy protection if hi-tech ID cards are introduced, writes Pamela Whitby

By 9/9/99 (1999)

GOVERNMENT must fast-track the enactment of new legislation if it is to convince the population that a citizen card based on "smart-card" technology will not result in Big Brother watching over them.

The proposed smart card would be issued to 22.4-million citizens by 2004 and initially hold identity and voter registration details. Similar to a computer, smart cards are chip-based and are able to process information.

The card could also hold a medical data bank, criminal record and — if banks can agree on an interoperability standard — an electronic purse.

The implementation of a smart card raises a number of issues such as security, government authority to issue such a card and probably the thorniest issue of all — privacy.

University of SA professor of private law Annelise Roos says if proper care is not given to the privacy implications and implementation of the new technology, individuals' rights could be infringed.

When personal data is processed it is important that internationally accepted standards for the protection of private information are adhered to, she says.

The most recent international standard is the European Union's (EU's) directive on data protection, which applies six fair information principles.

If government adheres to these or similar standards the introduction of the smart cards need not result in a "big brother" scenario.

Although the Open Democracy Bill which should be enacted next year, has provisions protecting consumers' private and confidential information, there are areas where it could be improved.

For example, no real power is granted to the Human Rights Commission — the body proposed to oversee the provisions of the bill.

The EU directive requires the establishment of an independent advisory body with powers of investigation and intervention, and the power to take legal action.

It requires special treatment of sensitive data, such as racial or ethnic origin, political opinions or trade union memberships, unscrupulous use of which could lead to the infringement of rights.

Another provision of the directive that would improve the draft bill is that no individual may be subject to a decision that affects him or her such as creditworthiness where this is based solely on the automated processing of data.

Although the enactment of the

unlikely in terms of the law, that a citizen could be obliged to either pay for or use the remaining in-built functions.

Medical records, for example, cannot be stored without a patient's express consent, "electronic money" stored on smart cards is not yet legal tender and can therefore be rejected as a payment instrument by transacting parties.

Smart cards, which have not found a niche, have been a commercial disaster worldwide, says Richard Poynder, head of the British Smart Card Society.

very few smart cards in issue internationally have been fully activated — this could be an expensive exercise for no good reason.

Sufficient cards for the population could cost up to R1bn without taking into account the infrastructure required. Smart card readers, software for each application on the card, security and training are among other cost implications.

Smart cards, which have not found a niche, have been a commercial disaster worldwide, says Richard Poynder, head of the British Smart Card Society.

However, government could enforce the card by installing an infrastructure that requires the use of the card for public services and administration. If government chooses this route to get the smart card to market it is imperative that mechanisms are put in place to ensure trust in the system and integrity of transactions.

Working groups established at the launch of the communications department's Electronic Discussion Paper in July are addressing some of these issues. One working group is in the process of completing a paper on "building trust for users and consumers".

This group has suggested the enactment of privacy protection legislation that will include the privacy of personal data.

This should provide for properly informed consent by giving the citizens notice of public and private sector information practices, access to their own information and an ability to correct it; choice regarding the use of government data; company can make of such data; and legislation allowing for criminal prosecution of persons breaching privacy.

The project may face delays. Although communications director-general of Andile Ngcaba confirmed a cabinet decision had been taken to implement a smart citizen card, Home Affairs Minister Mangosuthu Buthelezi appears to be lukewarm. Last month he said there needed to be further debate on the issue.

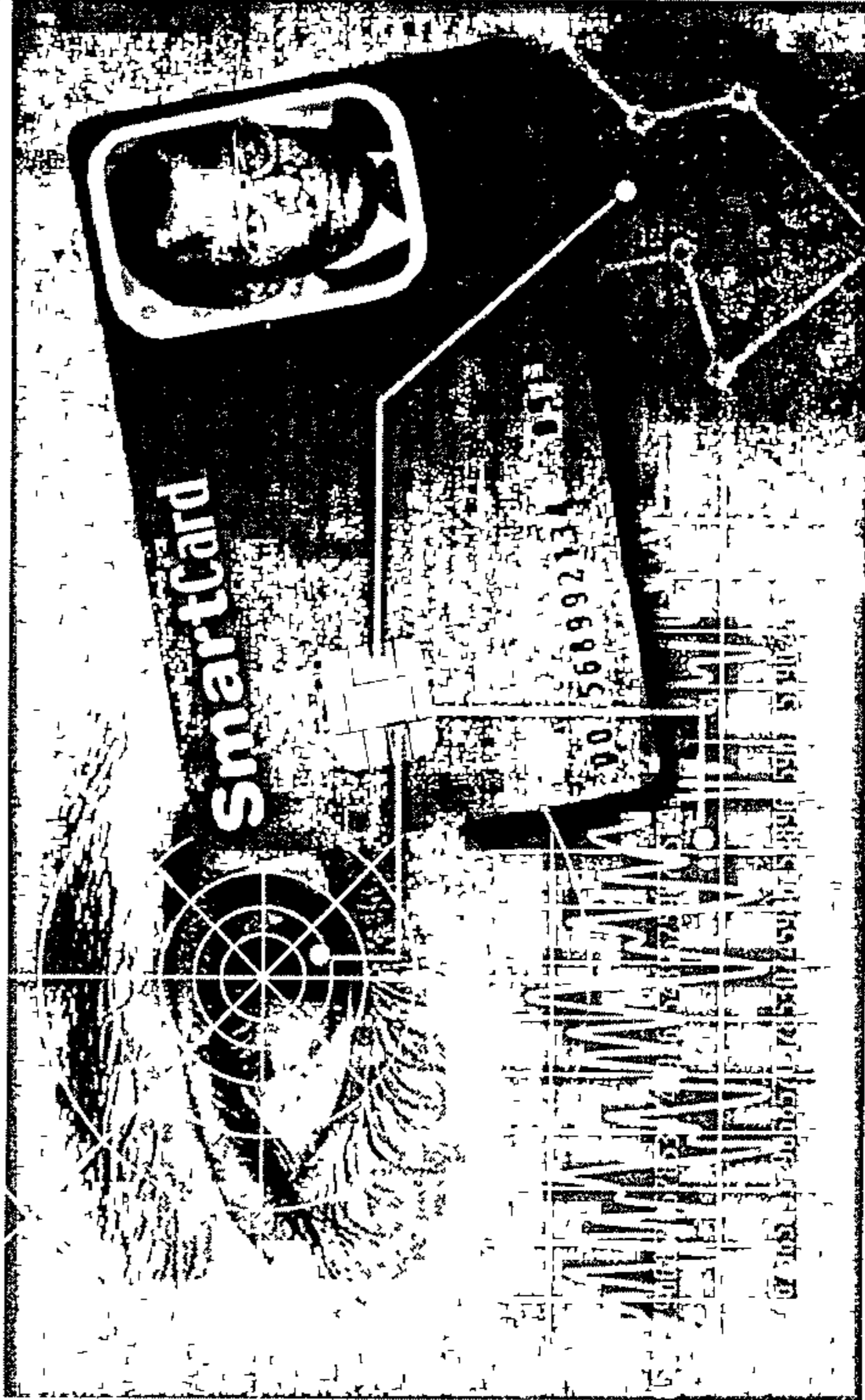
The advantages of a citizen smart card are worth considering. The ability to operate offline means they could facilitate greater access to government services where there is no telecommunications infrastructure.

All a government official would require is a smart card reader. An investigation by the Finnish government, which is to begin issuing a multi-application citizen card in December, found the card could significantly reduce public administration costs and improve service levels.

However unlike in SA, Finland's IT technology infrastructure is one of the most advanced in the world, the population is smaller and education is widespread. Private citizen data is also protected by the EU directive.

For government, a great deal of energy is required to face the challenges that lie ahead.

Failure to put the right structures in place to protect consumer privacy, regulate the authority of government or ensure adequate security could lead to the downfall of the entire project.



Tutu upset at TRC mistake

(252)

JOHANNESBURG Truth and Reconciliation Commission head Archbishop Desmond Tutu yesterday apologised for the wrong identification of bodies exhumed and returned to families during investigations of apartheid-era atrocities

From Atlanta, Georgia, Tutu said he was "devastated" by the revelation this week that as many as 40 of 50 exhumed bodies could have been misidentified. "My heart goes out, especially to the families, to whom we apologise unreservedly"

He added "I know my colleagues in the commission are, almost all of them, conscientious and hard-working people of integrity, who are as deeply distressed about the situation as anyone — but there will be weaknesses in even the strongest teams. As a chairperson of the commission, I must take the responsibility for this distressing state of affairs"

The TRC yesterday confirmed it was preparing a report to Justice Minister Penuell Maduna on the exhumations by its investigative unit, whose former head Dumisa Ntsebeza confirmed that there were "serious discrepancies" in some of the documentation relating to exhumations, and "grave doubts" about the identities of some of the bodies. Ntsebeza was also a TRC commissioner

Ntombi Mosikare, co-ordinator of the Khulumani Support Group, said yesterday that a single individual should not shoulder the blame. The entire commission should take responsibility, he said

— Own Correspondent

CT 9/9/99

Compulsory HIV test recommended

Commission wants victims of alleged sexual offences to be able to request this check

(252) (92) 009/9/99

David Greybe

CAPE TOWN — Anyone arrested for a sexual offence should face a compulsory HIV test if the victim requests it, the SA Law Commission recommended yesterday.

Compulsory testing is necessary "in the light of women's undoubted vulnerability in SA today to widespread sexual violence amid the increasing prevalence of a nationwide epidemic of HIV and in the absence of adequate institutional or other victim-support measures", the commission said in a report to Justice Minister Penuell Maduna.

"In these circumstances there is a compelling argument for curtailing an arrested suspect's rights of privacy and bodily integrity to a limited extent to enable his accuser to know whether he has HIV," the commission said.

Maduna told a media briefing that there was "mounting public concern and pressure on the authorities to take appropriate action with regard to the deliberate transmission of HIV infection".

Current SA law provides for HIV testing "only with the informed consent of the person concerned".

The public has been given until

October 15 to comment on the legislative proposals.

The commission recommended that compulsory testing be "victim-initiated", to ensure that only a person with a material interest in the arrested person's HIV status may apply for a compulsory testing order.

To protect the victim from a potentially traumatising confrontation, the arrested person should not be allowed to take part in an application by the victim for compulsory testing, apart from having the right to challenge whether information on oath has been placed before the magistrate in compliance with the law.

That the arrested person's rights are infringed "must be acknowledged and this must be reflected in safeguards built into the process created", the commission said.

Orders for compulsory testing, made only on the authorisation of a court, should be based on a specified standard of proof.

"A deliberately false complaint would amount to perjury and a malicious activation of the procedure would be actionable".

The procedure should ensure confidentiality of test results "so that the information is provided only to the victim and the arrested person".



A separate report, the first of a three-part series towards a single comprehensive act in respect of all sexual offences was also released by the commission yesterday. This report says:
 The criminal law is the appropriate mechanism to address sexual exploitation, abuse and violence against women and children in particular;
 The common law offence of rape

- Law Commission report**
- Draft bills:**
- Administrative Justice Bill
To give effect to the constitutional right to lawful, reasonable and fair administrative action.
 - Conflict of Laws Bill
To clarify when customary law should be applied instead of Roman-Dutch law.
 - Sexual Offences Bill
To provide a single comprehensive act in respect of all sexual offences.
- Discussion documents:**
- Law of personal insolvency: the first comprehensive review since 1916 and to clarify the much-amended 1986 act.
 - Domestic arbitration: to bring SA up to date in using arbitration to resolve commercial and other disputes.
 - Sexual offences (substantive law) on sexual violence, to be followed by papers on prostitution, pornography and the legal process for managing sexual offences.
 - Compulsory HIV testing of those charged with sexual offences.
 - Review of 1961 Marriage Act, to adapt the act to the needs of contemporary SA.
 - Community dispute resolution: to devise ways of helping community forums to play a more just and meaningful role.

Graphic: KUBEN DAVID Source: LAW COMMISSION

should be repealed and replaced with a new "gender-neutral" statutory offence.
 It should be legally possible for a man to be convicted for raping his wife.
 Sexual penetration of any child below the age of 12 years should constitute a criminal offence.
 A statutory provision called "child molestation" should be enacted aimed at prohibiting sexual acts with

children under 16, and
 The commercial sexual exploitation of children should be prohibited.
 The commission invited comment on whether female genital mutilation should be illegal.
 Two more discussion papers "relating to the management of sexual offences and on adult commercial sex work and adult pornography" will be published later this year.

Comprehensive overhaul suggested for community courts

David Greybe

CAPE TOWN — The SA Law Commission has proposed a comprehensive overhaul of the system of community courts, including a name change, in a bid to give them greater legitimacy.

The commission, in a discussion paper released yesterday, recognised that the so-called community forums "are at present diverse, fragmentary and tentative. Most initiatives are private or individual efforts and they tend to be unfocused".

However, it concluded that community dispute resolution structures could serve a "useful purpose" in

helping particularly the poorest of the poor to receive access to justice.

Recognition of community forums should be based on an act of Parliament, which spelt out their status, role, procedure and matters such as qualifications of personnel.

"There should be no appeal from community forums to the formal courts," the report states "if a matter remains unresolved, the dispute may be pursued in any other forum".

Justice Minister Penuell Maduna has conceded that "community forums suffer from a negative perception that they are 'kangaroo courts' or are linked with vigilantism".

However, he said, "if local justice and dispute resolution structures are properly recognised and supported, the broadened access to peaceful means of dispute resolution that they can provide will itself be an important hedge against the temptation for people to take the law into their own hands".

Justice spokesman Paul Setsetse said the department hoped to complete the consultative process by the middle of next year, when it would present a draft bill to Parliament.

In another report on domestic arbitration, the commission has concluded that such arbitration "needs

to be supported by appropriate legislation".
 Arbitration is increasingly being recognised internationally as an important method of resolving commercial and other disputes, "which can help to relieve the pressure on the civil justice system".

However, "it is clear that the existing Arbitration Act 42 of 1965 fails to meet these objectives adequately", the report says.

Legislation was necessary to bring SA up to date with the objects of modern arbitration. These were "the fair resolution of disputes by an impartial tribunal without unnece-

sary delay and expense, party autonomy; balanced powers for the courts, and adequate powers for the arbitral tribunal to conduct the reference effectively".

The commission recommended giving tribunals increased powers to comply with such new duties, including the power to rule on its own jurisdiction, depart from ordinary rules of evidence, order interim measures and security for costs, call witnesses, deal with a party in default, and limit recoverable costs.

Setsetse said a draft bill would be ready for Parliament around the middle of next year.

Department's woes diagnosed Heath unit to be dissolved, says Maduna

Linda Ensor

CAPE TOWN — The justice department would have to be fundamentally restructured, its expenditure concentrated on its core business and large portions of its budget devoted to training, Deputy Justice Minister Cheryl Gillwald said yesterday.

Gillwald and other department officials appeared at a hearing of Parliament's public accounts committee into the auditor-general's report for fiscal 1997/98 when unauthorised spending amounted to R157m.

No opinion could be expressed on the department's accounts because of the state of its financial management and the extent of the uncertainties. Auditor-General Henri Kluever said the financial management of the department had deteriorated.

Gillwald said the way the department was structured now was not designed to produce its policy objective of securing access to justice. It was cumbersome and unwieldy. A flatter, more flexible structure fitting into a modern government framework was required.

Work was underway in formulating a restructuring plan which would be completed by December.

Kluever believed the department's problems related to its inheritance from former homelands, its decentralised structure which was not under control, and the agency system. If staff expenditure — which was 75% of the total — was centralised this would go a long way towards solving the problem.

Gillwald said the department had made great strides on financial management — the problem was with regard to structural inefficiencies.

Farouk Chothia

THE special investigating unit headed by Judge Willem Heath will be dissolved and similar units headed by other judges will be created, says Justice Minister Penuell Maduna.

Maduna also warned Heath that he would be operating outside the law if he raised private sector funds to bolster the unit's budget.

The minister said during a parliamentary interpellation that no time frame could be set for the closure of the Heath unit. It would "come to an end" once it finalised investigations referred to it by the president.

The unit was created in terms of the Special Investigating Units and Tribunals Act which did not envisage the creation of a single, permanent unit to investigate "all kinds" of cases, he said.

The president could appoint "differ-

ent" units. As the unit was not a permanent structure, it could not have a "permanent budget". Provision had to be made for "similar units headed by other judges", Maduna said.

Asked to clarify Maduna's comments, his spokesman Paul Setsetse denied the unit would be dissolved. This would not happen as it was created in terms of the law and government was committed to fighting corruption, but there was a need to address perceptions that the fight against corruption was an "individual kind of initiative".

Cases could continue to be referred to the unit, but "the president can appoint any judge to investigate any allegation of corruption".

Setsetse said government was looking at a more cost-effective system. Other judges would not necessarily be full-time investigators, with "complete offices, personnel, etc".

The president might, for example, decide that a case in Northern Province should be investigated by a judge from the province who would have the same powers as Heath.

After concluding the case, the judge — along with other investigators — could return to their "normal work", Setsetse said.

Maduna said it was improper "in the extreme" for Heath to "come out and beg" for funds. He should not make requests to any parliamentary portfolio committee or the private sector for more funding. None of his powers "entail" him to ask for donations.

"The law is the law and we shall follow it," Maduna said. Heath should approach him and government would do its "utmost" to assist if the unit ran out of funds, Maduna said.

(252) 009/9/99

009/9/99 (252) (34)

Tshwete wants gun-free zones in SA's public areas

Farouk Chothia

SAFETY and Security Minister Steve Tshwete signalled yesterday that government intended to prohibit gun owners from carrying weapons in certain public places by declaring them "firearm-free zones".

Tshwete said in Parliament that he had presented an "excellent" gun control policy document to the safety and security interministerial committee.

The cabinet was expected to discuss it next week. All nine provincial safety and security MECs had already endorsed the document.

Tshwete said the policy recommended that he be given the power to declare certain areas or kinds of buildings "firearm-free". These included bars, shebeens, schools, hospitals and places of worship.

Only law-enforcement officers on duty would be able to carry weapons in the zones. The zones would be declared by Tshwete in consultation with safety and security secretary Azhar Cachalia and police commissioner George Fivaz.

Tshwete said the policy recommended a limit on gun ownership for self-defence purposes, although he did not indicate whether he had accepted original proposals that each person be restricted to one firearm. The limitation

would not apply to hunters, sports shooters and collectors.

Tshwete said there would be stricter control over licensing firearms to private persons and institutions. Applicants would have to be trained in the use of firearms, know their legal duties, be willing to undergo a fingerprint check, and have no record of drug or alcohol abuse. However, there would be no psychometric tests.

There would be a limit on the amount of ammunition that could be purchased, unless it was needed for hunting, target shooting or another special needs. Dealers would have to inform the police central firearms registrar of the identity of all purchasers within 48 hours, so that large-order buyers could be tracked.

It is understood the secretariat decided against forcing existing gun owners to reapply for licences. However, they would have to register their guns with the SA Police Service.

Tshwete said the policy recommended that the confiscation powers of police be increased. A person against whom a restraining order is granted for domestic violence could have his gun seized. Police would have more powers to carry out searches or fingerprint people in whose vicinity illegal firearms were found.

Justice system 'in danger of collapse' — Maduna

ROBERT BRAND

HIGH COURTS should conduct more criminal trials to relieve the load carried by magistrate's courts, Justice Minister Penuell Maduna said yesterday.

Maduna told the National Assembly that the criminal justice system was in danger of collapse unless ways could be found to ease the burden of magistrate's courts, which faced a court roll of 46 302 outstanding serious criminal cases.

He was speaking during a debate occasioned by his controversial remarks to the Pretoria Press Club last week, when he said some judges had time for trips overseas while the judicial system back home groaned under an impossible work load.

Maduna denied that he had attacked any particular judges or suggested that the Constitutional Court was a luxury South Africa could not afford.

"I was part of the process which created the Constitutional Court. I know its value to our new democracy... I did not set out to attack anybody. I merely stated my observation that there are huge discrepancies in the way in which resources have been allocated to courts and that this calls for rationalisation."

Maduna said regional courts, which deal with the majority of serious criminal cases, faced an average of 178 cases outstanding per court. An average of only 12

cases per court were finalised every month. He said he was "deeply disturbed" by the situation in magistrate's courts, particularly in townships and rural areas. The lower courts were the level at which people were most likely to encounter the judicial system, yet relatively more resources were channelled into the higher courts.

"While magistrate's courts like Mitchells Plain and Wynberg are staggering under huge criminal case loads, the Cape High Court disposed of only 185 criminal cases last year and yet they have 10 courts at their disposal," Maduna said.

"Some of the more serious cases which are presently referred to the regional courts for trial should rather be prosecuted in the High Courts. The utilisation of the High Courts needs to be re-assessed."

Maduna said a policy document being drafted by his department would propose a review of existing structures and institutions. For instance, the Judicial Service Commission — which nominates judges and advises government on judicial affairs — could be merged with the Magistrate's Commission, the body representing regional and district court magistrates.

"A single body which handles all matters concerning the judiciary would surely be more cost-effective and facilitate the policy of uplifting the magistracy and working towards a single judiciary which enjoys true independence," he said.

'Killer Bishop' and his gang ask for amnesty

FOUR Inkatha Freedom Party members who were part of Thokoza's notorious "Khumalo Gang" will appear before the Truth and Reconciliation Commission amnesty committee in Palm Ridge on the East Rand tomorrow.

Gang leader and erstwhile archbishop of the Church of Light of Zion, Mbhekiseni Khumalo, as well as Mpikéleli Khumalo, Mzwakhe Khumalo and Zwile Chamane are seeking amnesty for murder, conspiracy to assassinate, extortion, arson, theft, attempted murder, illegal possession of firearms and defeating the ends of justice.

One of the offences for which they are seeking amnesty is the 1991 assassination of prominent SA National Civic Organisation leader Sam Ntuli, who was gunned down in front of his Thokoza home.

Khumalo, a prominent IFP member, earned himself the title of "Killer Bishop" from the residents of Thokoza and nearby Katlehong because of the reign of terror with which his gang ruled the townships between 1991 and 1993.

He was allegedly also a hitman and a police informer who surrounded himself with a group of youths under the guise of cleansing the community of gangsterism.

The hearing is expected to continue until Friday.
- Sapa

(252) CP 5/9/99

IFP complains of 'lack of justice' from TRC

By DOMINIC MAHLANGU

(252)

HUNDREDS of Inkatha Freedom Party (IFP) members marched to the Truth and Reconciliation Committee's (TRC) offices in Johannesburg yesterday, in protest against "unfair justice" towards their members serving time in jail across the country.

The IFP said it would fight to the bitter end to force the TRC amnesty committee to give a hearing to 60 of their members who are currently in jail.

In the memorandum submitted to the regional offices of the TRC in Carlton Centre, regional chairperson of the IFP Youth Brigade Muzi Ntuli said they demanded a hearing for IFP members whose testimony into the past violence in South Africa had been "deliberately ignored".

Addressing more than 500 IFP marchers outside the TRC regional offices, Ntuli said there was no justice for IFP members - as opposed to what was guaranteed in the South African constitution.

"It seems to us that certain members of other political parties are given amnesty even if they did not disclose all the information.

"We demand that the TRC amnesty committee give our members a hearing before the year 2000," said Ntuli, to the applause of the marchers.

TRC regional co-ordinator, Dudu Chili accepted the memorandum on behalf of senior TRC members who were said to be in Cape Town.

IFP said in their memorandum that three of their members, Phathumuzi Magwaza, Madlakhe Mbhatha and Mbhuyane Sithole, were denied amnesty despite full disclosure to the amnesty committee.

Posters carried by the marchers read "We demand the TRC to release our members before the year 2000".

In their memorandum IFP also questioned the granting of amnesty to ANC member Michael Phama, who disclosed to the amnesty committee that during the political violence in Thokoza, he killed more than 21 IFP members.

CP 5/9/99

Guardian of justice

N O INSTITUTION is entitled to take public perceptions of itself and its achievements for granted. Everyone knows about the current debate about the role and structure of the judiciary and, in particular, the resources available to the courts.

We at the Constitutional Court welcome the notion that the court, and other courts, must be subject to public scrutiny after all what we do impacts directly on the lives of every woman, man and child in the country.

The Constitutional Court safeguards the Constitution and ensures that past misuses are not repeated, explains deputy president of the court **Pius Langa** (27/2)

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vitality and richness in our work.

Members of the Constitutional Court work extremely hard. In the constant endeavour to "get it right", we work nights and weekends. We do believe that whatever the range of our tasks, it is the quality of our work and its meaning for society as a whole that is crucial.

The true measure of our functioning must lie in its rigour, sensitivity and creative character. It is on our success in these respects that I believe we should be judged.

Because we are, in a sense, a society in formation, it would not be out of place to spell out

Judges are accountable. They do not work in secret.

some goals I shall identify firstly what I consider to be important goals for those of us who are either members of the judiciary, or are aspiring to be.

We are reaching the stage where the judiciary at all levels is beginning to take on the character and personality of South Africa as a whole. This is to be encouraged and accelerated.

Judges are accountable. They do not work in secret or behind some bush. They have to give reasons for their judgments and these are available for scrutiny and analysis by higher courts and by the public.

It is particularly important that members of the judiciary should exemplify the values of dignity, freedom and equality which we are required to promote.

But a good judge needs appropriate judicial space within which to work. In the exercise of our judicial function, we are answerable only to the Constitution and the law.

An environment must exist wherein the judge can dispense justice impartially, without fear or favour. That then requires that the Government and the public respect the independence and integrity of the bench.

Judges should not have to constantly look over their shoulders or to worry about what this person or that is likely to say. They cannot work well if they find themselves subjected to stereo-

typical analyses, being woundingly pigeon-holed either as unreconstructed reactionaries of the old order, or as sycophantic appointees of the new.

Their work has to be examined on its merits if they fail, or if they cannot overcome their prejudices, they may not escape criticism. It must however be fair and informed, not knee-jerk and not motivated simply by political or populist considerations.

Judges are not untouchable. They are however vulnerable because generally, they cannot and do not make public responses to what they may consider as unfair attacks. The problem with such attacks is their bandwagon effect and the danger it poses to the judicial morale.

We must all be deeply concerned about the problems of high crime rates, clogged court rolls and shortages of human and other resources.

These are matters which require our collective commitment and a heightened sense of responsibility.

But the integrity of individual members of the judiciary must not be impugned. Criticism must be founded on fact, not on the basis of labels, not because people belong to this group or that, but because they do not measure up to the demands of the Constitution and the law.

During the short period of the Constitutional Court's existence, we have laid significant jurisprudential foundation stones. I mention just four areas.

The first would be decisions about the Constitution itself. Secondly, that class of cases that deal with the powers of the Government, thirdly, what is meant by a fair trial, and fourthly, the issue of equality. All these are important areas. The future will tell whether the foundations have been well laid.

This is a young country. People feel deeply and passionately swirl. The Constitutional Court, possibly more than any other institution in South Africa, stands for, defends and symbolises the integrity of our nation and the fundamental rights of all our citizens.

For our part we regard it as a great honour to have been asked to serve at the court. The undiluted ongoing and integral character of our work is central. We are a court for all seasons.

(This is an abbreviated version of Justice Langa's speech.)

PM 10/9/99

MORE CHALLENGES ON ASSET LAW.

Issue of retrospectivity not the only pitfall in a rights-based State (27/2)

The legislation to bust organised crime represents a massive exercise of State power and the amendment passed by parliament is unlikely to ease its rough ride through the courts.

The legislation also promises further stand-offs between two arms of the law: the legislature and the judiciary. Last week a parliamentary committee cautioned judges to take account of the intention of the Prevention of Organised Crime Act.

The intention is to keep rampant organised crime at bay. Its supporters argue that organised crime quickly spreads its tentacles into every organ of the State — as it has in Russia and Nigeria — and is particularly pervasive in new democracies like SA.

Thus, the justice department has drafted a law that gives the State the right to seize assets without the need to prove guilt first. Because the legal action is civil, its rules of evidence are less onerous than criminal law. In civil cases guilt must be proved only on a balance of probabilities, while in criminal cases, it must be established beyond reasonable doubt.

But tough legislation for a world order in which crime bosses have been first to take the gaps offered by open economies, are often not complementary with a rights-based State.

So the most pressing question hanging over this legislation has yet to be answered: is it constitutional or does it trample on the right to property, privacy and the presumption of innocence, among others. Everybody's spooling for the test case to be put to the Constitutional Court because its verdict is likely to begin to strike the balance between a tough approach to crime and the rights inherent in the Constitution.

Meanwhile, judicial unease is not difficult to fathom. The term "organised crime" entered the criminal justice lexicon only in 1991 and civil forfeiture legislation goes against the grain of established legal tradition in SA. According to advocate Wim Trengove "The new law does invade the rights of people quite dramatically. It introduces new notions that didn't exist before."

Its most drastic measure is the provision for the seizure of assets prior to prosecution and even without a prosecution.

Willie Hofmeyr, the head of the Asset Forfeiture Unit, is surprised by the level of judicial circumspection and did not expect that courts would challenge the assumption that the law is retrospective. This did not crop up in the US courts. SA took much counsel from the US.

GETTING THERE

Cases won by the Asset Forfeiture Unit:

- Ighoort David. June 1999 R145 000 in cash seized from David, an alleged drug dealer in the Western Cape, and
- Amendo van der Westhuizen. July 1999. Goods to the value of R1.5m seized from this investor/broker who faces fraud charges.

Cases lost:

- Govin Canelus. March 1999. The Unit was forced to return the property it seized from the alleged drug-dealer in August.
- Piet Meyer. July 1999. Property valued at R530 000 was seized in June from this KwZulu-Natal policeman who is facing corruption charges. His property was returned in August after a court order, and
- Wouter Basson. This apartheid era scientist faces criminal charges for allegedly misappropriating R44m from the State. In August, the unit lost its attempt to seize his assets. (All three cases are being appealed)

Cases pending:

- An Umfolozi businessman had his property seized for the alleged kidnapping of tycoon John Philisidi's daughter for a R1.5m ransom in August 1999.



experience. But Trengove explains "The courts normally assume that laws tend to govern future conduct and not past conduct, unless it's made very clear." That particular hurdle has been cleared by the amendment to the legislation. NOW lawyers are asking, what next?

Trengove says a crucial challenge lies in a clause in the Constitution that entitles citizens to the "least severe" punishment should the penalties for a crime be made more severe over time. He foresees "a series of Constitutional Court challenges".

The Democratic Party says the legislation erodes judicial discretion and is subject to challenge on this ground. Hofmeyr says "There is nothing unusual about a democracy structuring discretion."

A legal challenge is likely on the so-called "double punishment" inherent in the Act because it provides for both civil and criminal litigation.

Another challenge might come when owners of a seized asset claim they did not know that their property was being used nefariously.

For the Organised Crime Act, the immediate future promises more disputation. Peter Gastrow, a director of the Institute for Security Studies, says the law requires "some creative shaping by police, prosecutors and the bench, in such a way that it is sharp, effective and constitutional."

SA is perched on the thin end of the organised crime wedge. Nigerian cocaine cartels, Russian kidnapping rings, Chinese Triads and South American hard-drug syndicates already litter these shores. Last year, police disclosed that they knew of 400 criminal syndicates operating locally.

"Once you allow organised crime to carry on growing in a risk-free environment, it develops contacts and tentacles in all State structures at all levels," says Gasitrow, "drastic steps are needed to prevent such penetration."

The asset seizure legislation aims to get at the infrastructure of organised crime, so disrupting its cash flow. But that means getting the law right first. Says Hofmeyr "We can't be fighting the courts, we must fight the criminals."

Ferial Hatfield

Let the Constitution and the law square up to crime

To act outside of the law in dealing with offenders would discredit it, undermine justice and make a mockery of our Constitution, writes BARNEY PITZYANA

ST 12/9/99

(257)

PUBLIC debate is healthy and desirable in an open and democratic society. In recent weeks, we have seen the new Minister of Safety and Security, Steve Tshwete, being gung ho in his determination to deal with crime. His strategy appears to be to lift the morale of police officers. He does this by talking tough and using language bordering on the intemperate — "We shall give them hell", and so on.

So committed is Tshwete to being seen as supportive of the police, as he believes his job requires, that he has staked his reputation on ensuring that Section 49 of the Criminal Procedure Act, enacted only last year and whose proclamation has been stalled because of police objections to it, as well as the proposed gun control law, are reviewed. Section 49 limits the use by police of lethal force only to instances where life is in danger or under serious threat. The gun control law restricts the carrying of firearms by police when they are off duty.

The Minister of Justice and Constitutional Development, Penuell Maduna, has also waded into a storm of controversy. He is reported to have suggested that the Constitutional Court was slothful and generously budgeted for when compared to the Appeal Court, which was under-resourced.

There are even suggestions, which he denies, that he hinted at a need to merge the two

courts. This came with the revelation by the Office of the National Director of Public Prosecutions that too many courts are under-performing. In some instances, courts are occupied for one hour a working day, cases are postponed, prisoners aren't brought from custody for their court appearances on time and dockets are lost.

All this amounts to inefficient service in our court system, delays, lengthening court rolls, a growing number of awaiting-trial prisoners and prison accommodation unable to cope with the congestion.

Frankly, this amounts to a gross miscarriage of justice. In most instances, the conditions of detention are barely consistent with human dignity and trials do not begin and conclude "without unreasonable delay".

This debate comes about because of the public's concern about the rising crime wave. Institutions have been put in place, units established and resources allocated to deal with the problem of crime. National Director of Public Prosecutions Bulelani Ngcuka's undertaking to consult with the judiciary regarding these concerns is most welcome.

But Tshwete's remedy of giving a blank cheque to the police to shoot without restrictions is contrary to the spirit of our Constitution. Our view is that police don't need any more protection than the law and the Constitution presently provide

Instead, as things stand, there's evidence that some 700 prisoners have died in police custody since 1994. Last year, the SAPS settled claims against the police for brutal treatment of prisoners and the use of excessive force to the tune of R30-million. Daily, reports are received of the unlawful use of firearms by the police. That, surely, is what the minister needs to pay urgent attention to.

Maduna's done our country a great service by bringing the budget discrepancies between our highest courts to our attention. He's also promised to address the problems of wastage in the administration of the justice system. The perception that he was waging an attack on the judiciary is unfortunate.

We believe that nothing should be said or done that might diminish the stature and authority of the judiciary. That is vital if we are to engender respect for the rule of law and rely on the authority of our Constitution. That, of course, does not mean we cannot engage with the judges on their judgments and the positions they take in public life. The way we do it, though, should never denigrate the esteem due to the judges. We certainly do not believe Maduna was guilty of that. Where we part ways is where he seeks to merge the Constitutional Court with the Supreme Court of Appeal. Our view is that South Africa needs a specialist

constitutional court that will develop the human rights jurisprudence for this country.

It is precisely for this reason that the comment by Judge Bernard Ngoepe, Judge President of the Transvaal Division of the High Court, that our Constitution should be changed if it provides too much protection to criminals, was unwelcome. We do not believe that the Constitution does anything of the sort. Judge Mohammed Navsa's comprehensive rejoinder was timely. Judge Navsa warned against using the Constitution as a scapegoat for the ills of society. The Constitution states that it is the "supreme law of the Republic." This means that all law and conduct inconsistent with it is invalid.

Crime is a violation of human rights. Judges are there to interpret the Constitution and apply the law. No dilutions to our obligations under the Bill of Rights or to our international treaty obligations can be countenanced. Human rights and our Constitution stand diametrically opposed to crime. Action against crime is not contrary to the Constitution. Everyone must act within the law.

That criminals violate the law is no reason to act outside of the law to deal with them. To do so would discredit the law, undermine justice and make a mockery of our Constitution.

● Pityana is chairman of the SA Human Rights Commission

Policeman killed 'in case he leaked secrets'

(Am) - 00 15/9/99

Stephané Bothma

PRETORIA — A security policeman had about 50 AK-47 bullets pumped into his body at short range by Vlakplaas members, the truth commission's amnesty committee heard yesterday.

The killing of Brian Ngqulunga occurred because they believed he had contact with the African National Congress (ANC) and could divulge details about security forces crimes.

Ngqulunga was assassinated on the orders of two police generals in July 1990 despite the fact

that only a month before, he had followed orders to give false testimony before the Harms commission to protect his security police masters, the committee heard.

Former Vlakplaas police unit commander Eugene de Kock, who applied for amnesty for the murder of Ngqulunga, said the order to eliminate his colleague came from security branch C1 section commander Gen Nic van Rensburg and it was given in the presence of the police's detectives chief, Gen Krappies Engelbrecht.

The order came at a time when government had appointed Judge

Louis Harms to investigate allegations by two ex-Vlakplaas members, Dirk Coetzee and Almond Nofomela, that their unit was a police hit squad and had been involved in a wide range of crimes.

De Kock told the committee Engelbrecht had been tasked specifically with controlling any possible damage caused by Coetzee and Nofomela's revelations and to cover up any crime committed by members of the police.

"Engelbrecht was responsible for coaching all of us in exactly what to testify at the commission. All of us, including Ngqulunga, de-

nied any knowledge of or complicity in police dirty tricks."

Despite having given "proper" testimony at the inquiry, Ngqulunga at the time was considered to be emotionally unstable and had a drinking problem. It was feared that he might divulge details about the 1981 assassination of Durban human rights lawyer Griffiths Mxenge.

"Van Rensburg also had information. Ngqulunga had put out feelers to the ANC," De Kock told the amnesty committee under the chairmanship of Judge Andrew Wilson. The hearing continues.

NATIONAL

Widow unable to forgive killers

(Aha)

RD 16/9/99

Vlakplaas unit members have not told the whole truth, says wife of murdered security policeman

Stephané Bothma

PRETORIA — The whole truth about the 1990 murder of security policeman Brian Ngqulunga by Vlakplaas members has not been told, his widow told the truth commission's amnesty committee yesterday, and she therefore could not forgive those responsible.

Former Vlakplaas commander Eugene de Kock and five of his underlings applied for amnesty for the murder, claiming that their action was a direct order from Gen Nic van Rensburg who said Ngqulunga was about to defect to the African Na-

tional Congress (ANC) and could divulge extremely sensitive information about unlawful security police activities.

Catherine Ngqulunga, a mother of two who has received a police pension since her husband's murder, told the committee "It surprises me that they claim Brian worked with the ANC or planned to do so. Brian would have told me, he discussed matters like that with me."

Ngqulunga, a Vlakplaas askari who was later appointed a security policeman, was gunned down on a deserted road in the former Bophuthatswana homeland by Vlakplaas members

Dave Baker, Balletjies Bellingan, Wouter Mentz and Piet Botha AK-47s were used to create the impression that Ngqulunga was assassinated by ANC cadres.

"Although they are not telling the truth, I am thankful to know Brian was killed by Vlakplaas members and not the ANC," Catherine Ngqulunga said.

Asked about her husband's career at Vlakplaas, she said he had been very unhappy because De Kock used to "beat him up" regularly.

Botha, the youngest policeman to be appointed to the Vlakplaas C10 unit, told the committee there was very little racism

within the security branch of the SA Police and that the colour of Ngqulunga's skin had nothing to do with the decision to kill him.

"De Kock was a non-racial commander," Botha said. Asked whether the fact that the ANC was no longer a banned organisation when Ngqulunga was killed made any difference to the Vlakplaas operatives, Botha answered "We were visited on several occasions at Vlakplaas by generals and they said that the talks between government and the ANC merely indicated political change and had nothing to do with us. Our work must continue normally."

Ngqulunga's murder was ordered at the time when government appointed judge Louis Harms to investigate claims that the security police had been responsible for the 1981 murder of Durban human rights lawyer Griffiths Mxenge and also other criminal activities.

Another former Vlakplaas member Willie Nortje testified "Ngqulunga had severe emotional and stress problems at the time and fears were expressed by Van Rensburg that he might spill the beans at the Harms commission."

Closing arguments for the applications start today

Cabinet approves firearms draft policy

By Wagheed Mlisbach
Political Correspondent

CABINET has approved the draft policy on the control of firearms in South Africa, paving the way for wider powers for the police and restricting gun ownership in the country. In a media statement yesterday, Safety and Security Minister Steve Tshwete said that he would appoint a team to draft a Firearms Control Bill to be placed before Cabinet next month. The new legislation gives wider search and seizure powers to the police and provides for

stricter control of gun ownership. The Bill allows for:
● Police to search vehicles and buildings and to seize guns and ammunition. The police will also be given wider powers to investigate anyone found in a vehicle or a building where illegal firearms have been found.
● New offences to be created, for instance, being in possession of a gun when under the influence. The policy also recommends harsher sentences for illegal possession of firearms.
● The Minister to have greater powers to declare certain areas or kinds of places firearms-hunters collectors or sport shooters free zones.
● State owned firearms to be registered with the Central Firearms Registry and for much stricter control over the distribution of firearms by state employees and parastatal organisations to the general public.
● Licences to be renewable every five years to determine whether people are still fit to own guns, and
● A limit on how many guns can be owned for self defence. This would, however, not affect hunters collectors or sport shooters.

McBride to appear before amnesty committee for bombing

FOREIGN affairs official Robert McBride is scheduled to appear before the truth commission's amnesty committee for the 1986 bombings of Durban's Magoo's Bar and Why Not bar, which left three revellers dead and 71 injured. The commission said McBride — who was sentenced to death but subsequently released on indemnity — and four other former Umkhonto we Sizwe cadres were seeking amnesty for the incidents. The hearings are scheduled for Durban's Christian Centre between September 27 and October 10. Nine other applications, including amnesty bids for murder sabotage and possession of firearms and ammunition, would also be heard. Although McBride was indemnified during the exchange of prisoners be-

tween the African National Congress (ANC) and the then ruling National Party (NP) government, he still needs truth commission amnesty to cover him against legal action by the victims — including civil claims. McBride and Ismail are also applying for amnesty for the January 10, 1986 murder of Const Bobby Wellman during a double bombing of an electrical substation in Jacobs near Durban — Sapa.

(652) ED 17/9/99

Cabinet gives green light to new gun-control policy

ANDRÉ KOOPMAN
POLITICAL CORRESPONDENT

A DRAFT firearms policy on the control of firearms was approved by the cabinet yesterday following weeks of controversy sparked by the NNP, which claimed that civil society had not been afforded a chance to comment on proposed changes to the gun laws.

Government proposals include boosting police powers to search premises when investigating firearm offences and arrest suspects. Safety and Security Minister Steve Tshwete said "The police must also be given wider powers to investigate crimes — for instance, by fingerprinting everyone found in a vehicle or building where illegal firearms are found."

Among the proposals is one to outlaw the use of a firearm by anyone under the influence of intoxicating substances. The draft policy also recommends harsher sentences for illegal possession of firearms. The proposals have drawn strong opposition from the pro-gun lobby. Tshwete said yesterday

"I would like to reiterate that the aim of the new legislation is not to disarm law-abiding citizens and police officers but to develop a culture of responsible gun ownership and to reduce violent gun crime in South Africa."

- Other proposals stipulate that:
● All state-owned firearms should be registered with the Central Firearms Register, and that much stricter controls should be exercised over the distribution and use of firearms by state employees and parastatals.
● There should be a limit on how many guns may be owned for self-defence, although special provisions will be made for hunters, collectors and sport shooters.
● Licences will be renewable, in most cases every five years, to ensure that the register is up to date and that licence holders are still fit to acquire licences.
● There should be a "layered" licensing system, whereby an applicant would be assessed and the firearm licensed separately.
● A cabinet statement released yesterday said the draft policy would form the basis of consultations with all interested parties

Magistrates squeezed

By Jimmy Seape

THE Health Special Investigation Unit is expected to issue summons to 48 senior magistrates and several building contractors suspected of defrauding the Government of million of rands. The money was earmarked for maintaining the courts. The magistrates are alleged to have diverted money from a special maintenance fund which was set up by the Department of Justice to allow them to carry out repairs without going through the Department of Public Works. Unit head Judge Willem Health confirmed that the unit was in the process of serving Rule 5 documents on magistrates implicated in the scam.

There are 48 magistrates involved, as well as a number of contractors. The total amount involved is R38 million," he said. Health said they were also probing a number of other magistrates who will also be subpoenaed once the investigation has been completed. Sowetan has been reliably informed that the number of those implicated in the scam could be more than 100 once investigation have been completed and more than R100 million could be involved. The Justice Department said more than 140 magistrates were involved but the Health Unit said it was able to issue summonses to only 48 at this stage. Justice deputy communications head Mr Kaiser Kganyago said the magistrates are also

facing a second special probe by the Office for Serious Economic Offences (OSEO) which will determine whether cases of corruption should be brought against any of them. He said the department has handed documents to both the Health Unit and OSEO after the discovery of new information in three more provinces implicating several individuals in the abuse of maintenance funds. Kganyago said the department has found further evidence during the past few months relating to serious abuse of funds earmarked for building maintenance in KwaZulu-Natal, Eastern Cape and Mpumalanga which had been probed. He said a second internal report, that would not be released to the public, has been compiled.

Earlier in the year, the department said their initial investigation of three provinces — Gauteng, Northern Province and North West — revealed the abuse of funds that were diverted to the official residences of the magistrates concerned. Kganyago said apart from the Health Unit documents relating to the abuse of power have also been handed to the OSEO which will be charged with investigating whether some of the individuals concerned should face criminal charges. The number of magistrates who are likely to face the investigation is expected to increase as only six provinces have been covered.

● Turn to page 2

Thursday September 16 1999 SOWETAN

Prisoners may no longer vote

(253)
Sowetan 16/9/99

PRISONERS could be barred from voting in next year's local government elections, the Independent Electoral Commission said yesterday.

The IEC's chief director for legal affairs, Mr Edward Lambani, told Parliament's home affairs portfolio committee there could be some municipal wards in which prisons were situated and prisoners outnumbered local residents.

This could lead to a situation of a prisoner being elected mayor of a municipal council, he said to mirth from MPs.

The IEC could therefore recommend that prisoners should not be allowed to vote in the municipal elections, scheduled for November next year, Lambani said.

South Africa's more than 140 000 prisoners were allowed to vote in this year's June 2 national and provincial elections.

Outlining time-frames for the build-up to the municipal elections, the IEC's chief director for democracy development, Mr Peter Motlhe, said another

voter registration drive may have to be held as boundaries of municipalities may change through the demarcation process currently underway.

The IEC proposed that the voters' roll be closed by June 13 for appeals to be lodged and other technical matters attended to.

It was hoped the demarcation process would be completed by April 30 and that the regulations for the elections could be published by December 31.

Motlhe said municipal by-elections would have to be suspended at some stage to allow the preparations for the November poll to take place unhindered.

IEC chairwoman Dr Brigalia Bam said South Africa's current 843 municipalities could be reduced to about 500 in the demarcation process.

Professor Mandla Mchunu, IEC chief executive officer, said the commission's report on the June 2 poll would probably be presented to Parliament in November. The IEC was required by law to submit such a report.

— Sapa

Cannibal pleads for TRC mercy

ARCHIE MINI (252)

DURBAN: A convicted cannibal who killed a man and ate his heart pleaded for forgiveness for the murder before the Truth and Reconciliation Commission's amnesty committee yesterday.

The committee, sitting at the Durban Christian Centre, was told that Mtu Dlamini, 30, and 15 of his ANC comrades captured the unidentified man "lurking suspiciously" near their homestead outside Tongaat on the KwaZulu-Natal North Coast in December, 1992.

The man, who was said to have had a home-made rifle at the time, was bound to a tree with wires. After he was interrogated, it emerged that he belonged to the IFP.

Dlamini, who earlier regaled the gallery with a tale of how he became an active supporter of ANC policies at the tender age of four in 1973, said the dead man was "under orders" to eliminate their comrade, Lucky Ntshetha

The man was lashed at least 60 times during the interrogation.

It would have been foolhardy to release the man as he would have "mobilised" and come back for revenge, the committee was told.

"But when I tried to shoot him the gun jammed," said Dlamini. The man was then stabbed four times with an assegai after the assailants "discovered" he could "not be shot as a result of having muti".

The killers, using a small fish knife, removed their victim's eyes so that police could not identify their images from the dead man's eyes, he said.

A while later the man's chest was ripped open and his heart cut out. The killers went to a nearby house where they cooked the heart and ate it.

The committee also learnt that the killers engaged in an elaborate "cleansing ceremony" which included walking away from the murder scene in single file while smoking dagga in an attempt to

avoid bad luck.

The applicant, who has a Standard 3 education, claimed the deed was politically motivated and that he and his family "benefited with freedom for killing the man because the area became quiet afterwards".

However, Dlamini made an about-turn at the hearing when he denied any knowledge of eating the man's heart.

The committee took a dim view of his denials, which flew in the face of evidence that surfaced at his criminal trial five years ago along with those of four accomplices.

Dlamini, who was sentenced to nine years by Judge Brian Galgut for his part in the murder, will be a free man before 2003.

He is jailed at Waterval prison. Two of his accomplices have since been released after completing their jail terms.

Ntshetha, who did not apply for amnesty, has already served five years of his 12-year prison sentence.

TRC told of human braai

(252)

South African 21/9/98

By Mfanafuthi Mhlongo

AFRICAN National Congress members gouged out the eyes of a suspected Inkatha Freedom Party informant to remove evidence that might link them to the murder, the Truth and Reconciliation Commission's amnesty committee heard yesterday.

The attackers also braaied the victim's heart and ate it, Moses Muntu Dlamini told the commission during his amnesty application over the killing committed in 1992 at Thongathi, north of Durban.

The unidentified suspected IFP informant was killed at the height of the violence between the ANC and the IFP in KwaZulu-Natal.

He was killed for being in "an area he did not belong", the commission was told.

The victim was tied to a palm tree before he was assaulted with a fishing rod and subsequently killed. His eyes were then gouged and his heart was also taken out, braaied and eaten.

"We untied him from the tree and Ntshetha (the leader of the group) told us that he would remove the deceased's eyes so that police could not trace them through lenses of the his eyes," Dlamini said.

Dlamini, who is presently serving a nine-year jail term, said although he took part in the killing, he did not join in eating the heart.

"I only participated in the killing when we were tortured him and I did not eat any part," Dlamini said.

He also admitted that he tried to fire some shots at the suspect and the firearm could not discharge the ammunition.

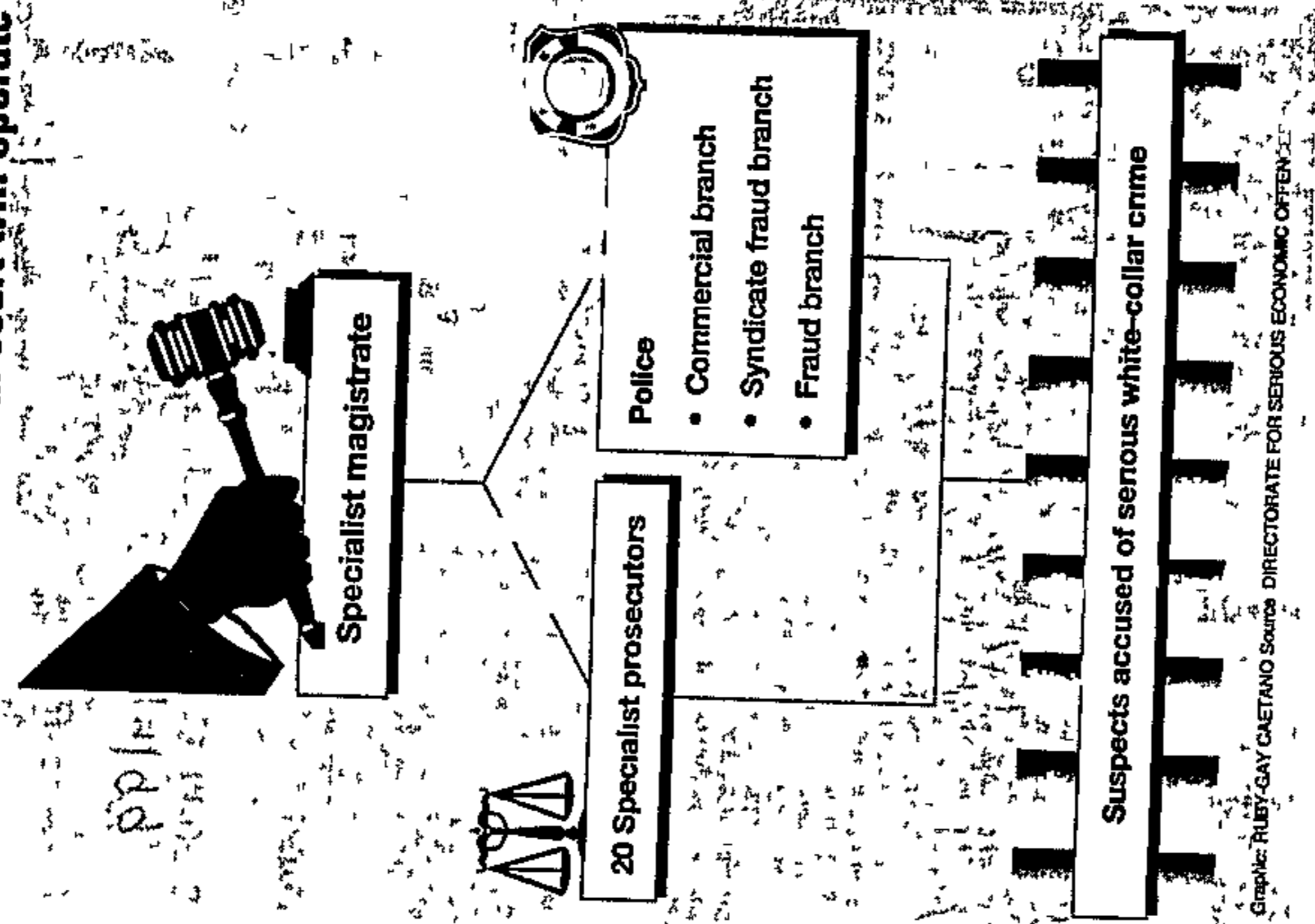
Dlamini said the eyes were left at the scene where the victim was killed.

The age of specialist courts dawns in SA

Government officials say that more specialised chambers may be in offing following the launch of commercial units, writes Taryn Lambert

(27b) 20 22/9/99

How the new commercial court will operate



whether to prosecute Cases would also be forwarded to the court by Ngcuka's office.

Justice Minister Penuell Maduna's spokesman, Paul Setsetse, said the idea of setting up specialist commercial crime courts had been in the pipeline for some time.

Setsetse said the justice ministry welcomed the initiative and had been involved in allocating staff for the new court.

Maduna believed the courts would play a significant role in relieving the burden on the criminal courts, which were straining under heavy workloads.

Official statistics show that commercial crime is soaring. A total of 25 456 cases accounting for R226bn were reported in Gauteng last year.

Judge Willem Heath of the special investigating unit charged with uncovering corruption and recovering state assets said he could not comment on the establishment of the new court as he had not yet been briefed on the move by Maduna.

He said he had suggested "a long time ago" that specialist courts be set up within the criminal justice system.

The move has been welcomed by Business Against Crime chairman Doug Band, who said it would help selected prosecutors, magistrates and judges to build up a "reservoir of knowledge and expertise" in commercial crime.

Democratic Party justice spokesman Tertius Delpoort has said specialised courts should also be established for other types of crime.

New National Party justice spokesman Sheila Camerer said the idea of setting up specialist courts was started by the former government in 1993. She said it was a "good idea with lots of merit", but that specialist detectives would have to crack the cases.

tions for the Gauteng region Chris Jordaan. One of the new court's aims is to fast-track trials of people suspected of being involved in serious white-collar crime.

"No case heard by the new court should take longer than 15 court days," he said.

Jordaan said he would have the discretion to decide if a case was serious enough to be heard in the specialist court.

Considering dockets

"If I get a docket against an attorney who is suspected of the theft of R500 in trust fund money, I would consider that to be serious if a private person is indicted of theft of R500, it is clearly not as serious," Jordaan said.

The court will fall under the Directorate for Serious Economic Offences, a division of Ngcuka's office. Jordaan, who will become the deputy director of the commercial crime courts when the first one opens in November, said other similar courts would be set up in due course.

He said 11 prosecutors had already been allocated to the court but he hoped to have a staff of 20 prosecutors before November 1.

The staff will also include a magistrate, prosecutors interpreters and administrative officials.

The prosecutors will work closely with the police as part of the drive to dispose of matters more quickly. The three police divisions assigned to cracking economic crimes are the commercial branch, the syndicate fraud branch and the fraud branch.

Jordaan said police who made arrests for crimes that fell in the commercial court's ambit would forward the docket directly to him for a decision on

NATIONAL Director of Public Prosecutions Bulelani Ngcuka favours specialist courts to deal with specific crimes. This would enable the judicial system to dispose more speedily of the backlog of cases in the courts.

Ngcuka's spokesman, Sipho Ngwema said the launch of specialist commercial crime courts in Pretoria in November will be the beginning of a trend towards the establishment of other specialised courts.

"I can't speak for the justice department but the prosecution services are in favour of specialised courts," Ngwema said yesterday.

He said it had also been announced "a few weeks ago" that 18 courts would be established countrywide to deal with sexual offences. It was important for courts to "prioritise".

"Most cases take ages to go to trial. They sit and gather dust. What can a rape victim remember four years after the crime took place?"

The main aim of the new commercial courts would be to "clamp down" on white-collar crime and dispose of matters more speedily, Ngwema said.

He said it was also important for experts to be assigned to deal with cases that were "highly technical" in nature.

"We need (prosecutors) who will be able to deal with the backlog efficiently. Too many people think they can get away with white-collar crime. We need to get the message out that we are clamping down."

The first commercial crime court will operate out of the Pret Joubert building in central Pretoria, next door to the building that houses the justice department.

The Directorate for Serious Economic Offences is also based in the Pret Joubert building making it convenient, said the deputy director of public prosecu-

Graphic: RUBY GAY CAETANO SOURCE: DIRECTORATE FOR SERIOUS ECONOMIC OFFENCES

Maduna puts Constitutional Court building plan on hold

David Greybe ⁽²⁵⁷⁾ 22/9/99

CAPE TOWN — Justice Minister Penuell Maduna will announce today that he has put on hold the building of the new Constitutional Court as part of a plan to re-order spending priorities

It is understood that Maduna is considering also having Constitutional Court judges seconded to the high courts for short periods to help eliminate backlogs

However, this would be announced only after he had consulted widely with the country's senior judges and would not take place before next year

"Plans for alterations of the Constitutional Court and Supreme High Court of Appeal are presently on hold," Maduna says in a progress report on his first 100 days in office to be delivered to the justice portfolio committee

Maduna's spokesman, Paul Setsetse, said "Additional funds are not available for construction of the new Constitutional Court building. The ministry

will be approaching the president (Thabo Mbeki) and finance ministry in this regard"

The design for the new court, to be housed in Johannesburg's Old Fort jail precinct in Braamfontein, has already been chosen from a competition, which received 185 entries. The winning design was awarded to OMM Design Workshop in Durban and Urban Solutions in Johannesburg in April last year

Maduna will also update Parliament on government initiatives to improve the efficiency of the magistrates' courts. Setsetse said "prioritising the magistrates' courts is linked to the fact they have the most backlogs"

Maduna will tell the committee that a priority list for both short and long-term projects has been drawn up to deal with magistrates' courts mainly in townships and rural areas "in urgent need of attention". He will also say that investigations have begun into the provision of high courts for Northern Province and Mpumalanga

New rights body on way

⁽²⁵⁸⁾ ARLT 22/9/99
POLITICAL CORRESPONDENT

Establishment of a constitutionally protected Cultural, Religious and Linguistic Rights Commission is a step closer

Sydney Mufamadi, Minister of Provincial and Local Government, will on Heritage Day on Friday reveal proposals for the commission at a conference in Midrand

Delegates are to include cabinet ministers, members of national and provincial parliaments and "representatives of cultural, reli-

gious and linguistic communities", according to a statement by Mr Mufamadi's office

The conference is a sequel to a summit a year ago to debate the promotion and protection of the rights of cultural, linguistic and religious communities

At the opening of Parliament in June, President Thabo Mbeki vowed to work for the speedy implementation of the constitutional requirement to establish a Commission for the Promotion and Protection of Language, Cultural and Religious Rights

'Work to rule' surprise for judges' staff

Secretaries won't get recesses

⁽²⁵²⁾ ARLT 22/9/99
CLIVE SAWYER
POLITICAL CORRESPONDENT

Secretaries of judges who reap months of extra time off because of the long recesses taken by their bosses could be in for a nasty shock, Justice Minister Penuell Maduna revealed today.

Briefing the National Assembly justice committee, Mr Maduna highlighted the unofficial perk enjoyed by judges' secretaries as one of the inefficiencies he planned to address against a background of scarce resources for his department.

He said work would be found for the secretaries

"They are public servants. There is no time off for them except the annual leave they are entitled to," he said.

In comments echoing his earlier controversial remarks about the productivity of judges, Mr Maduna told the

committee that the 10 criminal court judges of the High Court in the Western Cape dealt with 85 cases a year

He compared this with Washington DC, where he said 59 judges processed 100 000 cases a year

The minister said that the recesses taken by judges meant that prosecutors spent months on recess, too

He also sketched a gloomy picture of the financial resources available for legal aid

Since 1994, the requirements of the new constitution had pushed the annual costs of legal aid up by 500%

The system was not reaching the "poorest of the poor"

Two thousand people involved in litigation because of alleged damage to their health from asbestos would not be paid

At the same time, the state had funded a divorce case which ran for 200 days

SA gun laws lag way behind SADC nations

Ivor Powell

⁽³⁴⁾ ⁽²⁵²⁾ mtG 17-22/9/98
Four South Africans will be the victims of gun related crime for every single Zambian victim. And well more than 20 South Africans will be shot dead every time a Botswanan dies from gunshot wounds.

These are among the chilling consequences of South Africa's existing gun laws, argues independent researcher Katharine McKenzie after investigating gun control measures in 10 member states of the Southern African Development Community (SADC)

McKenzie found that gun laws in South Africa — despite the country's image as the leader of the Southern African community — lag way behind

enforcement measures in other SADC countries

"South Africa allows people to own more guns than any other country. It's also the country with the laxest controls. As the law stands, firearm licences never have to be renewed," McKenzie said. "You only have to be 16 in South Africa, not old enough yet to vote or to drive, but old enough to shoot and if the gun is to be used under adult supervision, firearms can be licensed to even younger kids"

McKenzie's report — commissioned by Gun Free South Africa — comes amid growing resistance on the part of gun-owners' associations to draft legislation aimed at controlling the proliferation of guns in South Africa. The proposed new laws aim to

compel all gun owners to reapply for gun licences and to limit the number of guns any person may own

There are regional initiatives to clamp down on gun ownership, notably initiatives by SADC's Southern African Regional Police Chiefs Cooperation Organisation

According to McKenzie, SADC efforts are being undermined by South African realities. "The situation in South Africa is drawing criticism from the police chiefs," she notes

"Not only are there more guns in South Africa than anywhere else, but South Africa is the only country that manufactures arms — and, moreover, the gun culture is much more entrenched here than anywhere else. In Tanzania, for instance, there

are only two gun shops in the whole country. In Mozambique, there are none. The role of South Africa needs to be looked into."

One of the case studies highlighted by McKenzie is that of Botswana, where, with a population of just more than 1.5-million, only 217 murders were recorded in 1997. South Africa's national average stands at about 12 000 firearm related murders per year.

Botswana has the toughest gun control laws in the SADC region, with 29 000 firearms licensed to private citizens and only a proportion of law enforcement and security personnel allowed to carry firearms in public. Each year 400 shotgun and rifle licences are given out for hunting — decided by a public raffle system in which the

winners are given gun licences.

In Mozambique only one gun is permitted per licencee. In addition to this, only 67 mm handguns are licensed, the argument being that larger-calibre weapons are weapons of war

In South Africa, legislation dating back to 1969 (though subsequently amended on various occasions) disqualifies only those with criminal and psychiatric records from licensing firearms — and permits any one person to own up to 12 guns

The situation in South Africa remains alarmingly anarchic, with nearly 30 000 handguns being reported stolen and around 8 500 being stolen from the police and the defence force each year, according to the Institute for Security Studies. Only 1 784 stolen firearms were recovered in 1998.

The countries surveyed by McKenzie were South Africa, Zimbabwe, Zambia, Lesotho, Swaziland, Tanzania, Malawi, Mozambique, Botswana and Namibia

Why SA needs silver bullet of gun control

Experience shows that unrestrained proliferation of firearms leads to a cycle of violence that is difficult to break, writes Wendy Cukier

22/9/99

WHILE SA is unique, it is useful to consider the international experience with firearms regulation in response to recent criticisms of local legislation. Sovereign nations must determine the appropriate balance between the concern for public safety and the interests of gun owners. Whatever they decide, it should be based at least to some extent on the best available research — and founded in international law and human rights rather than rhetoric inspired by the US National Rifle Association.

Despite efforts to minimise the importance of firearms, death and injury resulting from them are a major threat to public safety in many countries. A recent study by the United Nations Crime Prevention and Criminal Justice Commission reported almost 200 000 firearm deaths a year in murders, accidents and suicides.

What unfettered access to firearms increases the lethality of suicide attempts and violent assaults. Guns figure prominently in the cycle of violence against women in many countries, and the patterns of this violence are similar. A growing number of victims are children, as combatants and casualties.

In Latin America, criminal violence dwarfs political violence and has a huge effect on individual security, economic development and governance. The economic costs of violence, including policing as well as the value of lives lost, have been estimated as consuming 14% of gross domestic product.

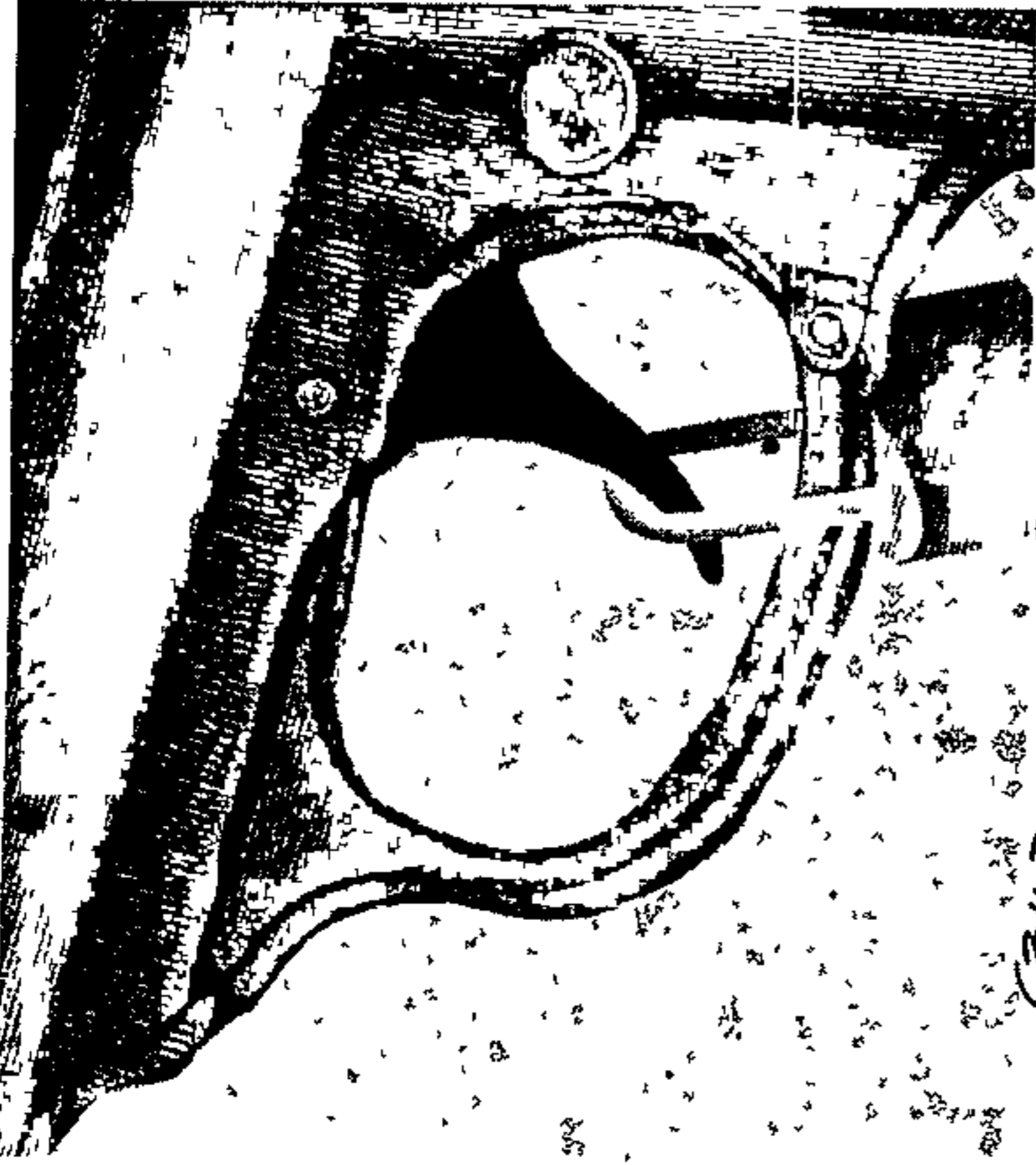
Even in Canada, where the rates of gun death and injury are relatively low by world standards, the economic costs of firearm violence have been estimated to be \$6bn a year.

Guns do not cause violence. We must address the root causes of violence, conflict and injury, but we must also focus on the instruments of violence.

However regardless of the context — crime, conflict, domestic assault or suicide — firearms increase the severity of violence and the number of victims. The best prevention strategies involve breaking the chain of the causes of violence or injury at its weakest point.

The firearm is an important focal point. Rates of firearm death and injury are linked to the accessibility of guns. The unrestrained proliferation of firearms leads to a cycle of violence that is difficult to break: fear leads to arming, which breeds violence which leads to insecurity which leads to further arming. Firearms undermine long-term efforts to build civil society whether in war zones or inner cities.

The link between accessibility to



firearms and death rates has been suggested in a number of studies. One study that examined the link between gun ownership rates and firearms deaths within Canadian provinces, the US, England/Wales and Australia concluded that 92% of the variance in death rates was explained by access to firearms.

Another review of 13 countries showed a strong correlation between gun ownership and homicide rates and suicide rates. In another study, based on a standardised survey of victimisation in 54 countries, gun ownership was significantly related to both the level of robberies and the level of sexual assaults. The relationship between levels of gun ownership and threats/assaults with a gun is also strong.

The gun lobby in Canada and elsewhere frequently cites "research" to prove more guns make us safer, but the research that it cites has been soundly criticised.

The University of Chicago's Prof. John Lott's More Guns Less Crime claims that allowing civilians to carry concealed weapons reduces crime. This conclusion counters to the bulk of research which shows a direct relationship between the rate of gun ownership and firearm deaths in developed countries.

Lott's study has been widely criticised. His advice following the Jonesboro, Arkansas shootings where an 11-year-old and a 13-year-old killed four schoolchildren and their teacher is also revealing. "Allowing teachers and other law-abiding adults to carry concealed handguns in schools would not only make it easier to stop shootings in progress, it would also help deter shootings from ever occurring." Few criminologists or crime prevention experts in Canada or the US would share this view.

Another refrain of gun enthusiasts is

AS THE debate about appropriate gun control measures intensifies, it is appropriate to look at the role SA plays as the dominant partner in a developing region.

With 4.18-million licensed firearms, SA has by far the most legal guns in the Southern African Development Community (SADC). SA's ratio of one firearm per 10 people contrasts with other countries where firearms are not part of everyday life.

In Botswana, a decision not to issue any firearm licences has been implemented by national police commissioner Norman Molebogae. "In the past it was easier to get a licence, but the police found that weapons changed hands frequently and there was little control," he says.

A similar concern was recently voiced in SA by Safety and Security Minister Steve Tshwete, who told Parliament that 70% of the addresses on SA's central firearms register, which contains details of all firearm licences issued, are out of date or false. It was also found many people had lost their guns or had them stolen without reporting this.

That the central firearms register lacks integrity is in part a consequence of the absence of a renewal requirement for gun licences. Other countries in the region, many of which do not have SA's extensive resources, insist on regular renewal of all firearms licences.

In Lesotho, Swaziland and Malawi, licences are renewed annually, in Mozambique biennially, and in Zambia and Zimbabwe every three years. This practice ensures sound administrative control.

Many countries in the region also employ a process of rigorous screening to ascertain the suitability of individuals applying for firearms licences. In Lesotho and Swaziland, traditional authority structures endorse licence applications which must have the support of the chief or village elder.

In Tanzania a range of structures from street level up must agree to a firearm licence application before it is approved by the director of criminal investigation. Mozambique's policy excludes some categories of people from applying for gun licences. Applications must be accompanied by a letter from the applicant's employer; licences are refused to the unemployed.

In Lesotho, self-defence is not sufficient reason to acquire a firearm licence and all applications are carefully scrutinised in a process that lasts between six and 12 months.

Many countries regulate the number of firearms, amount of ammunition and calibre of firearm for which a licence may be granted. SA's limit of 12 firearms for each licence holder (and more for some categories) contrasts sharply with countries like Mozambique where an individual may be granted only one handgun licence for a 6,67mm calibre firearm. Civilians may not have 9mm firearms which are regarded as weapons of war and are issued only to members of the

SA's conduct has a big impact on what happens in other countries in southern Africa, says Katharine McKenzie

police and military. In Namibia, individuals may licence up to four firearms, but all gun owners are required by new gun laws to reapply for their licences.

The new Namibian licences are booklets with a photograph of the licence holder and fingerprints. While SA's new car licence system requires that fingerprints be taken, this is not compulsory when it comes to issuing a firearm licence.

SA's constitution defines children as anyone under the age of 18, but juveniles as defined by the Arms and Ammunition Act are under 16.

Between January 1995 and August 1998, firearm licences were granted to 2 723 people aged 16. Swaziland and Zimbabwe also grant licences to 16-year-olds, but in Namibia the age limit conforms to the international norm of 18, and in Lesotho and Zambia applicants must be 21 years or older.

As SA prepares to discuss a few law, it would do well to look at the effect of its considerably firearms stock on its neighbours. While Pretoria frequently asserts its leadership in regional policy processes and conflict resolution, its neighbours feel the impact of its liberal firearms dispensation.

Botswana's police commissioner believes that SA's gun laws are not tough enough. He says illegal weapons come across the border from SA and are used to perpetrate violent crimes. As far afield as Malawi, the police frequently turn up SA-manufactured firearms. Mozambique lives with the legacy of weapons and other materiel supplied to Renamo by the apartheid regime.

Firearms proliferation not only negatively affects SA's neighbours but also pushes up crime figures. Tshwete believes that "the theft and loss of privately owned guns is almost certainly the most important source of illegal guns for crime", with 82 guns lost or stolen daily, almost double the 1994 figure.

Firearm homicide in SA accounts for 49% of all murders committed, with a murder rate of 64.6 per 100 000 people. In Zambia and Botswana it is less than 15 per 100 000.

Both of these countries strictly regulate access to firearms. In Botswana there were only 11 robberies committed with firearms in 1998 against 69 501 robberies in the same period in SA.

This suggests a strong correlation between gun control and crime control. The argument that SA should deal with illegal weapons first before looking at licensed firearms holds little sway in a country where firearm abuse abounds, frequently involving "responsible" licensed gun owners and where the status of legal firearms and illegal firearms frequently changes.

A reasoned look at SA's responsibilities as a leader in the SADC in fulfilling the vision of a peaceful African renaissance is required.

Katharine McKenzie is an independent researcher who wrote this article for Gun Free SA.

As far afield as Malawi, local police turn up SA-made firearms

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MFG 23-30/9199 (252)

Gillwald: Legal aid hasn't delivered

Barry Streek

The consensus reached nearly two years ago on the transformation of the delivery of legal aid in South Africa through the establishment of justice centres has not resulted in much delivery, the Deputy Minister of Justice, Cheryl Gillwald, has admitted

It is "sad that little has been done to give effect" to the model of justice centres through the use of state-salaried employees who would deliver legal aid services to as wide a spectrum of communities as possible, she said at a legal aid workshop in Pretoria last weekend

Gillwald, a surprise appointment by President Thabo Mbeki as deputy minister, made it clear that the provision of legal support to the poor would be one of her priorities

She admits she took up office with little knowledge or experience of the legal system, "but one thing I had experienced was the frustration of trying to secure legal assistance for indigent people" In her constituency office in the northern Free State she personally experienced the difficulties involved in trying to secure assistance for her constituents.

When the Consultative Forum on Legal Aid met in January 1998 there was consensus on the need for transformation on the structures responsible for the delivery of legal aid and the way in which services were delivered "There was clear recognition of the fact that South African can no longer afford to provide legal assistance by way of the Judicare system," she said

The Legal Aid Board itself acknowledged this and presented the plan for the establishment of justice centres, but little had been achieved since then.

Gillwald also said she had come across a number of references to the independence or autonomy of the Legal Aid Board "The impression I have gained would seem to suggest that the board in no way feels accountable to the executive arm of the government. The problem was that the ministry and department of justice were held accountable by the Cabinet, Parliament and the public for the board's actions. The Legal Aid Act established the board as a body corporate and implicit in the law was the theme of autonomy I contend, though, that the legislation never intended the creation of absolute autonomy. Neither did it intend the creation of an independent institution aloof and un-

responsive to the community and society of which it is an integral part."

The ministry and department are engaged in a process of rationalisation and transformation, and the board has to be part of this process, she said "The object of transformation is to bring about change which serves the best interests of the public. This means that we have to do away with practices

of the past which are inappropriate in our new democracy," she argued

If legal aid for civil matters were provided by funding approved NGOs and perhaps academic institutions, as was the case in the US, the administrative red tape at the Legal Aid Board would be reduced, Gillwald said

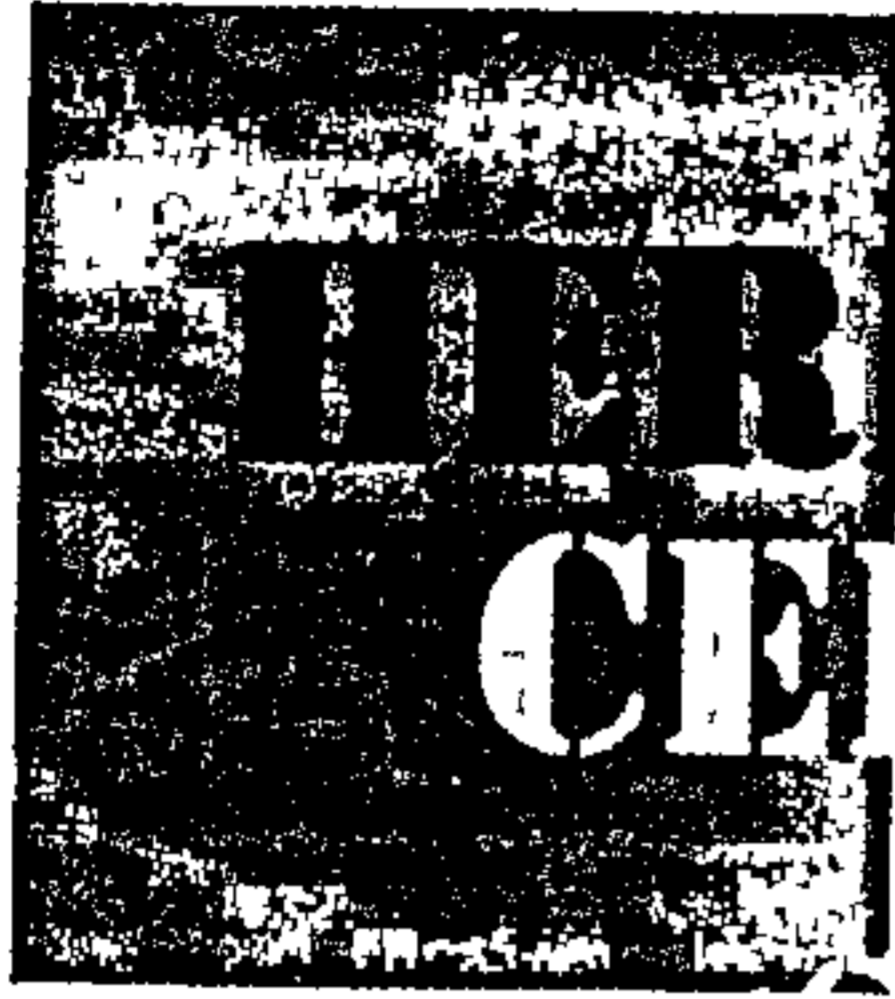
Gillwald added that the Legal Aid Board established its own pilot pro-

ject public defender office in Johannesburg in 1992 and "by all accounts, this has been a successful project"

The figures presented at the Legal Aid Forum in January 1998 indicated that the cost of defending someone through the public defender averages out at less than half of the cost of Judicare, the current legal aid system. Despite this, the project has not

been expanded to other courts. We need to know why. We need to know whether the public defender system ensures that the state's constitutional obligation to provide legal representation in criminal matters is met."

Gillwald clearly gave notice that she is going to push hard to take justice to those who cannot afford lawyers. She also promised to engage civil institutions and NGOs to find new ways to provide "relevant and community orientated services especially to the most disadvantaged and needy", pointing out that the Constitution laid down that anyone had a right to defence by a legal practitioner at state expense



Maduna banishes Heath to Eastern Cape

(272) ART 23 19/99

DP says Government fears corruption-buster

CLIVE SAWYER
POLITICAL CORRESPONDENT

Controversial corruption-buster Judge Willem Heath is to be confined to investigating cases in the Eastern Cape, to remove him from the national stage.

The move is the latest turn in a saga of tension between the judge and the Government

Ministry of Justice representative Paul Setsetse said Minister Penuell Maduna held that the act in terms of which the Heath Special Investigating Unit was appointed made provision for more than one probe nationally

As the Department of Justice had only limited resources, it would be more cost-effective to appoint an

investigating tribunal in the province where the complaint arose, instead of having the Heath unit constantly traversing the country

Judge Heath would be allowed to continue his present workload of cases

He then would probably return to the Eastern Cape Bench

Asked whether the ministry realised the move would be interpreted as a political one, Mr Setsetse said "Unfortunately, that will be the insinuation, but the minister is acting in terms of the act."

Asked when the confinement to the Eastern Cape would take effect, he said this depended on when the commission completed its present caseload

Judge Heath's office said he

would not be available for comment until after a meeting with Mr Maduna

Democratic Party deputy justice spokesman Hendrik Schmidt asked where, if there was no extra money to fund the Heath unit, the money would come from to pay for nine separate anti-corruption units

"Why does the minister not empower the Heath unit further to continue its work instead of stalling the anti-corruption process by having to go through the whole rigmarole of establishing nine identical functionaries?"

"It appears as though the Government is slightly uncomfortable about the effectiveness of the Heath unit and fears what it might uncover next," he said

M+G 23-30/9/1999 (252)

Victims demand to be paid

Evidence wa ka Ngobeni

Julia Molotsi's only daughter, a Soweto student activist, was detained, assaulted, released, abducted and killed in 1990

Molotsi shared her pain with the Truth and Reconciliation Commission (TRC) in Soweto in 1996. But today she believes appearing before the TRC did nothing for her dignity.

Molotsi says she has not received the compensation that was promised by the TRC, but her daughter's killers received amnesty. "The people who killed my daughter are now free and are enjoying themselves with their families, and we victims are not taken care of," says a bitter Molotsi.

This week she joined more than 200 people — most of them associated with the Khulumani Support Group, which helps victims of violence — in a protest march to force the TRC to pay compensation. The placard carrying protesters held a sit in inside the Johannesburg High Court.

Among the protesters was Sello Nhlapo (37) from Katlehong. He was shot in the chest during a demonstration in 1981, and lost a lung. Nhlapo testified at the TRC in 1996 where he asked for compensation.

Nhlapo, who lives in a shack with his wife and four children, said he needs the compensation to pay for his medical expenses and to support his family. Since he lost his lung he can no longer work a full day. His wife sells second hand clothing, but does not generate a regular income.

An urgent interim reparation committee was set up last year after the publication of the TRC's final report. According to committee chair Hlengiwe Mkhize hundreds of applicants



Demanding payment Hundreds of people marched on the Johannesburg High Court this week to force the TRC to pay their compensation. PHOTOGRAPH: MADINE HUTTON

have already received compensation of between R2 000 and R4 000.

Khulumani is demanding urgent intervention by the government, which they blame for stalling the reparation process. The organisation is concerned that when the TRC closes in December victims may not get their compensation, and that the interim compensation is not enough.

"We asked the former minister of justice to investigate this matter. But nothing has been done. Now we want someone who has taken over from Dullah Omar to meet with us to discuss this matter," said Duma Kumalo of Khulumani. "We have sent several letters to the Depart-

ment of Justice since 1997, but we have not even received any response from them. If they had answered our letters we would not be here."

When a justice official asked whether the group had made an appointment, Kumalo said "We thought it is not necessary for us to make any appointment because we have written several letters and no one bothered to respond. We are not leaving this place."

However, the protesters dispersed after submitting a memorandum to the Department of Justice, giving it 10 days to respond to their problems and arrange a meeting with Minister of Justice Penuell Maduna.

Maduna weighs up judges, finds them lacking once again

David Greybe (MIA)

CAPE TOWN — New York judges each handled hundreds more cases a year than their SA counterparts, Justice Minister Penuell Maduna told Parliament yesterday. He hit out at the lack of productivity of SA's judicial officers, saying out high court judges SA's high court system was paralysed. Deputy Justice Minister Cheryl Gilwald told the justice portfolio committee. Maduna said it was "quite clear"

that the long recesses in the high courts — about three-and-a-half months a year — was affecting the productivity of the courts and was contributing to wastage of expensive prosecuting resources. "Most other countries do not have such recess periods," Maduna said in a report on the efficiency of courts to mark his and Gilwald's first 100 days in office. A study had shown that 10 Cape High Court judges handled only 85 cases in a year, while 59 judges in New York dealt with 100 000.

Gilwald said the issue was not whether judges should take recesses. It was that "the entire system is paralysed" while the courts were in recess. Some administrative staff had accumulated up to 604 days leave, she said. Maduna said the issue of the recesses "will need to be revisited". The department's policy unit was investigating the matter "and all role-players will be consulted before a policy decision is made". Judges' secretaries, who also went on recess should be assigned

other tasks during recesses. In terms of public service regulations they were only entitled to annual leave, he said. Meanwhile Constitutional Court President Arthur Chaskalson refused to comment yesterday on a report that Maduna was considering also having Constitutional Court judges seconded to the high courts for short periods to help eliminate backlogs. Chaskalson said he was only prepared to comment on a written statement of confirmation of such

working at cross purposes" Maduna would meet "soon" with the country's senior judges to discuss the various issues plaguing the criminal justice system. He also updated the committee on initiatives to improve the efficiency of the magistrate's courts many of which were "staggering under huge criminal case loads". He gave a priority list for short- and long-term projects that had been drawn up to deal with magistrate's courts, mainly in townships and rural areas.

DD 23/9/99

Maduna puts Heath in amber

(34) (252)
JUSTICE Minister Penuell Maduna carried out his threats against Judge Willem Heath's Special Investigation Unit this week by severely restricting its activities.

Maduna has severely cut the responsibilities of the controversial crusader against corruption and his unit. Government said this week the Heath team would cease to be a national unit after completing the cases now under investigation. Heath will now handle only cases in the Eastern Cape.

This returns the unit to the status of the former Heath Commission, which was established in 1995 to investigate maladministration in the Eastern Cape. The national unit was established in April 1997 to root out government corruption and recover misappropriated assets.

This week's move by government will partly silence Heath, a controversial man who has irritated certain members of government, including three Cabinet ministers.

Heath said on Friday he was unable to comment until he had discussed the future of the unit with Maduna, with whom a meeting is awaited.

● Cowboy or crusader? Marcia Klein takes a closer look at Heath on Page 7

ST (BT) 26/9/99

Monday Times,
September 26 1999



McBride's dad shuns amnesty

(252)
ST 26/9/99

IN A shock announcement yesterday, just two days before a scheduled appearance before the Truth and Reconciliation Amnesty Committee, Derrick McBride, father of former Foreign Affairs official Robert McBride, withdrew his application for amnesty, writes RANJENI MUNUSAMY.

Both Robert and Derrick McBride were due to appear before the committee in Durban tomorrow to seek amnesty for their roles in acts of terrorism by the ANC's special operations unit in KwaZulu-Natal between 1981 and 1986.

In a statement to the TRC, McBride said he did not wish to take part in any aspect of the body as it had not brought about reconciliation and was "no good to anybody".

Robert McBride said his application to the committee would go ahead as scheduled.

Determined to keep guns blazing

ST(BT) 26/9/99

While Judge Willem Heath's detractors carp, the leader of SA's official watchdog unit continues to fight for justice, writes **MARCIA KLEIN**



WHO exactly is Judge Willem Heath? Cast as SA's fearless and determined anti-corruption crusader, his image has reached superhuman proportions in some sectors in others, though, particularly within government, he has got a lot of backs up.

His fiercest critics seem to come from the ranks of the very institution which brought his unit into being. His campaign for more funds (in which he has tried to elicit help from the private sector) and his sometimes dogged independence from government have not gone down well with state officials. Finance Minister Trevor Manuel, Justice Minister Penuel Maduna and former Justice Minister Dullah Omar have all clashed publicly with him.

Recent announcements that he is moving space in his investigations into Absa and major shareholder Sanlam and into the Western Cape Gambling Board and casino licence winner SunWest have caused some sceptics to ask if he is not a bit more cowboy than Superman, picking on everyone willy-nilly. Heath, however, denies he can investigate any matter without it being scrutinised by the Department of Justice and the premier of the province as well as the relevant MEC.

He remains stubbornly unrepentant, steadfastly fulfilling his mandate to investigate serious cases of malpractice, corruption and fraud involving state assets or money.

The Health Special Investigations Unit was established in April 1997 via proclamation by then President Nelson Mandela as SA's first special investigative unit to root out government corruption and recover misappropriated state assets. At the same time a special tribunal was established to hear cases arising from the investigations.

One of the unit's first jobs was to try to recover hundreds of millions identified by the unit's predecessor, the Health Commission, which was established in June 1995 to investigate maladministration in the Eastern Cape. It was reported that the commission saved the government R8-billion in potential losses by April 1996.

Heath's new unit was given considerable power. It could serve notice on any individual or institution to make documents available or attend a questioning by the unit. It could administer oaths. It could apply to the special tribunal to issue interdicts and warrants to enter and search any premises and attach items. The special tribunal, also with significant powers, could try civil matters arising from the unit's investigations.

Heath says the unit, whose 102 employees include 55 investigators and 11 lawyers, is currently investigating 220 000 cases. Over 500 judgments have been handed down by the tribunal since August 1997.

Some more interesting successes include the reversal of 92 unauthorised promotions in the Bisho Auditor-General's office. The unit investigated the R14-million stage production *Sarafina 2*, and secured assets, sold afterwards for more than R2-million, purchased with *Sarafina 2* funds for Committed Artists head Mbongeni Ngema.

Heath is investigating alleged corruption in R2.4-billion of drought relief granted before the 1994 election and involving 32 corporations.

The unit has received 179 complaints relating to payments made to attorneys by the Road Accident Fund. It is investigating about 900 car dealers in KwaZulu-Natal involved in allegedly fraudulent claims for repair work to government vehicles.

The unit is looking into 108 000 individual housing subsidy applications and other contracts involving about 232 contractors in Gauteng. Heath says that, from January 1998 to March 1999, the unit completed cases to the value of R1.35-billion, on a budget of R16.2-million, indicating a dividend amounting to R86.25 for each rand invested. The R1.35-billion was verified by the Auditor-General.

Some critics disagree. Manuel said in June that reports from the Auditor-General's office indicated that Heath's

he has asked President Thabo Mbeki for a proclamation for him to launch an investigation into the Western Cape Gambling and Racing Board and SunWest following allegations of irregularities in the award of a casino licence to SunWest.

His investigation, which would follow a prolonged investigation by the Office for Serious Economic Offences, has been criticised on the basis of his wasting a lot of time and money duplicating an investigation which has already gone on ad nauseam.

Heath argues that there is little duplication. "It is really an exceptional case where we inherit a case from another institution, and even if another institution has been involved, there is no duplication. That (Oseo) investigation was conducted with a view to a criminal offence. We have studied the report of Oseo, but we have received information which was not available to them."

The lengthy Absa/Sanlam investigation has been even more controversial, with prominent business players arguing that the Reserve Bank's foremost responsibility was to ensure SA's banking system did not collapse, and there was a very real risk that this could happen. It is believed Heath could issue summonses for the recovery of R1.125-billion, reflecting the pure interest the bank earned on the R1.6-billion lifeboat. The unit has indicated there would be a claim against Absa and Sanlam if taxpayers' money was used illegally to prop up SA's banking system.

An Absa spokesman says, diplomatically, that the process has been correctly handled and that the ball is now in the unit's court. Heath says the Absa investigation has been completed and he is in discussions with both Absa and Sanlam. "A final decision will probably be made within weeks," he says.

"With regard to SunWest, we are waiting for a proclamation from the Department of Justice and as soon as that comes out we will start an official investi-

gation." Both the Gambling Board and SunWest have granted the unit permission to launch a preliminary investigation while it awaits proclamation.

"We took the initiative to involve all the other bodies including the Auditor-General, Public Prosecutor, the SA Police Service and Oseo. We are all co-operating and we are in frequent contact with the other institutions," says Heath.

"I am also not claiming glory for myself — it is a joint effort. So I am fighting with the others and not fighting my own fight." Far from being a law unto himself, Heath says he applies the principles of the constitution "meticulously" and although independent, the unit has to comply with the Act which brought it into being.

Heath adds that he can only investigate matters referred to him by the President. Cases come to him first, though, and he decides whether to ask the President for a proclamation allowing him to investigate.

There are a few cases, he says, where he decided not to take action. But in those where he does, he succeeds. Heath claims a 100% success rate on the facts of cases.

"This is no small feat given the volume of work."

"Each is an individual case," says Heath. "For example, in our drought relief case, we must investigate each farmer. We have 8 000 files for one co-op alone. In the motor (Road Accident Fund) case, each attorney's cases with regard to which complaints have been received need investigation. In the housing subsidy case, there are 108 000 individual applications and 232 contractors. We have to check each house."

But the rewards, he says, are great. One small example was the signing of more than 2 000 acknowledgements of debt in the housing subsidy cases in KwaZulu-Natal.

Heath will, no doubt, continue tirelessly until he is removed from office, and there is a feeling he may follow the likes of independent Electoral Commission head Judge Johann Kriegler and Auditor-General Henri Krieger into the "old school" retirement village.

You can be sure, though, that he will draw all his guns before riding off into the sunset.

UNYIELDING. Judge Willem Heath quietly affirms his convictions, despite criticism from all sides, including government

ment was not permanent.

This week he carried out his threat, with the government announcing that the unit would cease to exist as a national unit. Its activities would, in future, be confined to the Eastern Cape.

Heath says the continued controversy over his position and his relationship with the government "causes anxiety all the time and affects the morale of members of the unit. It keeps me — and those assisting me — away from the actual job."

He would not want to see his job terminated. "As long as we don't get flack from the government or other institutions, we

could operate forever. Our aim is to manage corruption in SA."

But Heath is not certain of his personal future. "I am waiting for an appointment with the minister. There is no time limit in the legislation, although the President could, if he wanted to, terminate the unit's activities and my appointment. I believe we should continue to exist."

Heath is a polite and likeable man who seems genuine in his desire to root out corruption. He has also promoted closer working relationships with the SA Police Service, the Auditor-General, the National Director for Public Prosecutions and the

Public Protector.

Irritation on the part of Heath's critics grew recently when he announced that documents had been served on Sanlam and Absa over apartheid-era loans.

The unit has just finished an investigation into loans made by the Reserve Bank to Bankorp in the late 1980s. By default, Absa inherited the R1-billion soft loan in taking over Bankorp. The Reserve Bank has said the lifeboat was necessary to stabilise SA's financial sector, although this explanation has not satisfied Heath.

He has also announced that

McBride seeks TRC amnesty

ET 27/9/99 (27A)

DURBAN Undergruond activities of an ANC elite special operations unit will come under the spotlight when nine former freedom fighters appeal for amnesty at the Durban Christian Centre this week.

Robert McBride, a director with the Department of Foreign Affairs, heads the list of those seeking amnesty for sabotage, bombings and murder here between 1981 and 1986.

Although his father, Derrick McBride, has misgivings about the Truth and Reconciliation Commission's value and has withdrawn his application for amnesty, McBride jun has expressed his support.

"As a disciplined member of the ANC, which initiated the process, I support the TRC and its work," he said. "It is the only vehicle we have for reconciliation."

McBride sen, 67, withdrew his amnesty application at the eleventh hour. He stopped short of saying the TRC was a farce.

"Some of the judges who sit on its committees were involved in perpetuating apartheid," he said. He would have appeared before the amnesty committee for the murder of one person when he and Robert shot their way into and out of Edendale Hospital, Pietermaritzburg, in May 1986 to rescue unkhonto weSive guerrilla Gordon Webster, who was recuperating after being shot during his arrest and was under police guard.

The amnesty committee will hear that a day after springing Webster from hospital, McBride jun and Mathew LaCordier hurled a handgrenade into the Wentworth, Durban, home of a Labour Party member.

McBride jun will argue that the Labour Party's participation in the tricameral parliament made it an organ, by association, of the apartheid state.

More than 70 people who were injured by McBride's bombs will be intent on hearing how he arrived at the decision that Magoo's Bar here was a legitimate political and military target.

Three people died and 73 were injured when McBride detonated a car bomb in front of the beachfront pub in 1986.

A High Court judge sentenced McBride to hang three times for the deed.

He was freed when the ANC and the National Party government reached agreement about releasing political prisoners.

In January 1986, a policeman died when a limpet mine exploded while he and colleagues were investigating an earlier blast at an electrical substation in Jacobs, Durban.

Four policemen received at least 80% body burns when the second limpet mine exploded. They are among McBride's casualties who will be present at the hearings.

Because of the high-profile nature of these hearings, the TRC has beefed up security — Own Correspondent

McBride heads list of ANC amnesty seekers

ANC 27/9/99 (252)

Durban — Undergruond activities of the special operations unit of the African National Congress will come under the spotlight when nine former freedom fighters appeal for amnesty before the Truth and Reconciliation Commission at the Durban Christian Centre from today.

Robert McBride, a director at the Foreign Affairs Department, heads a list of amnesty seekers for sabotage, bombings and murder, which took place in Durban between 1981 and 1986.

Mr McBride said he supported the TRC in spite of his father's misgivings about its value. "As a disciplined member of the ANC, which initiated the process, I support the TRC and its work. It is the only vehicle we have for reconciliation," he said.

Mr McBride's father, Derrick, 67, withdrew his amnesty plea this week and questioning its credibility.

"Some of the judges who sit on its committees were involved in perpetuating apartheid," he said. He would have appeared before the amnesty committee for the murder of one person when he and Robert shot their way into and out of Edendale hospital in May 1986 to rescue Umkhonto we Sizwe member Gordon Webster, who was under police guard recuperating after being shot during his arrest.

A day later, Mr McBride and Mathew LaCordier hurled a handgrenade into the Wentworth house of a Labour Party member.

Mr McBride will argue that the Labour Party's participation in the tricameral Parliament made it by association an organ of the apartheid state.

Mr McBride will also apply for amnesty for the car bomb explosion outside Magoo's Bar on Durban's beachfront that killed three and injured 73 in 1986. In 1987, three death sentences were handed down to Mr McBride but he was given a reprieve almost 10 years ago.

He is also applying for amnesty for two limpet mine explosions at an electrical sub-station in Jacobs, outside Durban, that killed one policeman and injured four in 1986 — Saja

Maduna denies battle with Heath sparked curb on probe

Ministers press Mbeki to put brakes on anti-graft drive

NRG 27/9/99 (252) (34)

Johannesburg — A week after announcing plans to rein in the Heath anti-corruption unit, Justice Minister Pieter van den Berg has denied a clash between him and Mr Justice Willem Heath.

But it has been learnt that some Cabinet ministers are behind moves to ask President Mbeki to isolate Mr Justice Willem Heath and put the brakes on the anti-corruption drive, which has brought the unit into conflict with a number of politicians.

The Government and the unit under Judge Heath had worked well together in saving the country almost R1,35-billion, despite a shoestring budget and a small staff.

Mr Setsetse said, "We must look at the cost effectiveness of appointing a judge (to investigate) in the province where the corruption is alleged to have taken place" month.

There is no fight, although there may have been some misunderstanding because of the manner in which the minister's comments were quoted in parts of the media," said Mr Maduna's spokesman, Paul Setsetse.

He said Mr Maduna was portrayed in some parts of the media as having an axe to grind with Judge Willem Heath but this was not the case.

The Government and the unit under Judge Heath had worked well together in saving the country almost R1,35-billion, despite a shoestring budget and a small staff.

Cases jeopardised by cut in legal aid

Pule Molebeledi

DURBAN — The state's plan to complete the trial of suspects in the killing of United Democratic Movement leader Sifiso Nkabinde by the end of November has been jeopardised by the financial woes of the legal aid board.

Allistair McIntosh, the lawyer for Richmond councillor Joel Mkhize who is one of the suspects in the case, told the Maritzburg regional court that the legal aid board had denied the accused representation for adequate representation.

McIntosh said he was advised that the board was bankrupt and payments for some advocates had been severely restricted.

He said new tariff structures to be introduced by the board on November 1 would make it difficult for defence counsel to be able to afford to act for the accused in a lengthy trial.

It was likely that some of the legal representatives acting on behalf of the 12 suspects might withdraw from the case after the bail hearing.

McIntosh said this would prejudice his client and also make it impossible for the trial to start on November 8.

He said the board's pro-rata system would be applied to determine whether four hours of court time had been spent New tariff rules indicated that if a court case was postponed counsel would receive only R75. He said payment for experienced counsel had been slashed by two thirds.

McIntosh, who claims that he has received death threats since taking on the high-profile case, said this was not the type of trial that would attract a junior advocate to act as pro deo counsel. Refusing to provide more details about the nature of the death threats, McIntosh said he had related this information to the deputy director of public prosecutions, Chris MacAdam.

Arguing that the trial would not start on November 8 as planned, McIntosh said there was a large police docket, containing 241 statements, that still needed to be looked at.

There were also outstanding forensic reports, as well as photographs, tape recordings and sketches he said.

NRG 27/9/99 (27A)

TRC not credible – McBride

By Khulekani Ntshangase

THE lawyer representing former Umkhonto weSizwe activist, Mr Derrick McBride, will today submit a letter indicating that his client was withdrawing his amnesty application to the Truth Commission's Amnesty Committee (252)

McBride had told his lawyer that he did not trust the TRC

He and his son Robert were due to appear before the Amnesty Committee sitting in Durban today where they would testify about a series of bombings they embarked on between 1981 and 1986 in Durban

McBride wrote to the committee saying he was withdrawing his amnesty application because the hearings would be heard by the same judges who officiated in his trial when he was charged with treason by the apartheid regime.

"I have no respect for the TRC, not individuals but the structure, so why should I present myself to the structure that has no credibility," said McBride

He said his decision was personal

and had nothing to do with his son (Robert)'s actions nor did it have to do with activities he (Derrick) conducted with other MK operatives

"They (judges) have a mandate to decide whether or not the crime or gross human right violations that I and others committed are worthy of amnesty I will not allow them to stand in judgment over me and I will never be judged by the same standards that maintained and supported apartheid," said McBride

He said in terms of the TRC regulations, his actions would be put on the same scale as those of apartheid operatives like convicted mass murderer and former Vlakplaas commander Eugene de Kock, PW Botha, FW de Klerk, Pik Botha, Johann van der Merwe and Magnus Malan

"There was nothing even-handed about our struggle We fought against a powerful, well-equipped army and we did so with whatever means at our disposal," said McBride

He said none of the judges that served the apartheid government applied for amnesty

Sowetan 27/9/99

Magoo's bomb 'meant for security force staff'

DURBAN The 1986 Magoo's bar car bomb which killed three people and wounded 73 others on the Durban beachfront in 1986 was intended for apartheid security force staff who frequented the establishments, the TRC's amnesty committee heard here yesterday.

The bomb was planted by Robert McBride, who was at the time a unit commander of an ANC special operations unit, which was under the command of Aboubakar Ismail.

McBride received three death sentences for the bombing, but was given a reprieve when the ANC demanded an end to political executions as a precondition to negotiations with the NP government, almost 10 years ago.

He is now a director in the Department of Foreign Affairs and is applying for amnesty for the bombing.

Ismail said McBride raised the possibility of civilian casualties and was then referred to a decision taken at the Kabwe conference in June 1985, where it was decided that civilian casualties should not stand in the way of executing the struggle against apartheid.

McBride then told Ismail a number of

uMkonto weziwe operatives applying for amnesty for these incidents.

Testifying yesterday, Ismail said the Magoo's bar bombing was to commemorate the June 16, 1976 uprising as well as the June 14, 1985 raid on Gaborone in Botswana in which 12 people, including a six-year-old child, died.

Ismail said that during discussions with McBride in June 1986, they had talked about the possibility of carrying out an attack on the Natal Command military base on the Durban beachfront.

After telling him that security at the base had been increased, McBride was then instructed to identify other areas with high concentrations of "enemy personnel" whether they were on duty or not.

Ismail said McBride raised the possibility of civilian casualties and was then referred to a decision taken at the Kabwe conference in June 1985, where it was decided that civilian casualties should not stand in the way of executing the struggle against apartheid.

McBride then told Ismail a number of

targets had been identified which were frequented by off-duty security force members.

Ismail said he instructed McBride to choose a final target after further reconnaissance and to proceed with the operation.

He said McBride was trained to build a car bomb and was supplied with the appropriate material, which McBride then brought into South Africa from Botswana.

McBride was expected to testify in detail about events leading to the bombing after Ismail's testimony.

Advocate Tony Richards, on behalf of the victims, questioned Ismail extensively over what constituted a legitimate target.

Ismail said it was policy that while civilian casualties should be limited, they should not stand in the way of further operations.

He also testified on his role in the May 1984 attack on the Mobil refinery, the explosion at the Jacob's electrical sub-station in January 1986, and the escape from hospital of operative Gordon Webster in May 1986.

Ismail will continue his testimony today.

—Sapa

28/9/99

IN CONFLICT WITH OTHER RIGHTS

New bill set for rocky ride

THE PROMOTION of Equality Bill is expected to get the thumbs-up from cabinet this week, though heated debate looms over its implications.

ONE of the most far-reaching pieces of legislation, the Promotion of Equality Bill is likely to be approved by the Cabinet this week before being tabled in Parliament.

The draft bill, which has been approved by the cabinet sub-committee on social affairs and administration, proposes the creation of special equality tribunals to deal with cases of unfair discrimination on a wide variety of grounds, including race, gender, pregnancy, age and disability.

The bill was drafted by a committee chaired by Justice Johann van der Westhuizen, former head of the Centre for Human Rights at the University of Pretoria.

It is one of three bills which, in

terms of the Constitution, have to be passed by Parliament before February 4 next year.

The others are the Open Democracy Bill and the Administrative Justice Bill.

The three bills are intended to give effect to the constitutionally-enshrined rights to equality, access to information and administrative justice.

The bill's purpose is to promote equality. It will do this by providing measures to prevent and prohibit unfair discrimination based on race, gender, sexual orientation, pregnancy, marital status, ethnic or social origin, age, disability, religion, language, social status, nationality or any other grounds.

Unfair discrimination would be prohibited in all sectors of society, including housing and land provision, education, health-care, employment, services, clubs and other voluntary associations, the professions and the media.

Once it gets to the committee stage in Parliament, the bill is certain to provoke fierce debate.

It appears to be in conflict with some other rights enshrined in the Constitution, as well as with areas of government policy.

For instance, in terms of the bill, the media will be prohibited from reporting on statements which perpetuate racial stereotypes, or reporting information without permission from the individual concerned — which could appear to be discriminatory.

This would mean the media would not be allowed to mention that somebody is gay, married or pregnant without permission to ask for court orders.

Special equality divisions would be set up in the courts of each province and, in addition, an equality tribunal will be created to adjudicate matters within the ambit of the bill.

The South African Human Rights Commission would also be given wide powers in terms of the bill to implement court rulings or to ask for court orders.

Civilian deaths were acceptable, says ex-MK chief

'I ordered Magoo's bar bombing'

STAFF REPORTER

DURBAN — Civilian casualties became acceptable when it became clear to the exiled ANC that in a war civilians die and could not stand in the way of the successful execution of the armed struggle against apartheid.

This was said by Major-General Aboubakar Ismail, former MK commander of special operations, when he took full responsibility for giving nine of his former operatives authorization to carry out military operations where at least five people died and left 80 injured.

General Ismail yesterday told the Truth and Reconciliation Commission's amnesty committee at the Durban Christian Centre that he gave Robert McBride the order to proceed with the bombing of the Why Not and Magoo's bars.

The committee heard that General Ismail taught Mr McBride how to make a car bomb while they were in Botswana. Mr McBride was later given about 80kg of explosives for the operation. Three women died when Mr McBride detonated the bomb in front of the beachfront pubs on June 14, 1986.

Mr McBride, his father, Derrick, Ernest Pule, Lester Dumakude, Johannes Molefe, Zahran Narkedien, Edward Pearce, Marcelle Andrews and Matthew Le Cordier and General Ismail are seeking amnesty for the bombing and other acts of sabotage.

"Robert had reconnoitred the intended target, but expressed concerns that civilians might be caught in the crossfire," said General Ismail.

"I ordered him to proceed with the operation after reminding him of the ANC position that civilians cannot stand in the way of the overthrow of apartheid."

General Ismail, who is responsible for transformation in the defence force, said Mr McBride had told him that security force members frequented the beachfront pubs in their free time.

Yesterday, Mr McBride said he was a bit apprehensive about meeting the families of his victims.

"It's not an easy thing I regret that people died," he said. He added that he had no regrets, though, for fighting a just war.

Frank Green, whose wife, Erlka, died in the pub bombings, said he felt a load had been lifted from his chest.

"It's the first time I hear anything from them. It was a long time ago and I feel it's time to move on and forget about that sorry chapter in our history," he said.

The church hall where the hearings are being held had to be evacuated yesterday to allow the huge security contingent to search it after a bomb scare, which later proved to be a hoax.

(SFA)

28/9/99

Probe into justice and public works departments shows widespread corruption

ROBERT BRAND
PARLIAMENTARY BUREAU

AKG 29/9/99
System said

An investigation by the departments of justice and public works has brought to light "widespread corruption" by contractors and "gross mismanagement" by officials which had cost the state

RS4-million yesterday
The officials allegedly siphoned off money intended for the maintenance and repair of magistrates courts and official residences throughout the country, a statement by the Government Communication and Information

The statement said allegations of corruption were brought to the attention of Public Works Minister Stella Sigcau and Justice Minister Penuell Maduna by the department of public works' Fraud Awareness unit.
A joint investigation, including offi-

cial from both departments, was then launched to investigate repairs and renovations carried out between January 1997 and October last year at courts and official residences in all nine provinces.
The investigations revealed "gross mismanagement of state funds" by jus-

ice department officials, totalling R54-million, the statement said.
In addition, the investigators uncovered fraud and misrepresentation by two contractors and "possible collusion" between the contractors and officials from both departments.
The Office for Serious Economic

Offences has been asked to take over the investigation with a view to criminal prosecutions, the statement said.
In a separate incident, a contractor had attempted to bribe a public works official by offering him R60 000 to change his findings in a report on the contractor's activities, the statement

Further allegations of corruption in the Pietersburg regional office of the department of public works were still being investigated, the statement said.

Bd 29/9/99
Heath doing a first-class job, says Mandela
(34) (SSA)

Tim Cohen

CAPE TOWN — Former president Nelson Mandela implicitly criticised government's decision to scale back the Heath special investigating unit yesterday, saying he thought Judge Willem Heath was doing a first-class job.

Mandela said at International accountancy firm KPMG's annual partners' conference that he was disappointed by reports that some former comrades were involved in corruption.
"It was the most shattering experience," he said. The difference between the former regime and government was that the latter was facing up to the problem and had appointed a judge to do nothing else but investigate corruption.

Despite government's decision to restrict the unit to cases within the Eastern Cape and appoint other judges on an ad hoc basis in other provinces when necessary, he said Heath was doing a "first-class job".

"I have not the slightest doubt that we will get the crime situation under control."

Mandela echoed President Thabo Mbeki in saying that, with SA's second democratic election over, it was "down to work for our government" while he lobbied for investment in SA.

"We are eager for foreign companies to expand into SA, to trade with us and to invest in our country." SA had an economy with sound fundamentals.
"Testimony to that fact was that of all the emerging markets our economy withstood the battering resulting from the Asian crisis best."

Emerging markets had experienced how ailments in one part of the world could affect others far removed.

"In this globalised world, no single country can live or work on its own. We are all tied together in a common destiny," he said.

Zuma lashes out at

sexist justice system

CT 29/9/99 (298)
A CHILD is sexually molested every 25 minutes in SA, according to shocking statistics released yesterday, with the Western Cape having the third-highest incidence of sex crimes against children **ERIC NTABAZALULA** and **ROBERT BRAND** report

DEPUTY PRESIDENT Jacob Zuma launched a stinging attack on the criminal justice system yesterday, saying that women and children who became victims of crime were routinely "humiliated" by officials who showed little concern for their plight.

His attack came as the government released shocking new statistics in Parliament showing that sexual crimes against children have increased sharply this year.

A sexual crime is perpetrated against a child roughly every 25 minutes somewhere in South Africa, according to figures released by Safety and Security Minister Steve Tshwete, in a written answer to a question by DP MP Manuel da Camara.

Police investigated 22 917 sexual crimes against children in the 12 months up to July 31, Tshwete said.

This was 2 500 more cases than in the previous 12 months — or an increase of 12%.

By far the majority of these cases — 17 503 — involved rape, followed by 3 875 cases of indecent assault. The rest involved other sexual offences such as sodomy, incest or indecent assault.

Most sexual crimes against children were perpetrated in KwaZulu Natal where 4 302 cases were reported last year, Tshwete said in answer to a question by ACDP MP Rhoda Southgate.

Next on the list was Gauteng with 4 192 cases, followed by the Western Cape (2 666), Eastern Cape (2 638), North West (1 727), Northern Province (1 350), Free State (1 314), Mpumalanga (1 217) and Northern Cape (475).

Speaking at a conference on gender violence in Cape Town,



CRITICAL Deputy President Jacob Zuma slammed officials

Zuma called for stiffer minimum sentences for people accused of crimes against women or children. He also said these accused should be automatically denied bail.

The Deputy President called on men to become "part of the solution", saying "it is now time that men rose in unison to isolate those within their communities who still regard women as objects."

He also lashed out at the justice system, saying women and children who became victims of crime were often humiliated by unsympathetic state officials.

"Women who have suffered at the hands of their husbands, male friends and, very often, total strangers, have to suffer further humiliation at the hands of members of our justice system."

"These are people who have little or no interest in understanding and ensuring that the humiliation already suffered is kept to an absolute minimum."

He said dealing with cases of abused women and children requires a fundamentally different approach to those of common criminals.

"We need to revisit the mini-



'MEN MUST JOIN FIGHT', Cape Town mayor Nomalinda Mfleketo

ment sentences meted out to perpetrators of crimes against women and children to ensure that they are denied bail automatically, are given the toughest sentences possible and to create sentences for the more violent forms of abuse," he said.

Mandisa Mtonkali, executive director of Ilitha Labantu, an organisation aimed at fighting violence against women and children, said men have the power and ability to stop abuse against women and children and therefore should be part of the solution against abuse.

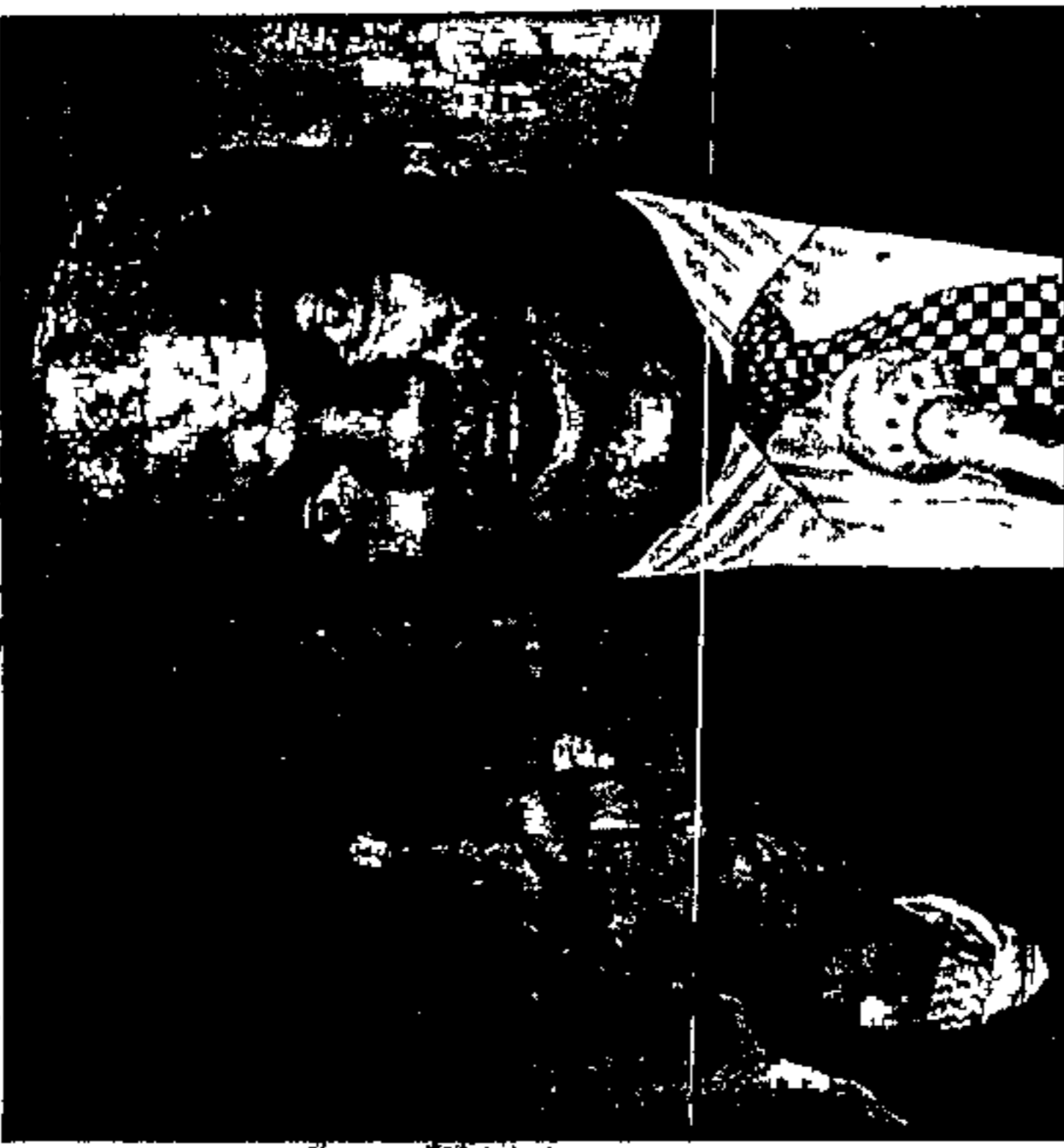
"We have been addressing women and gender equality and other issues. But now we have felt that there was a need for us to invite men to find out what the solution is to this scourge that has plagued our communities," Mtonkali said.

Cape Town mayor Nomalinda Mfleketo who opened the conference, said that for many years victims of domestic violence have been left alone to find solutions.

"Now we are embarking on a new focus where we form alliances with men to fight the abuse of women and children together," she said.

Judges should justify their workload

CT 29/9/99 (252)



should be able to establish their own legal and organisational boundaries, control their own operations, and account publicly for their performance. The umbrella that the Deputy President of the Constitutional Court took to the minister's statement is troubling. The minister was not impugning the integrity of the Constitutional Court.

Now he is questioning the distinctiveness of the judiciary as a separate branch of government. Instead, he was questioning the performance of the Court and what it was accomplishing. Both the co-equal branches of government as well as the public have a right to insist that courts perform their functions in a way which is efficient and accountable. Independence of the judiciary is not likely to be achieved if the courts are unable to manage itself. It is the responsibility of the minister to voice concern about the accountability and performance of the courts and how the courts are performing against the means at their disposal.

Similarly, it is the duty of the courts (including the Constitutional Court) to engender public trust and confidence by justifying their performance. Recognising the need for courts to justify their performance, many jurisdictions, including courts in the US have introduced performance standards as a way of self assessment and self-improvement so that the courts can provide a better and more efficient service to the public.

Accountability and the engendering of public trust and confidence are important for the achievement of the independence of the judiciary. Public trust and confidence is unlikely to be achieved if there is a perception that the courts are inaccessible. The framers of the Constitution believed that a newly created Constitutional Court, representing the entire population, would enjoy greater legitimacy than a judiciary appointed by the old order. The framers further believed that a newly created Constitutional Court would better represent the interests of all sectors of the population

JUST WONDERING: Penuell Maduna was not questioning the integrity of the Constitutional Court. He was questioning the performance of the court.

(which has the legitimacy and vision to provide uniform constitutional standards), the Constitutional Court has largely limited the access before it to a narrow range of circumstances. The Constitutional Court's limiting of access is troubling, given the very limited number of decisions the court has rendered over the past four and half years.

In the cases it has decided, the Constitutional Court has made an outstanding contribution in the fashioning of constitutional law and the entrenchment of human rights. South Africa needs the Court to be more active in fulfilling the role it was created for, namely, to give further meaning to the new Constitution. The Constitutional Court can begin by increasing its workload.

● *Motata is a professor of law and a director of graduate studies at Howard Law School, Washington*

Like the highest courts in other countries, the Constitutional Court receives numerous applications for review. Once a matter falls within its jurisdiction, the Constitutional Court has broad discretion in determining which cases it will decide. Unfortunately, it has proved extremely difficult for litigants to achieve redress before the Constitutional Court. The Constitutional Court has created a host of technical and legal barriers (which have proved to be avoidance techniques), which makes it extremely difficult to gain access before the Constitutional Court. The barriers created significantly raise the legal costs for litigants who want to engage the court.

There are other models such as the German example which allows for relatively easy, informal and inexpensive filing of complaints by ordinary people. Instead of fulfilling the role of a decisive and central judicial organ

State enemies sometimes 'had to be killed' —

Vlakplaas head

ED 29/9/99 (252)
Stephané Bothma

PRETORIA — Contrary to popular belief, security legislation in the 1980s was not totally effective, so enemies of the state had to be eliminated in some cases, the truth commission's amnesty committee heard yesterday.

Brig Willem Schoon, who during the late 1980s was in charge of the notorious Vlakplaas C10 unit, said it had not been possible to simply detain those who posed a threat to the National Party government.

"In many cases, detention of the enemy would have exposed and endangered valuable informants who managed to infiltrate the liberation movement," Schoon testified.

He is one of 18 security policemen who applied for amnesty for the February 1989 murder of three members of the SA National Students' Congress.

Thabo Mohale, Derrick Moshobane and Portia Shabar-gu were lured into an ambush by two Vlakplaas askaris and shot by members of the unit under the command of Vlakplaas commander Eugene de Kock.

The committee heard that Gen Gerrit Erasmus — at the time head of D section at security branch headquarters — approved the operation which was aimed at preventing the student congress members from meeting with African National Congress (ANC) cadres in Swaziland.

In his amnesty application, Erasmus said the Sanco members planned to smuggle weapons into SA and to receive military training from the ANC.

"Experience has taught me that the detention of activists only enhanced their status and that detentions were counter-productive in the fight against political violence," Erasmus told the committee.

The other applicants are Eugene de Kock, Douw Willemsse, Lionel Snyman, Johan Tait, Larry Hanton, Willem Coetzee, Hendrick du Plessis, Deon Els, Phineas Moshobane, Leon Fiores Alfred Oosthuizen, Jacobus Snyman, Riaan Bellingan, Dave Baker, Petrus Snyders and Piet Botha.

The amnesty hearings continue today.

Weeping general says sorry

STAFF REPORTER

Durban — A sobbing army general expressed sorrow at the pain and hurt his special operations guerrilla units inflicted on their victims and their families during the armed struggle against apartheid.

"We cannot take away your pain and hurt — and for that we are sorry," Aboobaker Ismail told the families of victims at the Truth and Reconciliation Commission amnesty hearings at the Durban Christian Centre yesterday.

Major General Ismail, former chief of MK special operations, is leading eight of his former field operatives in the amnesty applications. He sanctioned at least six military operations in the Durban area in which eight people died and 80 were injured in the 1980s.

The amnesty committee heard that the Why Not and Magoo's bars where three people died and 73 were injured, were bombed because the African National Congress decided to take the armed struggle into white areas.

"The ANC resolved that systematic attacks on police and army personnel in white areas were to be carried out," General Ismail said.



Aboobaker Ismail



Robert McBride

Robert McBride, who carried out the attacks, would tell the committee that he had satisfied himself that the beachfront pubs, situated a stone's throw from the Natal Command army base, were frequented by off-duty security personnel.

He would also say that his selection of the targets was in line with the ANC's strategy at the time.

"We tried to avoid civilian casualties when ever we could, but sometimes they were just unavoidable," said General Ismail.

State enemies sometimes 'had to be killed' —

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Ismail seeks forgiveness

Justice Minister Pennell

Pule Molebeleli
DURBAN — Former Umkhonto we Sizwe special operations commander Aboobaker Ismail broke down and cried before the truth commission's amnesty committee yesterday and asked for forgiveness from all the victims of the unit he headed.

Ismail said he was prepared to walk up to all the victims present at the Durban Christian Centre, where the hearings were being held, and "say I am sorry."

"If you wish, I could walk up to each one of you, take you by the hand and say, let us work together for peace and the future of all our people."

Ismail is one of nine people, including foreign affairs director Robert McBride, applying for amnesty in connection with a number of incidents that took place in and around Durban between 1981 and 1986. They include the targeting of oil refineries.

McBride to do further reconciliations today

McBride had indicated there were a number of possible targets frequented by off-duty security force members identified by internal reconnaissance.

He said he had instructed Ismail to do further reconciliations today.

Ismail told the committee that last year, when the commission convened in Pretoria, he was moved during a meeting with Neville Clarence, one of the SA Air Force soldiers blinded by the church street blast.

"We discussed issues and ultimately we met. It was a very difficult process, but I believe it was something overdue."

He said he and his wife were contemplating doing much more to bring about reconciliation in the country.

"In fact, with my wife, we thought of setting up some kind of an institute for reconciliation where people like myself and others could go in there and work — whether part or full time — to do things in order to bring about greater reconciliation."

The trial, estimated to run for at least two years, is expected to open a hornet's nest of international espionage and intrigue and divulge details of an alleged trail of deceit left by Basson, posing as a military draft dodger in the 1980s while in fact he was obtaining scientific and other useful data to establish a chemical

Chemical war 'mastermind' Basson faces litany of death

Charge sheet like a horror novel, writes Stephané Bothma

ED 29/9/99 (252)



Wouter Basson, murderer or mastermind?

PRETORIA — Some regard cardiologist Wouter Basson as a highly decorated soldier, a brilliant scientist who saves lives with his scalpel and as a quiet family man with a sharp wit and great sense of humour.

Others accuse him of being a shady operator who managed to deceive his government by stealing millions, of having carried out hastily experiments on human guinea pigs and of being a multiple murderer and a drug peddler. It will be the task of Pretoria High Court Judge Willie Hartszenberg to make a decision on where the truth lies.

On Monday, the mastermind behind SA's top secret chemical and biological warfare programme goes on trial, facing 67 criminal charges ranging from fraud and possession of illegal drugs to murder and conspiracy to murder. The murder charges relate to at least 229 deaths.

The trial will be held in court GD, the same venue where former Vlakplaas commander and multiple murderer Eugene de Kock was sentenced to more than 200 years' imprisonment for the crimes he committed during the apartheid era.

Basson will also be facing the same prosecution team, led by deputy national director of public prosecutions Anton Ackermann, which will place the allegations, contained in an indictment of nearly 300 pages, on record.

The trial, estimated to run for at least two years, is expected to open a hornet's nest of international espionage and intrigue and divulge details of an alleged trail of deceit left by Basson, posing as a military draft dodger in the 1980s while in fact he was obtaining scientific and other useful data to establish a chemical

been identified by investigators as a M16 agent, appears on the list of witnesses the state intends calling to prove their case against Basson, he was quoted in the British press as refusing to testify against his former friend and business partner.

According to the indictment, Buffham allowed the former head of Project Coast to use his bank account in England as a conduit for the illegal transfer of at least R30m.

The state claims that Basson defrauded his former military masters to the tune of at least R74m by setting up an intricate web of international and local front companies in various places, including the Cayman Islands, Luxembourg, the UK and the US. But it is the 16 charges of murder and 13 of conspiracy to murder that friends and colleagues find most difficult to deal with.

The charge sheet in some places reads like a horror novel.

While stationed at special forces headquarters between 1981 and 1988, Basson allegedly conspired with at least 10 colleagues to murder 200 Swapo members detained by the SA Defence Force in the then South West Africa. They were injected with a substance that made them suffocate. Their bodies were dumped into the sea from a military aircraft.

He had incited the top structure of the defence force and Renamo to murder five men blamed for assassinating Renamo leader Orlando Christina.

He and five colleagues are said to have murdered five unidentified black men, and

He conspired to murder state "enemies" such as Dullah Omar, the Reverend Frank Chikane, Pallo Jordan and Ronnie Kasrils.

and biological warfare capability for the country. The explosive nature of his knowledge became evident in 1987 when Basson, at the time a highly regarded cardiologist at the Pretoria Academic and I Military hospitals, was arrested, allegedly for dealing in the designer drug ecstasy.

Basson was whisked into a National Intelligence Agency protection programme, and the departments of foreign affairs and defence and the Council for the Nonproliferation of Weapons of Mass Destruction managed to keep evidence at his bail applications secret.

"It could endanger many lives and reveal the identities of many foreign agents who assisted Basson with Project Coast should the court proceedings be made public," it was argued.

The identity of at least one former British army major and military intelligence officer, who had close dealings with Basson, has been revealed recently, that of Roger Buffham.

Although Buffham, who had

The proposed new gun laws will replace archaic legislation, give the police wider search and seizure powers and tighten regulations on ownership and licensing. But most importantly, writes Political Correspondent Waghled Mlsbach, they seek to end this country's gun culture.

SA to get stricter firearms legislation

There are essentially three groups in the current debate around gun control in South Africa: those who want a totally gun free South Africa, those who want legislation to stay the same and a third group that wants tighter and stricter regulations and sentences for those who are irresponsible and harm others with their weapons.

It is safe to say that the Government has taken the position of the third group - of tightening up the archaic legislation that goes back to the late '60s, and imposing harsher sentences on those who transgress the law.

The proposed new gun law is a pragmatic approach to the realities of local gun ownership and crime.

It is the Government's first meaningful attempt at chipping away at the entrenched gun culture of this country - which increasingly reflects what's happening in the United States, with its wide availability of firearm retailers and politically powerful pro-gun lobbies such as the National Rifle Association.

South African statistics make alarming reading. Nearly 30 000 hand guns are stolen each year - 8 500 stolen from the police and defence force, according to the Institute for Security Studies. Only 1 764 firearms were recovered last year.

In a recent survey commissioned by Gun Free South Africa, it was revealed we have a great many trigger happy people compared to neighbouring Southern African Development Community (SADC) countries.

For instance, the research - conducted in 10 SADC countries - shows that more than 20 South Africans will be shot dead for one person killed in Botswana. And four South Africans will die from gunshot wounds for every one person who is shot and killed in Zambia.

This country has 12 000 firearm-related murders every year compared with only 217 murders a year in Botswana out of a population of 1,5 million.

A further breakdown of the statistics reveal that there is one licensed firearm for every ten South Africans. Every day, 33 people die of gunshot wounds, most of which involve handguns. In Gauteng a woman is shot dead by her partner every six days. Daily more than 80 legal firearms are stolen.

Katharine McKenzie, the independent researcher who conducted the survey, says that current gun regulations in South Africa are still archaic.

The law disqualifies only those with psychiatric or criminal records from

owning licensed firearms - and permits any one person to own up to 12 guns. It also allows 16 year olds - who are not yet eligible to drive or vote - to own guns. McKenzie says.

Government has taken a tough line in this almost anarchic situation. On September 16, Cabinet approved a draft ministerial policy on the Control of Firearms in South Africa and appointed a team of officials from various criminal justice departments to draft a Firearms Control Bill.

By mid-October, the Cabinet committee on security and intelligence is expected to appraise the bill and pass it on to Cabinet for final approval. It will then be published in the *Government Gazette* for final input from various stakeholders and interest groups.

It is expected that the draft bill will be based on the approved firearms control policy, as well as earlier working documents and research.

Its main recommendations can probably be summed up as an attempt

to get a stricter control of gun ownership in South Africa. It does not go so far as Britain, of banning outright the carrying of a concealed weapon, but it will nevertheless make the regulatory environment tougher on criminals and owners.

Certainly police powers will be increased under the new legislation. It looks certain that the police will have wide powers to search vehicles and buildings and to seize guns and ammunition. For instance, they will be able to fingerprint everyone in a vehicle or building where illegal firearms are found.

It also looks increasingly possible that there will be stricter regulations concerning the behaviour of gun owners. It has been recommended that any gun owner found in possession of his weapon when under the influence of alcohol, will be severely penalised.

There are likely to be harsher sentences meted out to people who have illegal guns. It is also proposed that

those applying for gun licences will have to be tested to determine if they are fit to possess a lethal weapon. The firearm will be licensed separately and renewed every five years.

A novel idea is to give the Minister of Safety and Security the power to declare any area or place a firearm free zone.

All firearms owned by public servants and those working for parastatals will be have to register their gun on the Central Firearms Registry.

But the one aspect which has raised the hackles of the pro-gun lobby, particularly gun shop owners, is the attempt to restrict gun ownership to one firearm a person.

Director of the non-governmental organisation Gun-Free South Africa, Adele Kirsten, says the stakes are rising now - with South Africa's domestic arms and ammunition industry, particularly gun shop owners, feeling especially threatened by the prospect of tough legislation shrinking

their market. They are therefore ploughing resources into a high profile and well coordinated campaign to resist effective gun controls.

However, the proposed new gun control law should be seen in the context of a whole host of tough anti crime legislation and other developments the Government has undertaken to make this country a safer place to live in and to make it as intolerable as possible for criminals.

Lawmakers now have the Proceeds of Crime Bill, other pieces of legislation and the elite Scorpions unit, which considered as a whole, are expected to make a huge difference to the fight against mobsters and other criminals.

The proposed gun control law is a realistic approach to our current trigger-happy society. Although there will be questions raised about the police's ability to enforce the legislation given their limited resources, the proposed new law is certainly a move in the right direction.



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graphic jo nhlapo • John tsatsi

Survey of 'outdated' laws

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laws

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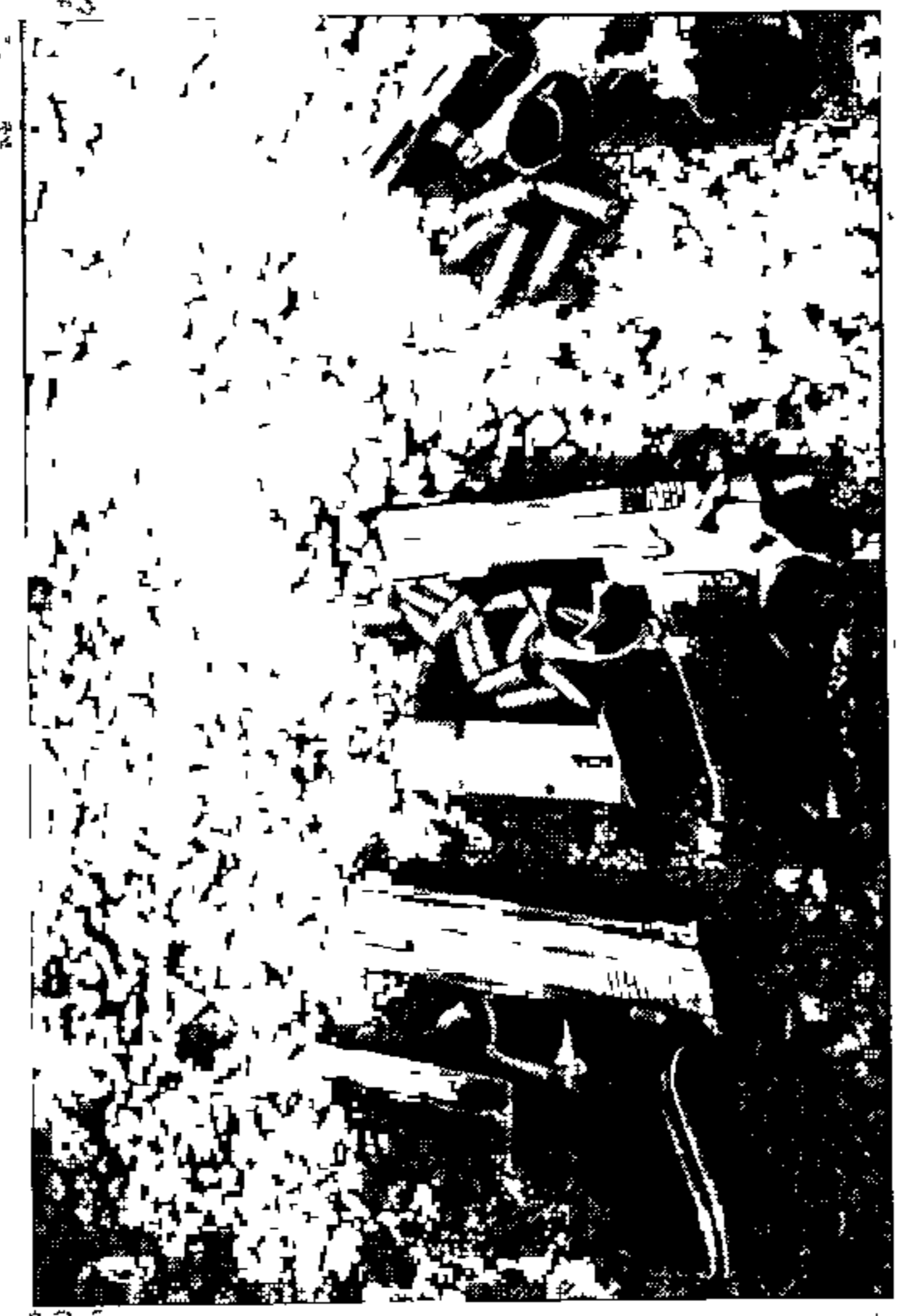
By Waghied Misbach
Political Correspondent

SOUTH AFRICA'S gun laws are outdated in comparison to its neighbouring African countries, new research has revealed. A survey, commissioned by Gun Free South Africa, shows that this country has a much higher rate of gun-related deaths than any of the countries in the Southern African Development Community (SADC).

For instance, the research - conducted in 10 of the SADC countries - shows that more than 20 South Africans will be shot dead for one person killed in Botswana.

Four South Africans will die from gunshot wounds for every one person shot and killed in Zambia. This country has 12 000 firearm related murders every year compared with Botswana which has only 217 murders a year, from a population of 1,5 million.

The statistics reveal that there is one licensed firearm for every 10 South African citizens. Every day 33 people die of gunshot wounds,



Guns which were found after nine suspected heist gang members were arrested on the N3 highway on the 22 July.
PIC PAT SEBOKO

mostly involving handguns. Everyday over 80 legal firearms are stolen in Gauteng and a woman is shot dead by her partner every six days.

Independent researcher Katharine McKenzie, who conducted the survey, said South Africa's current gun laws are archaic.

It disqualifies only those with psychiatric and criminal records from owning licensed firearms and permits the ownership of up to 12 guns. It also allows 16 year olds, who are not yet able to drive or vote, to own guns.

Nearly 30 000 handguns are stolen each year with nearly 8 500 stolen from the police and defence force. Only 1 764 firearms were recovered last year.

This country has a great deal more gun retailers than, for instance, Botswana, which has only two gun shops in the entire country.

Botswana has one of the most progressive gun control policies in Africa. It has only about 30 000 licensed gun owners in the country.

● See also page 9

Community service plan for lawyers

ART 30/9/99

(257)

ROBERT BRAND
PARLIAMENTARY BUREAU

The Department of Justice has released a discussion document proposing compulsory community service for legal graduates and practising lawyers, as well as the scrapping of set fees for legal services.

The document, released yesterday, was drawn up by the department's policy unit under Professor Cheryl Loots and is intended to stimulate debate around a proposed new legal practice bill, to be introduced in Parliament next year.

The document deals with broad transformation in the legal profession, touching on areas such as the separation between the attorney's and advocates' professions, vocational training, representivity in the professions and public access to legal services.

It proposes that

■ All law students should be required to perform 200 hours of unremunerated community service as a requirement for their LLB degree. The service could include law clinic and advice office work, street law teaching, or assisting public defenders, prosecutors and family advocates.

■ Legal graduates should perform six months' compulsory community service as part of a new, across-the-board one-year internship before being allowed to practice law. They would be paid a subsistence rate, and could serve as public defenders, prosecutors, clerks in the higher courts or in law clinics or the Legal Resources Centre.

■ All qualified legal practitioners who have been in practice for more than five years should be required to do 48 hours of compulsory unremunerated community service every year. They could serve as assistant magistrates, small claims court com-

missioners, public defenders, prosecutors, or in a variety of other legal services.

The document also includes proposals on reducing the cost of legal services either by capping maximum fees, or by abolishing regulation of fees. The latter option, which is the department's preferred option, would mean practising lawyers could charge fees they think the market can bear. At the moment, minimum and maximum fees are prescribed by the law societies and bar councils.

The document also proposes doing away with the professional distinction between attorneys and advocates, and proposes a single body to regulate both professions.

Professor Loots said the document did not represent current Department of Justice policy, but was intended to elicit comment. She said it had already been posted to stakeholders in the legal professions.

Lawyers may do community service

ROBERT BRAND
POLITICAL CORRESPONDENT

THE Department of Justice has released a discussion document proposing compulsory community service for law graduates and practising lawyers, as well as the scrapping of set fees for legal services.

The document, drawn up by Professor Cheryl Loots, is intended to stimulate debate around the proposed Legal Practice Bill, to be introduced in Parliament next year.

The document deals with transformation issues, touching on areas such as vocational training, representivity and public access to legal services.

It proposes that:

● All law students should be required to perform 200 hours of unpaid community service as a requirement for their law degrees. This could include advice office work, street law teaching or assisting public defenders,

prosecutors or family advocates.

● Legal graduates should perform six months' compulsory community service as part of a new, across-the-board one-year internship before being allowed to practise law. They would be paid a subsistence rate and could serve as public defenders, prosecutors or clerks in the higher courts or in law clinics or at the Legal Resources Centre.

● All legal practitioners who have been in practice for more than five years should be required to do 48 hours of compulsory unpaid community service every year. They could serve as magistrates, Small Claims Court commissioners, public defenders or prosecutors.

The document includes proposals on reducing the cost of legal services, either by capping maximum fees or by abolishing regulation of fees. The latter option, which is the department's preferred option, would mean practising lawyers could charge fees which they think the market can bear.

DP attacks Maduna on LAB 'chaos'

(252)

By Waghied Misbach
Political Correspondent

THE Government should provide a financial lifeline to the "chaotic" Legal Aid Board (LAB) and speed up the process of transforming the body

"Drastic steps are needed but we cannot expect legal practitioners and members of the public, who are entitled to legal aid, to carry the can," said Democratic Party (DP) justice spokesman Tertius Delpont yesterday. He said Justice Minister Penuell Maduna should be blamed for not acting speedily enough to resolve the financial crisis of the body.

Maduna reported to the justice portfolio committee recently that the LAB was virtually bankrupt and needed more than R200 million to cover its costs. It had only R27 million in its kitty, an amount carried over from last financial year.

Maduna confirmed that his department was working with the departments of finance and state expenditure and the auditor-general's office to find acceptable solutions to the LAB's problems.

"It's shocking that the Government could allow the management of the Legal Aid Board to deteriorate to the point where there was growing uncertainty among both legal practitioners and the people who qualify for legal aid," he said.

The DP called on the Minister to set clear guidelines for effective management and for the Government to ensure that a new structure, with proper controls, was put into place.

Delpont said that the Government should find the money to assist the organisation to pay outstanding legal fees and help smooth the crossover to a new system. "There is no doubt that money must be spent to improve the chaotic financial position at the LAB."

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New scheme to offer legal help to the poor

CARMEL RICKARD

(252) ST 3/10/99

DESPERATELY in debt and technically bankrupt, the Legal Aid Board is to revamp the way it provides free legal defence for people who cannot otherwise afford representation

The new scheme, announced this week, will involve two streams. Most of the work will be undertaken by lawyers employed by the board through justice centres instead of being done by lawyers in private practice. These centres are to be set up soon, and staff will be paid at public service rates

The second, far smaller, stream will involve a limited number of private practitioners, but they will be brought in only when the justice centres don't have staff members available

Also, the fees paid to private practitioners are to be greatly reduced. Under the new scheme the maximum fee for a lawyer appearing in the High Court will be R750 a day across the board. Previously, a junior advocate received R1 000 and a senior counsel R1 800. While some lawyers warned that this would condemn poor people to a "second-rate defence", others were more hopeful, suggesting that the justice centres would quickly produce experienced criminal lawyers

The board's financial problems have caused considerable embarrassment for private practitioners doing legal aid. Some are still waiting for payment — two years after submitting their invoices.

Pieter Brits, the board's acting chief executive officer, said the board was partly to blame for the crisis because past inefficiencies had led to mounting debts. However, responsibility also had to be shouldered by "unscrupulous legal practitioners" who had "plundered the board's coffers". He said while many lawyers had rendered valuable services over the years, the present structures of paying private practitioners had been too easily abused

Government acts on Legal Aid Board crisis

Restrictions and leaner tariffs will be imposed on civil and criminal matters, writes Taryn Lamberti

THE justice department has declared tough new rules to curb the financial crisis crippling the Legal Aid Board.

The constitution provides for the provision of legal services to all — a task which falls largely on the shoulders of the board. Part of the clampdown includes a drastic cut in the number of private lawyers hired by the board to represent poor people.

The volume of legal aid instructions issued has grown 500% over the past decade. Last year the board issued 208 000 legal aid instructions and expected to issue about 240 000 this year.

The financial crisis the board is facing is not new.

Soon after Judge Mohammed Navsa took over as board chairman from Judge Chris Plewman a year ago, he declared his intention to move away from the costly system to justice centres staffed by salaried attorneys, advocates and paralegals.

In the current year to August, 124 844 legal aid instructions were issued by the board "mainly in compliance with its constitutional obligations to supply criminal defences to qualifying accused", the board said. "These instructions are likely to attract financial liability of approximately R359m."

In line with the new measures, instructions will no longer be given in areas where there are legal aid clinics, advice offices, justice centres or public defender offices. Legal aid will no longer be provided for personal injury cases, applicants will no longer be allowed to appoint lawyers of their choice, and legal aid will not be provided for high court divorce matters.

Maduna said a single divorce, which lasted 200 days in the high court, had

chairman, Navsa said it was unfortunate the bulk of the board's energies were focused on administrative problems instead of the necessary task of taking justice to the poor.

When Maduna was asked at a press conference last week why the situation had been allowed to deteriorate, he said he had been in office for three-and-a-half months. "The critical thing is that something is being done about it now," he said.

In March, Navsa told Parliament there was no way to determine accurately the amount owed to attorneys. The sum could have been anything up to R100m, though the financial report reflected a sum of R800 000. Last week, Maduna put the figure at about R430m, but said it could be higher.

Justice minister spokesman, Paul Setse, said that including the instructions the board had issued to legal practitioners in debt to the tune of

R600m. "Whilst the board's inefficiencies over the years has led to the debt and has plunged the board into the present

crisis, it is also true that unscrupulous legal practitioners have plundered the board's coffers.

Instead of employing the services of private practitioners, the board will now offer legal services through the country's 26 law clinics at universities and justice centres will be opened in five metropolitan areas.

Maduna said the names of lawyers who had abused the system had been forwarded to the office of the National Director of Public Prosecutions Bulelani Ngcuka, who will decide whether to prosecute or not.

Although Maduna and Navsa acknowledged the clampdown would affect legal practitioners, some of whom relied solely on the legal aid board for survival, they stressed that the board had not been established to provide a livelihood for lawyers.

It was hoped the new justice centres would be opened by November 1, but there was still much work to be done. At the conference, Navsa joked that he hoped Maduna would give him time off from the bench to see the board through its financial crisis.

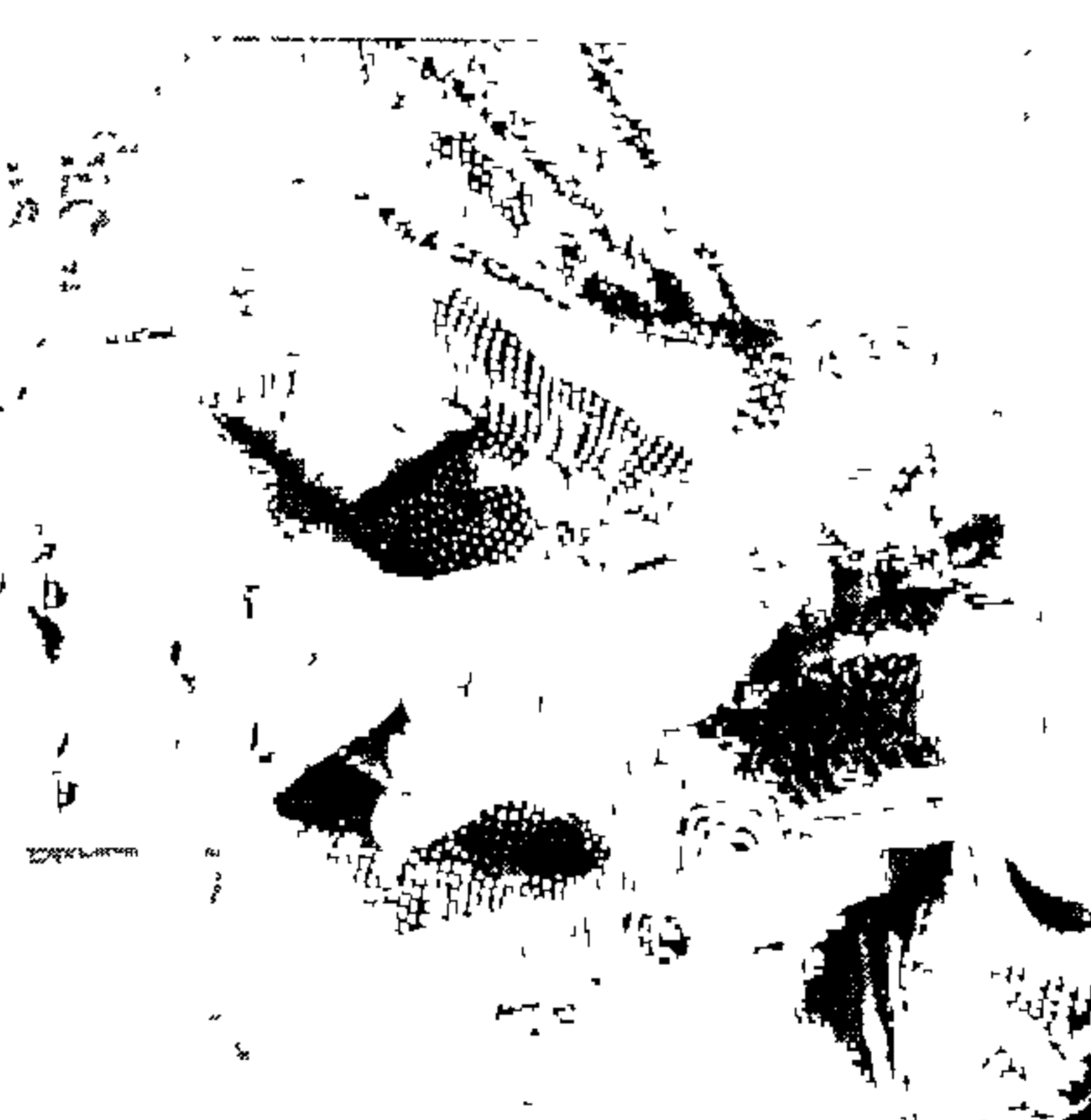
Navsa said he had been given five weeks' leave from the bench in May and June but had returned to the bench in the Johannesburg High Court, which he pointed out was "a busy division".

In August Maduna made use of an opportunity to speak to the Pretoria Press Club to vent his disapproval of judges who did work outside SA.

Last week he took a lighter view of the situation, laughing when Navsa suggested he be given leave. Maduna said although "the best place for a judge to be was in court", there were times when the "rules have to be broken".

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4/10/99



Justice Minister Penuell Maduna has introduced tough new measures in an effort to save the technically insolvent Legal Aid Board

Picture: ROBERT BOTHA

cost the board R600 000.

Tighter restrictions and leaner tariffs will also be imposed on judiciary instructions in civil matters.

After taking up the position of board

to date, it was in debt to the tune of about R600m.

"Whilst the board's inefficiencies over the years has led to the debt and has plunged the board into the present

Basson's lawyer wants Swapo killings left out

(252)

Sowetan 5/10/99

APARTHEID chemist Dr Wouter Basson's lawyer told the Pretoria High Court yesterday that Basson could not be charged with conspiring to murder South West African People's Organisation members as he had received indemnity from the Namibian government.

The crimes had also taken place outside the jurisdiction of South African courts, Mr Jaap Cilliers said.

Cilliers will argue later this week against the inclusion of several charges of conspiracy to murder among the 67 charges which range from murder to fraud and dealing in drugs facing Basson.

He told the court the charges and details contained in the bulky charge sheet - which among others refer to the alleged murder of about 200 Swapo members in Namibia allegedly injected with powerful muscle relaxants which caused them to suffocate before their bodies were thrown into the sea - did not reveal criminal offences that could be tried in a South African court.

The state alleges that Basson conspired to kill Swapo and South African Special Forces members regarded as liabilities in and outside South Africa.

Cilliers yesterday argued it would be "unfair" to admit the record of Basson's bail hearing in the Pretoria Regional Court two years ago as evidence against him.

This was because he had not had a

chance to prepare properly for the bail hearing, was "very ill at the time", was not allowed access to relevant documentation and was subjected to "trial by ambush" by Mr Dawie Fouche of the Office for Serious Economic Offences.

He said Fouche, who had questioned Basson for 39 days had used information elicited during this questioning as well as certain documents to which Basson did not have access to "ambush" him in his bail hearing.

Fouche cross-examined Basson for 12 days during his bail hearing on a vast number of fraud charges, in spite of the fact that he admitted that the state had a *prima facie* case against him and the state only relied on the possibility that he would not stand his trial for its opposition of bail.

Cilliers said the OSEO proceedings were inadmissible, and formed such a substantial and interwoven part of the bail proceedings that it would be unfair to allow the evidence to form part of the state's case.

Basson became visibly irritated yesterday when a large group of press photographers and cameramen, who were allowed inside the courtroom during breaks, descended on him.

During the tea break, he refused to return to the court before the photographers were removed - *Sapa*

New bill to make judges accountable

ET 5/10/99

(252)

MOTSHIDISI MOKWENA

THE Judicial Service Commission will discuss the new Disciplinary Draft Bill this week when it convenes to interview candidates for vacant judicial posts.

The proposed legislation aims to establish proper disciplinary procedures to deal with errant judges.

The bill drafted by the Department of Justice, will allow the public to lodge complaints against judges.

Spokesperson for the department, Paul Setsetse, said yesterday that the Judicial Service Commission did not provide proper guidelines on how judges should be disciplined and what the public can do if there were complaints against a judge.

"The draft bill will provide guidelines on how the public should go about instituting complaints against judges, particularly for remarks regarded as offensive and unethical.

"It will also show which guidelines should be followed when discipline is meted out," Setsetse said.

He added that the department saw the need for proper disciplinary measures to ensure judges' accountability to the public.

Jeremy Gauntlett, SC, chairperson of the General Council of the Bar, said that he had not seen the draft document and that he would not be able to make an informed comment.

However, he said that measures are required to ensure that the judiciary is effective and judges are accountable.

"But at the same time there is a need for the judiciary to remain independent," Gauntlett said.

Meanwhile, interviews for judges' posts in various divisions started yesterday.

Of the 36 candidates to be interviewed, eight are women.

Interviews will be conducted for the appointment of three judges for the Cape Provincial division, for which five candidates applied.

The Competition Appeal Court has three vacancies for which seven candidates will be interviewed.

The commission is also planning to appoint a judge for the

Labour Appeal Court. Only one candidate, Nigel Willis, applied for the post.

There are four vacancies in the Labour Court and five candidates will be interviewed for these positions.

The Transvaal Provincial division has four vacancies (eight candidates will be interviewed), while four candidates will be interviewed for two positions at the Bophuthatswana division.

Two candidates will also be interviewed for the judge president position in Transkei.

Interviews will also be conducted for the position of judge president of the Northern Cape division and two vacancies on the Natal Provincial division.

Also, two Cape High Court judges, Dennis Davis and Selwyn Selikowitz, have applied for positions in the Competition Appeal Court.

The following judicial candidates will be interviewed this week:

- Justice Thomas Dante Cloete, Justice Dennis Davis, Justice Hermanus Flemming, Justice Mbuyiseli Madlanga, Justice Lucy Mailula and Justice Selwyn Selikowitz, for three vacancies on the Competition Appeal Court
- Justice Martinus Steenkamp, the only candidate for the Northern Cape division
- Justice Cecil Somyalo, also the only candidate for the Judge President on the Eastern Cape Bench
- Ingrid de Villiers, advocate Mahomed Jajbhay, Alan Roycroft and Basheer Wagley for the four vacancies in the Labour Court
- Brian Jali, advocate Shyam Gyanda, advocate Gerald Josman, advocate Derek Mitchell and Belinda van Heerden for three positions on the Cape Provincial division
- Isaac Mkhize, advocate Chihanlal Patel and advocate Valerie Theron, for two vacancies on the Natal division
- Advocate Christopher Jafa, the only candidate for the Transkei division
- Advocate Lebotsang Bhejela, advocate Mashangu Leeuw, advocate Baaltse Nkabinde and advocate Birgit Vlegde for two vacancies in the Bophuthatswana division

'Ambush tactics' used — Basson

(252)

ET 5/10/99



GRUMPY: Wouter Basson became visibly irritated by a large group of press photographers who were allowed to take pictures at the start of his mammoth court case yesterday. PICTURE AFP

PRETORIA. Counsel for germ war fare expert Wouter Basson yesterday objected against the handing-over of the record of his bail application to court as part of the evidence against him, saying that the state at the time used "ambush tactics" to question him at length on the merits of the case.

At the start of the trial in the Pretoria High Court, advocate Jaap Cilliers said that it would be highly unfair towards his client if the state handed the bail application proceedings to the court in order to get "inadmissible evidence before court through the back-door".

Basson is facing 67 charges, ranging from murder to fraud and dealing in drugs.

Although the state earlier indi-

cated that it would start the trial with the drug-related charges, counsel for the defence at first wanted a ruling on technical points.

This included that certain charges of alleged crimes committed outside South Africa should be dropped, and an objection to the bail proceedings forming part of the hearing.

Cilliers said Basson was subjected to a "trial by ambush" by advocate Dawie Fouche, a member of the Office for Serious Economic Offences.

Basson was questioned for 12 days on the merits of numerous fraud charges during his bail application, without being allowed to see any documentation on which the questions were based, it was argued. Cilliers further objected to

Basson case

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From Page 1

the fact that Fouche, who questioned Basson for 39 days in terms of the Serious Economic Offences Act, used this information to further question him during the bail application.

The onus rested upon Basson to prove that he should be let out on bail and he had to give evidence without having the opportunity to prepare for this case of vast magnitude, Cilliers told Judge Willie Hartzberg.

He pointed out that the fraud charges against his client will result in this trial being one of the most comprehensive commercial trials in the country's history.

In arguing that the Oseo proceedings

were inadmissible, Cilliers said it formed such a substantial and interwoven part of the bail proceedings that it would be unfair to allow the evidence to form part of the state's case.

The defence said it would not be practical to hand in the bail proceedings and leave out the evidence to which they object. Cilliers said that this would cause confusion, in that the evidence had to be read in context.

Advocate Anton Ackermann, who is leading the prosecution team, told the court that the state had not definitely decided on handing in the bail proceedings.

Judge Hartzberg pointed out that the defence wanted a ruling on this from the start, in case the state decided to use Basson's evidence.

The state will argue this issue tomorrow.

Turn to page 3

New legal aid system to curb costs may disadvantage poor but benefit young lawyers

CT 5/10/99 (202A)



'BLOW TO JUNIOR COUNSEL'
Norman Arendse

MOTSHIDIJI MOKWENA

A NEW scheme by the Department of Justice to offer legal help to the poor while saving costs has had a mixed reaction from some people who warn that it will condemn poor people to a second-rate defence.

The scheme — announced last week and intended to prevent unscrupulous lawyers from plundering the coffers of the Legal Aid Board (LAB) — is regarded by the department as a necessary evil.

It comes in the wake of conflict between the LAB and private practitioners

over unpaid fees for legal services.

Paul Setsetse, spokesperson for the Department of Justice, said the scheme was one way of trying to ensure the LAB functioned effectively.

Some lawyers viewed the LAB as an employment agency and waited for instructions from it instead of marketing themselves and finding cases, Setsetse said.

This led to excessive claims from the LAB.

"The department wants to close the vacuum and remedy the situation so that people should stop abusing this facility," Setsetse said.

aged a uniform system in which lawyers would be paid the same amount, irrespective of their experience.

A fee of R750 a day would be paid for High Court representation, R650 for Regional Courts and R550 for Magistrate's Courts. However, the LAB would take into account the magnitude of the case.

Previously, a junior advocate received R1 000 a day and senior counsel R1 800.

The public were not blameless either, Setsetse said. There would be thorough screening before an applicant was granted representation through the LAB.

"Although the LAB has a constitutional obligation to the accused, there will not be automatic representation.

"Some people can afford lawyers, but they resort to the LAB for legal representation. We will make sure that those applying are scrutinised."

Peter Hodes, former chairperson of the General Bar Council, said that, as far as he knew, there had been little or no consultation between the council and the LAB.

"The (proposal) document was put out and the Bar was given three days to respond," Hodes said.

"In my personal capacity I find this completely unacceptable."

Hodes said he was concerned that junior lawyers, with only a few months' internship, would be hired for legal representation in criminal cases. The quality of legal representation would not be the same.

"I think they will be able to handle minor jobs, but if you are an accused you will not want to be defended by someone who does not have any experience," Hodes said. "There has been great disillusionment all over the world with public defenders — where you get people who

have failed in private practice resorting to public defending."

Norman Arendse, of Lawyers for Transformation, said the new scheme would be a blow to junior advocates who were dependent on the LAB for the first three years of their professional lives.

"We had alternative proposals on how the LAB could be run effectively and to ensure that unscrupulous lawyers were disciplined, but I doubt if these were considered," Arendse said.

However, the scheme would work in the long run, especially in giving young black and women lawyers experience.

Basson has amnesty for death plot, says defence

STAFF REPORTER (27A)

Pretoria — Wouter Basson like other SA Defence Force personnel, had received blanket amnesty for crimes against Swapo members during the Namibia conflict and he could not be tried on conspiracy to murder, his defence argued.

At the start of Dr Basson's trial in the Pretoria High Court yesterday, his counsel, Jaap Cilliers, objected to charges in the indictment relating to the killing of Swapo members.

He said the director-general of what was then South West Africa, Louis Pienaar, had granted all SADF members amnesty for crimes committed against Swapo members.

The amnesty prevented the Pretoria court from trying him

on such charges, Mr Cilliers argued.

He objected to the charges of conspiracy to murder on the grounds that any such alleged crimes were committed outside the borders of South Africa and a South African court did not have the jurisdiction to try Dr Basson on them.

The State indicated that it would object to this argument and that, among other authorities, it would rely on a judgement of Mr Justice Swart earlier this year on a similar issue.

Judge Swart ruled in a case in June that the court in fact did have jurisdiction to hear evidence of conspiracy to murder, even though the alleged murderers had been committed in that case in Angola.

Torrie Pretorius, for the State, asked for a week's grace to

prepare argument on this point.

Mr Cilliers indicated he would be ready to present his argument on this issue, which will last about three hours, to the court on Friday.

Mr Cilliers told the court at the start of yesterday's proceedings that if the court ruled in favour of the defence on this matter, it would shorten the trial by several months.

Charges of conspiracy to murder outside South Africa's borders, which form a significant part of the indictment against Dr Basson, concern the killing of five unknown men at Fort Dopplies in Namibia.

The State alleges Dr Basson, as head of the SADF biochemical warfare programme, watched to make sure the five were effectively injected with poisons that would kill them.

McBride tells of 'cheers' during hospital attack

ARCHIE MINI

PATIENTS, staff and visitors assisted and cheered Robert McBride on as he shot his way in and out of Edendale hospital during his rescue of Gordon Webster from police guard, 13 years ago

This emerged in McBride's TRC amnesty hearing at the Durban Christian Centre yesterday

The committee heard that McBride, disguised as a doctor, pulled out an AK-47 while his father, Denck, drew a Makarov pistol from under the priest's cassock he was wearing, and opened fire on a policeman standing guard outside Webster's ward

Once inside the ward, McBride shot and injured Constable Johannes Visagie

McBride said that during the ensuing skirmish he opened a further burst of gunfire on a group of people who "dived for the floor and moved in such a way that I believed they were police taking up positions to counter-attack"

Mlungisi Buthelezi, who was waiting for his mother, a nurse at the hospital, died in that attack. McBride said he was sorry for the death and injuries.

The committee heard that people inside the hospital "held back"

one policeman, preventing him from opening fire on the escaping party "Outside, a crowd of people had gathered and cheered us on," said McBride

The committee also learned that a few days before McBride bombed the beachfront Why Not bar on June 14, 1986, he had been chased away from the pub with the excuse that it was full, even though this was "clearly not the case"

The beachfront pubs were bombed, he said, because Webster had reconnoitred the pub and came to the conclusion that it was "infested with security personnel", a claim McBride said he later verified. Angelique Pattenden, Julie van der Linde and Marchelle Gerard, died in the attack while 73 others were injured

Among some of the acts McBride is seeking amnesty for is setting alight of Fairvale Senior Secondary School in Wentworth to highlight the inferior education and dilapidated condition pupils had tried to bring to the attention of education authorities

McBride also detailed the bombing of 10 other strategic and economic targets, costing the government, in his estimate, at least R50 million

CT #6/10/99 (252)

McBride tells why he blew up popular bar

Durban - Robert McBride conceded he had no way of making sure Magoo's bar and Why Not bar in Durban, which he bombed in 1986, were being frequented by security forces personnel when the blasts were set off.

Three civilians died and 73 were wounded in the Durban beachfront blast at Why Not, aimed at apartheid police and soldiers Mr McBride said frequented the bar.

In his application for amnesty in Durban, the former Umkhonto weSizwe operative said the targeting of the bar was based on "a preponderance of intelligence gathered" that security forces personnel would be there.

He had carried out extensive reconnaissance of the bar and was satisfied it constituted a legitimate target in terms of the African National Congress policy at the time to target military personnel, whether on duty or not.

Under cross-examination by Tony Richards, for the victims, Mr McBride said even if no military personnel or police were in the bar on that day, it would still have been a target, based on intelligence.

Asked if people were in the vicinity of the bar when he left a car outside with a 60kg bomb in the back, Mr McBride said he had not specifically been on the lookout for people.

Even if there had been people in the vicinity, it would not have deterred him during an operation, he told the hearing - Sapa



Long walk, apartheid biological warfare expert Wouter Basson leaves the Pretoria High Court during yesterday's proceedings to liaise with his lawyers

Judge delays decision in battle over Basson's 'trial by ambush'

STAFF REPORTER

Pretoria - A ruling has been postponed in the Pretoria High Court over the admissibility of a document that could be a key to the case against apartheid biochemical warfare kingpin Wouter Basson.

Jaap Cilliers, for Dr Basson, has challenged the admissibility of a transcript of 12 days of cross-examination of his client during a bail hearing in the Pretoria Regional Court.

Mr Cilliers argued it would be unfair to admit the record of Dr Basson's bail hearing, because at the time he had not had a chance to prepare properly, nor was he allowed access to relevant documents on which he was questioned.

The defence accused a member of the Office for Serious Economic Offences, Dawis Fouché, who questioned Dr Basson, of subjecting him to a "trial by ambush" whose record was submitted to the bail hearing.

Anton Ackermann, for the State, yesterday conceded the Oseo grilling was inadmissible, but argued that this could be left out of the bail hearing transcript handed to the court.

He told Mr Justice Willie Hartzberg that only after Dr Basson's defence was given would the prosecution decide whether it was necessary to test his credibility with the transcript.

In objecting, the defence sought to prevent any possible inconsistencies in Dr Basson's testimony being exposed. The judge said he would rule on admissibility at a later stage in the trial.

I stole US germ war secrets - Dr Death

(277) ART 7/10/99

Johannesburg - Apartheid biochemical warfare supreme Wouter Basson says his project was based on a secret US government programme he obtained from human rights groups while posing as a call-up dodger in America.

In a filmed interview last Friday, Dr Basson said he had slipped into the United States to gather information ahead of the launch of South Africa's secret chemical weapons programme, Project Coast, in 1982.

The 49-year-old cardiologist was interviewed by a freelance film maker in a Pretoria guesthouse while he waited for his trial on a raft of charges to begin today.

In researching chemical warfare, Dr Basson said, he posed as a call-up dodger to ingratiate himself with US human rights organisations in possession of secrets on the US programme, which they were working to destroy.

"I slowly started to develop a picture of how the whole US chemical and biological warfare programme was organised," said Dr Basson.

He said US military sources unwittingly provided the apartheid regime with details on how the programme was organised, who was involved, and what weapons were used.

In Washington this week, a Pentagon spokesman said, "We would highly question this man's story. We have safeguards in place that would prevent any such things from occurring."

Dr Basson said he also scoured

Britain and western Europe and went behind the Iron Curtain to get what he needed to make deadly weapons for the SA Defence Force.

The top-secret project produced toxins that could have killed millions of people.

"I must confirm that the structure of the project was based on the US system. That's where we learnt the most," said Dr Basson.

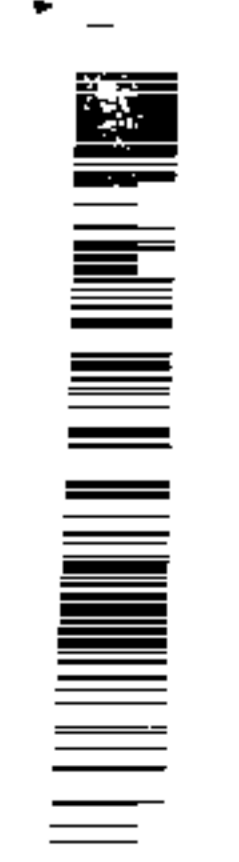
American film-maker Andrew Jacobs said he was negotiating with a number of foreign television networks for rights to the interview. He said he had received death threats from American secret agents.

The 250-page indictment at Dr Basson's trial charges him with making poisoned medicine and beer to kill African National Congress activists and other enemies of apartheid rule.

He is also said to have supplied muscle relaxants that made victims' lungs collapse. They were allegedly used on 200 Swapo guerrillas whose bodies were dumped into the sea.

Evidence from other scientists, some of them Mr Basson's former colleagues, who will testify against him to get immunity from prosecution themselves, have placed him at the centre of the chemicals programme, a charge he does not deny.

"I was certainly involved in the whole of the project. I can't deny that. I was the guy who had fingers in the whole pie, the one guy that put the picture together," he said. - Reuters



Protecting informers

AS LAWS around freedom of information take shape, debate is being focused on lesser known aspects such as the protection of people who expose corruption and other improprieties.

Part 5 of the Open Democracy Bill - which is due to be debated again in Parliament next week - makes provision for the protection of people dubbed "whistle-blowers".

It is an exciting provision says public protector Selby Baqwa, adding that while there had to be mechanisms to deal with "miscreants" who threatened those who did the exposing.

Baqwa was chairing a seminar hosted by the Institute for Security Studies in Pretoria on whether or not whistle-blowing - the popular term referring to informers - was an effective tool to fight corruption.

Guest speaker Guy Dehn, executive director of the non-governmental organisation Public Concern at Work in Britain shared some of his group's experiences.

While British law covers both the public and private sectors the Open Democracy Bill here is aimed at the public sector only, which is seen as a major flaw since corruption is not confined to the government.

Dehn nevertheless pointed out the need for an effective policy and said that while at first whistle-blowers were met with reluctance in Britain public attitude had changed so significantly that now they were seen wholly as the "good guys".

Some of the examples he used included the late media magnate Robert Maxwell's defrauding of his companies' pension fund, a train disaster similar to the one that happened this week, a fire on a ferry in which many people died and the collapse of the illustrious Barings Bank which was subverted by a rogue trader despite being bankers to the Queen of England.

In all these cases, it emerged after the disaster that someone had known "something", but did not do anything about it.

The British experience had shown that at the time of such disasters, and in the midst of the inevitable publicity, promises are always made for more regulation but it was always slow in coming.

Dehn's point was that there is a need for people to be made constantly aware of their responsibility to speak out when suspicious of misdemeanours whether it is a factory polluting a river or a manager stealing money.

However that is easier said than done, especially in South Africa, where informers have always been stigmatised said one participant.

Dehn said that even in European countries like Spain Portugal and Italy where there had been military regimes, informing was seen as

Whistle-blowers have had very little protection under the law in SA, but that is bound to change with proposed legislation, writes **Sharon Chetty** (252)

Sharon Chetty 8/10/99



or endanger the health or safety of anyone are also covered by the bill.

And while a civil servant is assured of not losing his or her job being suspended, demoted or harassed as a result of exposing any impropriety, they can request a transfer to an equivalent post, provided it is "reasonably possible".

Calland pointed out that the lack of financial compensation could prove a problem.

It is possible that there is no reasonable transfer and the person may not be able to stay in the position. The bill does not consider the possibility of financial compensation for those likely to become unemployed as a result of being a whistle-blower.

Some other misgivings about the bill include

- That it covers only the public sector

- That there is no support structure for whistle-blowers to get back-up and advice

- Doubts about the capacity of the Human Rights Commission (HRC) - which has the task of communicating the policy to civil servants - to implement it.

- Whether or not the bill should protect the identity of the whistle-blower - at present it does not.

- The only other recourse a whistle-blower has is through the High Court, which is neither accessible, inexpensive nor speedy, and

- Disclosure can be made to a parliamentary committee, the public protector the HRC, auditor general or any attorney general

Calland questioned whether the list should be extended to courts, tribunals, judicial commissions or any other inquiries.

Another likely contentious clause is one stipulating that a whistle-blower has to show clear and convincing grounds that it is in the public interest when making disclosures to the media.

Whatever form the Open Democracy Bill takes, and especially the provisions dealing with whistle-blowers the general view was that there is a clear need for such a policy to be put into place soon.

Current Affairs

A COMMISSION FOR 'DIVERSITY'

IN SEARCH OF A DEMOCRATIC ARCHITECTURE

Aim to avoid conflict in cultural, religious and linguistic spheres

In the give and-take of the negotiations that led to the new 1996 Constitution, ethnicity was a divisive issue. Now, a little later a constitutionally mandated commission to deal with the rights of special interest groups is closer to fruition. On Heritage Day (September 24) the Department of Constitutional Development convened a meeting of interested parties and released a draft Bill called The Promotion & Protection of the Rights of Cultural, Religious & Linguistic Communities.

Among those present were Jacob Zuma (Deputy President), and Ministers Mangosuthu Buthelezi (Home Affairs) and Sydney Mufamadi (Provincial & Local Government).

Broadly speaking the Nelson Mandela era was typified by attempts to foster the concept of a colour-blind nation. Under President Thabo Mbeki however, a greater realism about what is termed "diversity" has prevailed - and the proposed commission's primary task, therefore, will be to find ways and means of avoiding conflict in the spheres flagged in the Bill. It was very substantially Afrikaner fears of abruptly becoming a minority that led to the inclusion in the constitution of the mandate for a diversity commission. Among other bodies supporting "constitutional democracy" are the Public Protector and the Human Rights Commission.

Though the diversity commission will not deal solely with the problems of defined minorities, that will be its primary focus and Mbeki has signalled government's concern that it should help defuse tensions within the broader society. Speaking in Dar es Salaam on September 27, he told the AGM of the SADC

We firmly support diversity as we believe it is important to any state to manage diversity in a positive manner. If diversity is not promoted and protected disaster is the inevitable result.

How precisely, this is to be achieved is less clear - the Bill remains largely a discussion document, and doubtless financial constraints on the mooted commission will prevent it becoming a mechanism for the proliferation of countless sectional interests. A great deal will depend on who is nominated by the President as the commission's "fit and proper" full-time chairman (the other members of the body will serve on a part-time basis).

The commission is to hold an annual conference to examine the state of the minorities. Its powers include recommending to a recognised "cultural community" that it set up a "cultural or other" council for that section of the population, but only if this is conducive to peace and tolerance. Significantly, these subcommittees must fund themselves.

It is curious therefore that the Bill contains provisions for offences and penalties. Those who obstruct or seek to improperly influence the commission may be subject to fines or imprisonment "not exceeding one year". In what is meant as a sincere attempt to recognise and encourage peaceful diversity, provision for punishment seems out of place.

The Bill is important to Afrikaners. New National Party leader Marthinus van Schalkwyk signalled this in a parliamentary question to Mbeki last month when he asked about progress on the "diversity commission". The reply suggests that the Bill could be released to parliament soon after the next session begins.

Despite the obvious respect which Mandela had for the Freedom Front's Constand Viljoen, he gave the Afrikaner leader neither a *Volkskrant* nor an effective Afrikaans-interest council. Which may be one reason Viljoen fared badly in the June elections - leaving it to Van Schalkwyk to speed up the process of gaining official recognition of Afrikaner rights.



ANC commander did not test his intelligence

(272) BD 8/10/99

McBride did not tell Ismail that the bar was on Durban's beachfront

INTELLIGENCE which led to the bombing of the Magoos Bar and the Why Not bar on Durban's beachfront in 1986, in which three civilians were killed might have been insufficient to warrant the attack, the commander of the African National Congress's (ANC's) former special operations unit said yesterday.

Aboobaker Ismail conceded to the amnesty committee of the truth commission in Durban that he did not test intelligence which indicated that the bars were frequented by security force personnel.

Umkhonto we Sizwe operative and a unit commander in the special operations unit Robert McBride planted the bomb which killed three civilians and wounded 73 others. McBride is now a foreign affairs director.

The establishments were chosen based on intelligence that they were frequented by security force personnel, McBride said.

He said he gleaned some of the intelligence from his colleague, Gordon Webster, who told him the place was "infested" with policemen.

Ismail said he sanctioned the attack after McBride briefed him about the operation and told him it was a venue with a large concentration of security personnel.

This was in line with the ANC's policy at the time to target large concentrations of soldiers and policemen, irrespective of whether or not civilians would be killed or injured.

McBride did not tell Ismail the target was a bar on Durban's popular beachfront. Ismail said had he known that, he might have instructed McBride to conduct more reconnaissance and gather more information on the proposed target.

However, he defended McBride's actions, saying McBride believed the venues were frequented by security

personnel, and based on that his actions were justified.

In an emotional address to the public gallery, Ismail said the civilian loss of life was regrettable. "We may not have achieved our intended (security force) target and I say to the family and the victims, we are deeply sorry for that."

"We never intended to strike at you. Our intention was to strike at those security force personnel who upheld the apartheid state."

Ismail said the casualties were the result of a civil war brought about by a group of people who perceived themselves to be superior beings. "We had to get rid of that heinous enemy," he said.

Applications of another seven applicants are expected to be heard in connection with incidents involving the ANC's special operations unit in the greater Durban area from 1981 to 1986. — Sapa

Women wanted on high court bench

(176) BDB/10/99
(252)

Taryn Lamberti

JUSTICE Minister Penuell Maduna said that government and the Judicial Service Commission were committed to addressing the problem of judges who gave lenient jail sentences to rapists.

He was addressing a group from the National Network of Violence Against Women, which staged a picket at the commission's hearings in Pretoria yesterday.

The commission was conducting interviews for positions on the Johannesburg High Court bench yesterday when the nine protesters arrived. He said more women were needed to serve on the bench which was currently "male dominated".

The protesters were voicing their disapproval of a seven-year sentence handed down by Cape Judge John Foxcroft to a man convicted of raping his 14-year-old daughter.

Labour Court Judge Deon Basson, who was interviewed for the high court yesterday, said he was in favour of "very severe sentences for rapists in general". He said that part

of the courts' function was to "uphold law and order".

Pretoria advocate Eberhard Bertelsmann SC said he would not have accepted his nomination for an interview with the commission if one of his female colleagues had "come forward". He was responding to Chief Justice Ismail Mahomed who asked if he saw the need to transform the bench. Mahomed remarked that transformation sometimes had to do with "mindset", and not just gender or the colour of one's skin.

Another nominee Wits University's dean of law, Carole Lewis, said she had recently adjudicated a disciplinary inquiry for a rape committed on campus.

The rapist and the victim had lived in the same residence. The state had refused to prosecute the case and so a university inquiry was conducted. She said many male judges would not "really have understood" the case because the woman had invited the perpetrator into her room as he had been a friend of hers.

Not a family affair Page 13

Donors pledge R17m for police and prosecutors

Stephané Bothma

PRETORIA — SA's criminal justice system received a financial boost yesterday when two foreign donors pledged R17m for the training of police and prosecutors.

Aerospace company Rolls-Royce had donated R2m to assist national director of public prosecutions Bulelani Ngcuka and his new assets forfeiture unit, Justice

Minister Penuell Maduna said.

Most of the money would be used to hire private sector advocates to train prosecutors, especially on serious economic crimes.

Safety and Security Minister Steve Tshwete said the Swedish government had entered a three-year R15m co-operation programme with SA aimed at technical assistance to the human resources division of the SA Police Service.

Tshwete said the areas identified for support included personnel development, human rights training, affirmative action programmes and training of trainers.

"The Swedish government, through its development agency, will appoint the Swedish National Police Board to implement the co-operation on its behalf," he said.

Rolls-Royce's contribution would see the formation of Merlin

Trust, aimed at building human resources in the justice department.

"One of our problems is the shortage of skilled personnel in the criminal justice system and the trust will help us develop our capacity. At the moment criminals are able to hire senior counsel to get the best legal brains on their side. The trust will help us to match them and beat them at their own game," Maduna said.

(252) BD 8/10/99

Red tape ruins reconciliation

ARGUS 11/10/99

Government under fire as bitter victims left to struggle alone

ADRIAN HADLAND
Petrus Mothupi

South Africa's pledge to care for the 25 000 official victims of apartheid abuses is in danger of running aground due to red tape and government intransigence. Concerned members of the Truth and Reconciliation Commission and non government lobby groups are claiming the whole process of healing and reconciliation has been jeopardised by prolonged uncertainty, delays in the payment of urgent reparations, the lack of government support, the absence of a central co-ordinating body and the belief that perpetrators have fared better than victims. The experience of victims is that the system is not working," says the chairwoman of the commission's reparations and rehabilitation committee, Hlangwe Mkhize.

Mrs Mkhize said about 11 000 applications for state assistance had been received by the commission from people already classified as victims of serious human rights abuses. Of these, a little more than 8 000 had been processed and small amounts of money, or urgent reparations, awarded. The money is intended to help with urgent needs such as medical assistance or school fees where a breadwinner has been killed or disabled. Another 3 000 applications have been filed out but require further information or affidavits or have queries and the commission expects up to 7 000 more applications in coming months due to the continuing amnesty process and difficulties tracing some victims.

Although urgent reparations are beginning to trickle through, the Government has failed to resolve the issue of longer term assistance. Instead, victims are struggling even to make use of urgent reparations. Many feel more traumatised and frustrated than before some victims referred for health care are being turned away from hospitals and clinics and refused medication or surgery, others, encouraged to use their grants for education, are being rejected by universities, schools and technicians and their special needs ignored. Many in search of help are being passed from one government department to another. Thibeki Motokeng, a researcher at the Centre for the Study of Violence, said, "Victims were made to believe that if they went to the commission, the Government would take responsibility for them. But they never got anything back."

Mrs Mkhize said, "Some government officials don't understand the process and they fight with the victims. Victims are being re-victimised all over again." The real danger, though, is that the process of reconciliation is faltering. The consequence could be a reversion to anger, resentment and bitterness among victims. "Without being alarmist, this must become a big issue on the national agenda," Mrs Mkhize said. "I realise the healing of a nation can't be left to the Government alone, but they must play a leadership role. Only then will business and the international community come forward with contributions."

Funding from the private sector and from international donors had dried up in spite of many initial offers of help. This was because there was no clear direction from the Government. "The private sector wants business plans, they don't just hand over money." The most pressing need, Mrs Mkhize said, was for the Government to set up a structure to oversee the implementation of the reparations and rehabilitation policy. Justice Ministry spokesman Paul Seseise said the inter ministerial committee was due to consider the TRC recommendations "in the next few days".

New nose for AWB victim
Petrus Mothupi, left, was just 21 when his nose was shot off in a bogus roadblock set up by AWB members in 1993. Now the President's Fund has paid for a prosthetic nose. Reports Page 6



6 News

CAPE ARGUS, MONDAY, OCTOBER 11, 1999

President's Fund pays for man's 'new' nose after his was shot off by AWB

POLITICAL EDITOR

Petrus Mothupi was just 21 when he, his brother, his sister and seven others pulled up at what looked like a police roadblock between Krugersdorp and Ventersdorp in December 1993. But it was not police at what was a bogus roadblock, only a group of heavily armed Afrikaner Weerstandsweging (AWB) members.

Forced out of the vehicle, Mr Mothupi and the others were questioned for some time on whether they were members of the African National Congress. Then, the AWB men opened fire. Shot in the face, Mr Mothupi's nose was sheared off. His brother, sister and two other passengers were killed and the other five were injured. Almost six years later, Mr Mothupi still covers the hole in his face with a plaster.

"When it's dusty, I've got a problem," he told the Cape Argus. "Also when it's windy or if it gets too hot. When I've got the 'flu, it's difficult for me to breathe." About 18 months ago, Mr Mothupi attended a hearing in Johannesburg of the Truth and Reconciliation Commission, which was considering the amnesty application of the men who had so severely maimed him.

Far away, in Durban, the sight of Mr Mothupi, with a bandage over his face sparked the interest of Greg Bass, the head of the department of dental technology at Technikon Natal, and he contacted the Truth Commission, offering assistance. "This guy had a plaster over his nose that's what caught my interest," Mr Bass said.

The department, which is given funds by Liberty Life for charity work, specialises in the construction of facial prostheses. "That was 18 months ago," said Mr Bass. "We didn't know who the man was, but we telephoned the commission and offered to help. We didn't hear anything and forgot about it."

Two weeks ago, the commission told the department the man had received urgent reparations from the President's Fund and was ready to have a new nose fitted. The process had taken so long because Mr Mothupi had gone through the amnesty system, rather than a human rights violation hearing, prompting additional legal and procedural measures.

The fund, which was set up in 1993 to provide help to victims identified by the commission, will have paid out R25-million by the end of this month. In the process, it has helped thousands of victims with urgent needs, ranging from funds to pay school fees to medical expenses. In the next week or two, Mr Mothupi will go to Durban to have his new nose fitted, courtesy of Liberty Life and Technikon Natal. The nose is made from lightweight, acrylic plastic and is stuck on with a special facial prosthetic glue. The recipients are able to breathe through the nose, reducing pain and discomfort. It is apparently very difficult to construct a nose out of natural facial tissue and the results are usually far from satisfactory. With subtle colouring and, in many cases, the use of a pair of spectacles to distract people's attention, most people would barely notice there was any thing different. You can walk the streets and not be noticed. That's important to people with facial disfigurements. "If you look closely, you can spot it, but it's just a glance you wouldn't," "In the end, it's just an illusion," said Mr Bass. The usual cost of a prosthetic nose is R10 000. Mr Mothupi will use his urgent reparations grant for his fare to Durban, and for accommodation there during the fitting of his new nose.

Truth given - but reconciliation denied



For many ordinary South Africans, the work of the Truth and Reconciliation Commission has fallen below the threshold of public consciousness.

The odd amnesty application, such as the recent one in Durban by Robert McBride and eight of his Umkhonto weSizwe colleagues, is a reminder that the work of the TRC goes on.

But now that the human rights violations committee has completed its public hearings and an interim report has been issued, little thought is given to the thousands of South Africans who appeared before the TRC to tell their stories.

It is as if people have endured as much as they can of the past and now want it to go away. In fact, for many of the 25 000 people identified as official victims of gross human rights abuses, the scars are deep and the road to healing has only just begun.

At the time these people braved the lights and cameras of packed town halls, the TRC appeared to be doing all it could to make their task easier. Counsellors were there to hold hands. The TRC panels themselves were empathetic and supportive.

Who can forget the sight of Archbishop Desmond Tutu, head on the desk sobbing at the latest tale of human suffering?

The victims were promised many things if they agreed to co-operate. They offered their pain and their forgiveness and were in turn, to be rewarded with dignity, self-respect and whatever assistance the state could give them for their urgent needs.

For many of those who appeared before the TRC, however, the promises were a chimera.

There have been many cases of people suffering relapses after giving testimony, of mental conditions being worsened, of depression and anger being exacerbated.

Hengwe Mkhize, the chairwoman of the TRC's reparations and rehabilitation committee, says "Establishing the truth is only the beginning of healing. Failing to follow it up is like giving a traumatised person one session with a psychologist and then dumping them."

Victims of abuses still visit the TRC's regional offices, crying and desperate.

"They are disillusioned, they don't know what to do," says Mrs Mkhize. "They get angry. Some of them threaten violence. We're talking about



Too much to bear: Archbishop Desmond Tutu is comforted by his wife Leah after breaking down during the testimony of a TRC witness - but the suffering goes on for many victims who stepped up to tell their stories

desperate people."

What has affected almost all of the victims who agreed to appear before the TRC has been the endless delays.

A President's Fund was set up to provide victims with urgent interim payments of about R2 500 to R5 000 to help them get social services.

But before payments could be made bank accounts had to be set up and approval had to be secured from the ministries of finance and justice and the presidency.

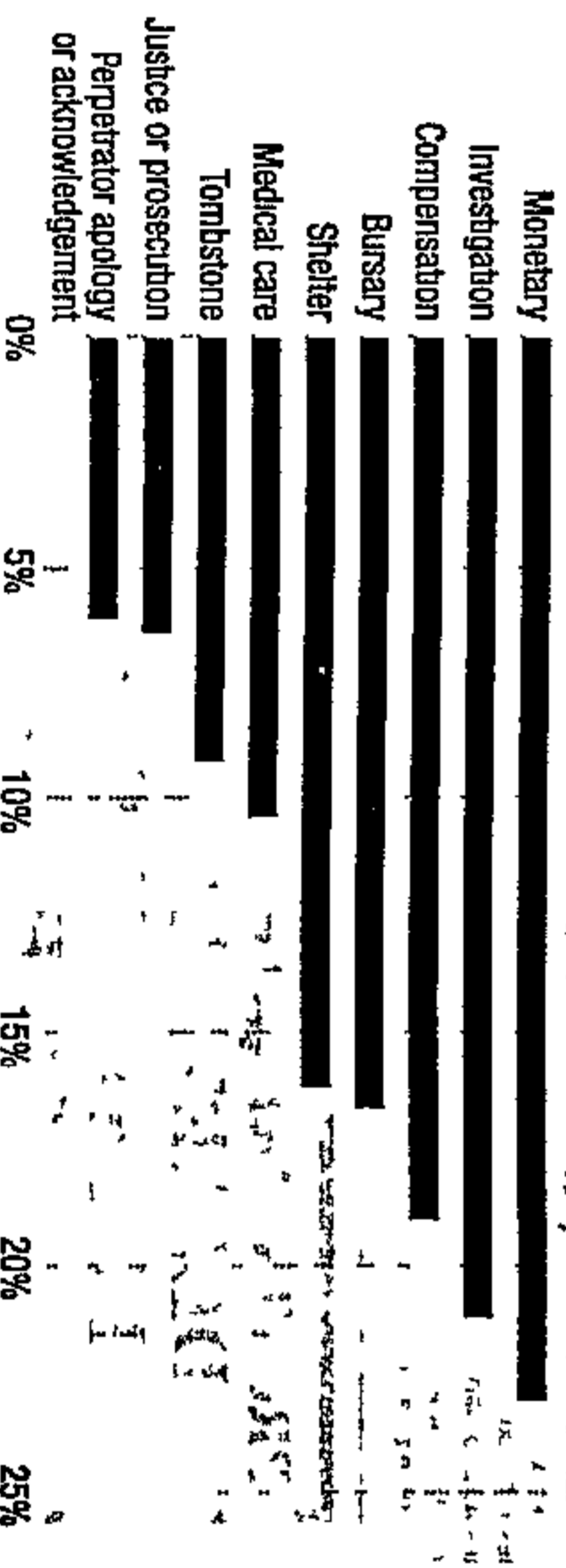
Field workers had to be appointed to help victims understand and complete the forms.

The forms amounting to 11 000 so far, then had to be checked and assessed by TRC officials who examined the consequences of the serious human rights abuses before recommending what services were required in each case. The applications were then sent on to the President's Fund for implementation.

Only once this whole process had been endured did a few thousand rands and a tentative referral to services end up in the hands of each of the victims.

Although many have received short-term help, some felt the effort was simply not worth it. More substantial assistance has

EXPECTATIONS OF THE TRC



been promised by the Government through its broad agreement with the recommendations of the TRC's proposals.

Among the proposals are a "final individual reparations grant", but this needs to be decided on by Parliament and President Mbeki.

Discussions around what the final settlement should be have been limited at a governmental level.

Thobisi Mofokeng, a field worker with the Centre for the Study of Violence, says "I think that both on the side of the TRC and the Government there hasn't been a clear process to keep the Government on its toes. The Government is dragging its feet and most of the victims are frustrated."

While most South Africans get on with life in a new democracy and look to the future, the past continues to have an impact on the lives of the ones left behind.

One man from KwaZulu Natal who lost 11 family members in apartheid

violence remains in hiding, still fearing for his own life.

Another was followed from a distant province to Soweto where his house was ransacked and his wife raped by people with an enduring grudge. He, too, is in hiding.

In its recommendations to the Cabinet, the reparations and rehabilitation committee warned that people seen by their communities as informers were still being victimised and harassed.

"The ongoing persecution of these so-called informers is a serious hindrance to the process of reconciliation," the report says.

The committee gave a long list of things that needed to be done to nurture reconciliation in South Africa.

They included the setting up of clinics and services both to help victims and to rehabilitate perpetrators, the building of monuments, the renaming of streets, the creation of a structure in the president's office to oversee the implementation of reparations and rehabilitation policy, the establishment of a serious crimes compensation fund and the declaration of a national day of remembrance and reconciliation.

Progress on all of these has been painfully slow.

The fear, says Mrs Mkhize, is that after making such purposeful strides toward reconciliation in the first few years of democracy, the process is in danger of grinding to a halt.

The much vaunted and internationally heralded process faces the prospect of sliding back into anger and disillusionment.

"We're not doing much given how well we've done over the last few years," says Mrs Mkhize.

"As a country we haven't started grappling with the question of healing."

South Africans have started talking and they are often comfortable talking about race, she argues.

"But the major problem we have created is a situation in which we are not helping people to take that process forward."

"We've taken a risky position. Some people can easily reverse. There's no ongoing dialogue and we cannot afford to lose momentum."

The impetus, simply, has all but been lost and the victims, once more are being left to suffer, unseen and unnoticed.

In its report, the committee noted that a common criticism of the commission was that it had been strong on truth, but had made little or no contribution to reconciliation.

"History will judge whether or not this particular criticism is accurate," it said, adding that "it is not possible for one commission, with a limited lifespan and resources on its own to achieve reconciliation against the background of decades of oppression, conflict and deep divisions."

(252) AR6 11/10/99

Proposed bill 'shows little regard for freedom of expression'

When governments are driven by ideological correctness they fall into the trap of trying to legislate the attitudes of people, usually with disastrous effects.

The last National Party government strove mightily to do this by passing laws designed to drag South Africans into adopting a way of life which the political leaders believed was good for them. One of the straight-jackets was the Publications Act which was used to prevent people from reading "undesirable" material. Eventually, nearly 40 000 books were banned, scores of films and songs and some paintings were censored.

Now the new African National Congress Government is following a similar path in trying to eliminate unfair discrimination. This is a constitutional requirement which is to be achieved by a new law, the Promotion of Equality and Prevention of Unfair Discrimination Bill, which will be piloted through parliament by Justice Minister Penuell Maduna.

The proposed Promotion of Equality and Prevention of Unfair Discrimination Bill will seriously inhibit journalists and also force self-censorship on authors and performing artists.

Writes Raymond Louw
ART 12/10/99

It was drawn up by the Justice Department and the Human Rights Commission and because it tackles the vexing question of discrimination, especially in ANC circles. However, it is the manner in which the bill hopes to achieve this that has raised deep concern, in particular, electronic, the arts world and book publishers.

There appears to be no recognition that the bans that are sought will offend against freedom of expression rights in the constitution or the effect on the media.

There are outright bans on the use of words which are regarded as abusive and theories based on unfair racial stereotypes or which promote inequality of persons in any manner, or which justify, promote or incite hatred or prejudice against other persons on account of race, ethnicity, gender or religion.

This blanket ban means that writers and the media will not be able to report on racist or sexist speeches or discuss books or arguments where such ideas are propagated, even if the discussion is intended to reject these theories.

The mind boggles at the ramifications that outright bans of this kind could have. Will the histories and personal diaries of people, which use these offensive terms, have to be removed from libraries and other places where they are deposited because they contain them?

The Nationalists got around the problem to some extent by excluding from its bans books being used for legitimate study in educational institutions, but that exemption did not apply to the non-academic person.

The bill makes provision for the justice minister to issue "guidelines" for the media to ensure compliance. This is an invitation for the minister to interfere in the media and, if he follows the general tenor of the bill by introducing prohibitions, the guidelines will be vigorously resisted by

the media as being in conflict with its constitutional rights. Another section of the bill prohibits the media from violating people's privacy by publishing without their permission information of "prohibited grounds" which could impair their dignity.

The key to this section is the term, "prohibited grounds", which covers references to race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, disability and ability and much more. This means a ban on describing a person as married, obese, elderly, crippled, gay or virtually anything, unless one obtains permission beforehand.

And any person who has had dignity impaired must be given the right of reply in a fair and consistent manner proportionate to the offending publication or media coverage. All this will seriously inhibit journalists in reporting and discussing

the news. But it will also affect authors and performing artists. The rules will prevent satirist Pieter Dirk Uys and others from making racial references in their shows. It will also prevent the utterance of those time-honoured jokes that start with "There was a Scotsman, Englishman and a Jew".

It is clear from the manner in which the bill has been drafted against the media that those who have not taken into account people's freedom of expression rights in this raises yet another concern.

The South African Human Rights Commission (HRC) is about to bring an inquiry into the "products" of the media. When this inquiry was announced and the media raised its concerns about its effects on media rights, it

was assured by HRC members that full cognisance had been taken of the freedom of expression clauses in the constitution. Yet before that inquiry has run its course, the commission nullifies this inquiry and arrives at concrete rules for the media, realising the worst fears of journalists.

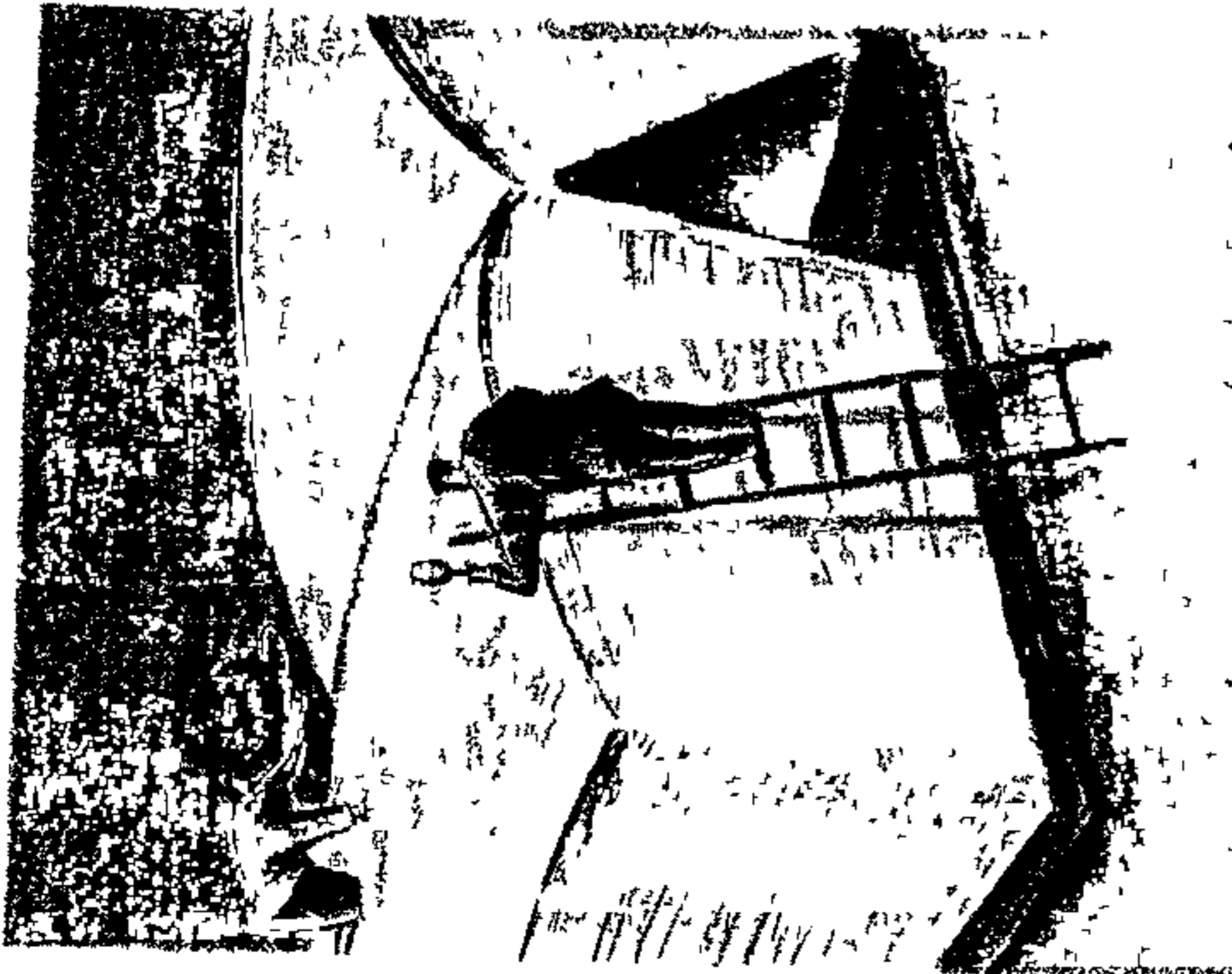
It is now quite apparent as a result of the bill that neither the HRC, nor the justice department, have a clear understanding of the implications of the freedom of expression clauses in the constitution.

Another worrying aspect of the bill generally is that the basis of offence is "unfair discrimination". Interpretation of "unfair" can be highly subjective - one of the singular deficiencies of apartheid legislation and which made it so deadly - and one fears that the credibility of this legislation will become as tainted as apartheid legislation was because of this yardstick.

Raymond Louw is deputy chair man of the Freedom of Expression Institute and editor and publisher of the weekly newsletter, Southern African Report.

60 12/10/99 (252)

A quick, cheap right to know Tribunal should be formed to give acts teeth, write Richard Calland and Thabani Masuku



THE river near your town is full of waste. Children playing nearby are getting sick. Your pension calculation is wrong. A bank loan is refused. Why? You want information and answers today. But soon things may change with the passing of two crucial new laws.

The Open Democracy Bill comes before Parliament again this week, hopefully for the final time after a tortuous path towards the statute books. Later in the parliamentary session the Administrative Justice Bill will be considered. The constitution guarantees the right to access to information and to just administrative action. It also imposes an obligation on government to pass laws to put flesh on the bones of these rights by February next year.

The two laws will together create the imperative for a new approach to the power of information. For a country steeped in a history of authoritarian secrecy — in both the state and the private sector — a culture of openness and accountability must be built. This is heady, idealistic stuff

However, the crucial thing is to create a system that works. That is why the enforcement mechanisms are critical. People will need to know how they can gain access to information, where they should go, who and how they should ask and what they should do if their request is turned down.

The procedure must be accessible, inexpensive and speedy. Unfortunately, the bill says that the appeal must be made to the High Court, which is inaccessible, expensive and slow.

The 1995 draft proposed a new Democracy Court. That was then, during the age of constitutional idealism. Ever since then more pragmatic realism has gripped those in power. First, the judges moaned about the proposal, threatened by the notion of a specialist court. Then the justice department retreated from the idea, worried about the extra costs.

At parliamentary hearings in March, a number of pressure groups charged that the whole system would flounder on the rock of an inaccessible and costly enforcement mechanism. They said that if the people who hold information

know that an appeal against their decision to refuse it is unlikely they are more likely to withhold it. If, however, they know that a quick, cheap, accessible, specialist decision-making body can overturn their decision, they will be more inclined to think twice.

But how to achieve this goal? Without losing sight of the need for fiscal prudence given the many competing demands on resources, it is time once again to think big. We propose a democracy tribunal — a new specialist jurisdiction that would reside within the current court system and use the infrastructure of the Magistrates Court, of which it would be a division. These new forums would have the power to make interim orders and, if the issue is very complex, the power to order an immediate referral to the Supreme Court of Appeal.

Although based on an informal, non-intimidating approach, they would be tribunals of record, so the higher courts would also be able to deal with other referrals when there had been a hearing on the papers — without the need for a full hearing.

Decisions would be comprehensive and carry the weight of the highest constitutional authority, and the principle of low cost and speed would not be compromised. This set-up would require no new buildings or administration. It would necessitate an inquisitorial approach to reaching speedy decisions. Specialist democracy officers, appointed from all walks of life, would give reality to the concept. Moreover, this would provide a perfect opportunity to speed up the process of transformation of the judiciary in what should be a key area of jurisdiction.

The inquisitorial approach would reduce the need for legal representation — in turn, therefore, there would be no need for the state to provide legal aid — and would enhance the accessibility of the forum.

This would represent an exciting new focal point for people's access to justice and another brave, innovative step for SA and for the still-watching world to admire.

Richard Calland and Thabani Masuku are members of *Letasa's Political Information and Monitoring Service.*

UNPRECEDENTED MOVE

Foxcroft to be grilled by MPs

ET 13/10/99 (252)

IN WHAT IS BELIEVED to be an unprecedented action in South African history, a judge is to be summoned to Parliament to defend a controversial judgment PHINDILE NGUBANE and ROGER FRIEDMAN report

JUDGE John Foxcroft, the Cape High Court judge who prompted howls of outrage for imposing what detractors said was a light sentence on a father for raping his 14 year-old daughter, is soon to be summoned to Parliament to explain his decision

The judge also came under fire for his "insensitive" remarks when he said the interests of the community played a much lesser role in determining the 54-year old Else's River man's seven year sentence as the victim was his daughter

The Parliamentary Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women said yesterday it is intent on holding a hearing with Judge Foxcroft. The committee said the sentence flew in the face of a new law on minimum sentences, which ruled that anyone raping someone under 16 must be sentenced to life imprisonment

A surprised Chief Justice Ismail Mahomed said last night that as far as he knew, the summoning of the judge to Parliament was unprecedented. "The normal procedure, if anybody is dissatisfied with the judgment, is to use the mechanism of appeal. If the Chief Justice thinks there's merit in the appeal, he sets it down"

The Chief Justice drew the Cape Times' attention to Section 177 of the Constitution, which provides for the removal of a judge from the bench — "but only in extreme cir-



ASKED TO EXPLAIN HIMSELF. Judge John Foxcroft

cumstances" A judge could be removed from office only if the Judicial Services Commission found that the judge suffered from an incapacity or was grossly incompetent or was guilty of gross misconduct, and only then if the National Assembly resolved to do so by a two-thirds majority

The Constitution also provides for the President to suspend a judge on the advice of the commission

Members of the monitoring committee yesterday slammed what they said was the continued breaking of laws by some judges

Committee chairperson and ANC MP Pregs Govender said Judge Foxcroft would be asked to attend a hearing, to be set up by the committee, to explain the reasoning behind the light sentence

Govender said it would be useful if the prosecutor involved in the case also attended the hearing. The victim could also attend the hearing with her legal representative.

Supporting the call, the DP's Sandra Botha said it was "unfortunate" that such judgments continued to be passed by the country's judges. "It is important to speak to people like (Foxcroft) to understand how they think."

The committee has set up a task team of five members to gather information on similar judgments so that it can hold similar hearings with the judges and magistrates concerned. These included a 10 year sentence imposed on a 23-year old man in August by Bloemfontein High Court Judge Dirk Kotze for repeatedly raping two 15 year-old girls. This, the judge argued, was because the girls were not virgins and one had been "naughty" in having had sex with someone else two days before

The task team is to meet on Friday to decide on a date for the hearing, expected to be next week.

Meanwhile, Parliament's Deputy Speaker, Baleka Mbete-Kgositsile, turned down a request by the DP for a snap debate on the high incidence of and lack of effective deterrents to rape.

She said the DP could raise the matter during a debate on October 20 on "the challenges facing South Africa in building a non-sexist society"

The DP's Raenette Taljaard said this showed "a flagrant disregard for the events of recent weeks and the public outcry following the banning of the Charlize Theron advertising campaign and the controversial Foxcroft judgment"

6 charges against Basson dropped

(252) CT 13/10/99

OWN CORRESPONDENT

JOHANNESBURG Chemical and biological warfare expert Wouter Basson won the first round in his legal battle when the Pretoria High Court ordered that he not stand trial on six charges, which include conspiring to kill at least 200 Swapo members and his alleged part in the attempt to kill top ANC officials Palo Jordan and Ronnie Kasrils

The ANC cadres were allegedly destined to die by way of a 007 type umbrella ejecting poisoned balls, which was manufactured in Pretoria

Judge Willie Hartzenberg yesterday ruled that Basson could not be tried with conspiracy relating to murders or attempted murders committed outside South Africa's borders

He further found that Basson had indeed received amnesty from the former director-general of South West Africa for crimes committed against Swapo members, which meant that Basson was exempt from prosecution on these charges

He also ruled that a charge involving the alleged intimidation of Archbishop Desmond Tutu, when a baboon foetus was hanged in the driveway of his Cape Town home, be dropped. Judge Hartzenberg said that as the charge stood, it did not prove a crime. However, he said the state could reintroduce the charge if it amended it

A charge relating to the total conspiracy to eliminate enemies of the then apartheid state will be allowed. However, Judge Hartzenberg said he would afford Basson's counsel the opportunity to object to evidence relating to the charges dropped

If the court decides not to accept the amendment on the charge relating to Archbishop Tutu, Basson will stand

trial on 60 of the 67 charges against him. These include 16 of murder, fraud of more than R80 million and drug related charges

The judgment follows an application by defence advocate Jaap Cilliers to have eight of the charges against Basson quashed

The judge ordered that the six conspiracy charges should be dropped because they did not reveal a crime and could not be tried in a South African court. He would only allow the seventh charge if it was amended by the state

The judge refused to drop the eighth charge, saying that the conspiracy and the action were completed in South Africa and clearly revealed a crime here. This relates to a Swapo member who was poisoned in Namibia and then brought to Pretoria where he died in 1 Military Hospital

Most of the charges which were dropped relate to Swapo members who were drugged with laced cool drinks and then killed with muscle relaxants. They were then allegedly dropped into the sea from an aircraft. The toxins used in the killings were provided by Basson, the state claimed

The judge pointed out that his judgment did not rule that criminal deeds in neighbouring countries should not be tried elsewhere

Advocate Anton Ackermann indicated that the state may appeal against the decision not to prosecute Basson on all the charges once officials had read the judgment and considered the options

Cilliers told the court that he would object to a postponement of the trial as Basson had the right to a speedy trial

Judge Hartzenberg postponed the matter to October 25 in order for the parties to argue for a further possible postponement

Basson cleared of serious charges

BD 18/10/99 (252)

Major setback in state's case as judge rules against prosecution in SA for murders committed on foreign soil

Stephané Bothma

PRETORIA — The state's case against alleged multiple murderer and fraud Wouter Basson has suffered a major setback with the quashing of six of the most serious charges against him, including the poisoning of 200 Swapo prisoners of war

High Court Judge Willie Hartzenberg ruled yesterday that Basson could not be prosecuted in SA for murders committed during the 1980s on foreign soil

In addition, he said that Basson

— a former SA Defence Force brigadier who headed the notorious 7 Medical Battalion and SA's top secret chemical warfare programme Project Coast — had been granted amnesty for any criminal deeds committed in the former South West Africa.

The amnesty was granted in 1989 by then administrator-general Louis Plenaar to all members of the SA police, South West Africa police, SADF and South West African Territorial Force for acts committed as part of operational duties in what is now Namibia.

"The current Namibian authorities do not question the legality of the amnesty proclamation," Hartzenberg said

Although Basson was implicated in a series of murders against Swapo members in the operational area — he spent the border war in Pretoria at Special Forces headquarters — home of the shadowy Civil Co-operation Bureau (CCB)

Charges that he dispensed lethal toxins, bacteria and "007-type gadgets" to CCB agents tasked to eliminate enemies of the state and fellow dirty tricks operatives

who had become security risks are among the charges that have now been dropped

They include an alleged plot to assassinate African National Congress (ANC) luminaries Ronnie Kasrils and Palo Jordan who were in exile in London at the time

Unless the state successfully appeals Hartzenberg's ruling, Basson will also no longer face charges related to the murder of ANC activists Gibson Mondlane in Maputo and Knox Dlamini in Swaziland, both whom were poisoned

The only charge in the 300-page

indictment which placed Basson at a murder scene, where he allegedly personally injected five Swapo detainees with potent muscle relaxants which caused them to suffocate and die, was also quashed

He can also no longer be charged in connection with a CCB plot to poison the water supply of a Swapo refugee camp with cholera bacteria

Hartzenberg ruled that Basson, who is currently out on R400 000 bail, no longer has to report to a police station once a week. The trial was postponed to October 25

Victims of bombings (252) slam McBride

EMOTIONS ran high at the Truth and Reconciliation Commission amnesty hearing in Durban yesterday as victims of the Why Not and Magoos bars bombings spoke of how they felt about the events of the night of June 14 1986 which changed their lives forever

Ms Claire Burton, who lost a sister Ms Julie van der Linde (28) in the blast, told the hearing at the Durban Christian Centre of her strong feelings against the applicant Mr Robert McBride, now a Department of Foreign Affairs official, who has told of his role in the bombing

"What has McBride done to earn amnesty? What has he done to deserve it?" asked Burton who said McBride's special operations commander, Major General Aboobaker Ismail, "hardly knew anything about everything" and accused him of having handed weapons to young boys without training

McBride responded "The cause of the conflict was apartheid which benefited people such as Ms Burton. No amount of ranting and raving will make me change my belief that it was correct to fight this crime"

McBride is applying for amnesty for planting a car bomb in front of the bars, which were next to each other, just off Durban's main beachfront.

McBride and Ismail said they and the African National Congress would reserve their rights concerning what they called Burton's inflammatory attack on them

The amnesty committee heard that Mr Jonathan Jeffers arrived at the Why Not bar 40 minutes before the 80kg bomb exploded in a car parked outside. Three people died and 13 were injured. "I remember holding a beer, then felt a force - the lights went out and I fell over," he said

Jeffers, who was cut in the face, chest and arms by flying glass, received just over R1 000 from the State President's Fund which was set up for the victims

"I hardly knew what was happening in the country, but realised when it happened to me that night," Jeffers said

Ms Helen Kearney, the manager of the Parade Hotel, which housed the two pubs, said she was fortunate to be standing behind a concrete pillar when the bomb exploded

It demolished the pubs and a restaurant behind them, as well as five floors of the hotel above

"What was the problem for Mr McBride to target the pubs - I never supported apartheid," said Kearney, who received glass cuts to her legs - Sapa

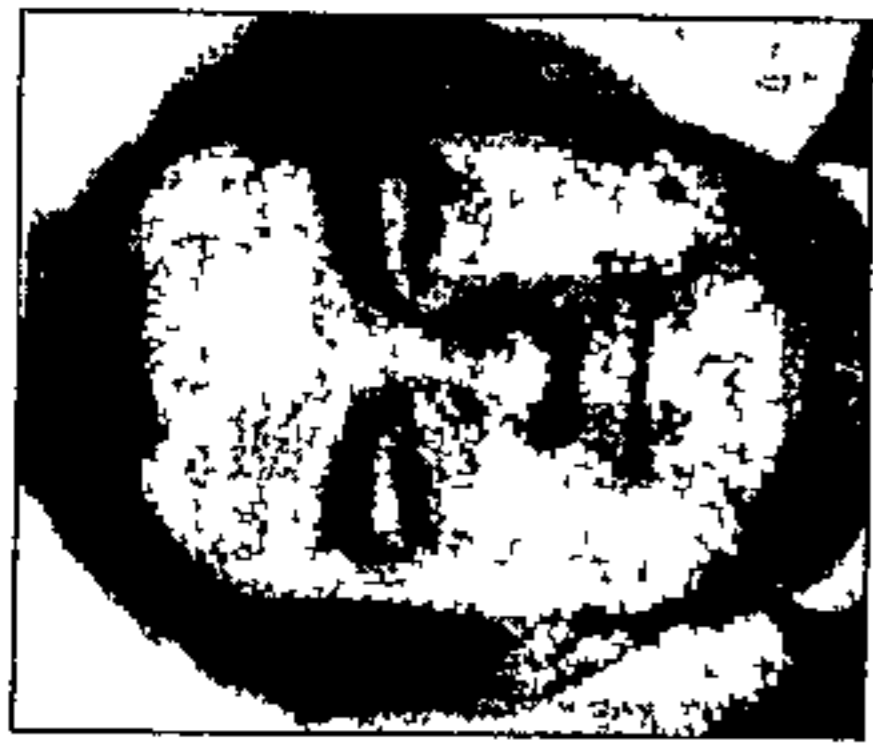
'Dr Death' wins some Basson in small victory as six charges dropped

DR WOUTER Basson will not be tried in South Africa for his alleged part in a conspiracy to kill Water Affairs Minister Ronnie Kasrils or former Environmental and Tourism Affairs Minister Ploegman in London in 1987 when both were African National Congress operatives. Judge Willie Hartzberg ruled yesterday that the chemical and biological warfare expert could not be charged for murders or attempted murders that occurred outside South Africa's borders. According to the charges, which were dropped from the state's case yesterday, Basson

allegedly provided poison to manufacture toxic "micro balls" which were to be used to kill Kasrils and Jordan between 1987 and 1988. The balls would have been fired with umbrellas specifically manufactured for this purpose. Hartzberg also ruled that Basson cannot be tried for conspiracy to murder at least 200 South West Africa People's Organisation (Swapo) members who were drugged and injected with powerful muscle relaxants which caused them to suffocate and die. Basson received amnesty for the Swapo killings from the then SWA-Namibia adminis-

trator general Advocate Louis Pienaar. General amnesty was granted to members of the SA Police, the SWA Police, the SA Defence Force and the SWA Territorial Force in 1989 after a proclamation by Pienaar. Hartzberg said the Swapo-led government, which came to power in Namibia after it gained independence in 1990, did not dispute the authenticity of the amnesty. Yesterday's ruling was made after an application by Basson's defence last week that eight of the 67 charges against him be dropped. They argued that Basson could not be tried in South

Africa for crimes committed in another country. The application forced an interlocutory hearing on the charges which included conspiracy to murder enemies of the state in Namibia, Mozambique, Swaziland and London. Hartzberg ordered that six of the conspiracy charges relating to crimes abroad must be dropped because they did not reveal crimes Basson had also received amnesty for the crimes pertaining to Namibia, he said. Basson will still face 60 charges including 16 murder charges, fraud of R80 million and drug possession charges - Sapa



Judge Foxcroft: summoned by MPs

MPs summon rape-row judge for grilling

CHARLES PHILLIPS AND NORMAN JOSEPH
STAFF REPORTERS

A parliamentary committee has summoned Mr Justice John Foxcroft to explain a judgment that has caused a public outcry.

Judge Foxcroft's "light" seven-year sentence in the Cape High Court for a father who raped his 14-year old daughter has sparked outrage from interest groups and the public.

Judge Foxcroft also said the 54-year old Elster River man's deviancy was limited to his own family and, therefore, the community did not need to be protected from him.

Minimum sentencing laws indicate that anybody convicted of raping a child under 16 should be jailed for life.

The step to summon the judge comes in the wake of an unprecedented attack on judges by members of the public, which the Constitutional

ments might be misunderstood. Asked whether it was constitutional to summon him to Parliament, Judge Foxcroft said that it was not for him to comment, but for the person who wanted to summon him to do so.

Judge Foxcroft said "I see they have already spoken to the chief justice. The courts must now comment on it, and not me."

Members of the National Assembly's joint monitoring committee on the improvement of quality of life and status of women yesterday slammed what they said was the continued breaking of laws passed by Parliament by some judges.

Committee chairperson and African National Congress MP Pregs Govender - who was yesterday re-elected to the position - said Judge Foxcroft would be asked to attend a hearing to be set up by the monitoring committee, to explain

the light sentence he had given. The hearing would also include other recent rape cases, in one of which a 10-year sentence was given a 23 year-old man in August by the Bloemfontein High Court's Mr Justice Dirk Kotze for repeatedly raping two 15-year-old girls.

He said the girls had not been virgins and one had been "naughty" because she had had sex with some body else two days earlier.

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What Foxcroft said in court: 'A message should be sent out to the community'

This case was referred to the Cape High Court from the Cape Town Regional Court for sentencing.

The accused was found guilty in the regional court of raping his own daughter, who was under the age of 16 at the time of the attack. I am satisfied, after reading the evidence of the court case, that the verdict of guilty is correct.

The problem that emerges is that according to Article 51(1) of the new minimum sentencing law number 106 of 1987, which is applicable in this case, the accused must be sentenced to life imprisonment unless the court in terms of Article 51(3) (a) "is satisfied that there exists material and compelling circumstances" that justify a lesser sentence than a life imprisonment. The court is required to make a written note of these circumstances.

I heard the evidence this morning of the accused as well as that of his wife and also testimony of a social worker. I have taken everything into account that was said and also the arguments of both the defence and

the prosecution.

The "material and compelling" circumstances the defence mentions which they believe allows me to deviate from imposing a life sentence on Mr. ... is firstly the question of alcohol and the petition that the accused should be held less accountable in that situation. I heard the evidence of the accused himself also in this regard. He said that he had had a few beers on the day of the alleged attack and that he had fallen asleep.

He remembers waking up but he did not say what he did while he was under the influence of alcohol. On the contrary he still denies that he committed the crime. The question arises whether alcohol played any role in the crime.

As far as I'm concerned it did not play a major role. It only played a lesser role - a very limited role - in what the accused did. It was also mentioned that the accused had very little formal schooling. I do not think that this has anything to do with a rape case.

What is important is that prosecutor

Tessa Henulis conceded that the court was dealing with a 54-year-old man who has no previous convictions.

This is a fact which normally plays a big role in determining a sentence. It is also doubtful whether this is the only factor which counts in favour of the accused.

It is so that a person of 54 years old can not be allowed to act toward his daughter or any other person in the way the accused did.

His age is not an excuse, but his clean record is of great importance. In the matter of the State vs. Subaia, a case heard in the Appeal Court this year, Mr. Justice Grosskopf said the following about sentencing someone to life imprisonment:

"Life imprisonment is meant to be the heaviest sentence that an accused can be given, but there are also procedures which allow the same accused to be released on parole if for example he is truly reformed." Coming back to this case, I am not satisfied

that this crime was one of the worst examples of rape.

On the contrary, it has for years been said in this court that there are different degrees of rape. Raping your own daughter is naturally a morally reprehensible thing, as happened in this case, but luckily the damage done to the victim was not as extreme as in most other cases.

In a series of Appeal Court cases I have been reading lately the imposing of a life sentence did not occur even in cases where much more physical violence was used and victims were seriously injured. There is evidence in this case that the young girl has a loss of concentration and is a little rebellious, but I don't know if this is that uncommon, and one knows that boys and girls her age show those kinds of signs.

I cannot make a judgment on this, because no complete psychiatric evaluation was presented to the court about the effects of the rape, but this was one deed at one time and although reprehensible it is not the kind of case in which I would ever

impose a life sentence in the absence of a compulsory sentence.

I believe the fact that the accused is 54 years old and has had no previous convictions indicates that he is not the type of person who should be sent to jail for the rest of his life.

There is also the possibility that his daughter will heal and that he will be rehabilitated from ever repeating his actions. Ms Henulis said in her argument that this was almost a "text-book case" for the imposing of a life sentence. I do not agree with that.

I would also like to mention a case heard in this court where Mr. Justice Van Reenen gave judgment on sentencing with which I agreed. In the case a father had raped his two young daughters over a period of seven years. That case was a much more serious rape case than the present sentencing with which I am dealing.

And obviously the daughters were much too young to give their consent and their father began abusing them when they were

five and six years old respectively. In that case this court said the father's sexual deviancy was limited to his own family and there was no suggestion that the man's behaviour would surface outside the family unit.

This case is similar. On the other hand this is a case where a young girl was raped and where a suitable sentence must be imposed.

I must also keep in mind that the legislation requires that I impose a life sentence unless circumstances exist which justify a lesser prison term.

In his judgment on sentencing in the case of the rape of the two daughters, Judge Van Reenen said as follows:

"Because all the accused's daughters have left their parents' home the likelihood that these crimes will be repeated is almost zero. Taking this into account there seems to be no reason for the public to be protected from the accused or that a sentence be imposed which will act as a deterrent so that the accused does not commit a similar

offence."

The learned judge then went on to discuss the roles played by deterrence, rehabilitation and revenge in imposing a sentence.

The sentence which Judge Van Reenen imposed was eight years, of which two years was suspended.

As Ms Henulis rightly mentioned a message should be sent out to the community about rape, including rape that happens in the home.

I am satisfied that under the circumstances that I have taken into account, namely the age of the accused, the fact that he has no previous convictions and that protecting the public and deterrence plays a lesser role in determining his sentence, that there are material and compelling circumstances which justify a lesser sentence than life imprisonment.

The accused has already been in custody for a year as an awaiting trial prisoner and the sentence that I impose is one of seven years.



'IT'S WRONG' Judge Dennis Davis

uninformed" manner He said there were mechanisms to deal with judges' decisions One was to apply for leave to appeal and another was through the convening of the Judicial Services Commission, on which there was a high proportion of MPs

The director of UCT's Criminology Institute, Professor Dirk Van Zyl Smit, said yesterday "I have read the judgment and it is open to criticism for the way it deals with the concept of 'substantial and compelling' circumstances, which are grounds for departure from the otherwise prescribed, mandatory, life sentence (for rape)

"Nevertheless, Parliament should not interfere while the process of law is running its course," Van Zyl Smit said

FOXCROFT (252) et 14/10/99



'NOT POSSIBLE' Frene Ginwala

"shockingly inappropriate" "Without wishing to pre-empt the outcome, we have the fullest confidence in the Chief Justice, irrespective of the outcome of this matter" A senior state advocate said he doubted whether a portfolio committee could summons any person to appear before it

Frank Kahn SC, Cape Director of Public Prosecutions, said his concern was to rectify the sentence passed by Judge Foxcroft through the appropriate channels "Political side-shows undermine the independence of the judiciary and the Chief Justice"

Kahn said his office was petitioning the Chief Justice for leave to appeal on the grounds that the sentence was

'EROSION OF INDEPENDENCE'

Judges hit out at 'summons'

ET 14/10/99 (252)

LAUGHABLE, LUDICROUS AND PREPOSTEROUS! This is how the news was greeted that for the first time in South Africa a judge would be summoned by a parliamentary committee to defend and explain a controversial sentence

MOTSHIDISI MOKWENA, PHINDILE NGUBANE, MELANIE GOSLING and RONNIE MORRIS report

PARLIAMENT has the power to summon any member of the judiciary to discuss matters of public interest, Speaker of Parliament Dr Frene Ginwala said yesterday — but she maintained that these powers do not extend to the point where judges can be questioned on their judgments

Questions as to whether Parliament can summon judges to explain their judgments were raised after a decision by the Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women to call Cape High Court Judge John Foxcroft to a hearing to explain the "light" seven-year sentence he recently gave to a father for raping his 14 year-old daughter

Slamming what they said was the continued breaking of laws passed by Parliament by some judges, the committee had agreed to hold a series of hearings on similar judgments with the judges and magistrates concerned

A task team was formed to gather information on judgments that had not been in line with new laws on rape

At a press conference, committee chairperson Pregs Govender said the committee would not summon Judge Foxcroft or any other judicial officer to explain judgments, but would rather invite them to "discuss policy issues on minimum sentencing and the application of those laws"

Govender said Judge Foxcroft's judgment had policy implications concerning rape in the home versus rape outside the family

However, the judge would not be questioned on the controversial seven-year sentence he had handed down, she said

Ginwala said the judge had made "a very important policy statement about how one sees rape", which she said needed to be "looked into"

Govender said it was important that Parliament exercised its power to ensure that laws passed were "implemented instead of remaining on paper"

The hearings were expected to be held in two to three weeks' time, she said

Judge Dennis Davis of the Cape High Court said "I take this as serious erosion of judicial independence and would have to reconsider my position should this happen to any judge"

Judge Davis said he did not suggest that there should not be public debate about judgments but that other steps could be taken — including using the appeal process or the Judicial Services Commission as a forum for public accountability of judges

"I can't see how one arm of the state can compel another arm of the state to explain something it's constitutionally wrong"

Judge Dumisa Ntsebeza, a prominent human rights lawyer,

said that without looking at the merits of the case, it was "ridiculous" to call on a judge to justify his ruling before a parliamentary committee

"This step is very premature under the circumstances, especially when an appeal will be lodged," Ntsebeza said

Peter Hodes SC, former chairperson of the General Council of the Bar and now an acting judge, said "It's preposterous"

He added that summoning a judge would undermine the independence of the judiciary

"Judges are not answerable to politicians. This is totally inappropriate. If someone does not like a judge's sentence, they can appeal," Hodes said

Jeremy Gauntlett, SC, chairperson of the General Council of the Bar said summoning a judge to Parliament would be at odds with the division of powers between the judiciary and the government

"Parliament is in no position to summon a judge and I am also sure that Justice Foxcroft would find it inappropriate to attend. Judges are only accountable to the Constitution," Gauntlett said

"However, the logic and wisdom of Judge Foxcroft's reported words is another matter," said Gauntlett

Norman Arendse of the Advocates For Transformation also slammed the move and said that if a presiding officer's decision caused dissatisfaction, there were procedures to be followed — "or else we will end up with judges' decisions being ruled by public opinion"

Arendse added "If this is the case, then why wasn't the same

Parliament meddling comes under spotlight

(252) Taryn Lambert

WHILE the Judicial Service Commission is considering a draft code of conduct and introduction of legislation on judges' accountability, Parliament's interference in the independence of the judiciary has come under the spotlight again

Pregs Govender, chairman of the Joint Monitoring Committee on Improvement of the quality of life and status of women, said yesterday the parliamentary committee would invite magistrates and judges to "share their perspectives on the new legal dispensation in relation to gender equality"

Govender denied she had given the impression that Judge John Foxcroft — who recently sentenced a man who raped his 14-year-old daughter to seven years' jail — would be "summoned" to explain his decision to Parliament

She said the hearings would be held to examine the "impediments to effective implementation of laws" Foxcroft has been accused by anti-rape lobbyists of flouting the new Minimum Sentences Act

which makes a life sentence mandatory for perpetrators of violent crime against minors

New National Party spokesman Sheila Camerer and Democratic Party spokesman Tertius Delpoit said the proper course of action in the Foxcroft case was for the state to petition the Supreme Court of Appeal in Bloemfontein for leave to appeal against his sentence

Camerer said the idea of making judges "accountable" had been spoken about in African National Congress circles for "about three years" Justice Minister Penuell Maduna had indicated to the Judicial Service Commission last week such legislation was being readied

A petition to appeal is currently being prepared by state prosecutors in Cape Town and is expected to be filed at the court in Bloemfontein by the end of the week

Chief Justice Ismail Mahomed and Constitutional Court Judge President Arthur Chaskalson said the constitution expressly separated the function of the judicial section of the state from its legislative and executive organs

Top judges warn Parliament

Summons to Foxcroft to explain sentence sparks warning

FIKILE-HITSEKLELO MOYA
AND CHARLES PHANLANE
POLITICAL STAFF

The country's two top judges issued a strong warning to Parliament against any attempt by MPs to summon judges to explain their sentences in cases in an unprecedented move on Tuesday.

Parliament's committee on the status of women said it would name Cape High Court judge John Foxcroft before it to justify his decision to impose a seven-year sentence on a father who raped his 14-year-old daughter.

But Chief Justice Ismail Mohamed and Constitutional Court president Judge Arthur Chaskalson, yesterday reacted with dismay to the call and pointed out that the separation of powers between the judiciary, the legislature and the executive did not allow for judges to be called before Parliament.

But the possibility of judges appear-

ing before Parliament to explain policy was put on the table by National Assembly speaker Dr Frene Giniewala yesterday.

Meanwhile, an anti women abuse group yesterday came out in support of Parliament for "not only making laws but being seen to be ensuring the book was followed".

Judge Foxcroft was expected to follow the provisions of the Criminal Law Amendment Act which stipulates minimum sentences for various categories of offences. People convicted of rape of a child under the age of 16 must be sent to jail for life unless there are "compelling and substantial reasons for a lighter sentence".

Judge Foxcroft said that because the man had restricted his sexual deviancy to his home and to his daughter, he was not a danger to the greater society and therefore there were "substantial and compelling reasons" not to send him to jail for life.

At the heart of the debate on whether Parliament could call Judge Foxcroft to account is the interpreta-

tion of what the constitution means by "The judicial authority of the Republic is vested in the courts".

"The courts are independent and subject only to the constitution and the law, which they must apply impartially and without fear, favour or prejudice. Organs of state through legislative and other measures must assist and protect the courts to ensure the independence."

However, the constitution further says "The National Assembly or any of its committees may summon any person to appear before it to give evidence on oath or affirmation, or to produce documents" and "(may) require any person or institution to report to it".

Chairwoman of the joint monitoring committee on the improvement of quality of life and status of women, Prags Govender, said the committee was fully aware of its constitutional limitations on "summoning" judges.

In a joint statement Judges Mahomed and Chaskalson said they doubted if Parliament had indeed,

called Judge Foxcroft to account.

"A member of the judiciary cannot properly be 'summoned' or even otherwise be required to explain or justify to a member of the legislature or the executive any judgment given in the course of his or her judicial duties.

"If any person is aggrieved or dissatisfied with any judgment of the court, the proper course is to follow the procedures prescribed by law to correct or review such a judgment," said the joint statement.

New National Party spokeswoman on justice Sheila Camerer said Parliament's decision flew in the face of the separation of powers specifically provided for in the constitution.

Dr Giniewala said today she would turn down a New Nat request for a special debate on the independence of the judiciary, reports Sapa.

Dr Giniewala said today she had already explained that the constitution did not make the judiciary accountable to Parliament.

There was therefore nothing to debate she said.

Cape's top judge slams rape row MPs

(252)
MURRAY WILLIAMS

STAFF REPORTER

REG 14/10/99
Cape Judge-President Edwin King today stated any "summons or an invitation" to a judge to explain a sentencing to Parliament as an "assault on the independence of the judiciary".

This follows reports that a parliamentary committee wished to summon Mr Justice Foxcroft of the Cape High Court to explain his decision to sentence a man, who raped his 14-year-old daughter, to seven years in prison.

Judge King said "My advice would be a summons or an invitation, (for Judge Foxcroft) to decline, because it is undoubtedly an assault on the independence of the judiciary I say that with every understanding of the good intentions of the members of the committee."

Section 165 (3) of the constitution was clear "No person or organ of state may interfere with the functioning of the courts."

Judge King said "All the judges of this division, without exception, are sensitive to the issue of rape and its prevalence - and cognisant of the fact that Parliament has prescribed heavy sentences."

"Informed and constructive criticism of the judicial process is permissible." The public also had access through the Judicial Services Commission. "But none of that can justify the vituperative, personal attacks from members of the public in print and on radio."

See pages 5 and 19

SA's human rights drive is failing, say experts

(252)

Johannesburg - The Government was struggling to establish a human rights culture, with fundamental flaws in its programmes so far, the national director of Lawyers for Human Rights, Vinodh Jaihand, said.

He was reacting to a warning by the SA Human Rights Commission that there were signs human rights were eroding.

Commission chairman Barney Pitso said there was a lack of focus on human rights issues in the 100 day old government of President Thabo Mbeki.

Mr Pitso did not want to comment immediately on his allegations saying he would do so during a media briefing tomorrow.

Mr Jaihand said historical reasons and the lack of resources were among factors contributing to the Government's lack of progress

in establishing a human rights culture.

"To give effect to legislation in this regard one must have the necessary infrastructure."

"This is a fundamental flaw with the state programmes so far. They are going ahead with making sure they have the capacity to give effect to that legislation."

He said the state's inability to deliver on social rights such as housing, schooling and water for every citizen also reflected on its human rights record.

The high crime level also contributed to the erosion of human rights with ordinary citizens feeling criminals enjoyed more rights than their victims.

One of the results of this was the trend of "kangaroo courts" where people had started taking the law into their own hands.

"We as a nation now seek revenge and ask for the blood of every accused person," Mr Jaihand said.

Black Sash chairwoman Sheena Duncan said yesterday she agreed with Mr Pitso's view on the deterioration of the human rights culture in South Africa, but not with his criticism of Mr Mbeki's 100 days in government.

"The president is still building on the ideas of the previous government," she said.

Black Sash had done a lot of work on social security rights and there had been a retreat since 1994 she said. There were constant violations of human rights and the Government was moving away from the realisation of such rights.

African National Congress spokesman Thabo Masebe said Mr Pitso had no basis for his allegations against Mr Mbeki. - Sapa

Maduna responds to Foxcroft call

PHINDILE NGUBANE (252)
PARLIAMENTARY BUREAU
CT 15/10/99

COMMENTING for the first time yesterday on the furore over plan to "invite" Cape High Court Judge John Foxcroft to Parliament to discuss his controversial seven-year sentence for a father who had raped his teenage daughter, Justice Minister Penuell Maduna said Parliament had no powers to ask judges to account for judgments they had made.

The Monitoring Committee on the Quality and Status of Women said earlier this week it intended inviting Judge Foxcroft to explain the "light" seven year sentence he had given to the 54 year old man.

The committee had agreed to invite other judges and magistrates who had passed similar judgments — which were against new minimum sentencing legislation that stated that anyone found guilty of raping a child younger than 16 years should be given life imprisonment.

Maduna said he did not wish to respond to the merits of the matter, but wished to register his concern regarding the approach to the entire issue.

"In terms of our Constitution, the judiciary is independent from both the legislature and the executive. The principle of separation of powers and independence is strongly entrenched in our Constitution."

He said while the judiciary as an organ of state must be accountable in its actions, this did not mean that judges should appear before a parliamentary committee to explain their judgments.

"Judges are, however, encouraged to interact with members of the public because it is through this process that they will be in a position to understand the deep feelings of the community with regard to crime, particularly crimes committed against women and children," Maduna said.

Through this process and other forums outside the judiciary, the executive and legislature, the community and judicial officers could meet and freely express their opinion or views on various matters relating to the administration of justice, as well as build a cordial relationship with one another, he added.

"This process can also play a major role in improving (and) restoring people's confidence in the judiciary," Maduna said.

He said that while he recognised people's constitutional right to express their views without any fear or prejudice, "our criticisms should not undermine the legitimacy of an independent judiciary or cast doubts on the integrity of our judicial officers".

The minister said government intended working with the Judicial Services Commission (JSC) and the judiciary as a whole to strengthen the independence of the judiciary, and at the same time to establish accountability in it.

The justice ministry was working with the JSC in producing a code of conduct for judges which would be distributed to the judiciary for comment and suggestions, Maduna said.

Williamson not off the hook

THE nine former South African security policemen who were this week granted amnesty for bombing the ANC's offices in London in 1982 may yet face prosecution, writes BONNY SCHOONAKKER from London.

The nine, including apartheid spy Craig Williamson and SAP commissioner Johannes Coetzee, are still under investigation

by SO13, the Metropolitan Police's anti-terrorism unit, a spokesman at Britain's Scotland Yard said yesterday.

She said an SO13 officer, Detective Inspector Kim Durham, sat through the amnesty application hearings of the Truth and Reconciliation Commission.

The nine won amnesties on Friday after the committee ruled that they had made a full disclosure, that the attack was aimed at political opponents and that it had been ordered by Louis le Grange, then Minister of Law and Order.

Williamson, Coetzee, Viak-plaas, commander Eugene de Kock, and security policemen Sybrand du Toit, Peter Casselton, John McPherson, John Adam, James Taylor and Roger

Raven, also won amnesties for conspiring to bomb the SA Communist Party's offices in London, malicious damage to property, obtaining false passports, and illegal possession of weapons and explosives.

But Scotland Yard is not yet satisfied. "We are going to continue with this investigation," said the spokesman.

(252) ST/7/10/99

TRC probes W Cape wounds

ET 18/10/99

(252)

JUDITH SOAL

THE Western Cape is to relive part of its violent past when the TRC hears applications for amnesty in the city this week.

In 1996, the TRC was told how policeman Michael Luff had dragged an injured teenager into the street "like a dog" and shot him in the back.

An inquest in 1986 found Luff was responsible for William Dyasi's death in Zwelofeni, Worcester. A year before, a magistrate's court had decided not to prosecute. The police gave the teenager's parents, Mbédle and Selma Dyasi, R687,34 for funeral expenses.

Ten years later, after the Dyasis had testified before the TRC about their son's death, the case was re-opened and Luff charged with murder.

Luff is one of eight people to apply for amnesty for violent acts committed during the 1980s in the Western Cape.

The applicants are from across the political spectrum. For the next two weeks the amnesty committee will hear testimony from Luff as well as from

● Security policeman Patrick Siyali, who shot former uMkhonto weSizwe

(MK) member Bongani Jonas, now a senior SA National Defence Force officer, in 1987.

Siyali said he had seen Jonas, who was wanted on charges of terrorism, in a car on the N2. He chased the car and shot Jonas in the leg as he tried to run away. He handed Jonas over to the security police for interrogation without allowing him to get treatment for the wound.

Jonas said the policemen trampled on his injured leg during interrogation. He was detained for almost a year.

● Former youth activist Johannes Africa Nhlapo, who is applying for amnesty for murdering civilians George Beenton and Cedrick Jansen, whose cars he stoned in Klipfontein Road in August 1980.

Nhlapo was tried — with ANC veteran Oscar Mpetsha and eight others — for the murders and was imprisoned until 1990.

● Former self-defence unit member Zola Yekwana, who has asked for amnesty for killing ANC member Mzonke "Pro" Jack in Nyanga 1992.

● MK member Fumanekile Boo, who was involved in a shootout with

police in July 1990 in Nyanga, before a public speech by SA Communist Party leader Chris Hanu. Policeman Nicholas Els was killed in the shootout.

● The members of an underground ANC cell, Aneez Sahe, Vanessa November and Sydney Hendricks, who are applying for amnesty for placing a bomb at the Bonteheuwel rent office in 1988.

The three were members of a unit known as the Ashley Kriel detachment, with Sahe as the commander. A civilian, Moegamat Bartlett, was seriously injured in the blast.

● ANC member Derrick Grootboom, who is applying for amnesty for petrol-bombing the civic centre and occupying a police station in June 1991.

The amnesty panel will grant protection from prosecution if it finds the applicants have made a full disclosure and that their actions were politically motivated.

On Friday, Vlakplaas commander Eugene de Kock and nine others were granted amnesty for the bombing of the ANC's London office in 1982. The ANC has welcomed the decision.

Forfeiture unit seizes properties of 'druglord', Pule Molebeledi

DURBAN — An intensive four-year investigation, coupled with surveillance and communication interception devices, has resulted in the attachment of property worth R10m belonging to a man alleged to be "one of SA's biggest drug kingpins".

Ronnie Johnny Smith, a Swazi citizen owning properties in SA, has also had his bank accounts frozen by the SA Revenue Services for an investigation into alleged tax evasion.

He is out on R50 000 bail after he

was arrested in April with other accomplices in Mpumalanga and is due to appear in court in Middelburg on January 20. He is facing criminal charges of drug dealing.

On Friday, the Durban High Court granted the asset forfeiture unit in the office of the director of public prosecutions a court order to seize two of Smith's luxurious houses in the Bluff suburb and another property on Victoria Embankment.

Attempts by police to get him to arrive at the house for the seizure to happen in his presence failed. He promised to turn up but did not

The unit's Willie Hofmeyer said Tanya Smith, Smith's daughter, had deposited R500 000 into her father's account in one month. She is a technikon student with no employment record.

"She also has an account for herself," said Hofmeyer. "It has a lot of money and she also has four luxury vehicles registered in her name. Her boyfriend also has a former Ron Smith vehicle registered in his name." She is alleged to be a collecting agent for money received as a result of drug deals.

National director of public prosecutions Bulelani Ngcuka, who was

present during the search, said investigations had revealed that over the past two years, R14m in cash transactions had gone through Smith's account. He praised police for doing an "exceptional" job.

Smith is alleged to have derived his properties from proceeds of crime by illegally importing drugs from Dubai and India. He allegedly brought the drugs through Mozambique and Swaziland into SA.

He allegedly owns properties in Jamaica, Hong Kong and Jersey Island. He also has a mansion in Swaziland and several businesses, including a crocodile farm.

BD 18/10/99

TRC bid to solve riddle of township killing

Parents' grief rekindled as policeman seeks amnesty for fatal shooting of Worcester youth

MICHAEL MORRIS
Special Writer

Two stories - 'war in outline, but conflicting in all - frame an amnesty application to the Truth Commission in Cape Town which is the sequel to a fatal shooting in the dum streets of Zwelethemba in Worcester 14 years ago.

The stories converge to a point where, briefly and bloodily, they agree, then diverge again. Early on November 4, 1985, 17 year-old William Dyasi died from a gunshot.

Policeman Michael Phillip Luff says he fired his shotgun into the dark, in the general direction of his fleeing captive's footsteps, and William died.

Yesterday, as rekindled grief brought tears to Mbedle and Selina Dyasi, Inspector Luff, 40, asked for amnesty and for forgiveness for a killing that he argued fell within the bounds of suppressing the revolt of the 1980s.

But there is still no agreed version of events that night.

Was William Dyasi a political activist in Zwelethemba, the ring leader of a group of youths stomping the local community hall on that November 3?

Or had he merely gone, at his father's request, to fetch his sister from a friend's house?

Was he shot the first time because he was a threat to public order, or had he merely turned and fled on seeing two policemen up ahead in the dark street, and then been shot by them for



ARG 19/10/1999 (257)



LEON MULLER

Inspector Michael Luff, 40, asks for amnesty for the killing of his son William in 1985. With Mr Dyasi is witness Elizabeth Hadi.

no good reason? He was shot again later - but was the second shot fired as he broke free and ran, or was he too seriously injured - with blood and pellets "coming out of his mouth" - from the first blast of some hours before even to stand up, let alone run? And, finally, was Inspector Luff shattered by the realisation he had killed the teenager, or did he say aggressively to Mr Dyasi at the scene "I did it, I'm the one who did that?"

These are among the disputed questions that came up yesterday as Mbedle Dyasi and Inspector Luff, today a

policeman in Ceres and the father of two himself, faced each other.

Back in 1987, an inquest magistrate found that William Dyasi's death had been caused by an act or omission which constituted or included an offence on then Constable Luff's part. (Formally, the Criminal Procedure Act provided no justification for killing an escapee suspected of any thing less than a serious offence.)

But the Attorney General decided not to prosecute. That changed in 1986 when a charge of murder was brought against Inspector Luff.

The matter was postponed to April

1987 and, when the charge was put to him, he notified the court that he intended applying for amnesty.

Inspector Luff told the amnesty committee yesterday he believed his actions on November 3 and 4, 1985 had been "bona fide" and part of the suppression of the political struggle against the state.

He said the death of William Dyasi would remain with him for the rest of his life.

"I can only say that I am sorry a young man had to lose his life, and I ask for understanding for the circumstances in which I acted."

Inspector Luff added "I want to say something to William Dyasi's parents. I am very sorry and I ask you to forgive me. I have a young son and I can only imagine what you have been through."

"I am prepared to talk to you personally, and ask your forgiveness personally, if you are prepared to do that."

The Dyasi family said they were not opposing the application, but reserved their rights.

Mr Dyasi said "As far as I am concerned, I do not believe Mr Luff is telling the truth."

He disputed specifically Inspector Luff's insistence that William had been capable of standing up, and running away after being arrested. "If he is afraid of God, and wants an apology and amnesty, he must speak the truth and I could see my son could not stand up."

Mr Dyasi said not once in the past 14 years had Inspector Luff phoned him or written to him to apologise for his son's death.

"If he did any of these things, I would say he is regretful. Right now he wants to ask forgiveness for something which is not true. I was willing to forgive, if he told the truth."

It was war, says ex-policeman who shot teenager

CT 19/10/1999

Luff apologised to Dyasi's parents for killing their son.

However, his account of what happened was contradicted by Dyasi's father, Mbedle Dyasi, who testified that his son could not move after he had been wounded. Dyasi said he was at the police station reporting that his son had been wounded when he heard a shot. He said Luff was heavy set and could not have been overpowered by a teenager. His son could not have broken free because he was wounded and blood and pellets were coming out of his mouth, he said.

Patel said Luff should not be granted amnesty because he had not made a full disclosure and his actions were not politically motivated. Dyasi said although he did not believe Luff, he did not oppose the application. Judge Potgieter reserved his decision.

The hearing continues tomorrow.

Luff fired the shot that killed Dyasi. He had not fired a warning shot, Luff said.

"It all happened in a split second. I was serious about stopping him," Luff said in reply to a question by advocate Ramula Patel who was leading evidence for the TRC.

Luff said his actions had been politically motivated. "I was counselling the struggle waged by organisations like the ANC and I had no doubt that the deceased was a member of the organisation — or else he would not have taken part in such notorious behaviour."

two other officers entered Zwelethemba in a Casspir. His colleagues cocked their weapons and told him to do the same because "things were going to turn ugly".

Fourteen pipe-bombs were thrown at them and shots were fired by the protesters and from the Casspir, Luff told the hearing.

"I realised that it was a war, in the true sense of the word."

Luff had noticed Dyasi because he was wearing a bright shirt. He kept an eye on the youngster.

He had shot at Dyasi to disperse the crowd, but Dyasi escaped, Luff said.

A few hours later, when calm had returned, Luff and colleague Chris Geldenhuys went looking for Dyasi and found him in a shack. He was

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Luff said his actions had been politically motivated. "I was counselling the struggle waged by organisations like the ANC and I had no doubt that the deceased was a member of the organisation — or else he would not have taken part in such notorious behaviour."

MOTSHOISI MOKWENA

AT the first of eight amnesty application hearings to be held in Cape Town this week, a former security policeman has told how he shot and killed a teenager he had wounded earlier.

Michael Phillip Luff, seeking amnesty for the murder of William Dyasi, 17, in Zwelethemba, Worcester, on November 3, 1985, appeared before Mr Justice Denzil Potgieter, advocate Sibongile Sigoli and advocate Francis Bosman yesterday.

Luff, from Ceres, alleged that Dyasi was a leader of a political group who caused unrest and stoned a building.

Giving evidence, he said his actions had been intended to protect the state and its property. His intention had not been to kill Dyasi but to apprehend him.

Luff said that on the night Dyasi died, he and

Families relive days of anguish

TRC hears blow-by-blow account of death by mob attack on Cape Flats

ARG 20/10/99

Time has done little to assuage the grief of the Jansen and Beeton families, who lost husbands and fathers to political unrest on the Cape Flats nearly two decades ago.

As they listened yesterday to the brutally clinical account of the death by mob attack of George Beeton, 59, and Frederick Jansen, 46, in Klipfontein Road on August 11, 1980, it was as if they were reliving every moment of the anguish.

Afrika Hlapo was applying for amnesty before the Truth Commission's amnesty committee in Cape Town for his part in the murders. He and 18 others, including leading activist Oscar Mpetha, were convicted of the murders in one of the major terrorism trials of the early 1980s. He spent 11 years on Robben Island, and was released in 1991. His application is unique since he has already been punished under the law.

But his plea for forgiveness, he said, was to underline his conviction that

all South Africans must now come together and reconcile as best they can, for the future's sake.

The Beeton and Jansen families did not oppose the application, but steered themselves to sit through the formalities. It was a visibly painful experience, and they declined to speak publicly when it was over. What they had to endure was a blow-by-blow account of the events of August 1980.

At the time, the Cape was in the throes of bus and school boycotts, and August 11 was the anniversary of deaths of ANC members in 1976. Emotions were running high. Earlier in the day, the crowd in Nyanga East had been told of an assault of an elderly black woman by a young, white policeman. Their political anger turned, it seems, to racial hatred. "Any white man became a target," Mr Hlapo said yesterday.

At 3.15pm Mr Beeton's car appeared in Klipfontein Road, and stopped short of the barricades across his path. Stones rained down on the



MICHAEL MORRIS
Special Writer

photograph that went round the world showed Mr Jansen sitting in a puddle of water, burned skin flaking off his face, arms and legs, lightly clasping his hands across his knees. He was dying.

Mr Jansen, a building contractor who often worked in the townships, had also been driving down Klipfontein Road. When he saw the barricades he tried to turn back, but his bakkie stalled.

Mr Hlapo described what happened next. "The driver of the motor vehicle refused to get out and I, together with other members of the crowd, pulled him from his motor vehicle and threw him to the ground. Mr Jansen sat on the road next to the driver's door. The crowd, including me, continued to stone him."

When the bakkie was torched moments later, he was badly burned. Mr Hlapo said that even if the whites, who crossed the path of the crowd on that day had been ANC supporters, "it would not have helped,

because of our anger because we were sending a message to white people that even without guns we could make a difference."

He hoped that his apologies would be accepted and that the family would forgive him.

Departing from his affidavit, he said "All South Africans need to come together and be open with each other about what we did and did not do. It has been my wish, and I hope that one day before I die (I can fulfil it), to meet the families and say, honestly and openly, 'I apologise'."

Amnesty committee chairman Mr Justice Denzil Potgieter told Mr Hlapo that any meeting with the Beeton and Jansen families would be their prerogative. The proceedings were attended by Mr Beeton's son Geoff, and Mr Jansen's wife Joan, daughters Beryl and Audrey and sons Karl and Adrian.

The committee's decision on Mr Hlapo's application will be announced in due course.

'Dr Death' decision sets dangerous precedent

Stefaans Brümmer

The Pretoria High Court decision this week to scrap six charges against apartheid's "Dr Death", Wouter Basson, may set a legal precedent allowing similar killers to walk free.

The court ruled Basson cannot be prosecuted for poison murders committed abroad. One of the first judicial casualties may be

efforts by the National Directorate of Public Prosecutions to bring to book the killers of Namibian advocate Anton Lubowsky, a leading South West African People's Organisation (SWAPO) activist. Members of the Civil Co-ordination Bureau (CCB), an apartheid hit squad, have been blamed for his 1988 assassination in Windhoek.

Ordinarily South African courts have no jurisdiction to judge crimes committed abroad, even when the culprit is South African. In the case against Basson, manager of the former government's chemical and biological warfare programme, the state attempted to bypass this principle by charging him with "conspiracy" to murder.

In each charge dismissed by Judge Willie Hartzberg on Tuesday the state argued that while the actual crime took place abroad, the planning was done locally — and that was punishable.

But it was only a week into the trial before Basson pleaded to the 67 original charges of murder, conspiracy to murder, fraud and drug offences — that Judge Hartzberg acceded to a defence motion to scrap the charges. After heated legal argument, he ruled that conspiracy to commit a crime is not a crime if the deed was done outside the country's borders.

Since South African courts have to respect legal precedent, it may well mean Lubowsky's assassins cannot be tried. Torie Pretorius, deputy director of public prosecutions in Pretoria and one of the Basson prosecutors re-

opened the Lubowski investigation late last year and conspiracy to murder was thought, the likely charge.

On Tuesday, Anton Ackermann, co-prosecutor in the Basson trial, told Judge Hartzberg that the state may appeal his ruling when the trial resumes on October 25. But if the judge's ruling stands, the public will be denied the opportunity to hear details of some of Basson's and the apartheid state's darkest secrets.

Among the 61 charges that remain, some are similar. In one instance, Basson allegedly supplied a poison jelly to be rubbed on three unknown victims in KwaZulu Natal. When the jelly failed, the victims were injected with muscle relaxants which killed them.

The underpinnings of anti-apartheid activist Frank Chikane, who fell seriously ill but survived, also stands. Chikane is now director general in President Thabo Mbeki's office.

But the effect of Judge Hartzberg's ruling will be that testimony recounting the details of the dropped charges cannot be heard in court.

The indictment claims, for example, that the poisoning of the 200 Swapo detainees was decided at special forces headquarters in Pretoria due to an "overpopulation" of the detention facilities. Details of who opted for mass murder on such cynical grounds may well now be denied the public.

The indictment, for the first time, gives a coherent account of the interaction between Basson and his colleagues, on the one hand, and the apartheid state's assassination machinery on the other.

It sketches how Basson's programme manufactured gadgets and toxins, including sugar coated pills as diverse as "coffee chocolate containing B anthracis", "salmonella typhimurium in

deodorant" and "whiskey 50ml with colchicine". Such poisons were allegedly regularly handed over to units of the defence force — often the CCB — and also to police members. In the case of the CCB, the alleged middleman was often one RF Baha, "medical co-ordinator" of the CCB and a relative of former Cabinet minister Pik Botha.

David Unterhalter, law professor and director of the Centre for Applied Legal Studies, said conspiracy charges have always been "a tricky area" in South African law, and that Judge Hartzberg's ruling "may well be the first definite judgment".

But he added, "Should an appeal court ultimately uphold this view, it cries out for statutory adjustment. From a moral perspective there is a great deal to be said for the proposal that one should make conspiracies, if they are seriously entered into, subject to punishment."

Conspiracy charges, where the actual crime was committed abroad, have not often been brought in South Africa. Earlier this year such a prosecution against former mercenary Sjaak Krugel failed not because of legal objections against the charge, but for lack of evidence. Krugel was accused of murdering two South Africans and a Namibian in war-torn Angola.

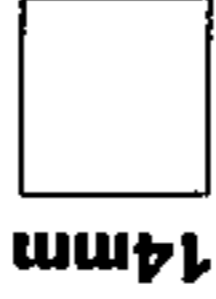
The same conspiracy law was successfully used against Vlakplaas hit squad commander Eugene de Kock during his 1985/96 trial. He was convicted on charges of conspiring to murder askari Brian Nqulunga and Japie Maponya, brother of an African National Congress soldier, outside South Africa. Nqulunga was killed in the former Bophuthatswana, and Maponya was taken across the border into Swaziland to be killed.

Judge Hartzberg on Tuesday agreed with Basson's defence argument that the principle of the law had not been argued in the De Kock case and that he was consequently not tied to that precedent.

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Apartheid is dead - but its wounds still burn



Leon Muller and his colleague, who did not answer Mr Grootboom's application. Ramula Patel, right, represented Mr Tarentaal. Trauma ex-policeman Martin Tarentaal said he had been left traumatised after being taken hostage at Dysselsdorp police station.

MURRAY WILLIAMS
STAFF REPORTER

It's five years since apartheid officially died. Nelson Mandela has a Nobel Peace Prize, struggle heroes have been elevated to positions of power and status, and apartheid is accepted as a crime against humanity.

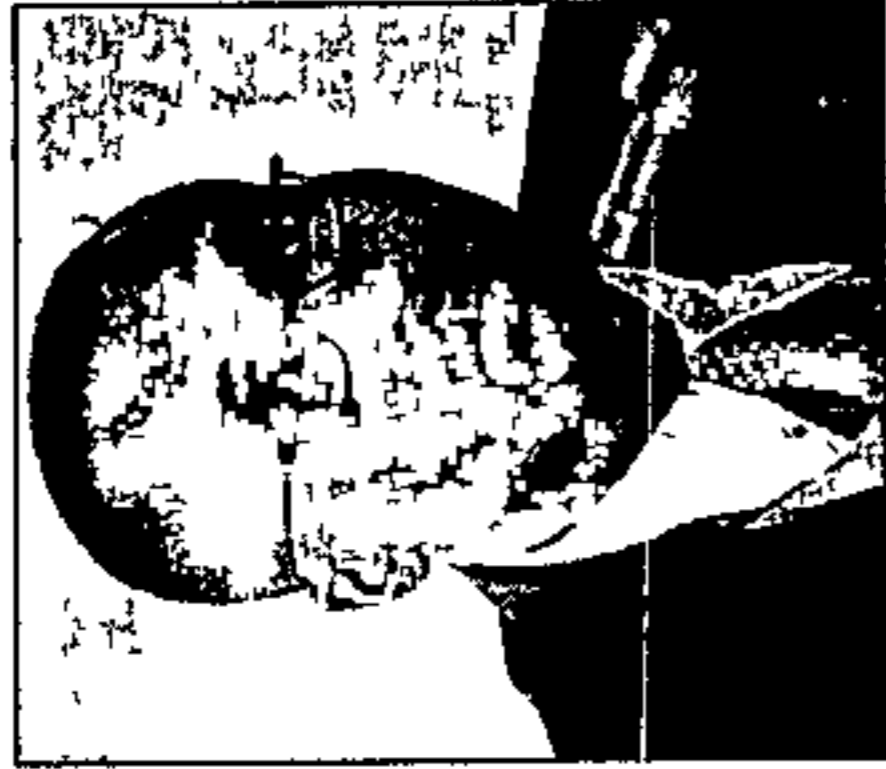
But Derrick Grootboom, and many like him who fought against the apartheid regime, are still classified as convicted criminals.

Yesterday he appealed to the Truth Commission's amnesty committee to have his name cleared.

Almost 15 years ago, he and a band of teenage mates hurled a petrol bomb into the rent office in Dysselsdorp, near Oudshoorn.

Today, he works for Asijiki Tour Enterprises, which runs "human rights camps" on Robben Island. But he remains a "convicted criminal".

At the Truth Commission offices in



Clear my name: Derrick Grootboom

Cape Town yesterday, he told Mr Justice Denzil Potgieter and the amnesty committee panel that his involvement in the liberation struggle had never been for personal gain.

In the Little Karoo town of Dyssels-

Struggle figures still carry criminal records for their role

ARLT 21/10/99
(AP)

dorp, he and a group of friends had started their own political youth group, of which he was elected chairman. But they were harassed and assaulted by police and soldiers.

Mr Grootboom said the rent office "administered the eviction of poor and helpless families, with no regard or empathy for our people". Shortly after a secret meeting of the group, Derrick Grootboom, still just 19, hurled a petrol bomb through the rent office window. No one was injured.

But he was arrested and jailed for seven years for sabotage.

In the various prisons in which he served his time, Mr Grootboom said, he almost always had to share a cell with violent criminals.

Freed after five and a half years, he was elected head of the Dysselsdorp African National Congress Youth League.

After a dispute over use of the civic centre, he and 48 colleagues occupied the police station, where they handed over a memorandum of protest.

During the protest two policemen were slightly injured. The protesters were arrested and later found guilty in the George Regional Court of occupying the police station.

"I'm not sorry and don't regret anything I've done in my small contribution to the liberation struggle," he said. "I do regret suffering. I may have caused the two police officers and their families who sustained injury."

When the TRC process began, the ANC encouraged members to apply to have their criminal records expunged. But just a handful came forward.

Ivan Tomas, Cape Town's medical officer of health, was one of the campaigners jailed for opposing military service, and has a criminal record for "refusing to render military service".

"On every application form for a visa they ask you if you have a criminal record," he says, "to which I have to say 'yes'." When travelling to the US, he has to visit the embassy in person to "explain why I'm a criminal."

TRC aim at March 2000

MOTSHIDI MOKWENA

THE end is not yet in sight for the Truth and Reconciliation Commission's amnesty committee. When the committee started its work in 1997, it announced that December 1999 would be the date of completion for the process of granting amnesty to all eligible applicants.

However, due to unforeseen problems, the process has dragged on and, come next year, the commission will still be hard at work. "I think that we have not really communicated to the public what our job entails and, as a result, they do not understand why the process takes a while to complete. Others have said that it is a waste of time and money, but we are working with a very limited staff complement so that we will be able to sustain ourselves," said the chairperson of the amnesty committee, Martin Coetzee. Coetzee said about 7 000 people had made amnesty applications and about 83 people process applications. He pointed out that the committee had, however, finalised about 90% of its work.

Former police officer 'victimised'

MOTSHIDI MOKWENA

Former police officer Martin Tarentaal, who was assaulted and victimised by African National Congress Youth League members in Oudtshoorn in 1991, yesterday told the Amnesty Committee that he had suffered at the hands of community and political organisations as well as his bosses.

Members of the ANCYL saw him as an instrument of the apartheid system whereas his SAPS bosses believed that he did not suffer injuries at the hands of the "comrades" because he colluded with them.

"I was regarded as a problem by my bosses and although I suffered serious depression and psychological problems, I never received any support from my employer and I could not function," Tarentaal told the hearing.

As a result, he had to leave the police force. In an attempt to rehabilitate himself, he is working closely with the community. Tarentaal made this brief submission at the Truth and Reconciliation Commission's amnesty hearings held in Cape Town yesterday, shortly after Derrick Grootboom applied for amnesty.

Grootboom, 33, of Dysselsdorp, Oudtshoorn, was making the application for a

subotage offence in 1986, for which he served five years, and for the illegal occupation of Dysselsdorp police station and the assault of Tarentaal and another officer, Mervyn Murray, in June 1991.

Grootboom said that he was motivated to appear before the committee because he recognised that the TRC was the only legitimate body created through a democratic process for the purpose of revealing the truth while reconciling the nation.

Grootboom helped form the Dysselsdorp Youth Organisation (DYO), he said, because of the political call to make the country ungovernable. He was elected its first chairperson. His political activities were sparked by the suffering inflicted by white South Africans on his people, he said.

"Dysselsoorp was firmly in the grip of the establishment, the regime, and after the launch of the United Democratic Front (UDF) and subsequent attendance of its meetings in Cape Town and Oudtshoorn, by myself and other members of the organisation, propelled us into the option of violent attacks in Dysselsdorp on government buildings and associated entities."

The first target was the rent office which the DYO believed administered the eviction of

poor and helpless families. "We attacked the office on October 30, 1985 with petrol bombs. This attack resulted in our conviction on a charge of sabotage in the Kuyana Regional Court," Grootboom said.

He pointed out that because it was after hours, the office had been empty and therefore nobody was injured.

Grootboom said that when he served his sentence the police and prison warders didn't allow his parents to see him and they were given false information. His father died without ever seeing him again.

After his release from prison in February 1991, the struggle continued and under the flagship of the ANC he went back to Dysselsdorp to mobilise people.

The police got involved, he said, so Grootboom and others occupied the police station. He said Tarentaal was assaulted because he was notorious for assaulting people of the community.

Courts in crisis as orderlies stop work

STAFF REPORTER

The Wynberg Magistrate's Court was in crisis early today after orderlies refused to escort prisoners from the cells into the courtrooms for their appearances.

A spokesman for the court confirmed that the orderlies, who are police staff members, had taken strike action and that courts were not sitting.

She said that the orderlies had indicated that they wanted to work in pairs in the courtrooms, to have "better cover" if prisoners tried to escape.

The orderlies have also reportedly been threatened by gangsters, who attend court cases in support of their members who on trial.

At mid morning the orderlies where meeting the chief magistrate in an attempt to resolve the issue. A further meeting, one between the Prisons, Police Civil Rights Union, the South African Police Union and senior justice officials is scheduled to be held later today.

Earlier this year two prisoners awaiting trial disarmed a court orderly sent to fetch them for their court appearances. They locked him in their cell before escaping.

ARG 21/10/99

Siyali remained in police to 'protect freedom fighters', TRC amnesty committee hears

MOTSHIDI MOKWENA

AMNESTY applicant Patrick Siyali told a Truth and Reconciliation Commission amnesty hearing yesterday that he remained in the apartheid police to protect freedom fighters like Tony Yengeni — now ANC chief whip in Parliament — from being killed in detention.

"You would not be here today if it was not for me," Siyali said in

reply to Yengeni

Yengeni had asked Siyali, who claimed his superiors did not trust him, why he had remained in the police.

Yengeni attended the hearing because he was informed by the committee that he had been implicated in the shooting of Bongani Jonas in September 1987.

He told the committee that he wished to correct the impression created by some media reports that

while in detention he had led the police to Jonas.

Siyali, who is now with the Organised Crime Unit (narcotics), told the committee his actions had been politically motivated.

But by the end of the hearing yesterday it was still not clear for which actions or offences he was applying for amnesty. His amnesty application form does not indicate what offences he was supposed to have committed.

Siyali's legal representative, Bennie Rheeder, told the hearing that the Promotion of National Unity and Reconciliation Act of 1995 made provision not only for acts committed, but also for omission and anything that might constitute an offence.

Rheeder said the committee's task was not to decide which side of the fence Siyali was on, but whether his actions fell within stipulated requirements.

It was evident from Siyali's testimony that he did not shoot anyone. David Mosenke, an Askani, fired the shot that injured Jonas.

On the day Jonas was shot, Yengeni, who was commander of the military wing of uMkhonto weSizwe in the Western Cape, had just been interrogated and tortured at Culemborg.

He was taken along by the Askani and was in the vehicle when Jonas was shot.

Siyali added that Yengeni did

not need to point out Jonas because the police knew his identity. He said after following Jonas and the other two passengers in a Mercedes-Benz, on the N2 near Gugulethu, he was ordered by Mosenke to shoot Jonas. "I was nervous and decided not to shoot Jonas but fired in the air. I wanted to give him a chance to run away."

When Jonas tried to flee into the bushes he was chased on foot by Mosenke who then shot him

in the leg and arrested him. Siyali, 39, of Khayelitsha asked the committee to grant him amnesty because "I was at all times acting in my capacity as a constable policeman in the Security Branch. I acted with the belief that we were combating terrorists and terrorist activities."

After the hearing, Yengeni said the TRC papers that had claimed he was implicated in the shooting of Jonas were misleading.

Courts face disruption by orderlies

(Cape Town)

MATTHEW MACKAY

STAFF REPORTER

APR 22 10 1999

Police unions are threatening to take matters in their own hands unless the shortage of orderlies at the Wynberg Magistrate's Court is remedied.

Yesterday the court stopped functioning after orderlies launched industrial action in support of their demands, refusing to escort prisoners from the cells to the courtrooms.

They say they will continue protests unless they are allowed to work in pairs.

Billy Daniels, provincial organiser of the SA Police Union, said most Wynberg courts had only one orderly on duty at any time.

If additional orderlies were not provided today, they would double up anyway leaving some courts without orderlies at all.

Members of Sapu and the Police and Prisons Civil Rights Union met to discuss the issue.

Superintendent Martin Swanepoel, station commissioner at the Wynberg police station, said he and his colleagues sympathised with the court orderlies.

But the problem was widespread at courts and had to be dealt with at provincial or national level.

Call for a human rights 'institution'

(252) Sowetan 22/10/99

By Claire Keeton

AFRICA needs to develop "a credible institution for the promotion and protection of human rights", South African Human Rights Commission (SAHRC) chairman Dr Barney Pitso Moseneke said yesterday.

He was speaking at South Africa's first official celebration of African Human Rights Day - organised by the SAHRC, the Independent Electoral Commission, the Rollback Xenophobia Campaign and the Commission for Gender Equality - at the Union Buildings in Pretoria.

Pitso Moseneke said the foundations for human rights had largely been laid on the continent and internationally, and it was time to search for mechanisms to implement them.

He said independent institutions, although no substitute for the courts, could play a vital role in promoting human rights.

In fact, national human rights institutions in Africa had increased from six in 1996 to 36 in 1998.

Responding to his speech, Geneva-based Ms Olatonkunbo Ige, of the Inter-

national Commission of Jurists, called on South Africa to be the fourth country in Africa to ratify the protocol for an African court to uphold the African Charter on Human and People's Rights.

The charter was ratified by the majority of the member states of the Organisation of African Unity in Kenya in 1981, and came into force on October 21 1986.

It provides for the establishment of an African Commission on Human and People's Rights.

Pitso Moseneke said the Africa Commission, following recent elections, was becoming more representative of all regions of the country.

"That means the commission will take better account of developments in different parts of the continent," he said, adding it was now better resourced and would be able to examine state reports more responsibly.

Deputy Justice Minister Cheryl Gillwald paid tribute in her conference opening address to the late Julius Nyerere. "Today, we mourn with the people of Tanzania the death of one who epitomised African dignity," she said.

'PLANNED AT GOVT LEVEL'

'FW, PW were in on plan to kill Goniwe'

MINUTES of a high-level government meeting, obtained only in May this year, are set to cause a stir at TRC amnesty meetings **MOTSHIDISI MOKWENA** reports.

ET 25/10/99 (252)

MINUTES of a security council meeting held on March 19, 1984, which was attended by former South African presidents PW Botha and FW de Klerk in Cape Town, indicate that they knew of plans to assassinate activist lawyer Matthew Goniwe

The charred and mutilated bodies of Goniwe, Fort Calata, Sparrow Mkhonto and Sicelo Mhlawuli — who became known as the Cradock Four — were found in the bush in Bluewater Bay after they were murdered by security police on June 27, 1985

In his TRC amnesty testimony in 1997, De Klerk rejected claims that he knew about the plans to kidnap and murder the men

De Klerk also testified that it was never the policy of the government or the National Party that people should be murdered. Botha refused to appear before the TRC

However, in a recent application for the re-opening of the amnesty hearing of Eric Taylor, Gerhardus Lotz, Nicolaas van Rensburg, Herold Snyman, Johan

van Zyl and Hermanus du Plessis, Miriam Wheeldon, acting on behalf of the victims' wives, said the minutes, taken during the meeting in March 1984, should be admitted as evidence

The minutes came into the hands of the widows' legal representatives on May 13 this year

They show that both De Klerk and Botha were part of the security council meeting in 1984, where the discussion involved "two old teachers who acted as agitators in Cradock" According to the minutes, "it would be good if they were removed"

Wheeldon, of the Legal Resource Centre, said the minutes corroborate the evidence of Jaap van Jaarsveld, who testified in March 1984 — while serving as a lieutenant in the intelligence unit of the security police in Pretoria, and on the instructions of Craig Williamson — that he had spent the day in Port Elizabeth and Cradock in the company of Van Zyl. He said they were supposed to investigate the feasibility of assassinating Goniwe

The minutes also corroborate

Van Jaarsveld's version that, as early as 1984, the security council ordered the assassination of Goniwe

"This is the first documentary proof that the removal of Goniwe and Calata was discussed at state security council level," Wheeldon said. "(It) links a decision taken at the highest level of government to the actions of the applicants"

It is significant that the minutes contradict the contents of the applicants' written applications — which stated that the decision to kill Goniwe was only taken by the applicants themselves, two to three weeks prior to the deaths

Taylor had earlier testified that they took the four men, who thought that they were going to be detained, and handcuffed them

They drove them to Bluewater Bay where they clubbed, stabbed and shot them

Mkhonto was the first to be shot. Sicelo was second and Goniwe and Calata were the last to die. The bodies were mutilated, doused with petrol and set alight

The killers then allegedly went back to headquarters to destroy files and take an oath of secrecy

The amnesty hearing of the six men will be held in Port Elizabeth today

A right, not a favour

HUMAN rights are not a luxury or a favour to people, they are a necessity, most delegates agreed at South Africa's first official celebration of African Human Rights Day last Thursday

"Rights must be respected and constraints on power must be recognised," Constitutional Court president Judge Arthur Chaskalson said at a seminar that formed part of the programme at the Union Buildings in Pretoria

"The next millennium challenges for human rights and democracy in Africa" was the theme of the seminar, organised by the South African Human Rights Commission (SAHRC), the Independent Electoral Commission (IEC), the Department of Justice and the Rollback Xenophobia Campaign

Chaskalson was responding to a challenge by one of the delegates, Nigerian writer and academic Professor Kole Omotose, that "human rights are a luxury" until people's basic needs are met

Chaskalson said "We have not yet achieved human dignity and it may be essentially an economic problem. Central to this must be the role of government, which has the resources to manage it"

At the same time he argued that there must be constraints on the power of governments so that they cannot squander essential resources and treat people in an inhumane way

"I would hope we leave here (agreed) that human rights are an absolute necessity, recognising and promoting human rights," Chaskalson said

In the keynote speech, HRC chairman Dr Barney Pitjana explored the idea of human rights and human development and the indivisibility of political and economic rights

The Vienna Declaration and Programme of Action in 1993 "ruled that all human rights are universal, indivisible, interdependent and inter-related," he said

This principle was affirmed at the first Organisation of African Unity ministerial conference on human rights in Africa, held in Mauritius, where the Grand Bay Declaration and plan of action was adopted

"In truth, of course, the OAU had adopted this principle and enshrined it in the African Charter in 1981," said Pitjana

"It must be noted, though, that the link between human rights and human development has not always been acknowledged

"For example, the United Nations Development Programme concedes that it had always worked to eradicate poverty in countries notorious for human rights violations and never considered it an important element of their work on development to challenge the human rights record of the states where they operated

Human rights and development are two sides of the same coin. All rights are equal, there is no hierarchy of rights, explains feature writer **Claire Keeton**

(252) Souetan 25/10/99



Dr Barney Pitjana ... human rights are an essential element of good governance.

"The result was that resources essential for development were diverted for corrupt purposes and national priorities were skewed towards militarisation and prestige projects"

Pitjana added "In Africa many states insisted that they gave priority to meeting basic needs and there was no point raising the issue of human rights

"There is now a greater appreciation of the fact that there is an intrinsic, inter-relationship between good governance, democracy and the ability of states to meet the basic needs of the people

"In other words, human rights are an essential element of good governance and not an optional extra"

Supporting his position, Olutokunbo Ige of the Geneva-based International Commission of Jurists replied that the right to development in the African Charter on Human and People's Rights was important

"The link between human rights and human development needs to be fortified. All rights are equal, not hierarchical," she said

Ige also acknowledged the need for a connection between human rights and African tradition "I am a proponent of the universality of human rights. The African Charter needs to take

account of the positive values of African civil society," she said "There is a meaning and context to rights, which are within a cultural context"

But delegates, particularly Commission on Gender Equality chairperson Joyce Piliso-Seroke, were clear that women's oppression could never be justified on the grounds of tradition or culture

She emphasised that, even though the world discriminates against women, there is no outcry against this systematic prejudice as there was against apartheid

"This is a gender-apartheid world, and custom, culture, tradition and religion are sought to justify gender oppression"

However, she said "There is a growing conviction that women's rights are human rights"

Piliso-Seroke said women were central to development and their rights - including the right to abortion, to own property, to pass on citizenship and to vote - must be recognised

Studies show women do about two-thirds of the world's work and only control about a third of the wealth, and they are denied access to critical resources like land and credit

"Globalisation is reinforcing women's inferior status," Piliso-Seroke said

The impact of globalisation on human rights broadly, and on Africa, was another theme of the seminar. Pitjana warned that even though globalisation presented opportunities, it must be managed since it was designed to benefit those who control capital and resources

"It needs to be managed precisely because globalisation has faceless beneficiaries who exploit and affect the lives of the people we know"

He also pointed out the growing number of mechanisms for enforcing human rights internationally - which were essential to deal with the impunity around human rights violations - in fact limited the sovereignty of states

From his side, Chief Justice Ismail Mahomed called on African countries to stand together in the interests of the continent as a whole

"Separate African nations are largely the creation of the colonial masters, they are arbitrary and perpetuate xenophobia

"I respectfully submit that (national sovereignty) needs to be eroded for Africa to avoid the victimisation of being a marginalised continent"

Basson charged with 'crimes for personal gain'

No political agenda - State

STAFF REPORTER

Head of the apartheid government's chemical and biological warfare programme Wouter Basson did not commit the crimes for which he is being tried because of a political agenda, but because he wanted to enrich himself, the Pretoria High Court heard.

Advocate Anton Ackermann, head of the prosecution team said this amounted to common criminality. He said Dr Basson was not being tried for apartheid crimes, even less for political crimes.

In his opening speech to the court at the start of the trial yesterday, Mr Ackermann said the heart surgeon faced a wide range of common law crimes.

"In short, it boils down to 'You may not steal and you may not murder,'" said Mr Ackermann.

Dr Basson pleaded not guilty to the 61 charges against him. His counsel, Jaap Cilliers, said his client's explanation of plea would be placed before court in due course.

Mr Ackermann told Mr Justice Willie Hartzberg that the State would not at this stage appeal against the court's earlier ruling that Dr Basson could not stand trial on six charges relating to the conspiracy to murder people outside South Africa's borders.

This includes the murder of about 200 Swapo members who were injected with toxins and whose bodies were dumped from a plane into the ocean, and the attempted murder of top African National Congress officials Ronnie Kasrils and Pallo Jordan.

Judge Hartzberg allowed the changes the State made to the charge concerning the alleged intimidation of Archbishop Desmond Tutu, in which a baboon fetus was hung in the driveway of his Cape Town home.

The charges Dr Basson faces range from 16 counts of murder to fraud amounting to more than R80 million. The State will focus on the drug related charges first.

Mr Ackermann said it would be a long, complex and very costly trial. He said he would apply early for certain evidence abroad to be heard on commission - in the UK, America, and Switzerland.

Various witnesses from overseas would have to be brought to South Africa to testify. Apart from this, there would also be several State witnesses who were accomplices to certain of the charges on which they had to give evidence.

He pointed out that Dr Basson had an excellent legal team, who were also known for their skilled cross examination of witnesses.

However, he said, he believed that the truth would be placed before court.

Referring to the fraud charges, Mr Ackermann said that, in a nutshell, they boiled down to Dr Basson taking millions and millions of rands from state coffers to enrich himself and others over a long period of time.

He had extensive powers and had convinced the SADF that it was important that, as a cover, he posed as a successful businessman with business interests both locally and abroad. This was not a cover and he was indeed, a successful businessman here and overseas.

Chemical warfare expert Basson 'common criminal'

Stephané Bothma

PRETORIA — Chemical warfare expert Wouter Basson was a common criminal whose actions were motivated by self-enrichment and not politics, the Pretoria High Court was told yesterday.

He pleaded not guilty to 61 charges ranging from drug peddling and fraud to murder and conspiracy to murder.

Deputy director of public prosecutions Anton Ackermann SC, told Judge Willie Hartzberg that Basson's trial should not be seen as an attack on the SA Defence Force or on the country's special forces.

"The trial is also not aimed against the legitimate establishment of a chemical and biological warfare capability or against soldiers who at the time, acted within the framework of a war."

He said the state would prove that, over a 12 year period, Basson was closely involved in the murder of enemies of

the state by means of special gadgets and special toxic substances.

At the same time evidence will be led to prove that Basson over a lengthy period of time, fraudulently stole "millions and millions" of rands from the state to enrich himself and others.

He said Basson had financial control over the country's top secret chemical and biological warfare programme, code-named Project Coast and, because of the sensitivity and secrecy of the project, superiors in the defence force had to rely on his bona fides.

"Basson was fully aware of this fact and abused the situation to enrich himself at the cost of the state," he argued.

An important facet of the case would be verbal and documentary evidence about the lavish lifestyle led by Basson, who at the time was a civil servant earning a basic salary.

"It seemed he had a goose that laid golden eggs," the court heard.

BD 26/10/99 (252)

TRC reserves

'Cradock 4' case

PORT ELIZABETH The TRC's Amnesty Committee has reserved a decision on re-opening the case of the seven policemen who admitted to murdering the Cradock four in 1985.

George Bizos, representing the victims' families at a special one day sitting of the committee yesterday, lodged an application for the re-opening of the case, on the basis of new evidence in the minutes of a state security council meeting held in March 1984.

The four former United Democratic Front (UDF) activists — Matthew Goniwe, Fort Calata, Sparrow Mkhonto and Sicelo Mhlauli — were killed on a Journey between Cradock and Port Elizabeth in 1985.

Their stabbed and burnt bodies were found in the dunes on a vacant stretch of coast. Seven security policemen — Nic van Rensburg, Herman du Plessis, Sakkie van Zyl, Eric Taylor, Gerhardus Lotz, Harold Snyman and former Vlakplaas head Eugene de Kock — applied for amnesty for the murders, on the grounds that they were trying to quell unrest in the Eastern Cape by killing the men.

Government ministers at the time denied that the killings were officially sanctioned. But minutes of a government state security meeting, held some time before the murders and produced during De Kock's amnesty application, appeared to indicate that a request to have Goniwe "eliminated" came from government ministers. Bizos said the minutes proved the case should be re-opened, because the applicants were not telling the truth.

The applicants' defence counsel, Kobus Booysens, opposed re-opening the case and questioned whether the document would have any influence on the granting of amnesty.

A decision is expected soon — Sapa

APARTHEID NOT ON TRIAL, SAYS STATE

'Basson enriched himself'

PRETORIA: The state says it will prove most of biological warfare expert Wouter Basson's actions were rooted not in political conviction but "common criminality".

APARTHEID and the former South African Defence Force were not on trial in the case against chemical and biological warfare expert Wouter Basson, the Pretoria High Court was told yesterday.

In his opening arguments, Anton Ackermann, for the state, said Basson was not standing trial for apartheid crimes or crimes that had a political motive.

The trial was not aimed against the former SADF or the special forces. Nor was it aimed against the legal creation of a chemical and biological warfare capability or against soldiers of the SADF who acted within the framework of a war, Ackermann said.

It was about the illegal eliminations of state enemies in which Basson and toxic substances were common denominators, he said.

Basson pleaded not guilty yesterday to the 61 charges, includ-

ing 16 of murder, six of possession and dealing in drugs and fraud involving R80 million.

He headed the SADF's Project Coast, founded in 1982 to develop a chemical and biological warfare capability.

He initially faced 67 charges, but six of conspiracy to murder were dropped two weeks ago when Mr Justice Willie Hartzberg ruled that he could not be tried for crimes committed outside South Africa's borders.

The charges related to the deaths of 200 South West African People's Organisation detainees, for which Basson was granted amnesty, and conspiracy to murder Ronnie Kasrils, now Minister of Water Affairs and Forestry, and Pallo Jordan in London. Jordan was Minister of Tourism and Environment under President Nelson Mandela and is now an MP.

The state said it would not

appeal Judge Hartzberg's ruling at this stage and it called the first of about 150 witnesses. The trial is expected to last two years.

Ackermann alleged that Basson supplied poisonous substances which were used to murder a large number of people.

He had committed most of the crimes with which he was charged not because he had been politically motivated but to enrich himself. Some of the crimes could have had a political motive, Ackermann conceded, but most, particularly those involving fraud, had been committed purely with self-enrichment in mind.

This, Ackermann said, pertained to common criminality.

Basson had defrauded the government over a long period and millions were taken from the state coffers, he said. The state would present evidence of the creation of an intricate network of at least 46 companies in South Africa, the United States, Europe and the Cayman Islands and in which Basson was directly or indirectly involved. Loans were granted

without security and no repayments were made.

Although he was a civil servant, Basson had a luxurious lifestyle, with extensive trips abroad. He gave expensive gifts to friends, had a private box at Loftus Versfeld stadium in Pretoria, sent his daughter to a finishing school in Switzerland and built a home for R10 million.

The state would present documents on companies created by Basson, bank records and documents in Basson's handwriting, Ackermann said.

However, several factors would make it difficult for the state to prove some of the charges.

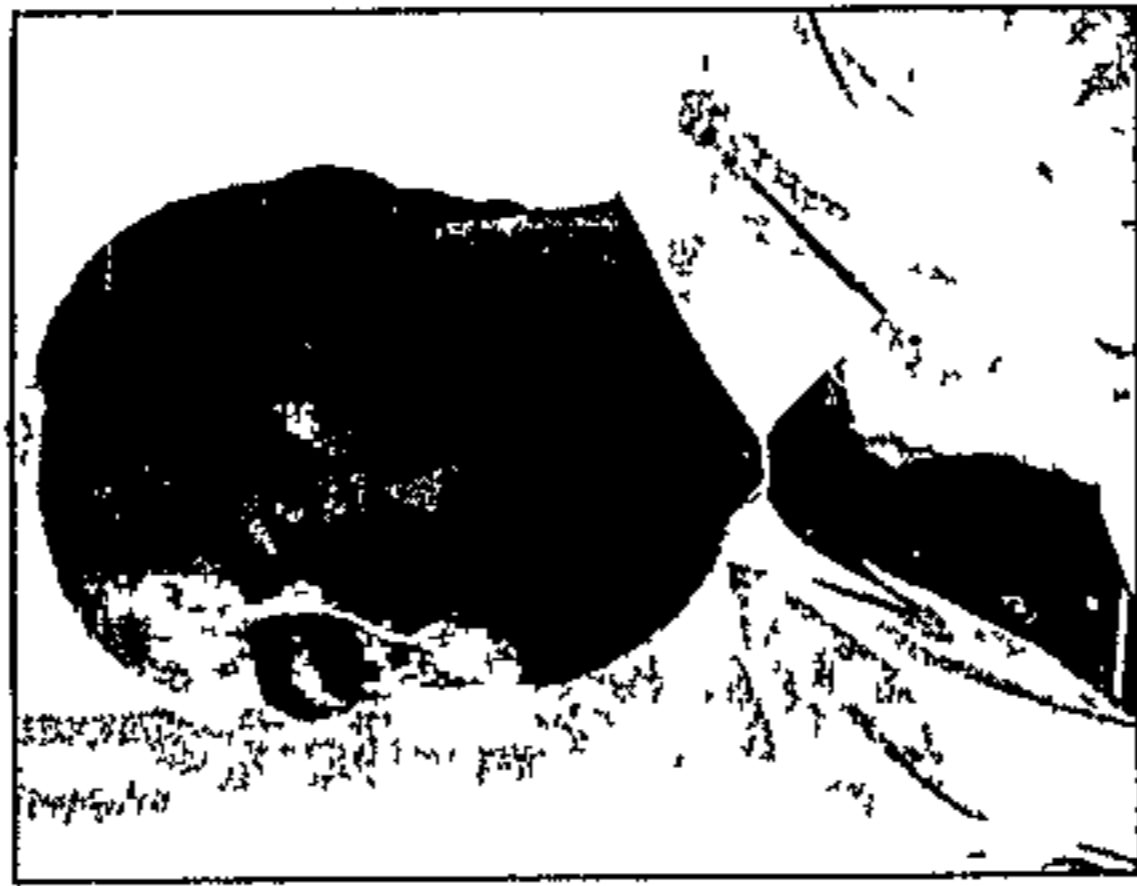
The crimes were committed over 12 years and evidence had been destroyed. Also, the poison used in a number of murders was difficult to trace once administered.

The state's first witness yesterday was former policeman Jan Ehlers, who arrested Basson in January 1997 in a police trap. The hearing continues today with Ehlers' cross-examination — Sapa

Court told how Basson held in sting

Drug dealer tells how germ warfare expert supplied him with ecstasy tablets

ARLT 27/10/99 (ANA)



'Caught red-handed'. Wouter Basson

Pretoria - A former business partner of Wouter Basson today told the Pretoria High Court how the apartheid germ warfare expert supplied him with ecstasy tablets.

Grant Wentzel described to the court how he received drugs from Dr Basson on three occasions, the last during a sting operation in which Dr Basson was arrested.

Mr Wentzel said he knew Dr Basson long before the drug dealing, as they had opened a company, Global Management, in 1992 to find overseas markets for South African products in the face of sanctions.

He testified that he had regular contact with Dr Basson during this time, and that dealings included possible crude oil transactions and acquiring AK-47 rifles.

Mr Wentzel was arrested at Rustenburg in January 1997 for dealing in ecstasy capsules. He said he agreed to help police arrest the supplier in a sting operation in exchange for either a suspended sentence or the dropping of the charges against him.

Mr Wentzel, the State's key witness in the six drug charges against Dr Basson, said he was having financial difficulty because of sanctions against South Africa when he was told there was a market for ecstasy.

He was told by another colleague of Dr Basson's that ecstasy was being made at Delta G, a front company for Project Coast near Midrand, north of Johannesburg.

He later met Dr Basson at Grand Central Airport in Midrand and asked him if he had ecstasy available.

"Dr Basson said 'yes'," Mr Wentzel said. He also said Dr Basson wanted R80 a capsule and that he had asked R50 a capsule.

Dr Basson initially gave him 100 ecstasy capsules as a sample when they met at Grand Central.

These samples were given to a Steve Martin at a Bryanston shopping centre and he was paid R4 000 for the drugs.

Mr Martin later arranged another deal with a man named Fred, who wanted 2 000 capsules.

When he contacted Dr Basson, Mr Wentzel was told the deal was too large. Dr Basson later contacted him to say that he had the capsules available.

Mr Wentzel took these capsules to Rustenburg, where he handed them to Fred. He received a briefcase with R100 000 inside, and was arrested shortly afterwards.

Mr Wentzel told the court how he arranged to meet Dr Basson at Magnolia Dell in Pretoria to obtain another 1 000 capsules, and how, with a policeman in the boot of his car and several others waiting in the bushes, he received a black bag filled with red and black capsules from Dr Basson on January 29 1997.

He said Dr Basson took the bag from the boot of his car and handed it to him. He placed it in the front of his car and walked away. Dr Basson was arrested and taken to the Brooklyn police station.

Reacting to allegations from Dr Basson's legal counsel, Jaap Cilliers, yesterday that Dr Basson had been set up in a trap by Mr

Wentzel because he was in trouble with police, Mr Wentzel said he held no grudges against Dr Basson.

He told Torie Pretorius, for the State, that he did not even know where Dr Basson lived at that stage, or which car he would use to deliver the drugs.

Dr Basson is facing 61 charges, including 11 of murder, some of fraud involving R80 million and six for drug dealing and possession. He has pleaded not guilty on all counts.

Yesterday, former detective Giel Ehlers told the court how he and his team arrested Dr Basson "red handed" during the drug deal at Magnolia Dell.

Dr Basson had taken a black bag containing packets of the ecstasy drug out of his car and handed it over to Mr Wentzel, who then placed an envelope with marked notes amounting to R60 000 on the back seat of Dr Basson's car, Mr Ehlers testified.

Mr Cilliers said Dr Basson did not deny the black bag was in his boot, but did deny knowing what the contents were. - Sapa-AP

Comrade' finally admits to killing activist 'Pro' Jack

ERIC NTABAZALULA
(Cape Town)

A "DISCIPLINED" self-defence unit (SDU) member, who did not report the assassination of prominent ANC activist Mziwonke "Pro" Jack to his commander, applied for amnesty for Jack's murder yesterday.

Theminkosi Xola Yekwani has consistently denied any involvement in Jack's killing — only admitting to killing policemen to "protect his people from police brutality".

He told the TRC hearing yesterday that he shot Jack "by mistake"

In his confession, Yekwani said he and three other "comrades" wanted to ambush a police vehicle on Lansdowne Road in June 1991, after eight people had been shot dead by police in Khayelitsha and ANC member Christopher Ntamo had been arrested for possession of an AK-47.

He said he had borrowed an R4 rifle from Gladstone Ntamo for the purpose of killing policemen.

With the three others — an SDU member from Phillippi, Gcobani Xhegwana, and two other men, known only as Mthandazo and Michael, both

ANC Youth League members in Phillippi — Yekwani decided to ambush "any" police vehicle on Lansdowne Road.

Police vehicles regularly used that road, he said, explaining why they chose to strike there.

The three men positioned themselves not far from the road, under some trees. "I was the first one in the row as I wanted to take the first shots with the R4 rifle," said Yekwani.

"I was concentrating on the road, in the direction of Phillippi, (where I would have been able to see) police vehicles," he said. He

told the commission that he didn't hear the noise of a car or see headlights before Xhegwana indicated that a car had stopped about two metres from them.

"I thought the people in the car were police, who wanted to arrest or to shoot us. I turned, and without noticing, I pulled the trigger. The rifle was on automatic."

"I started shooting on the driver's side and then turned towards the passenger's side. I wanted to make sure the driver would be killed instantly and would not be able to chase us before we could take cover," he said.

Jack's nephew, 14-year-old Andile — who was in the car with him, and whom Jack allegedly shoved under the dashboard when the shooting started — escaped with bullet wounds in his chest and shoulder.

At the time of the shooting, Jack had been taking Andile home after he had watched television with his grandmother.

Testifying yesterday, Andile said he heard people calling his uncle's name from the direction of the trees. They then drove towards the trees. "My uncle rolled down the window. Before

any words were exchanged the men fired with their weapons," he said.

Yekwani said he only realised the following day that Jack was the person he had killed.

"Michael brought the paper and, after reading about the incident, I instructed my comrades not to talk about the incident again. After the assassination, several ANC members were arrested."

Yekwani had denied any knowledge of Jack's "assassination" — even when he was questioned by then ANC Chief of Staff Chris Hani.

Amnesty bid focuses on puzzle of activist's killing

JEREMY LAWRENCE
STAFF REPORTER
ARG 27/10/99

On a misty June evening in 1991, African National Congress activist and community worker Mziwonke "Pro" Jack was killed in a hail of bullets when he stopped his car in Lansdowne Road.

Was his attack a cold-blooded well-planned murder or just an accident?

This question will be answered in part by the outcome of a Truth Commission amnesty bid by one of the gunmen — also an ANC supporter.

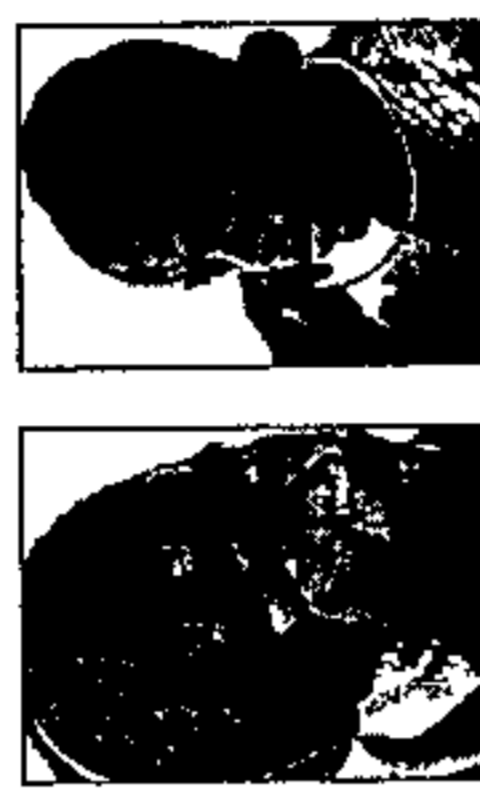
The application by Theminkosi Yekwani, a former member of the KTC self-defence unit, has been opposed by the Jack family.

Mr Yekwani's version of events that night and following days have indicated that ANC members knew the truth about the shooting all along.

Mr Yekwani told the amnesty committee yesterday that he and three other SDU members had been hiding under trees along Lansdowne Road waiting to ambush police vehicles.

This had been prompted by police raids on SDU members' homes and Mr Yekwani's own experiences at the hands of police.

He said he borrowed an R4 rifle from Gladstone Ntamo, now ward councillor for KTC on the City of Cape Town council, so he could kill policemen.



Applicant: Yekwani Nephew: Jack

The attack on Mr Jack had been an accident. He thought Mr Jack's car was a police vehicle, he said. He opened fire on the green Golf, killing Mr Jack and wounding his teenage nephew, Andile.

The next morning the men learnt in a newspaper that it was that had been killed. Shocked by the news that he had killed a well-known community figure, Mr Yekwani and the others decided to keep quiet about the attack.

But he decided to tell a respected community figure, a Mr Laaga, what had happened.

He had been told to see a lawyer and make a statement. Also at this meeting was Umkhonto weSizwe member and former SDU commander Dan Ntamo.

Mr Yekwani claimed Mr Ntamo was aware of the statement he had made.

Mr Ntamo denies this, saying he became aware of Mr Yekwani's involvement in the shooting only when he told him about his amnesty bid.

TRC told how ANC leader died

Sowetan 27/10/99

By Claire Keeton

WHEN the late Chris Hani, then MK chief, asked Mr Xola Tembinkosi Yekwana about the assassination of a valued African National Congress leader, he (Yekwana) denied knowing anything, the Truth and Reconciliation Commission (TRC) heard yesterday in Cape Town.

But now Yekwana, a former member of the ANC-aligned Nyanga East Defence Unit, is applying for amnesty from the TRC for shooting Mr Mziwonke "Pro" Jack on June 19 1991. He claims that he intended to target the police instead and the killing was a "mistake".

In a strong stand, the Western Cape ANC has "completely dissociated" itself from Yekwana, saying he was acting against the ANC's interests and that he is not making a full disclosure in his application.

ANC provincial secretary Mr Mcebisi Skwatsha said yesterday "Mr Yekwana was not mandated to act by any

formal structure of the ANC and its military wing MK.

"Comrade Pro Jack was a valued member of the ANC and MK, and in our communities. His killing is a loss to our communities and has unnecessarily deprived us of a cadre with many capabilities."

Yekwana said on the night he shot Jack, he and three comrades were waiting to ambush a police van coming from nearby Phillippi.

Without looking who was in the car, he opened fire on the vehicle with a R4 automatic rifle, intending to kill the occupants. He claimed that he only found out the next day in the press that he had killed Jack and wounded his 16-year-old relative Andile.

However, Andile's statement indicates that Jack specifically reversed towards the applicant and his comrades after someone called out his first name, Mziwonke.

ANC legal representative Peter Williams, an attorney, suggested to Yekwana yesterday that his story did not make sense.

ANC opposes former cadre's amnesty bid

sowetan 28/10/99

(252)

By Claire Keeton

THE African National Congress took the unusual step of opposing application of former ANC cadre Xola Yekwani, who is asking for amnesty for killing well-known Western Cape leader Mziwonke "Pro" Jack on June 19 1991.

"His application is a stem of lies," the ANC legal representative Mr Peter Williams told an amnesty panel at the Truth and Reconciliation Commission's Cape Town office yesterday. "The ANC distances itself from the application and has instructed me to oppose amnesty."

Yekwani applied for amnesty on the grounds that he killed Jack by mistake.

He claimed that Jack drove off the road to where he was standing with three comrades. Blinded by the lights, he (Yekwani)

shot the occupants of the car without checking whether they were policemen. Jack's nephew Andile, who survived the attack, contradicted the applicant's evidence. He said Jack reversed the car towards Yekwani when his name Mziwonke was called, before he was killed.

The family's legal representative, Advocate Ismail Jamie said they opposed the amnesty. "We will probably never know the true reason (for the assassination) but the one thing we do know is that it was not a mistake, Jamie said.

He argued that the killing was out of proportion to the applicant's stated political objective of targeting policemen. "There was a 14-year-old boy in the vehicle with an ANC activist. There has been no explanation (by the applicant) concerning why he thought they were

policemen. A large number of shots were fired at point blank range. Jack's head was blown off," Jamie said.

He suggested that the applicant blamed Jack for the detention of Mr Christopher Toyise, his landlord and a squatter leader in the area. He therefore decided to eliminate Jack without corroborating his suspicions and without a mandate from the ANC.

The Toyises were detained when police found an AK-47 on their property, delivered by Jack and Mr Tony Yengenu (now ANC Chief Whip in Parliament).

"I find it impossible to conclude it was coincidence that the very person killed was the person suspected of being responsible for Toyise's arrest. The killer was living on the (Toyise's) property, Jamie said. Nobody testified at the amnesty hearing in support of the applicant.

Teachers leaving in droves, says union

SOUTH Africa is likely to suffer a serious shortage of teachers within five years, the National Professional Teachers' Organisation of South Africa warned yesterday.

Napitosa spokesman Mr Henry Hendricks said scores of trained teachers were leaving the profession, while new entrants were declining at a rapid rate. "The number of students opting for a teaching career saw a dramatic drop in the past two years," he said in Pretoria. "Young people no longer see a future in teaching. We are going to be in serious trouble within five years."

Gauteng was expected to have a shortage of between 1 400 and 1 600 teachers in the next few years, Hendricks said. Afrikaans-medium schools were already struggling to find qualified staff.

"The major national crisis lies in subjects such as mathematics and physical science, with projected shortages of 14 000 and 16 000 respectively," he said.

"There are also not enough highly competent teachers in English." The profession was on average losing about 18 000 teachers a year through natural attrition. This figure excluded staff leaving in the current process of rationalisation.

"The way things are going now, they are not being replaced," Hendricks said.

The national council of Napitosa resolved on Tuesday to call on the Government to intervene. A concerted effort was required to avert an imminent crisis in teacher supply, Napitosa president Mr Musa Slieli said in a statement. - *Sapa*

seweron 28/10/99

A 'comrade' pleads for amnesty

ET 28/10/99 (252)



ERIC NTABAZULU

THE TRC reserved judgment yesterday for the amnesty application of Thembinkosi Xola Yekwani for the murder of a popular and prominent ANC activist, Mziwonke "Pro" Jack.

Meanwhile the ANC distanced itself from Yekwani's actions and has asked the commission to refuse him amnesty for the murder, alleging that he lied in his application.

"Making his final plea for amnesty, the former self defence unit (SDU) member said that he had no intention of killing Jack and called the murder a "mistake".

"I would have gone to his house and not stood on the road if I had wanted to kill him. Had I heard voices coming from my direction calling his name, I would not have shot him. I would like to tell Jack's family that I'm very sorry for what happened. What I'm telling you is the truth. I have nothing to hide," he pleaded. Yekwani said he and three

other "comrades" waited to ambush a police van on Lansdowne Road in June 1991 after the police had shot eight people in Khayelitsha, and ANC member Christopher Toise had been arrested for the possession of an AK-47.

Arguing for Yekwani's amnesty, John Riley said the commission should be satisfied with the applicant's submission as he had not in any way gained personally from killing Jack. "There's no evidence that Yekwani acted for

personal gain or received any monetary reward. He made a full disclosure and has met the requirements of the Amnesty and Reconciliation Act. He should therefore be granted amnesty," Riley said.

"Due to what the police were doing to people in the communities and also for the fact that I had earlier in 1987 been arrested for arson, I felt that there was a need to act against the police of the apartheid era," Yekwani said.

Advocate Ismail Jeremy of the ANC argued that according to Yekwani's testimony, he acted out of vengeance against the police because of what happened to him while he was in prison. He further argued that in 1991 the ANC was involved in negotiations with the then government and the SDUs were used to protect communities, not to attack police.

"He never acted in the interests of the organisation. He lied to his commander Gladstone Ntamo saying that he planned to patrol Brown's Farm while he went to kill the police," Jeremy said.

PREMATURE DETONATION

Recce couldn't avert injury at bombing

(272) CT 29/10/99
A CAPE TIMES copy editor who ordered the bombing of a municipal rent office in Bonteheuwel that resulted in a man losing his leg, appeared at a TRC amnesty committee hearing yesterday. **ERIC NTABAZALULA** reports

ANEEZ SALIE, who was a commander of the Ashley Kriel detachment of uMkonto weSizwe, ordered operatives under his command to plant a mini limpet mine at the door of the Bonteheuwel rent office on September 28, 1988.

The limpet mine was in a milk carton placed at the door of the rent office. It was primed to detonate early the next morning. It appeared that Moegamat Nurdien Bartlett went to the rent office, rifled through some litter near the explosive, picked up the milk carton and threw it away. "I believe that this unfortunately caused the explosive to detonate prematurely, causing

injuries to Mr Bartlett," Salie testified. Bartlett, who was 20 years old at the time and mentally challenged, lost his leg and suffered severe burns.

Salie said the MK operatives Sydney Hendricks, Vanessa Rhoda November, a Standard Nine pupil, and the late Coline Williams had done a "thorough" reconnaissance of the area around the rent office for three weeks.

The rent office was seen as an oppressive structure used by National Party councillors who were furthering the aims of an illegitimate government. It was also thought the attack would spark a rent boycott.

Testifying yesterday, Salie said the three operatives were instructed to make sure that the area was secure and deserted, and to abort the operation if there was any prospect of injury to any person.

"We intended to destroy the building. We were extremely intent on avoiding injuring members of the public, and the operatives were told if there were chances that the operation would injure anybody, it should be aborted."

"After receiving an intelligence report about the area, we checked it thoroughly. Also, we were staying in the area. Therefore we knew it like the backs of our hands."

Salie said the operatives were interrogated after it was discovered that Bartlett was injured. Asked whether he did not deem it dangerous to entrust a limpet mine to a high school student (November) Salie said "We did deem it dangerous. But the chil-



MAKING PEACE: Cape Times copy editor and former MK regional commander Aneez Salie, on the far left, appeared before the TRC amnesty committee yesterday. **PICTURE: ANDREW OCTOBER**

dren who grew up in Bonteheuwel were forced by the apartheid government to be more mature than their counterparts at Bishops and other high schools in Constantia.

"We did not just leave limpet mines in the hands of young people. The explosion was just five

percent of the work that needed to be done. November was very passionate about justice and was somebody we could trust with our lives," Salie said.

The applicants went to the Bartlett family in 1997 to explain the attack and ask for forgiveness.

Appearing for the three, Taswell Papier said their applications complied with the Reconciliation and Amnesty Act and that they should be granted amnesty. The family of the victim is not opposing the applications. The commission reserved its judgment.

'Police plotted to kill Hani'

(252) CT 29/10/99
A FORMER uMkonto weSizwe (MK) commander yesterday told the Truth and Reconciliation Commission in Cape Town that the African National Congress knew of a police plot to assassinate Chris Hani in the Western Cape in 1990.

Fumanekele Bool, 39, who is applying for amnesty for the murder of a policeman, told the TRC's amnesty committee that Hani had briefed him and other MK members about the planned assassination on the day before he was due to address a rally in Gugulethu near Cape Town.

Bool told the committee Hani said he knew of a plot by police to use askaris (turned former MK members) to assassinate him.

Hani had also spoken of a plot by the police to kill as many MK members as possible in order to weaken the ANC's position during the negotiations for a democratic South Africa.

Bool said that soon after speaking to Hani during July 1990, he and other MK members were driving in Nyanga township when they noticed they were being fol-

lowed by a police vehicle. He said that when they were in a remote part of the township another police vehicle blocked their path and they realised they were being ambushed.

He said he began firing at the policemen as they left their vehicle and Sergeant Nicholas Els was killed.

Bool said he regretted the death of Els because it had not been the intention of the ANC at that time to kill policemen.

He said he had fired because he was convinced it was a police ambush in which he and his fellow MK members would have been killed.

He told the committee that he was arrested two years later and during his application for bail, Hani had testified in the hearing and supported his contention that there had been a plot to kill MK members.

All charges against Bool were later dropped when he appeared in the Supreme Court. The Amnesty Committee has reserved its judgment on his application for amnesty — Sapa

Cabinet approves 'draconian' Bill

Howard Barrell and Barry Streek

The Cabinet has approved a wide ranging draft law to guarantee equality among all South Africans. If passed the legislation will give vast powers to the courts to intervene against discrimination which it defines very broadly. The Bill which is softer than a version that was circulated among interested parties earlier this year and published in the *Mail & Guardian* is likely to prove controversial when MPs debate it in coming weeks.

The Bill's stated aims are likely to be widely applauded but the manner in which it sets out to achieve them is likely to be heavily disputed by opposition parties and civil rights groups.

The final version of the Bill no longer contains a special section dealing with the media but it does say that no person may 'disseminate or broadcast any information, publish or display any advertisement or notice that indicates or could reasonably be understood to indicate an intention to unfairly discriminate'.

It aims, among others, to 'actively promote the building of a South African society that is rich in its diversity that is caring, compassionate and that strives progressively to achieve equality'. It also sets out to 'address and eliminate the imbalances and inequalities particularly in respect of race and gender existing in all spheres of life as a result of present and past un-

fair discrimination brought about by the apartheid system".

It goes on to prohibit what it terms "unfair discrimination" in any area of life specifically in employment, education, health care, accommodation, land and property, insurance, pensions, goods, services and facilities, associations and partnerships, clubs and sports, and professions.

It defines racial discrimination as 'any distinction, exclusion, restriction or preference, based on race, colour, descent, national or ethnic origin which is aimed at or has the effect of nullifying, impeding or impairing the recognition, enjoyment or exercise, on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other sphere of life'.

It explains racism as 'any act, practice or policy which denies or is calculated to deny or undermine the inherent dignity of a person or a group of persons on the basis of race, language, religion or ethnicity as manifested in violence against such person or group of persons, the denial of free and equal access to, and participation in all spheres of life'.

It specifically outlaws the use of words such as 'kaffir', 'coolie', 'hotnot' and what it terms 'their variations'.

There are similarly broad definitions of gender or disability discrimination. These include the prohibition of female genital

(252) M+G 29/10-4/11/99

mutilation", the system of preventing women from inheriting family property" and what it calls "pregnancy discrimination".

A clause that is likely to prove particularly controversial is the burden of proof. The Bill places on the person or organisation accused of discrimination. It states that, if a complainant makes out a *prima facie* case of discrimination, the respondent has to "prove that the discrimination is not based on one or more of the prohibited grounds" or if that is the case, "that the unfair discrimination is reasonable and justifiable".

The Bill does not, however, give much guidance on what might be "reasonable and justifiable".

This could be a tricky judgment in the case of clubs and sport. Among other things, it provides that all clubs or sports structures which benefit from public resources "must identify all forms of inequality and discrimination in this sector and take steps to eradicate such inequality, paying particular attention to recruitment and equitable representation of designated groups in selection, administration, coaching and refereeing".

Designated groups are defined as persons previously classified as Africans, Coloureds or Indians, women or persons with disabilities. This could pave the way for women and people in wheelchair to be represented in rugby teams.

If passed into law the Bill could go a long

way towards removing discriminatory practices in, for example, the letting of property and the granting of bank loans and mortgage bonds. But the all encompassing provisions could, equally, become a legal nightmare.

The Bill provides for courts to make orders for damages and costs, or to reconcile parties in actions over discrimination. It does not however provide for any direct criminal sanctions such as fines or jail terms.

The justice ministry suggests in a memorandum attached to the Bill that R50 million be set aside to cover the costs of expanding the Human Rights Commission and training personnel to assist in the implementation of the Bill. The Democratic Party's constitutional affairs representative, MP Dene Smuts, says the Bill misses the

point and 'reads like a poor imitation of an international convention designed for states not persons'.

She also said the preamble larded with words like gross violation *ubuntu* peace reconstruction sounds like a mixture of the Truth and Reconciliation Commission and the Reconstruction and Development Programme and occasionally like a cross between Archbishop Desmond Tutu and Sibusiso Buthe with justice and liberty for all.

Smuts added that the Bill would effectively prohibit Cherie Theron's recent anti rape advertisements.

The Bill could go a long way towards removing discriminatory practices, but the all-encompassing provisions could become a legal nightmare

Bomb anguish laid to rest

ARG 29/10/99 (253)

Three ask for forgiveness over retarded man's injuries

Three Capetonians yesterday finally laid to rest their anguished memories of a strike against the apartheid government that went horribly wrong.

Their bomb was intended to wreck a hated apartheid institution, but blew the leg off an inquisitive mentally retarded man.

Moegamat Aneez Salie had been commander of the Ashley Kriel detachment of Umkhonto we Sizwe, and Vanessa November and Sidney Hendricks made up the Bonteheuvel MK cell.

Coline Williams was also part of the team, but has since been killed.

Under the guidance of Mr Salie, the trio planned to bomb the Bonteheuvel rent office, which they described as "an oppressive mechanism used by the state". They hoped the destruction of the office would spark a rent boycott.

Mr Salie testified that they knew the area "like the back of their hands" and took every precaution to make sure that no civilians were harmed by the blast.

The area was unlit at night and the street the rent office was in was seldom used after dark.

But, despite satisfying themselves that no one would be hurt,

MURRAY WILLIAMS
Staff reporter



and priming the limpet mine to detonate in the early hours of the morning when the area should have been deserted, disaster struck.

On the night of September 28, 1988, Mr Hendricks, Miss Williams and Miss November reconnoitred the area for the last time, then placed the mine in an empty milk carton in amongst litter strewn at the front entrance to the building. A special chemical had been added to the charge so that when the blast went off, it would spark a fire which, they hoped, would destroy the entire building.

But living in the area was a 20 year old mentally retarded man, Moegamat Nurudien Bartlett.

In the words of Mr Salie, Mr Bartlett "had a preponderance for exploring places where other people would not go".

"He was such a sweet boy that

he would often bring his mother gifts, like empty packets, from the places he had explored."

After Miss Williams primed the mine and the three MK members had returned to their respective homes, Mr Bartlett found the mine among the litter, picked it up and apparently tossed it aside near him.

The mine detonated, blew off one of his legs and seriously damaged one of his eyes. He was also severely burnt.

Yesterday, the three applicants pleaded once again that they could not possibly have foreseen the tragedy.

Miss Williams was, ironically, also killed in a limpet mine explosion a year later outside a toilet, opposite the Athlone Magistrate's Courts in Klipfontein Road. She was 22.

Mr Salie said Mr Bartlett's injuries had "weighed heavily" on them, and more than two years ago, before they knew they would be applying for amnesty, the trio decided to visit him - to own up to what they had done and "bring some peace to the victim and his family".

But a member of the amnesty committee, Sibongile Sigodi, yesterday asked Mr Salie "Did you not consider that training young

people with such lethal weapons could be dangerous?"

Miss November had been in Standard 8 at the time.

Mr Salie responded, "Under apartheid, young people grew up very quickly." He said there had been a big difference between the youth of Sea Point or pupils at Bishops and the young people involved in the struggle in areas like Bonteheuvel.

"Our children were forced to take responsibility beyond their years. Perhaps it does seem shocking, irresponsible and startling, but planting a mine or pulling the trigger of an AK (47) was just 10% of operatives' work."

"There was a multitude of tasks that we needed people to perform, and Miss November, despite her youth, had shown herself to be both highly committed and able to keep a secret."

After the hearing, Mr Salie and his fellow applicants crossed the floor to hug and kiss the Mr Bartlett and his family.

Despite this, the three pleaded that Mr Bartlett be compensated in full.

The amnesty committee reserved judgment and will study the applications in detail before deciding whether to grant them amnesty.

Assassination or 'hit'

(252)

Not knowing prominent Western Cape ANC leader Mziwonke "Pro" Jack had been killed by an ANC cadre, the organisation sent the killer to guard the Jack family against the security police.

This emerged during Xola Tembinkosi Yekwana's amnesty application before the Truth and Reconciliation Commission in Cape Town this week for Jack's killing on June 19 1991 - an application opposed by both the family and the ANC.

Clearly the high level of tension between the police and community and the widespread taxi violence resulted in conditions that put him at risk. But the Jack family never expected the danger to come from within the ANC, an organisation to which Jack, his sister and both his parents were committed.

The killing and inadequate investigation which followed it suggests weak levels of control and communication within Cape Town ANC structures in the early 1990s.

Jack himself joined the ANC at 18 during the 1976 uprising and was arrested the following year for illegal activity. He spent five years on Robben Island, was released in 1983 and again supported the ANC and its armed wing.

Among the thousands of people who mourned him at his funeral in Nyanga was his daughter Sihle, only four years old at the time.

This week Sihle joined the Jack family in the front row at the TRC hearing, which essentially failed to uncover the reasons for his killing.

But it did seem to suggest that Jack had been intentionally executed despite Yekwana's claim that it was a mistake and he was targeting policemen.

We will probably never know the true reason. It could have been the endemic taxi violence in which he was attempting to broker peace. It could have been the detention of Christopher Toyise (for which Yekwana may have blamed Jack).

It could have been the (police) - we don't know, said the family's lawyer, Advocate Ismail Jamie. "But one thing we do know it was not a mistake."

The ANC's lawyer, Peter Williams, agreed. It seems highly probable the applicant set out to kill Jack. It is my submission his application is a skein of lies."

Certainly the two-day hearing exposed a number of contradictions within Yekwana's evidence. It also conflicted with the testimony of Andile Jack, who survived the attack in which his uncle was killed.

Yekwana's lawyer, John Riley, said in his concluding argument. "The applicant has admitted he was responsible. What is not in dispute is that he was an active SDU member and regarded himself as an MK member as a result

The TRC hears conflicting accounts surrounding the killing of Western Cape ANC leader 'Pro' Jack, who was slain by an ANC cadre, writes **Claire Keeton**

sowetan 29/10/99

of training (for six weeks in Transkei)."

Riley added that the applicant had been accompanied by three other cadres all armed, and that attempts to trace them for the amnesty hearing had been unsuccessful.

The chief issues in dispute are the reasons for the killing and the circumstances in which they occurred.

"There is conjecture about why he was killed and I don't know if we will find out the truth," said Riley - even though his client must make full disclosure about the act for which he is seeking amnesty.

The family's lawyer responded. "We don't know the (full) events precisely because the applicant has not told the truth."

In Yekwana's version of events that night, he was waiting to ambush and kill police on patrol in Nyanga. He was taken off guard when a vehicle drove up to them and blindly opened fire on its occupants, intending to kill them.

The amnesty panel should find there was a deliberate attempt to assassinate Pro Jack

Yekwana said he was shocked to realise the following day that he had killed Jack and not policemen, and at the hearing he apologised to the family.

But at the time Yekwana, while describing himself as a disciplined member of the ANC, did not report what he had done to his commanders.

In fact when questioned about it by senior members of the organisation - including then MK chief the late Chris Hanu - Yekwana denied knowing anything.

Andile Jack gave a different account of the circumstances that night. He said Jack was giving him a lift home when he heard his first name, Mziwonke, being called. He wound down his window and reversed towards two men.

The men came round to the driver's side and opened fire on Jack at point blank range. Jack

pushed his 14 year old nephew under the dashboard and then fell on top of him. When the shooting stopped the boy - wounded in the chest and back - ran for help.

In their concluding submissions, both Williams and Jamie argued that Andile Jack's testimony was coherent and that Yekwana's was extremely improbable.

Jamie said it was unlikely Jack would have reversed off the road if nobody had called him. He said the cadres could not have missed Jack's approach, given that he was reversing and his lights were on.

He pointed out that Jack's Golf well known in the township had a different shape to the police vehicle for which Yekwana was waiting. Also Yekwana did not kill both occupants - he shot at Jack alone - an illogical move if he intended to eliminate policemen.

"The amnesty panel should find there was a deliberate attempt to assassinate Jack," Jamie said.

"If it was a pure mistake and Jack was at the wrong place at the wrong time it would be a very extraordinary coincidence."

"I find it impossible to conclude it was a coincidence that the very car attacked and very person killed was the person suspected to be responsible for Toyise's arrest, and the killer was living on (Toyise's) property. These coincidences are so incredible it makes it likely it was a hit."

Toyise was detained in the early hours of June 1991 after an AK-47 which had been borrowed and returned to him that day by cadres including Jack was found in his house.

Concluding the hearing, amnesty panel chairman Judge Dennis Potgieter said. "This application turns on whether or not (the killing) was an assassination or hit."

"It will take time to decide. This is a matter of importance as all applications are. This one in particular has attracted wider attention and we have to consider (it) very carefully."



Govt 'slow' on reparations

(252)

By **Claire Keeton**

ONE year after the release of the Truth and Reconciliation Commission's final report, there has been limited progress on its recommendation about reparations for the survivors and victims of political violence.

TRC commissioner Ms Hengiwe Mkhize criticised the Government yesterday for failing to deliver on reparation.

"The Government is responsible for implementing reparation but has said very little about the next step," agreed Mr Brandon Hamber of the Centre for the Study of Violence and Reconciliation.

Justice Ministry spokesman Mr Paul Setsetse admitted the process had "moved at a very slow pace". However, he said the department had completed a proposal on reparation for the Cabinet and it would soon be released for public discussion.

The Khulumani Support Group, representing thousands of survivors, will hand a memorandum to Justice Minister Penuell Maduna today.

Among the group's priorities are final reparations, investigations into disappearances, exhumations and pursuing perpetrators who did not apply for amnesty.

Its march to the Department of Justice will start at 11am from the Johannesburg Library Gardens.

Up to now about 8 000 out of about 22 000 people found to be victims by the TRC have received interim reparations of R3 500 each. The Government has spent only about R25 million of the R300 million set aside for reparations.

Meanwhile, 578 perpetrators have been granted amnesty and 5 412 refused amnesty by the TRC out of some 7 000 applications.

A spokesman for the TRC said the amnesty hearings were "over 90 percent finished. We hope to finish all amnesty hearings by March next year and to wrap up the final amnesty report by June."

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Legal fight could mean court chaos

CARMEL RICKARD (272)

ST 31/10/99

A SHOWDOWN is looming between the Legal Aid Board and lawyers threatening not to take any further work from the board when its new, reduced fee structure takes effect tomorrow.

Should the threat materialise, the board is likely to take tough action which could cut off the lawyers involved from any further board work.

The board says the tariff payable to lawyers for defending poor people has been reduced because it is facing financial ruin. In some areas, including Wynberg and Mitchells Plain, however, a number of lawyers say they will stop doing work for the board from tomorrow, citing the lower tariff as well as the fact that they have still not been paid outstanding fees.

According to a Cape Town attorney, most lawyers who have been involved in legal aid work fall into one of two camps — those who will finish the work they are doing but not take any further work, and those who will "bail out from Monday", refusing even to continue with their present cases.

If they go ahead, it could mean chaos at the courts, with cases postponed and uncertainty about when they can resume.

The Minister of Justice, Penuell Maduna, and the chairman of the

board, Judge Mahomed Navsa, both said yesterday that for the sake of taxpayers and poor people who needed state-funded legal representation, they could not yield.

Judge Navsa said that if the threat materialised he would request the full board, which meets tomorrow, to authorise drastic action including a request that the affected courts postpone all legal aid cases for a week while public defenders are brought in to take over.

He said the board would also act urgently to set up a "justice centre" in Mitchells Plain, staffed by public defenders employed by the board. Maduna said he had been inundated with letters from lawyers who said they would stop doing work for the board. He backed Judge Navsa's approach if lawyers refused to co-operate. "I am not perturbed, however. Those with a conscience will take over."

He said the establishment of justice centres was the policy of his administration and would give young lawyers an opportunity to do exciting work as public defenders.

Judge Navsa and his acting CEO, Peter Brits, met with lawyers in nine cities this week, telling them the new lower fees, as well as restrictions on travel costs, were essential to save the board from financial collapse.

He said urgent efforts were being made to speed up the payment of 80 000 outstanding fees owed to lawyers for work done as far back as 1992.

Organisational problems led to hundreds of cars blocking the streets including Harrow Road, said he was uncomfortable about the behaviour of certain individuals and later left the stage in disgust due to unruly elements

home and dropped her off at a All of this was gleaned from just one woman — Nomang. This week she went to ground,

Maduna says laws on legal practice must be redrafted

By MCHIPONE KOMANE

ST 31/10/99

JUSTICE Minister Penuell Maduna has called on his department to hold a national consultative conference to enable them to draft new legislation governing legal practice.

Speaking at the annual meeting of the Law Society of Transvaal on Friday, Maduna said existing legislation on legal practice was in conflict with the Constitution and did not take account of significant changes that had taken place regarding legal practice.

Maduna mentioned that in the past there had been an unfortunate perception that attorneys had a lower status than advocates. However, the ministry had taken significant steps to try and address this perception of inequality.

"The Bar continues to assert categorically that it is the best source of judicial appointments to the superior courts, so contributing to the perception that its members have a higher standing than attorneys," he said.

"The argument is that exten-

sive experience of high court practice makes advocates ideal appointees to the superior court bench.

"What the argument overlooks is that technical skill is not the only important criterion for these appointments."

Maduna said it was equally important that judges should be in touch with the values of the society they served.

Attorneys, who generally have closer contact with ordinary people than advocates do, met this requirement.

Maduna said the law society should be guided by some important principles when reviewing the legislation governing legal practice.

These principles included protection of the public interest, and the promotion of access to justice for all.

He added that attorneys played an important role in providing access to justice, since they provided a wide range of legal services.

It was therefore unfortunate that many South Africans could not afford to pay the fees of pr-

vate practitioners and were dependent on state legal aid.

"In terms of the Constitution and the Legal Aid Act of 1969, the state is obliged to provide legal aid for indigent people."

"As these people become aware of their rights, the demand for legal aid service increases," Maduna said.

He said his department's discussion paper on transformation of the legal profession included a suggestion to develop new roles for legal practitioners in the provision of legal aid services.

"These new roles would provide work and experience for legal practitioners who had not yet built up a sustainable practice."

"These practitioners could be employed in law clinics or advice offices for part of their working time as this would provide a steady income for practitioners who rely on legal aid work," he explained.

Maduna said the ministry believed an integrated approach should be adopted which allowed for delivery of services in a range of different ways

W Cape justice goes off rails

Kahn pleads for urgent action

ASHLEY SMITH
STAFF REPORTER

The criminal justice system in the Western Cape is on the edge of an abyss. Shocking statistics in possession of the Cape Argus indicate that from April to August this year there was a total of 95 050 criminal cases waiting to be finalised in the province's magistrates' courts.

The province's 42 regional courts, situated in crime-infested areas such as Mitchell's Plain, Cape Town and Wynberg, had 34 830 outstanding cases over the same period - a mind boggling 830 cases per court.

Western Cape Director of Public Prosecutions Frank Kahn said, "If steps are not taken to urgently redress the situation, these figures will escalate in the next two years to levels which will make the justice system totally unmanageable."

Justice delayed is justice denied. Another fact that highlights the critical situation in the courts is that the earliest an awaiting trial prisoner can hope to begin his trial in any magistrate's court in the province is between April and June next year. In the Wynberg sexual offences court the earliest trial dates are for May next year, while someone attending court in Goodwood will have to wait until June for his or her trial to begin.

Courts in CRISIS

- there are 95 050 outstanding serious criminal cases in Western Cape magistrate's courts
- there are 34 830 cases outstanding in the province's regional courts
- any accused will have to wait at least six months before their case may be heard in a magistrate's court - and they may have to wait even longer
- the Legal Aid Board allegedly owes R83-million to lawyers for work done over the past three years

Set to compound these shocking statistics is last week's decision by Cape Town attorneys not to accept further Legal Aid Board cases - criminal cases in which legal fees are to be paid by the cash strapped board. The board is said to owe attorneys more

than R88-million in arrears fees accumulated over the past three years

Although some lawyers have indicated that they will complete cases they have already started, today could see further court postponements throughout the Western Cape as attorneys enforce their boycott.

Commenting on the statistics on outstanding court cases, Mr Kahn said that not only were people waiting in jail "for long periods" before trials began, but witnesses were losing interest and forgetting their evidence, and "strong cases" were falling through the net.

Mr Kahn repeated recent calls by Justice Minister Penuell Maduna for a review of the three-and-a-half month recess enjoyed each year by the Cape High Court.

Mr Maduna evoked a storm of criticism from the judiciary recently when he told the National Assembly that the High Courts should conduct more criminal trials to relieve the load carried by the magistrate's courts.

He had earlier told the Pretoria Press Club some judges had time for trips overseas while the justice system groaned under an impossible work load. "While magistrate's courts like Mitchell's Plain and Wynberg are staggering under huge criminal case loads, the Cape High Court disposed of only 185 criminal cases last

Cape justice system in crisis

From page 1

year and yet they have 10 courts at their disposal," the minister said.

Mr Kahn said the Minister deserved support for his initiatives and added that the justice system was in dire straits.

"Historically murder cases which could only be heard by the then Supreme Court can now be heard by the regional courts. Bail applications which in the past were heard in the magistrate's courts could now also be heard in the regional courts."

"This means that the regional courts have become grossly overloaded," Mr Kahn said.

"What is simply needed are more regional courts or reviewing the system in the Cape High Court where criminal courts close down for three-and-a-half months a year."

"The issue is not whether or not the judges are idle. It is the fact that some 19 courts are shut down for three-and-a-half months during the recess," he said.

"Our Minister has seen the danger signals and he should be supported, not criticised."

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'Maduna tramples on our rights'

(252) Sowetan 1/11/99

By Nkosana Sibuyi

JSTCC Minister Dr Penneil Maduna has been quoted in newspapers as saying that English should be used as the only language of record in court.

There is no doubt the minister's comments will not go down well with language activists and speakers of African languages who have tried to ensure that these languages do not become extinct in this country.

To put matters into perspective, the dawn of democracy in 1994 ushered in a new paradigm in language equity and development.

The establishment of the Language Task Group (Langtag) as an advisory body to the Minister of Arts, Culture, Science and Technology was a landmark in the linguistic revolution of this country.

It was intended, among other things, to address "the lack of tolerance of language diversity" and the "fundamental importance of language empowerment in our democratic society".

The inauguration of the Pan South African Language Board (Pansalb) in 1996, to promote and create conditions for the development and use of all official languages, including the Xhosa, Nama and San languages and sign language as well as to promote and ensure respect for all languages commonly used by communities in South Africa, is another landmark in our language history.

Linguistic choice

Pansalb reaffirmed its mandate in its mission statement to 'encourage the best use of the country's linguistic resources to enable South Africans to free themselves from all forms of linguistic discrimination, domination and division and to enable them to exercise their linguistic choices for their own wellbeing as well as for national development.

In our constitutional principles as encapsulated in the Langtag Report, the goals of our language policy are to promote national unity, entrench democracy, promote multilingualism, promote tolerance towards linguistic and cultural diversity further the elaboration and modernisation of African languages and promote economic development.

The Langtag Report rightly notes



Justice Minister Penneil Maduna supports the idea that English should be used as the only language of record in South African courts

Unless these pertinent issues are robustly discussed as part of the national agenda, some of the comments uttered by influential leaders will lead to serious insecurity in the legal field.

Inasmuch as one is aware that questions of usage, practicality and expense should be taken into account, these should not be used as a scapegoat to deny the masses the opportunity to be informed in their own languages.

Without romanticising and sentimentalising the national language question we need to take heed of what Judge Albie Sachs said. "There are three basic rights the right to use your language, the right to develop your language and the right to understand and be understood by others."

These are the three fundamental language rights that should belong to all South Africans whatever their language might be."

Language is a right

To the extent that our linguistic diversity, rights and heritage are harnessed, we need to be vocal enough to challenge the old-age sentiment that perceives language as a problem.

Language is both a right and a national resource that enables a multilingual country such as ours to articulate its aspirations, longings, fears and needs.

The national language question is interwoven with other matters of national importance that affect the entire nation.

South Africa, like any other country, has had its fair share of historical and political injustices and continues to contend with problems dictated by current historical and material conditions.

The legacy of the past is still there. The continued dominance of Afrikaans and English is a case in point.

It is therefore our moral and historical duty to turn the situation around. The African renaissance will remain an absurd dream as long as we remain oblivious of the fact that "language is at the centre of a people's culture".

"The acceleration of their economic and social development will not be possible without harnessing in a practical manner indigenous African languages in that advancement and development.

(The writer is the senior communications officer of the Pan South African Language Board in Pretoria.)

government and the private sector. The promotion of multilingualism is not an impossible task. It is a national resource which will foster and improve language equity or fairness in the treatment of all official languages.

In the South African context in general and the public service in particular, the use of language in government should be tailored to provide equal access in languages that the people understand.

The Department of Justice cannot be immune from the process. Translation and interpreting facilities should be provided.

How many people have been sent to jail because they were tried in a language they did not understand?

How many people were acquitted of serious crimes because the police failed to record cases accurately in English?

How many people were sent to jail because interpreters failed to strike a balance between the terminology of African languages and the complexity of the English language?

of our Constitution and the use of African languages in domains previously reserved for Afrikaans and English.

The Langtag Report noted that "no language is superior to any other but historical development and previous social struggles, including colonial conquest racial discrimination and apartheid made it possible for English and Afrikaans to become the dominant languages in South Africa".

Not a problem

It is against this historical injustice and unfairness that we should all strive for language equity to permeate in all domains of our society.

Language must not be perceived as a problem but as a national resource for mutual enrichment diversity multiculturalism/multilingualism, economic prosperity and national development.

Ay agents of change in the transformation discourse we should collectively address the linguistic domination in our courts parliament education,

that "it has to be acknowledged that in the case of the Department of Justice, the possible impact of an official language policy on inter-provincial and province-central government relations, for example, the language in which judgments are written, necessitates a special and perhaps urgent in-depth study of this sector".

If Maduna's comments are anything to go by, it seems the sentiment that African languages are a problem will take some time to wither away in this country.

It needs to be acknowledged that language is a fundamental human right enshrined in our Constitution.

Over and above this the Constitution the highest law in our country makes provision for 11 official languages which must be used in the courts parliament and the legislative, judicial and executive arms of government and in all domains of society.

Maduna's comments will therefore not only set the cat among the pigeons but will cast a shadow on the credibility

Court told of trips⁽²⁵²⁾ to Libya by Basson

By Themba Molefe and Sapa

THE names of former President Nelson Mandela and his wife, Graça Machel, came up in the trial of apartheid chemical warfare mastermind Dr Wouter Basson yesterday.

State witness Mr Jerry Brand, a former director of Global Management, a company started by Basson, told Judge William Hartzberg in the Pretoria High Court that Basson had travelled to Libya several times in the early 1990s.

Brand said he had faced several federal charges in the United States after being arrested with Mr Grant Wentzel, a leading state witness who is still being sought by the Federal Bureau of Investigation (FBI) for skipping bail in 1990.

Basson's former business partner Wentzel led the scientist to an elaborate trap which led to his arrest on January 29 1997.

Brand said he returned to the US on his own accord and spent a harrowing year in an American prison before being allowed back to South Africa.

However, despite claims by defence counsel Advocate Jaap Cilliers that Basson had travelled to Libya in 1992 to fetch money for the kidnapping trial of Mandela's former wife, Mrs Winnie Madik-

izela-Mandela, Brand said he was aware but did not know why.

According to Cilliers, another former business partner of Basson, Mr Sol Pienaar, made the trip to collect the money in Libya with Basson.

Pienaar was a household friend of Graça Machel and also that of Mozambican President Joaquim Chissano's brother, Brand testified.

Pienaar and Wentzel were close friends. The former also knew Mandela and other highly placed figures in the African National Congress very well and there was a good chance to start an import export business.

I contacted Dr Basson and asked him if he could finance the business. He supplied us with R160 000.

I know Pienaar and Dr Basson travelled to Libya at one stage. When they returned Basson asked me to investigate the possibility of obtaining gas masks and uniforms to export to Libya.

We (Brand, Basson and Pienaar) later also went to see people in Mozambique with the idea to start a bank, Brand said.

He said he had also been instrumental in getting US \$ 25 000 (about R153 500) from Basson, which he handed to Pienaar.

Basson has pleaded not guilty to 61 charges including murder, fraud and manufacturing and dealing in

drugs.

Brand said he eventually closed down Global Management, because Pienaar "flew everywhere, but never got a contract".

Brand said he was in the late 1980s asked by Delta G to import "sensitive material" for them.

He was banned from Delta G after being arrested in the US for trying to export sensitive computer components and guidance systems.

Dr Gert Lourens, a former professor in synthetic organic chemistry at the University of Pretoria who was a development manager at Delta G, testified that Brand had at one stage asked him to develop a disinfectant that a client wanted to export.

After preparing a sample, he was informed that Wentzel was the exporter and the man who should pay him for his work.

He set up a meeting with Wentzel, but was told the deal had fallen through and that Wentzel could only pay him about R200. At a later meeting set up in the hope that Lourens could get his money, Wentzel said he knew that Delta G was manufacturing the drug Ecstasy.

He asked Lourens to develop a method to manufacture Ecstasy and promised that there would be "big money in it".

The trial was postponed to Friday.

Bold plan to speed up court cases

Pollsmoor the first stage

JEREMY LAWRENCE
STAFF REPORTER

A bold new plan could ease the logjam of cases overwhelming the Western Cape courts and reduce the number of awaiting trial prisoners being held at Pollsmoor Prison.

The department of justice's plan is also intended to save money.

The regional head of the department of justice, Hishaam Mohamed, says the objectives of the plan are to

- Review all cases to ensure that prima facie cases do exist against prisoners,

- Survey, on a voluntary basis, all awaiting trial prisoners to ascertain who intend to plead guilty and then "fast track" those particular cases,

- Facilitate outstanding trials by speeding up outstanding issues, and

- Manage corrective action for cases not court ready which still require further investigation.

Mr Mohamed said the Integrated

Management of Awaiting Trial Prisoners Project was in response to the jammed court rolls facing district courts and regional courts in the Western Cape.

The project part of the government's integrated justice system aims to reduce the number of awaiting trial prisoners and so expedite court proceedings. Mr Mohamed said each awaiting trial prisoner cost the government R82 per day.

The project has been running successfully in Durban, Port Elizabeth, Johannesburg, Pietermaritzburg and Empangeni.

Pollsmoor prison, which serves 27 regional and district courts as well as the High Court in Cape Town, has been identified as the project's starting point in the Western Cape.

The project has been sponsored by Business Against Crime.

Mr Mohamed said in another bid to ease the logjam, his department would look at introducing short term contracts for magistrates and prosecutors.

Murders: Amnesty for ANC member

ERIC NTABAZALLA

THE Truth and Reconciliation Commission has granted ANC member Afrika Hlalo amnesty for the murders of two white men and for terrorism acts committed in the 1980s and for which he served 11 years on Robben Island.

Families of the two dead men did not contest Hlalo's amnesty application.

Judge Denzil Potgieter said that after carefully considering the evidence and other material placed before the committee, the TRC was satisfied that all the offences committed by Hlalo were, as envisaged in the act, actions that had a political objective.

"The applicant's actions clearly resulted from political conflict at the time and were a direct result of the struggle for political liberation in which the applicant,

as a supporter of the ANC, was engaged," Potgieter said.

The case gained prominence when Hlalo asked the families for their forgiveness and told them he regretted his actions.

Hlalo was granted amnesty for the murders of Henry George Beeton and Frederick Casper Jansen on August 11, 1980, in Klipfontein Road.

He was also granted amnesty for attacks between August 8 and 12, 1980, near Nyanga East and Crossroads.

The terrorism charges on which Hlalo was tried included the stoning and petrol-bombing of 31 vehicles, assaults on a number of people and the barricading of Klipfontein Road.

The murders of Beeton and Jansen followed the beating by a young white policeman of a 79-year-old black woman

at the Nyanga train station earlier that day.

A crowd of about 2 000 people who gathered at the Nyanga bus terminus reacted angrily when told about the assault.

Hlalo and others addressed the crowd. A decision was taken to attack government vehicles as well as any white people whom the crowd might encounter.

Beeton and Jansen, who were driving nearby, were stopped by the crowd and stoned to death.

An army vehicle that drove into the area left without helping the two men.

In his application, Hlalo testified that in the turbulent political mood of the 1980s, white people were regarded as the political enemy and were accepted as targets for attack by political activists.

By Penuell Maduna

I HAVI read the comments attributed to certain High Court judges about the imposition of minimum sentences, in terms of section 51 of the Criminal Law Amendment Act, No 105 of 1997

These comments follow the public outrage at the lenient sentence by Judge Foxcroft in a rape case in which the perpetrator was the victim's father who had raped her over a number of years

I feel constrained to comment on these matters in the public interest

The idea of minimum sentences is not new or peculiar to South Africa. Many countries have passed mandatory sentences designed to make their citizens safer and more secure

In doing so, the relevant constitutional safeguards were considered and limited. The rights of the courts to comment or adjudicate on those measures have not been eroded in any way

South Africa today is characterised by levels of crime which remain unacceptably high. This is receiving the Government's most urgent attention

In accordance with the National Crime Prevention Strategy, many departments cooperate to combat crime effectively. The Justice Department particularly has implemented a number of measures to ensure the courts can play a meaningful role in ensuring our citizens can be protected against criminality

An essential feature of the plans designed to combat crime has been the adoption of legislation. The Criminal Law Amendment Act and the Proceeds of Crime Act are but two examples of legislation passed recently

The reaction of the judiciary to these measures has been, to say the least, surprising. That reaction has to be compared to the role and function of the judiciary under apartheid

Quite apart from the fact that a number of appointees to the bench were people who served the apartheid government well, the judiciary was inclined to vigorously implement measures introduced by the apartheid state

Many of the judges remain in office and have not been replaced, unlike the situation in other countries which have undergone changes similar to ours

As a result of the judiciary's work, a body of precedent has developed which we have not abandoned. Those principles formulated during apartheid, continue to be referred to by the judiciary to this day - but, it seems, selectively

Take for example, the question of minimum sentences. In 1983 the late Oscar Mpethe, a 74-year old political activist who was already ill, was sentenced to five years' imprisonment after being found guilty under the infamous Terrorism Act

The five year sentence was a minimum sentence which had to be

Sentencing: judges' discretion inviolate

(2/12) Sowetan 3/11/99

imposed by a court which convicted a person charged under that Act

Interestingly, the highest court at the time the Appeal Court - whose judgments continue to bind our courts today - rejected arguments that it could deviate from imposing a minimum sentence where such a sentence was prescribed, even though it expressed the view that such sentences interfered with the court's discretion

Although in that case the Appeal Court was confronted by a number of arguments which it found easy to reject, it did not even try to find a way of doing away with minimum sentences

Acting Judge Smuts' comments and the recent sentence imposed by Judge Foxcroft are therefore disturbing

Section 51 of the Criminal Procedure Act is a vital weapon in the fight against crime. Although it prescribes minimum sentences for a wide range of serious crimes, it does not remove the right of the courts to impose lesser sentences in appropriate cases

Section 53 provides that a court which is satisfied that "substantial and compelling circumstances exist, which justify the imposition of a lesser sentence than the sentence prescribed, shall enter those circumstances on the record of the proceedings and may thereupon impose such lesser sentence"

The section imposes a duty on a court to consider very carefully all the factors which, in its view, justify a lesser sentence. The courts seem to be reluctant to do so

In the days when the death penalty could be imposed, judges who found extenuating circumstances could sentence a convicted person to a lesser sentence. The same principle applies to minimum sentences today

Another aspect which needs to be considered in this context is the recent failure of the courts to come to the assistance of those who have the exacting task of fighting organised crime

A few months ago a number of courts ordered the state to return property confiscated under the Prevention

of Organised Crime Act. That Act allows the state, on application to a court, to seize property which it believes was acquired as a result of unlawful activity such as drug smuggling, racketeering or prostitution

In almost each case, the courts held that the Act could not be used in respect of property acquired before the Act came into operation. In the light of our own judicial history, those judgments appear to be surprising

The Constitutional Court is the highest court in South Africa today. In the case of *S v Makwanyane* 1995 (6) BCLR 665 (CC), that court repeated, with apparent approval, statements made by our courts in relation to the interpretation of statutes

It noted "Our courts have held that it is permissible in interpreting a statute to have regard to the purpose and background of the legislation in question"

Certainly no less important than the oft-repeated statement that the words and expressions used in a statute must be interpreted according to their ordinary meaning, is the statement that they must be interpreted in the light of their context

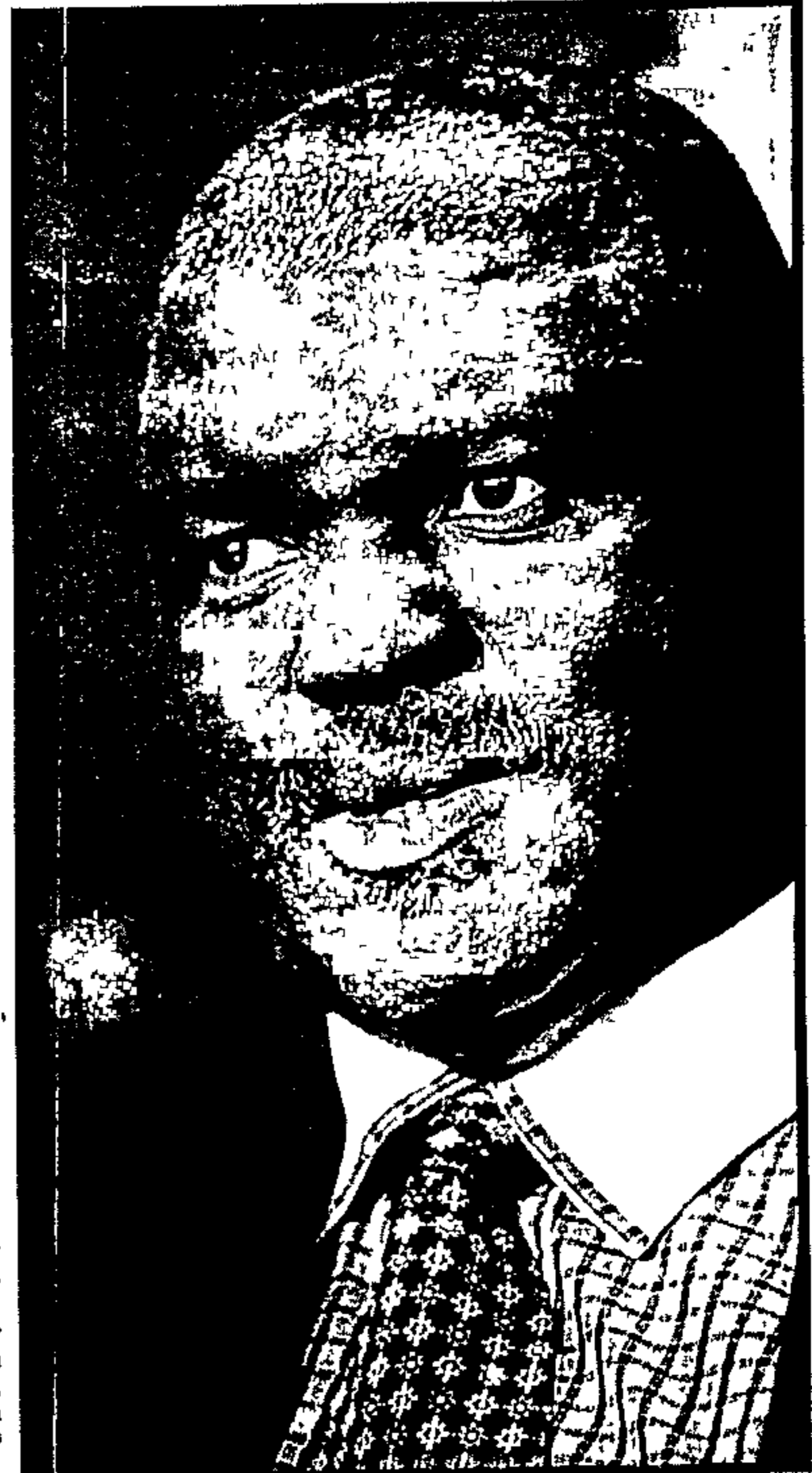
"But it may be useful to stress in relation to the application of this principle that 'the context', as here used, is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted"

"Often of more importance is the matter of the statute, its apparent scope and purpose, and, within limits, its background"

Our courts are entitled to use debates in Parliament, including statements by ministers responsible for legislation and explanatory memoranda on new bills, and may even consider reports of judicial commissions to assist them to interpret legislation

These rules of interpretation, rather than restricting the judicial discretion of judges, actually, in my mind, increase that discretion - particularly in cases where minimum sentences have been prescribed

(The writer is the Minister of Justice and Constitutional Development)



Minister of Justice and Constitutional Development Penuell Maduna.

Amnesty for Robben Island veteran

TRC rules on application by man involved in Cape Flats killings 19 years ago

MICHAEL MORRIS
SPECIAL WRITER

(252)
ARG 3/11/99

Hlalo had been given amnesty for his part in the deaths by mob attack of George Beeton, 59, and Frederick Jansen, 46 in Klipfontein Road on August 11, 1980.

Mr Hlalo's appearance before the Truth Commission at their offices in Cape Town was unusual, since he had already served a sentence in 1980 for his part in politically inspired murders on the Cape Flats nearly two decades ago, and has been granted amnesty and had his record cleared.

The Truth and Reconciliation Commission's amnesty committee announced earlier this week Mr.

In a private meeting after the hearing, the Jansen and Beeton families forgave him. Afterwards, Mr Hlalo publicly thanked the families.

"I feel it is important to thank them publicly for forgiving me. They have suffered a terrible loss, and I think it takes time to relieve the anguish they have felt."

"They forgave me, despite the horrible thing that happened, and for that I hold them in the highest esteem."

At the time of the murders, the Cape was in the throes of bus and school boycotts, and August 11 was the anniversary of deaths of ANC members in 1976.

The Nyanga East crowd, of which Mr Hlalo was a part, was so angered by reports of an assault on an elderly black woman by a young, white policeman that they regarded "any white man as a target".

Mr Beeton and Mr Jansen were the two motorists who became vic-

tims of that anger when they found themselves trapped between makeshift barricades across a road and the incensed crowd.

The amnesty committee said yesterday it was satisfied Mr Hlalo's actions "resulted from the political conflict of the time and were a direct result of the struggle for the political liberation which, as a member of the ANC, (he) was engaged in". It was also satisfied Mr Hlalo had made a full disclosure to the commission.

Judges overworked, says King

ASHLEY SMITH
HIGH COURT REPORTER

(252)
ARG 3/11/99

Western Cape Judge President Edwin King has defended the judiciary against a spate of attacks, saying judges are overworked and agonise over decisions.

Judge King was reacting to repeated calls by Justice Minister Penuell Maduna and provincial Director of Public Prosecutions Frank Kahn for a review of the high courts and to their criticism of the long recesses Cape High Court judges have every year.

He said yesterday that judges were overworked and that it was "no exaggeration to say that judges agonise over their decisions in their continuing search for truth and justice".

Mr Maduna told the National Assembly the high courts should take on more criminal trials to relieve the load of magistrates' courts.

He had earlier said some judges had time for

trips overseas while the justice system groaned under an impossible workload.

Commenting on a backlog of 20 000 cases in magistrates courts and 7 000 in regional courts, Mr Kahn said the minister deserved support for his initiatives.

Yesterday Judge King hit back. "The judges of this division work extremely hard. The work they do is of the utmost gravity and significance, affecting as it does not only the parties involved but also, very often, many others."

"It is no exaggeration to say that judges agonise over decisions in their continuing search for truth and justice. The judges' workload is immense and never ending."

"Some backlog of cases is inevitable. The



'Workload is immense', Judge Edwin King

best that can be done is to strive to keep it within manageable limits.

"To this end, certain special steps have been taken. No less than 1 200 divorces will be heard at the end of this term and the period for the hearing of full-bench (three judges) appeals has been extended extra sittings will be held for ordinary (two judges) appeals."

"The ordinary workload is such that judges have to find the time out of court hours to prepare for cases to be heard and to write reserved judgments."

"Court decisions cannot be instantaneous. A great deal of research is required and evidence must be considered in order to make

King defends Cape judges

credible findings and the legal principles to be applied must be established," Judge King said.

"Much of this work is done during the court recesses, particularly the long recesses during July and January."

"At the commencement of the first and third terms of the year, after these recesses, all but the two duty judges, the 16-18 judges, are engaged in full-bench appeals."

"In addition to working on reserved judgments, the judges have carefully read hundreds and on occasion several thousand pages of record."

"In addition to this, they research relevant law, in order to qualify themselves for the hearing of these appeals," Judge King said.

To page 2

Finance committee comes to rescue of Legal Aid Board and police medical scheme

ANDRÉ KOEPMAN
POLITICAL CORRESPONDENT

PARLIAMENT'S finance portfolio committee yesterday approved R107 million to bail out the nearly bankrupt and problem-prone Legal Aid Board, and has allowed police to move R300m allocated to fighting crime, to the ailing police medical scheme Polmed.

Judge M.G. Aureu Navsa, the recently appointed chairperson of the Legal Aid Board, said steps were being taken to address the "chaos and maladministration" he had dis-

covered on being appointed. He said the funds requested fell far short of the R290m needed to keep the fund afloat. Navsa ascribed problems to the failure to apply means tests to applicants for legal aid, the exorbitant fees paid to lawyers acting for the state, as well as huge backlogs in account payments.

As a result, fees were almost halved, which led to howls of protest from lawyers. A new system had also been introduced to speed up payments.

Rates paid to lawyers for appearances in the High Court had been reduced to R750 a day, from a high of up to R3 000 previously paid to senior counsel.

A means test had been introduced to ensure that only those who qualified for legal representation received it, Navsa said.

Since there had been no means test before, people who could afford to pay for their legal costs had claimed it in the board, while the poorest of the poor had not received assistance, he said.

Navsa added that a financial business plan expected to be finalised this week to map the way forward, would be submitted to Parliament soon.

Amounts approved by the committee have to be approved by Parliament. Committee chairperson Barbara Hogan expressed doubts about the board's future and whether additional funds would help it survive.

"Is it not just a case of heading water?" She asked a delegation from the board. The right to state funding for legal costs in courts is guaranteed in the Constitution's Bill of Rights.

Navsa said the board had debts totalling R428m. While there had been a marked improvement in the processing of claims since he had been appointed, there was still a huge backlog.

Hogan congratulated Navsa and his staff for their hard work in trying to cope with the processing of the hundreds of thousands of claims. Meanwhile, the committee was also asked to divert sorely needed crime fighting funds to the police medical aid scheme Polmed.

Morgan Chetty, the deputy national police commissioner, told the committee permission had been requested to transfer more than 2 400 officers employed had been reduced by 2 400, Chetty said.

Less money was needed for crime prevention programmes because the number of police officers employed had been reduced by 2 400, Chetty said.

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R300m from crime prevention to Polmed, to keep it afloat until next year.

The medical scheme has a history of corruption and fraudulent claims. From January next year Polmed would be registered as a private medical scheme, and would charge membership fees based on salary and number of dependents.

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(252) (299) CT 4/11/99

R170-m injection for legal aid board

ARG 4/11/99

(257)

State bid to get ailing body out of the red

POLITICAL BUREAU

Parliament's finance portfolio committee has approved a much needed R107-million cash injection for the Legal Aid Board (LAB), although the National Assembly must still endorse the decision.

This was in spite of committee chairperson Barbara Hogan's scepticism about the board's future and whether the granting of more funds would help it survive.

"Is it not just a case of treading water?" she asked an LAB delegation.

The delegation had briefed the committee on the need for R107 million in state funds - in terms of the Budget adjustment estimates - to keep the board afloat.

Newly appointed LAB chairman Judge Mahomed Navsa painted a bleak picture of the institution's financial situation, which, he said,

had incurred huge debts while desperately trying to meet its commitments in terms of the constitution.

State funding for legal costs in courts is guaranteed in the constitution's Bill of Rights.

Judge Navsa said the board had debts totalling R428 million, and needed R107 million in order to function and meet its obligations.

Although there was a marked improvement in the processing of claims since he had taken control of the board, there was still a huge backlog.

Judge Navsa said a means test had been introduced to ensure that only those who qualified for legal representation received it.

Previously there was no such test, and people who could afford to pay for their own legal costs had claimed from the board, while the poorest of the poor had not received assistance, he said.

Ms Hogan said the board had been

experiencing financial problems for years.

She congratulated Judge Navsa and his staff for their hard work in trying to cope with the processing of the hundreds of thousands of claims.

After the meeting, acting head of the board, Pieter Brits, said chances were good it would get the additional funding in the current financial year.

He added that this would not solve all the board's financial problems but would help greatly to get it out of the red.

He denied reports that the Board owes lawyers a "staggering R600 million" saying legal practitioners countrywide were owed between R160- and R200-million.

He said R600 million was the amount the board expected to pay out by April 1, 2000 if all the cases for which practitioners had been given instruction were completed.

Parliament gives Legal Aid R107m

(257)

Jonathan Katzenellenbogen

CAPE TOWN — Parliament's finance committee has given the go-ahead for the troubled Legal Aid Board to get an extra R107m this year.

But this will not cover its arrears of about R428m. The board's head, Judge Mahomed Navsa, criticised some lawyers who he said had become entirely dependent on legal aid work.

He said that to determine whether accounts were fair, board officials were looking at court files in some jurisdictions to determine if lawyers were in court for the time they claimed.

He said the board had to answer a philosophical question about whether it existed to serve the interests of private lawyers or the interests of the poor.

The R107m covers additional payments the board expects its computer system will be able to process before the end of March.

Last month the board thought it needed R270m to pay its arrears to March. According to board officials the agency, which gives free state legal assistance through its own lawyers and others in private practice, has cash resources of R80m.

Navsa said the board's problems had worsened over the years due to the absence of a means test for applicants for legal aid and the excessive payment of private lawyers. He said an unrealistic fee structure meant the board could pay a total of nearly R13m for two trials — the Bronkhorstspuit and Marble Hall heist trials, out of an annual budget of R233m.

Navsa said software problems meant the accounts backlog built up at between 250 and 500 a day. He said the board had received as many as 60 summonses a day to appear in court for late payment.

He expected the board would save with its new fee structure, refusing to pay for lawyers' waiting time, and implementing a means test for applicants.

At its sitting yesterday the committee also scrutinised the SA Police Service's (SAPS's) request for additional money for this fiscal year. The SAPS is facing a rise of R207m in medical insurance with the appointment of Medscheme as the new administrator of the police medical scheme Poimed.

Faster payment by Medscheme and a surge in medical claims ahead of the required registration for the new scheme on November 1 lie behind the rise in money to finance the rise in medical insurance will come mostly from a R286m transfer from the police crime prevention and response service.

Firms battle as lifeline clogs up

JEREMY LAWRENCE
STAFF REPORTER

As the dispute between the Legal Aid Board and Cape attorneys heats up, many affected law practices are struggling to survive.

For many young and inexperienced attorneys, the Legal Aid Board was the best way to build up a practice and gain experience, a city attorney said.

"Legal Aid cases are where many young attorneys cut their teeth. They need the experience and Legal Aid work does provide an income while they are building up a client base," said the attorney, who did not wish to be named.

In fact, the work has become so lucrative that many law firms have built their reputation and their businesses purely on Legal Aid cases.

"I know of several lawyers and law firms who rely only on the Legal Aid cases for their business. They operate almost exclusively at certain magistrate's courts like Wynberg and Mitchell's Plain," said the attorney.

Some city lawyers say the controversy surrounding the board's decision to reduce its tariffs was not the issue that was upsetting the law fraternity.

"We need to remember that the board does not owe us a living. Most of the attorneys who have refused to take on any more cases are doing so because they have not been paid for months and, in some cases, years," said a Western Cape advocate.

"We don't get any interest on the money that is owed to us." Other lawyers said outstanding fees, which in some cases run into thousands of rands, had caused

lawyers and legal firms to reconsider working for the board because in district court cases lawyers were paid only when the matter was finalised.

In many cases, this means a lawyer works on a case for up to a year before being able to make a claim.

"The problem is that we claim when a case is completed. If the case is postponed for several months, then we lose out."

While the dispute continues and the court rolls become increasingly congested, the Justice Department has launched a project called the Integrated Management of Awaiting Trial Prisoners to try to reduce the blockage.

The department's head in the Western Cape, Hisham Mohamed, said the aim of the project was to shorten the courts' waiting list by 10%.

FACING PROSECUTION, DEATH

Gay men seek asylum in SA

CT 5/11/99 (272)

SOUTH AFRICA'S commitment to gay rights is to be tested by the first applications for political asylum based on sexual orientation. **JUDITH SOAL** reports.

A UGANDAN doctor and two Pakistani men have applied for political asylum in South Africa on the grounds that they had to flee their home countries because they are homosexual.

The applications present a test case for South Africa and could set a precedent for similar applications in future.

"I am not a criminal," said Steve Kabuku, as the Ugandan doctor prefers to be known. "I didn't want to flee but at least I am safe here. I just want to live my life in peace."

A Home Affairs spokesperson said yesterday it was "technically possible" for the applications to succeed.

South Africa is a signatory to international agreements which determine the grounds for asylum," said the department's Henrie Meyer.

"One of these grounds is a well-founded fear of persecution in your home country. I can't comment on the merits of these cases but we will consider each one to see if this applies."

In Uganda gays can be charged with 'carnal knowledge of another against the order of nature', and sentenced to life in prison. Under religious laws in Pakistan homosexuals face a maximum sentence of death by stoning.

The South African government recently passed a law that specifies sexual orientation as one of the

reasons for granting political asylum, but the law will only come into effect in May.

"These people weren't able to wait for that," said Evert Knoesen of the National Coalition for Gay and Lesbian Equality. "Their lives were in immediate danger."

The asylum-seekers arrived in South Africa last month and were granted temporary permits to remain in the country until their cases could be heard. They are all living in Johannesburg.

Kabuku said he fled after hearing rumours that Ugandan President Yoweri Museveni, who recently ordered that all homosexuals be jailed, was considering sentencing gays to death.

"One of my friends from university visited me to warn me that I was in danger," he said.

"I had already stopped wearing earrings and putting decorations in my hair. I tried to be as plain as possible, but still people I had never met would come up to me in a bar and say, 'we know you, you're a homosexual'."

"They were getting more aggressive and basically I was freaking out."

He said he had heard of several gays being arrested since he left the country.

The men from Pakistan, who arrived a week after Kabuku, fled when the patriarch of the family found out they were a homosexual couple.

"They were given an ultimatum," said Knoesen. "Either they

dissolve the relationship and live a lie or they would be reported to the police."

The first country the couple could get a visa for was Zimbabwe, whose President Robert Mugabe has led the attacks on homosexuality. Unable to stay in Zimbabwe, they contacted the gay and lesbian coalition and were helped to come to Johannesburg.

Knoesen said although the applications would set a precedent if they were successful, the coalition didn't expect a "flood" of gays into South Africa.

"Canada and the United States have been granting asylum on the basis of sexual orientation for years. There hasn't been a flood there and we don't see why there should be here."

Public attacks on homosexuality in Africa have increased recently with the political leadership of several countries declaring gays 'un-African, unnatural and depraved'. Yet Knoesen said it wasn't only on this continent that gays were threatened.

"Homophobia is widespread," he said.

"Gays are persecuted in European countries like Rumania and Albania, in Islamic countries and in Asian countries like China."

"Even in South Africa, where we boast about our liberal constitution, many citizens hold similar views," he said.

"It's not as though we have won the battle here. We are still fighting the Department of Home Affairs for equal status for gay couples when it comes to immigration for example. Gay people still face a lot of discrimination wherever they live."

Money-laundering laws 'will empower bankers'

(34) (252) 80 \$ (1199)

Specialist on crime says confronting problem is 'a piece of cake'

Taryn Lambert

MONEY-LAUNDERING legislation does not turn bankers into policemen, but it empowers and encourages them to assist in the fight against organised crime, says international money-laundering specialist Michael Adlem.

Adlem, who hosted a seminar in Johannesburg yesterday on money-laundering and the growth of organised crime, said confronting the problem of money laundering was a "piece of cake. There are two things which have to be done."

"You have to put the correct legislation in place, and then you have to make sure you comply with it," he said.

SA recently introduced the Prevention of Organised Crime Act, which provides for measures to combat organised crime, money-laundering, racketeering, gang-related activities and civil forfeiture of criminally acquired assets. The Financial Intelligence Centre Bill aims to co-ordinate infor-

mation emanating from reports of suspicious transactions submitted by financial and other institutions in terms of the act.

One of the main aspects of new legislation introduced in the UK is that new clients must be identified before they are allowed to open accounts to prevent fraudulent accounts from being opened.

"It is often difficult to distinguish between fraud and money-laundering, and monitoring for money-laundering purposes can often identify potentially fraudulent transactions," Adlem said.

He said the sale of illegal drugs was the third largest industry in the world and between 50% and 80% of its proceeds was being laundered. Money-launderers tended to target bureaux de change and casinos, but also employed bankers to help them launder money through financial institutions, Adlem said.

As more banks and financial institutions conducted their business by telephone or over the in-

ternet, a vigilant attitude towards identifying money-laundering was crucial, he said.

Adlem said that every bank or financial institution should appoint a money-laundering reporting officer who was responsible for training staff on issues related to money-laundering.

Staff could also report suspicious cases to the officer.

Adlem said SA was not alone in its fight against crime. London police were also swamped with work and had admitted that they did not have the resources to investigate big corporate fraud matters.

Public Protector Selby Barwa said the new crime-fighting body, the Scorpions, would focus on organised crime and "have as one of its primary tasks the establishment of a better information management and crime analysis system."

US President Bill Clinton was recently quoted as saying the worldwide laundering of the proceeds of illicit activities amounted to about \$300-trillion a year.

JUDGE Willem Heath were running a business instead of a state-sponsored anti-corruption unit that there would probably be a queue of people outside his door eager to buy in. Instead, he finds himself battling a government which, for opaque reasons, wants to shackle him. Now Heath is preparing a breakout that could be a litmus test of government's will to fight corruption.

In the 15 months to May, Heath's special investigative unit and its associated tribunal recovered saved or protected state assets worth R1.3bn. That is not a figure Heath has sucked from his thumb. It was established and verified by Parliament's financial watchdog, the auditor-general.

The R1.3bn is not a bad return considering his annual budget, slashed for two years in a row, stands at a mere R168m. Treble that and you get close to the sum splurged on President Thabo Mbeki's inauguration.

Heath's current budget rose barely 4.3% this year, way below the percentage increase wrung from government by public service unions — unions whose membership is the nearest thing to a common factor in probes by the unit's forensic teams.

Small wonder, then, that Heath acknowledges that morale has dipped and that resignations have risen. The unit's 100 survivors, over half of them investigators, still manage to "put in some unbelievable work", he says. Despite their uncertain future.

So what is Heath going to do? In an interview at a discreetly secure house in Bedfordview, Johannesburg, he identified three critical interlocking issues: the unit's funding, its independence and the need for its procedural framework to be revised. He has a clear line on each and is determined to press the case.

And if no-one listens? Heath will not say but he gives the impression he will die fighting rather than live on his knees.

Prospects look bleak. The registration plates of cars parked in the Bedfordview driveway betrayed the unit's East Cape origins and base Justice Minister Penneil

range is formidable — from "ghosts" on pay-

rolls to drought relief fraud committed by farmers and co-operatives in the bad old days. There are also massive scandals involving township contracts and housing subsidies.

"We have made a lot of progress in Gauteng where we have decided to concentrate on the contractors who were given townships to develop," says Heath. "It is a major job because you have to check on every house that was supposed to have been built. We discovered some cases where contractors have built nothing at all. One such contractor was paid in full and went overseas. He came back — and was then given a second contract."

One investigator handles the entire Gauteng investigation, a tough task. Why does a government so publicly committed to eradicating corruption have such an ambivalent attitude towards a unit leading the fight?

Heath shakes his head. "You do not understand it. I do not understand it and I can tell you that the international community does not either. I have had so many discussions with international experts, not just politicians, and they are baffled."

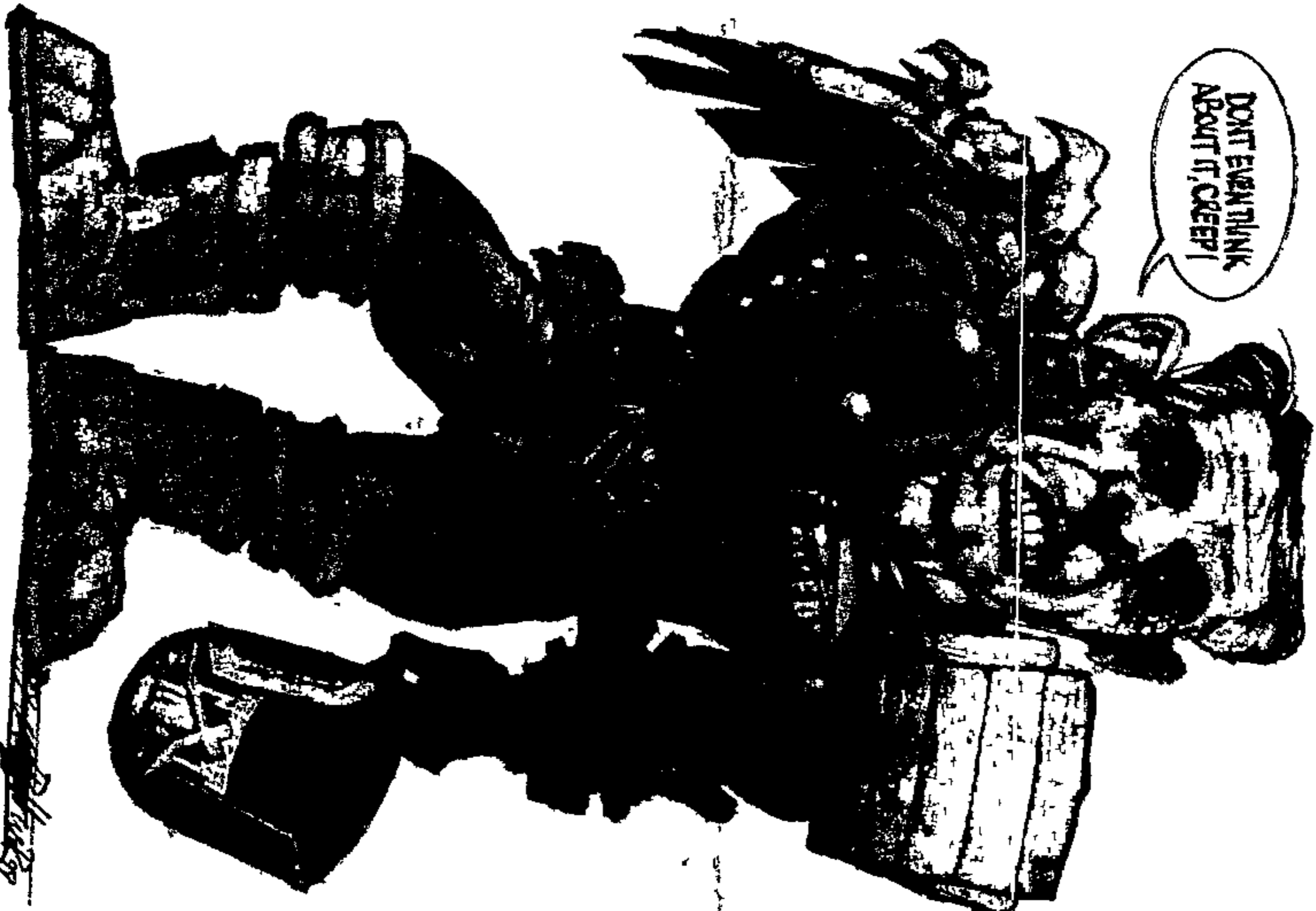
"Of course, there is a lot of speculation — that we are getting too close and that some are uncomfortable with that. Or that we have built a reputation which they [government] have not got and some are envious."

But Heath is at pains to claim government backing. "Those who attack us are the

He may not be popular with certain key government figures, but he is hitting the corrupt where it hurts

Don Quixote or Judge Dredd?

Bill Krige examines the tribulations of corruption-hunting Judge Willem Heath — the man who many in Parliament would like to muzzle



reaction was that all commissions just cost money. He was completely negative and antagonistic. The second occasion was a high-profile budget meeting with the deputy president [then Mbeki] present and he said I must motivate why we were appointed. My reaction was "You are the government. You appointed us. You should know the reasons!"

It might have been an impolitic response and Heath concedes that, as a result, "there might be a gap between us". Manuel subsequently sneered at Heath as "the Don Quixote of South Africa [taking] on everything regardless of budgetary constraints. Ask him to put money on the table," he said. "Then we can talk about growing his budget."

Money has been put on the table. The budget would still have embarrassed Mother Teresa.

Maduna has accused Heath of "begging for money". Heath denies it but he hints at the road ahead.

"No, I have not [solicited money overseas] yet. I have had many offers, as well as local offers, but up to now I could do nothing about it. But now I have an opinion from a senior advocate and someone from the department of justice which indicates that we are entitled to [accept offers]. So that will be my next project."

The unit needs to treble its budget, he believes. If non-government funding is one strategic thrust, revising the rules is another. The core issue is the requirement of proclamation, "one of my major fights", he says. As things stand the unit

try and recover them afterwards," says Heath. As a result of a proclamation delay in the East Cape "we must trace 191 people to collect R30m."

This instance relates to Tracor, a liquidated Transkei parastatal where management gave employees a sunset bonus — paying off bonds, debts on cars and school fees.

"A proclamation is not a requirement anywhere in South Africa or we would have any law enforcement institution," says Heath. "A police constable can arrest someone for corruption without a proclamation. Why can we not do the same?"

Independent funding and freedom from constraints are worth striving for, but is it not more likely that government will simply close him down?

"In theory they could. In practice, of course, they would have to face the public and international opinion. I do not think they would take the chance. I might just make a mistake but that is the only way I can see that is positive."

He is buoyed by the fact that so

many ANC supporters, "from the man in the street to those at the top," seek him out to say "Carry on the good work. Forget the politicians."

Has the unit's work led to an improvement in levels of public services?

"Yes, we believe so. When culprits hear that a case has been referred to us they pay back what they have taken. Free State officials paid back R30m before a proclamation was issued. Farmers [who benefited from drought relief schemes] paid back R62m and I have just seen you by the farmers that they have backpay of R40m which has been lying with the co-ops for some time."

Thousands involved in housing swindles have signed acknowledgments of debt.

Of the many causes of corruption Heath singles out two — the appointment of people to positions they know nothing about, and greed. Greed is fundamental. Local and international crime syndicates with "access to top people in government" operate countrywide and money laundering has become prominent. "Corruption," said Heath, "changes shape all the time."

THE CRIMEFIGHTER

IN RECEIVING the Johannesburg Press Club's Newsmaker of the Year award next week Judge Heath follows in the footsteps of that other distinguished crime fighter, Max the gorilla.

Heath, 54, married and with two sons and a daughter, is an Afrikaner who traces his ancestry to the arrival of English settlers in 1820. The first Heath was, in fact, a lawyer although maybe not a good one — being declared insolvent more than once.

Born in Boksburg, schooled in Touws River and a law graduate of Pretoria University, it is perhaps fitting that Willem Heath accepted a secondment from the Pretoria bench to Ciskei in 1988, then an "independent" homeland wedged in to settler country.

"The initial appointment was for two years. I found it very challenging and the minister was only too pleased that I

into corruption in the Eastern Cape and with the passage of the following year of the Special Investigating Units and Special Tribunals Act his work was given a national scope.

Heath said he was astonished at the "unbelievable support" for the unit internationally. "I was at an anti-corruption conference organised by Transparency International and the Department of Justice in Durban recently.

"It was attended by about 1,600 delegates from 110 countries and I was kept busy the whole time. People admire the unit for what it does. They see it as a success story, which it is actually."

So why does government not tap into this?

"That is exactly what I said to the Minister of Justice [Penneil Maduna]. I said 'Why do you not use us to your own benefit?' For the election you dro

Unfortunately for Heath, key members of the cabinet, led by Finance Minister Trevor Manuel are hostile. Penneil Maduna has followed a line set by his predecessor Dullah Omar at justice. And no-

C. J. R. C. and other nations have risen. The unit's 100 survivors, over half of them investigators, still manage to "put in some unbelievable work", he says. Despite their uncertain future.

So what is Heath going to do? In an interview at a discreetly secure base in Bedfordview, Johannesburg, he identified three critical interlocking issues: the unit's funding, its independence and the need for its procedural framework to be revised. He has a clear line on each and is determined to press the case.

And if no-one listens? Heath will not say but he gives the impression he will die fighting rather than live on his knees.

Prospects look bleak. The registration plates of cars parked in the Bedfordview driveway betrayed the unit's East Cape origins and base. Justice Minister Penneil Maduna says it is to the East Cape Heath and his unit will be confined just as soon as its current national workload has been disposed of.

That will take time. About 220 000 individual cases are on the books and more pour in daily. The

the fight?

Heath shakes his head. "You do not understand it, I do not understand it and I can tell you that the international community does not either. I have had so many discussions with international experts, not just politicians, and they are baffled."

"Of course, there is a lot of speculation — that we are getting too close and that some are uncomfortable with that. Or that we have built a reputation which they [government] have not got and some are envious."

But Heath is at pains to claim government backing. "Those who attack us are the exception. I have cordial meetings with other members of cabinet and they instruct their staff to assist us. If I go to Parliament the support we enjoy is unbelievable. My point is that the government does support us."

Unfortunately for Heath, key members of the cabinet, led by Finance Minister Trevor Manuel, are hostile. Penneil Maduna has followed a line set by his predecessor Dulah Omar at Justice. And no one pretends that Nkosazana Zuma — Royal Game throughout the Sarafina debacle — wants him around.

Omar handpicked Heath for the job — but later made it plain he wanted the unit to be answerable



to a cabinet committee, a death sentence for independence.

Heath gets steamed up at the memory. "In private he [Omar] would say 'Ignore what you have read, it is not the truth, I never said that.' And yet we had a transcript of what he said in Parliament."

Of Manuel he says "I have never given him reason to act so negatively. I have had three meetings in the past two-and-a-half years. The first was on budgets and his

denies it but he hints at the road ahead.

"No I have not [solicited money overseas] yet I have had many offers, as well as local offers, but up to now I could do nothing about it. But now I have an opinion from a senior advocate and someone from the department of justice which indicates that we are entitled to [accept offers]. So that will be my next project."

The unit needs to treble its budget, he believes. If non-government funding is one strategic thrust, revising the rules is another. The core issue is the requirement of proclamation "one of my major fights", he says. As things stand the unit must motivate requests for a probe. Foot-dragging officials and politicians have delayed the issue of proclamations by up to 18 months.

"We say it is very much easier to stop the loss of assets than to

judge Heath follows in the footsteps of that other distinguished crime fighter, Max the gorilla.

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"The initial appointment was for two years. I found it very challenging and the minister was only too pleased that I was happy to carry on," says Heath who now lives at Kidd's Beach outside East London. In 1995 he was appointed to head a commission of inquiry

vestigated 17 Units and Special Tribunals. Act his work was given national scope.

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So why does government not tap into this?

"That is exactly what I said to the Minister of Justice [Penneil Maduna] I said 'Why do you not use us to your own benefit?' For the election you dropped us instead of saying 'We have created this body which is making a success of what is entrusted to do.'"

"He took that seriously and maybe things will change."

REPUBLIC OF SOUTH AFRICA
SALDURU LIBRARY

By Claire Keeton
Feature Writer

A NEW nose is an unusual gift, but it's a contribution that will bring healing to Abraham Mkhize - which is one of the reasons behind reparations for the survivors of political violence during apartheid.

This donation is also significant as it shows how the private sector can assist with reparations for those declared victims by the Truth and Reconciliation Commission (TRC), in ways that could transform the lives of individuals and communities.

Reparations should include financial compensation, symbolic acts and improved access to social services such as medical care, according to the TRC.

"The willingness to assist Abraham Mkhize (by the Natal Technikon and Transnet) shows what can be done by the private sector," says the TRC commissioner responsible for reparations, Hlangwe Mkhize.

"This is where we should concentrate our energies."

Certainly the survivors and families of political violence, represented by the Khulumani Support Group, feel that business has a central role in providing reparations.

"The business sector could donate in kind, through services like medical care or education," says Ntombi Mosisikane from Khulumani. In addition, there is a need for financial support.

The TRC proposed that victims or their beneficiaries should receive financial reparations of around R21 700 annually for six years. With about

'Business must help with reparations'

22 000 victims, this would cost around R477 million a year, or close to R3 billion in total

At TRC business hearings in November 1997, submissions revealed how business implemented apartheid policies and how some companies even colluded with the security forces leading to gross human rights violations.

Retired Stellenbosch University economist Professor Saunpe Terreblanche made a presentation to that hearing for a wealth tax or some such mechanism to fund broad reparations.

"Restoration must be paid to the black poor, who were the victims of racial capitalism and white supremacy," Terreblanche reiterated to *Soewetan*.

He estimates that around R10 to R50 billion was needed to address the high levels of unemployment and poverty - which he links directly to

the structural exploitation of black labour under apartheid.

The TRC recommended in its final report that the private sector contribute towards reparations in an attempt to redress its past.

Justice Ministry spokesman Paul Seisense said the Government will take up this suggestion by calling on business to make a contribution once it has finalised its reparations policy - which is soon to be considered by Cabinet and then released to the public.

"Government is considering the establishment of a Reparations Trust Fund to which all sectors including the private sector and civil society, could contribute," he says.

While agreeing that business should support reparations, those working to speed up the process of reparations are concerned that the Government

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Restoration must be paid to the black poor

does not relinquish its responsibilities.

"Business should contribute, but that doesn't mean the Government doesn't have a responsibility to lead the process," says Brandon Hamber from the Centre for the Study of Violence and Reconciliation.

What is clear is that strong partnerships between the Government, the private sector and civil society are essential to turn reparations, which are already overdue, into a reality.

Pills made by pro, Basson trial told

By Themba Molefe

THE trial of Dr Werner Basson continues today against the background of evidence by a top American forensic scientist last week that drugs found on the apartheid chemical warfare mastermind were manufactured by experts in a technical laboratory.

Testifying for the state in the Pretoria High Court on Friday, Dr Tim Mckibben, of the United States Drug Enforcement Agency's special testing and research laboratory told Judge Willem Hartzberg that

Ecstasy capsules found on Basson in January 1997 "could not simply be manufactured in a backyard garage but by experts in a technical laboratory". Mckibben is one of several international criminal investigators and experts on the list of more than 150 witnesses in Basson's trial.

Identities and addresses of several other state witnesses have been withheld in terms of a decision by the Director of Public Prosecutions.

Basson has pleaded not guilty to 61 charges including 16 counts of murder, several fraud charges relating

Basson was captured when he allegedly sold red and black capsules to his ex-partner
Souwetan 8/11/99

to R80 million and six charges of possession and dealing in drugs.

When the trial resumed on Friday after a week's break Mckibben said the Ecstasy capsules, found in

Basson's possession when he was arrested in 1997 were the same as samples he had analysed for the South African Police Service.

Basson headed the South African Defence Force chemical and biological warfare programme which aimed at eliminating enemies of the apartheid state.

He was captured when he allegedly sold red and black capsules to his former business partner Mr Grant Wentzel in an elaborate police sting operation in 1997.

Wentzel helped police to set a trap

for Basson at Megonha Dell in Pretoria. Red and black capsules were found on Basson while the yellow and red capsules were found on Dr Johan Koekemoer, a scientist at Delta G - a front company for the former SADF's Project Coast to develop a chemical and biological warfare capability for the country.

Mr Richard Freeman, the sole importer of empty capsules in South Africa, on Friday positively identified the capsules allegedly found on Wentzel and Basson as those imported by his company.

Court hears how ANC man was tortured

10b 9/11/99

Viakplaas operatives killed Swazi 'on orders'

FORMER Viakplaas police commander Col Eugene de Kock said he accepted responsibility for the actions of operatives who kidnapped, tortured and killed a Swazi national on his orders in the 1980s.

De Kock and eight others are applying for amnesty for killing Jameson Mngomezulu an African National Congress member who assisted ANC cadres to infiltrate SA.

The apartheid security police wanted information from Mngomezulu on the names and number of "terrorists" who had infiltrated the country to be able to trace them.

"I take responsibility for the actions of those persons who acted under my command and those who were co-opted," De Kock said.

Mngomezulu was kidnapped and taken to a place called Moolman outside Piet Retief in Mpumalanga.

De Kock testified that the order to take action against Mngomezulu came from Lt Gert Schoon head of the northern Natal command at that stage.

It was approved by his brother Brig Willem Schoon at the security branch headquarters in Pretoria.

De Kock said he did not approve of

the methods used to torture Mngomezulu to get him to talk.

While he was not present himself, he was informed that barbed wire was inserted into the captive's urethra by Kimpuni Mogai, who was mainly responsible for the interrogation.

De Kock said he found this so offensive that he ordered Mogai not to be used for interrogation again.

"We were used to torture methods such as electrocution the helicopter method burning breaking arms, assault, sjambokking, tubing and wet bags. But this was I don't know beyond me and I am not being coy here. I have never heard of this," De Kock said.

Presiding officer Judge Sisi Khamepe said the panel found it interesting that De Kock found the methods used by Mogai offensive in light of the fact that there were no guidelines for torture given to Viakplaas operatives.

Mogai's legal team said his client would deny ever using such methods.

Mogai would also claim in his application that De Kock had been party to the torture. He had allegedly "struck the deceased in his testicles," De Kock said if he had been present he would have told the committee so — Sapa



Former Viakplaas police commander Colonel Eugene de Kock and eight others are applying for amnesty for killing African National Congress member Jameson Mngomezulu

Stiffer penalties in gun bill

David Greybe

CAPE TOWN — Government has rejected psychometric tests for gun owners in the final draft of its gun control legislation.

The draft firearms control bill sets strict requirements for licensing and registration of firearms, introduces checks on prospective gun owners and gun dealers and stiffens penalties.

Anyone caught with an illegal firearm faces a maximum 25 years in prison, Alice Plenaar, a manager of government's firearms programme and assistant director in the national crime prevention centre, said yesterday.

Gun dealers could lose their licences if, for a third time, they cannot account for their stock, Plenaar said. The first time they face a R5 000 fine, the second time a R10 000 fine. "Government intends to crack down hard on any illegal trade in firearms," she said.

Government rejects the call for psychometric tests for firearm owners

The draft legislation limits gun owners to one hand-gun for "self-defence" purposes, while hunters, sports shooters and collectors of firearms will be permitted to apply for an exemption to the number of firearms they can own.

There was an outcry by the pro-gun lobby a few months ago when the drafters proposed psychometric testing of applicants for gun licences. Plenaar said government had rejected the proposal because psychometric testing was internationally "very unreliable".

Applicants will have to conform to a "layered licensing system", she said. Arguably the biggest difference between the draft bill and the 1969 Arms and Ammunition Act is that now both gun owners and firearms will be licensed and registered.

Applicants for gun licences will have

caused an outcry among the pro-gun lobby, that government intended to charge R500 (presently R50) for each firearm licence were "totally incorrect".

"Government does not know what it will cost. We will first undertake a business evaluation to establish the actual cost involved in issuing a firearm licence," she said. "The fee, to be reviewed annually, will be based on the Masakhane principle we will charge applicants what it costs us to administer the legislation."

New gun licence applications will be dealt with under the new legislation once it is enacted. However, SA's estimated four-and-a-half-million current licence owners will have to register under the new system only as part of a government firearm audit.

Plenaar said such an audit was likely

to commence only in 2001 and "take three to four years to complete".

Under the new legislation licences for hand guns will have to be renewed every five years and licences for rifles once every 10 years, Plenaar said.

Owners of "self-defence" hand guns will be permitted a maximum of 200 rounds "at any one time in their possession", or 2 400 rounds a calendar year in a working document in July it was proposed to limit the number to a maximum 100 rounds. Bona fide hunters, sports shooters and collectors will not be limited to this restriction, she said.

An earlier proposal to limit hand gun magazines to 10 bullets has been scrapped, as well as a proposal to limit the length of the barrel to six inches. The draft bill allows a maximum of four firearms for a third category of gun owners — anyone who classifies as "an occasional hunter or sports shooter".

Freedom for Eikenhof Three

(25/2) ARG 9/11/99
SPECIAL CORRESPONDENT

The Eikenhof Three were to be released from the Diepkloof Prison in Johannesburg today after more than six years in jail for a massacre they always maintained they did not commit. The Gauteng Director of Public Prosecutions has decided not to prosecute them in a new trial. The release of ANC cadres Boy Ndweni, Sipho Gavin and James Bholo brings to an end one of South Africa's most controversial legal chapters. They were arrested soon after the 1993 car ambush at Eikenhof, near Johannesburg, in which Zandra Mitchell, her son Shaun and his friend Claire Silberbauer died. The Pretoria High Court sentenced Bholo and Gavin to death and Ndweni to 17 years in jail. The death sentences were later commuted to life in 1997. Phyllis Dolo, a commander of Apla, the Pan Africanist Congress's armed wing, told the Truth and Reconciliation Commission he had ordered the attack.

Basson's guest house allegedly cost R8m

(M2) 66/11/99

PRETORIA — Apartheid chemical warfare expert Wouter Basson's involvement in the development of a luxury guest house, which cost the SA tax payer about R8m was revealed to the Pretoria High Court yesterday. Basson faces 61 charges, including 27 of fraud. The state alleges he used government funds to build a vast private business empire, both locally and overseas. He allegedly failed to reveal his direct or indirect commercial interest in about 38 companies or entities to the defence force, for which he worked. A Pretoria architect Lizelle Larson, testified yesterday that she worked on various projects with Basson over a number of years and had been paid by various companies during that time. She said she never questioned the arrangement because it was not her place to question her client. She renovated a house in upmarket Waterkloof Ridge in Pretoria for Basson and his present wife, Annette, in about 1988 for R1.5m. Her instructions came from Mrs Basson (then Mrs Versiuis) but it had been her impression that the couple lived in the house together.

She was paid by Aries Trust. She said the house was "very big" and luxurious, boasting conference facilities and an extra office or flat, once the project was finished. The house would now be worth between R3m and R4m. Larson said she drew up plans for two other properties for Basson, but these never materialised. In 1990 she became involved in the refurbishing of an Arcadia house which was turned into a luxury guest house, complete with marble interiors, cordon bleu kitchen, billiard room and sculpted garden. The project took almost four years to complete and the initial cost of R1m eventually escalated to almost R8m. The state alleges that the guest house, known as Merton House, was eventually sold at a huge loss. Basson, who gave all the instructions, told Larson the guest house was needed to house potential overseas investors. Larson said she had dealt chiefly with Basson. It was on his instructions that she conferred with two of Pretoria's top chefs about the kitchen. Her ticket on a commercial flight and later on a private Lear jet, which seemed to belong to Basson, were all paid for, as was her accommodation. Larson was initially paid by a company called Wisdom Erf 129, but when she later complained to Basson that she had problems getting paid because he was overseas so much, he told her to open a project account in her own name into which money was paid. Cheques were deposited into this account by a number of different companies, but Larson never questioned this. She eventually closed down the account and handed the financial affairs of the project over to one of Basson's partners because the project had grown to such an extent that she no longer felt comfortable to handle the finances. The trial continues — Sapa.

Basson ordered R8m luxury guesthouse

(25/2) ARG 9/11/99
ZELDA VENTER

PRETORIA — Apartheid chemical weapons specialist Wouter Basson gave instructions for the R8 million restoration and conversion of Merton House into a luxury guesthouse, the Pretoria High Court heard yesterday. A Waterkloof architect, Lizelle Larson, testified that the house in Arcadia, a suburb here, was fitted with a cordon bleu kitchen, library, sauna, jacuzzi and marble finishes. The state claims Basson used SA Defence Force money earmarked for its secret biological warfare programme, code-named Project Coast, to enrich himself. It is alleged that the more than R10m that Merton House eventually cost, including renovations, was paid by Project Coast's front companies. Larson said she had been instructed by Basson to transform the property into a luxury mansion. Cheques from various companies were paid into her account for her services, she told the court. She had not questioned this because "it was not her place to do so". During cross-examination, defence counsel Jaap Cilliers put it to her that Basson had not owned the property and was only acting on behalf of an American businessman. Merton House had not been earmarked as a guesthouse but as an embassy, Cilliers said. The "guesthouse" instructions were intended as a cover for the embassy.

Larson said she had not been given the impression that Basson and Anette Versiuis, who were married in 1991, would move into the house. Basson had asked her in January 1990 to renovate Merton House so that businessmen who came to look for investments in the country could stay in the luxury to which they were accustomed. Before the renovations began, Basson took the plans abroad and returned with a list of requirements, Larson said. At first Basson told her to spend about R1m on the renovations, but as his demands for luxury grew, the cost of the

project increased to R8m. She received all her instructions from Basson and she accompanied him when he went shopping for such items as bath taps. Basson also wanted a cordon bleu kitchen in which trained chefs could work. The project took three years. Among the super-luxury mansion's features were reception areas, en suite bedrooms and a cellar large enough for 1 000 bottles of wine. This was in keeping with Basson's specific instructions, Larson said. The property next door was bought and its 60-year-old house demolished to create a parking lot for Merton House. Larson said she had met Basson in about 1987 when Versiuis asked her to renovate her Aries Street property for R1.5m. This sum was paid by the Aries Trust.

Merton House was sold eventually at a loss to the Zimbabwean government, which paid R7.5m. Cilliers pointed out that Larson's evidence fitted in with his client's claim that Merton House had been earmarked for an embassy. He said the extra parking lot, the luxury kitchen and the big wine cellar had been reinforced so that it could be used as a bomb shelter if necessary. Larson conceded that, looking back, it could have been renovated for use as an embassy.

Cilliers said Basson had given the go-ahead for everything that had been done. Basson's wife — who was a "perfectionist" — had not interfered in the renovations, so this proved it was not intended that the couple would live there. The prosecution said it was the first time the state had heard about the property's having been developed as an embassy. The state began to focus yesterday on the fraud charges against Basson. Evidence relating to the drug charges is being concluded. Surgeon-general Niel Knobel is to testify about the drug charges and to explain Project Coast's workings to the court.

MAMMOTH LAWSUIT MOOTED

Innocent men freed after 6 years

Eikenhof 'attacker' joins SANDF

PHILA DOLO, the man who claims he ordered the Eikenhof attack, joined the South African Defence Force in Kimberley last Wednesday.

"I personally ordered that massacre, although the initial target was supposed to be a school bus carrying white children," Dolo said.

Three ANC men who were wrongly convicted for the killings, spent time of death row and were jailed for six years, were finally freed yesterday.

Dolo, a former commander of the PAC's armed wing, Apla, applied for amnesty from the TRC for the March 19 1993 killing of a woman and two children.

Dolo's attorney Lungelo Mbandazayo said yesterday the case was expected to be heard by the TRC's amnesty committee early next year. If he is denied amnesty, the state could charge him for the murders.

Mbandazayo said Dolo was part of a group of Apla cadres who had received amnesty and were now being integrated into the defence force.

Killed in the June 1994 ambush were Zandra Mkhchey, 35, her 14-year-old son Shaun and his 13-year-old friend, Claire Silberbauer.

In a newspaper interview last year, Dolo accused the police of knowing for a long time that he was responsible for the Eikenhof massacre, but deliberately putting the wrong people in jail.

Attempts to contact Dolo for comment yesterday were unsuccessful.

When earlier asked how he felt about the fact that the three men were serving jail terms for something they did not do, Dolo reportedly said he felt sorry for them but could not do anything as he would have had to face the hangman's noose himself.

"It was not for me to go to the police and confess," he had said — Sapa

(252) CT 10/11/99
JOHANNESBURG: Three men who have spent the last six years in jail, for crimes they didn't commit, are free and plan to demand compensation, write **SELBY BOKABA and TEO MOTHIBELI**

THE Eikenhof Three, released from prison amid fanfare yesterday, were scheduled to meet with their lawyers today to plan a mammoth lawsuit against the state for unlawful arrest and conviction.

In an exclusive interview last night with *The Star* — at a "welcome home party" in Sebokeng in the Vaal Triangle — Siphso Samuel Gavin, speaking for the trio, said "We are definitely going to demand financial recourse."

"We'll be meeting with our lawyers to determine the extent to which we can demand financial reparation."

The Eikenhof Three have been in prison for the last six years. As they left the court, tears of joy rolled down their cheeks. Hugs and kisses were exchanged and women ululated.

Siphso Bholo, 31, Titi Boy Ndweni, 26, and Gavin, 24, were carried shoulder-high by a band of ANC supporters who burst into struggle songs as the trio prepared to spend their first day of freedom with their families.

The scene was reminiscent of the joy of the release from prison of Nelson Mandela in 1990.

Family members, relatives, friends and placard waving well-wishers hardly contained their excitement.

Bholo, Ndweni and Gavin were drenched with perspiration in a packed hall at Johannesburg Prison after they were mobbed by friends and family moments after their release.

They expressed gratitude at the support the ANC and civic organisations had given them while they were still imprisoned. They said they had remained "loyal" to the ruling party.

"I am happy to be released. I stood innocent from the beginning," Ndweni said, to roaring applause.

"I thank our families, the ANC and the PAC for telling the world who was responsible for the killings."

"There are still those reactionary judges in the country. And the

government should appoint people who know their work.

"Judges should judge fairly and not use colour to judge."

The release of the three followed startling claims by the ANC's political arch-rival, the PAC, that the Eikenhof Three had not committed the three murders they were convicted and sentenced for.

The PAC accepted responsibility and have since applied for amnesty from the TRC. The outcome is pending.

Responding to his new freedom, Gavin said, "This is a surprise. I don't believe it's true — I am shaking."

"I want to thank those who campaigned for our release. May God be with them."

Bholo thanked their legal team, headed by attorney Mohamed Randera, and the ANC for its relentless support.

"I am happy to be free," Bholo said.

Nikwe Suphung, a family member of both Bholo and Gavin — who are cousins — said she was happy because they would be able to spend Christmas with their family.

Suphung said their release marked the end of their misery in prison.

"We were worried that we wouldn't celebrate the new millennium with them," Suphung added.

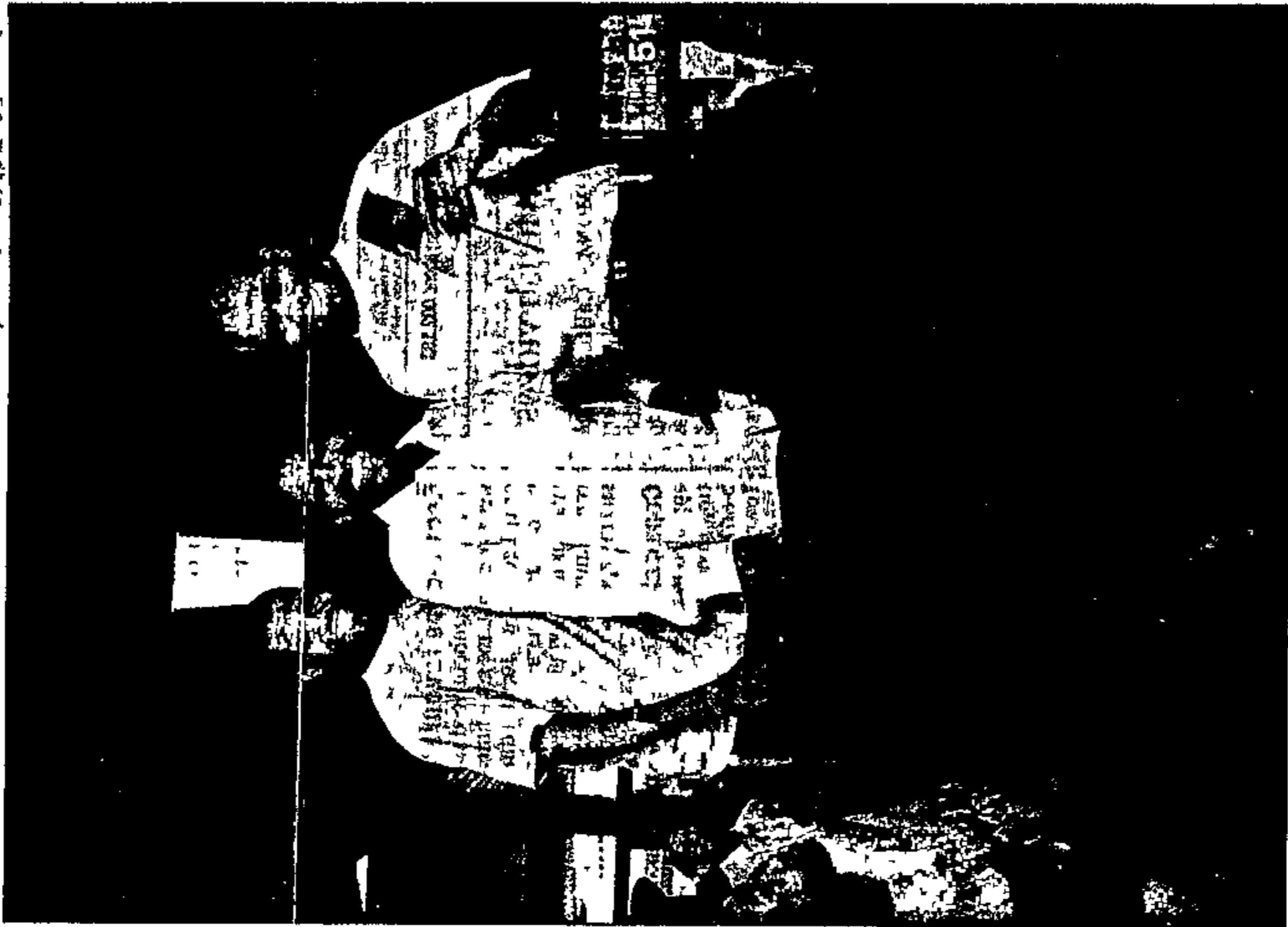
Bholo, Ndweni and Gavin were whisked away into a convoy of vehicles and immediately ushered to the ANC headquarters, Luthuli House — formerly known as Shell House — to greet staff.

Scores of people last night gathered in the Vaal Triangle for what some described as "a mother of all bashes" to celebrate the return of the trio.

ANC Gauteng secretary Obed Bapela led a wave of enthusiastic supporters who welcomed the trio. Bapela said they were happy that the men were reunited with their families.

"We thank the assistance of the PAC and the campaign to release the men, spearheaded by the ANC in the Vaal

"The ANC will take care of the comrades until they acclimatise," Bapela said.



FREE. The Eikenhof Three, Siphso Samuel Gavin, Titi Boy Ndweni and Siphso Bholo celebrate their first day of freedom at the ANC headquarters in Johannesburg. **PICTURE: STEVE LAWRENCE**

MORE CRACKDOWNS EXPECTED

Dealer's assets frozen in terms of new law

CT 10/11/99 (36) (252)

IN the first action taken by the Assets Forfeiture Unit since problems in the Prevention of Organised Crime Act were ironed out, a Facticeon drug dealer's assets were frozen yesterday. Crime Writer **GASANT ABARDER** reports

A LARGE notice was posted on the steel doors of alleged Facticeon drug dealer Christopher "Ougat" Patterson's house yesterday stating that the house and its contents had been frozen, it was the culmination of a five-month investigation.

Anyone who moves or damages the Matroosplein property or its contents in a way that will lower its value will be held in contempt of court.

The action taken yesterday was one of the first moves by the Assets Forfeiture Unit to find communities of illegal shebeens and drug houses. Similar actions are expected all over the Western Cape.

Head of the Assets Forfeiture Unit Willie Hofmeyer said Patterson, the leader of the Wonderkids gang in Kensington, and his wife Denise were married in community of property and that a mortgage bond of R47 500 was registered against the property.

The preservation order served yesterday was to ensure that the

property was preserved pending an application for a forfeiture order which should be made within 90 days, he said.

Patterson appeared at the house in a 3-series BMW, but sped off when he saw police and the media outside his property.

In an affidavit, Hofmeyer submitted that the property was "an instrumentality of an offence".

"I submit that there is compelling evidence in affidavits that the property has been used for the illegal sale of drugs and liquor. The evidence is supported by information contained in affidavits that Patterson does not have any legitimate sources of income that justifies his lifestyle," Hofmeyer's affidavit read.

He also submitted that either Patterson or his accountant had consistently fed false information to the South African Revenue Services and financial institutions about his true income, his sources of income and nature of his business. There was a strong likelihood

that the bond payment money came from the proceeds of crime.

The preservation order was as much the work of the community and the local police as it was of his unit, Hofmeyer said.

The Cape Times learnt yesterday that children as young as nine years old were being roped into drug and gang activity in Kensington and Facticeon.

Kensington police station commander William Clayton started mobilising the community against gangs and drug dealers last year when he took office.

Clayton dispatched sergeant Jamin Witbooi, an intelligence officer, to research Patterson's property.

Witbooi consulted a police register in which he found a string of cases dating back to 1994 which include arrests and convictions for the possession of drugs like marijuana, cocaine and crack cocaine.

Liquor, sold in contravention of the Liquor Licences Act, was also confiscated.

Clayton was also behind the formation of a Kensington/Facticeon Community Policing Forum (CPF).

Chairperson of the CPF, the Rev Noble Williams, said "The community want him (Patterson) out and this was evident in the protest marches, where scores of people joined in and stopped being afraid of intimidation and threats. They can see that the police and CPF are doing something good."

Billy Downer, deputy director of Public Prosecutions in the Western Cape, said the Prevention of Organised Crime Act had been amended since the case against another alleged drug dealer, Gavin Carolus, had failed.

"What we have to prove in 90 days is that the house is being used to further criminal activity. The problem with the Carolus case was that the act could not be applied retrospectively," Downer warned that these actions could be the first of many in the province.



FROZEN ASSETS. From left sergeant Jamin Witbooi, Kensington police station commander William Clayton and community policing forum chairperson Noble Williams outside alleged drug dealer Christopher Patterson's Facticeon house. PICTURE, DENZIL MAREGELE

Debate on court record language



PRACTICAL. Justice Minister Penuell Maduna

CONSULTATION with stakeholders and the general public about the language of record to be used in the country's courts would start very soon, Justice Minister Penuell Maduna said yesterday.

Existing legislation and current court practice were not in line with the Constitution and needed reviewing, Maduna said a survey of other English speaking countries in the Southern Africa Development Community showed these used only English as the language of record.

"This is despite the fact that all such countries have their own indigenous languages which, like our own, were victims of diminished use and had lower status in the heyday of colonialism," he said.

The current practice in South Africa's magistrate's courts derived from a 1944 act, which determined that either of the two official languages — at that time Afrikaans and English — had to be used as the language of record.

The Constitution, which recognises 11 official languages, required the state to take practical and positive measures to elevate and advance the use of indigenous languages, and to recognise their historically diminished use and status.

While using all official languages would satisfy constitutional requirements, "one is nonetheless constrained to agree (that) the conduct of court proceedings

in indigenous languages would entail inconvenience, delay, and the additional expense of having the records translated in instances where such proceedings became the subject of review or appeal."

Two judge presidents had said the best solution might be to adopt one of the 11 official languages, which would be used exclusively for the purpose of court proceedings — irrespective of the mother tongue of the court officials involved.

Maduna said the Constitution did not grant an accused person the right to be tried in a language of his or her choice or mother tongue.

Although there is the right to be tried in a language he or she understands, "in the final analysis, the language an accused person understands, as opposed to a person's mother tongue or language of choice, and what is practical, are questions of fact to be determined by the judge or magistrate in each instance they are raised."

During a workshop on the issue in February last year, many stakeholders preferred English to be recognised while it was suggested that people be entitled to address the courts in the languages of their own choice — Sapa

Lawyers face legal aid fraud probe

Many more to be investigated as board pushes issue 'to the hilt'

JEREMY LAWRENCE
STAFF REPORTER

At least 14 attorneys, some from the Western Cape, could face prosecution over fraudulent claims to the Legal Aid Board, says board head Mr Justice Mohamed Navsa.

And many more names are expected to be forwarded for possible prosecution in the next few weeks.

According to Judge Navsa, names have been forwarded to the Director of Public Prosecutions. He said there were Western Cape attorneys among

the 14, but he could not say how many.

A special investigator has been appointed by the board to look at existing claims from attorneys, as well as new claims, for any possible fraud.

"It is important to note that these are 14 practitioners and not 14 counts. Some of them have multiple counts against them."

"We intend to pursue this issue to the hilt and we need to show that we have zero tolerance for improper conduct from attorneys," he said.

The announcement comes in the wake of a storm of controversy surrounding legal aid claims from attorneys in the Western Cape estimated to be owed R83-million in fees due for at least three years, while R600-million in all is believed to be owed to attorneys nationally.

Parliament's finance portfolio recently approved a much needed cash injection for the Legal Aid Board of R107 million.

Last month the Legal Aid Board announced that it would drastically cut its tariffs on legal aid cases by almost half. This decision provoked a storm of protest, with Cape attorneys saying

they would not accept any more legal aid cases. In some instances they have withdrawn from cases that have not yet gone to trial.

The lawyers have claimed that without the money owed to them it was increasingly difficult to continue taking on legal aid cases.

Meanwhile, the board is continuing to process claims.

Judge Navsa said the problems with processing claims should also be addressed more speedily within the next two weeks, when a new computer system was introduced.

He said that for the most part the claims were being processed as fast as possible although "there will be teething problems." He added that the Legal Aid Board's new tariffs had been accepted by most attorneys and no further serious problems were expected.

"We have appointed a permanent investigator to look at the existing claims from attorneys, and he will also be responsible for regulating new claims. There will certainly be more names of practitioners forwarded to the director of public prosecutions in the next few weeks," Judge Navsa said.

ARL 10/11/99 (58) (252)

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Draft gun law kept under wraps

Gun Free SA says the central firearms registry must be overhauled, writes **Stephané Bothma** (34) (252)

Grawitzky

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THE deadly use of firearms in crimes is increasing more rapidly than crime in general, but new draft gun control legislation, expected to be placed before the cabinet for approval on December 1, is unlikely to make SA a safer place, those in favour of individual weapon ownership believe.

Their opposition believes restricting gun ownership will — not immediately, but in the long run — instil a gun-free culture in South Africans who saw 12 267 of their fellow countrymen killed with guns last year.

Fears are also being expressed that limiting and prohibiting lawful gun ownership will, as was the case with the Prohibition in the US, create an active and lucrative black market in firearms.

Last year 49,3% of all murders in the country were committed with firearms — up from 41,5% in 1994 and 1995.

"It is a case of what came first, the chicken or the egg," says SA Gun Owners' Association chairman Chris Evans.

"People living in a relatively crime-free country do not feel the necessity to own a gun," he says.

The latest draft firearms control bill, which according to industry interest groups has been kept "top secret", will set strict requirements for licensing and registration of firearms and will introduce stringent checks on prospective gun owners and dealers. It will also limit the number of firearms and rounds of ammunition allowed.

"But it does not address the problem of firearms in the hands of criminals," says SA Arms and Ammunition Dealers' Association chairman Alex Holmes.

Holmes, who also chairs the National Firearms Forum, an umbrella organisation representing 32 interest groups, said it was extremely difficult to adequately comment on the contents of the draft legislation as it was being treated by government as "top secret".

"Despite the fact that the forum was started three years ago with the specific



aim of combining expertise in the field and to assist government in its drafting of new legislation, we were not once consulted," he says.

Referring to the approximately 15% of SA's adult population owning a firearm, Holmes said it was unacceptable that the planned legislation was being kept from them.

The firearm industry in the country totals about R1bn each year while the hunting industry turns over even more.

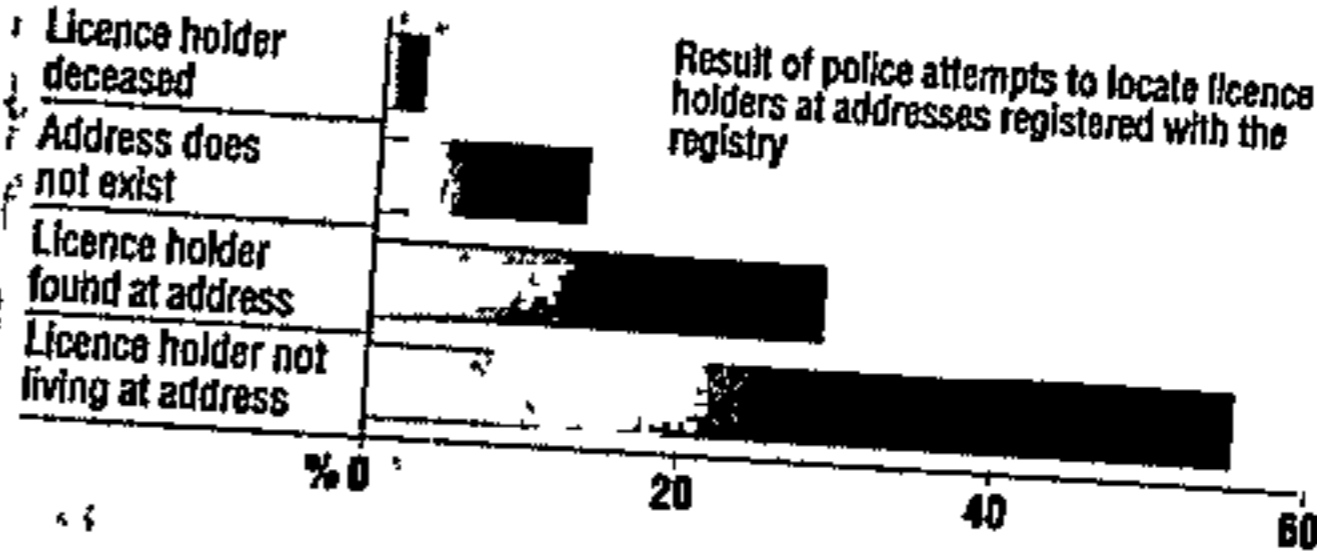
Evans also expressed concern about the lack of interest group participation in drafting the new law.

"From what I have read about the final draft legislation in the newspapers, it does not seem to differ too much from the first draft bill," he said.

THE CENTRAL FIREARMS REGISTRY

Number of firearm licences approved by the registry

	1994	1995	1996	1997	1998
KwaZulu Natal	30 746	18 018	24 016	24 982	24 351
Gauteng	83 363	53 502	62 291	70 228	61 263
Northern Cape	6 040	4 058	4 407	4 749	4 455
North West	14 646	9 931	13 010	13 398	12 871
Western Cape	30 854	21 406	22 743	19 717	18 254
Eastern Cape	12 588	8 361	26 017	15 580	13 874
Northern Province	8 890	7 033	8 682	9 643	10 152
Mpumalanga	15 442	10 635	12 676	13 699	14 663
Free State	15 887	9 747	11 533	12 194	13 861
Total	220 450	144 686	187 371	188 187	175 742



Graphic: MATTHYS MOSS Source: CENTRAL FIREARMS REGISTRY

"The underlying policy is still the same — that of limiting private ownership of firearms."

Evans stressed that unless the criminal justice system started taking strong measures in the country's courts against the criminal use of weapons, very little would change.

Adele Kirsten of Gun Free SA welcomed the draft legislation, but stressed it was critical that the SA Police Service's central firearms registry be completely overhauled.

Referring to a study by the Institute for Security Studies which showed that the registry was less than 30% accurate, Kirsten said the country needed an independent firearms authority.

"This confirms for us that the so-

called 'responsible' registered gun owners are not so responsible. They do not even inform the authorities of an address change," she said.

"The two-tier licensing system proposed will not only licence and register the firearm, but also the owner. That is a very positive step," she said. "The onus will be on the owner to prove that he is fit to own a gun."

Kirsten believes that the issuing of service weapons to policemen should also be revisited.

Talking about the high number of off-duty policemen being killed, many in shebeens or in brawls in other places, with their service pistols, Kirsten asked: "Do police really need their guns when they are not on duty?"

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Illegal arms 'are not addressed'

Stephané Bothma (252) (24)

PRETORIA — New draft legislation on gun control was placing the focus on legal firearm owners while the issue of illegal weapons was insufficiently addressed in the proposed bill, the Democratic Party (DP) says.

"When one considers that illegal firearms are used to deadly effect in the vast majority of gun-related crimes in SA, the bill must prioritise and lead the fight against illegal firearm ownership," said DP safety and security spokesman Graham McIntosh. He expressed concern about the "insufficient attention" given to unlawful gun ownership and said government should get tough on illegal firearm owners.

Gun Free SA spokesman Adele Kirsten said the proposed "layered licensing system" was welcomed.

Alex Holmes, chairman of the National Firearms Forum, which represents interest groups including organised agriculture, gun owners and dealers, and hunters, said "Our biggest concern is that the draft Bill will be presented to Cabinet in early December, be approved and published in the Government Gazette for comment over the holiday season," he said. "This would result in a large number of people not being granted the opportunity to respond."

Holmes, who had to rely on media reports about the contents of the bill, also expressed concern that emphasis was being placed on lawful gun owners.

Meanwhile, New National Party leader Marthinus van Schalkwyk accused Safety and Security Minister Steve Tshwete of not divulging the full facts surrounding the funding for preparing the draft legislation.

Van Schalkwyk said he was not accusing the minister of deliberately misleading parliament, but that there had been a clear attempt on "someone's" part to obscure the true facts.

Tshwete claims that the safety and security secretariat obtained a commitment from the United Nations office for drug control and crime prevention and also from the UN development programme.

Van Schalkwyk, however, said he had obtained information that the British government had received a request for funds from the "government of SA (office for the national crime prevention strategy/department of safety and security)". Following the request, the UK's department for international development had approved funding of R631 000.

GETTING IT RIGHT

FAIR Lady predicts it will increase its circulation from 105 000 to 115 000 within a year, and not to 155 000 as reported in Business Day yesterday.

SHARES of Thebu Financial Holdings were suspended by the Johannesburg Stock Exchange and not those of Thebu.

Constitutional Court can take cue from foreign experiences

The example set by west Germany is a useful one as SA seeks to heal wounds from its own divisive past, writes Jonny Steinberg

(252) BD 11/11/99

WHAT sort of role will SA's Constitutional Court map out for itself over the next generation?

While there is no such thing as a crystal ball, we do have other people's experiences in the light of which to think about our possible future

Fifty years ago, the Federal Republic of Germany wrote a constitution not dissimilar to ours to close the book on a dark past

Like us, it handed the ultimate power of arbitration to a set of rules and principles, tasking a group of jurists to interpret them. Does the past 50 years in Germany shed any light on the next 50 in SA?

It would be too crude to say that Germany's constitutional court is an "interventionist" one. There are a host of rules dividing the German judiciary from the legislature and executive, and the court has learned through bitter experience that all hell breaks loose when it crosses the sacred line.

Nonetheless, it is safe to say that the constitutional court has had a ubiquitous presence in 50 years of German democracy.

Sometimes with aggression, at other times with restraint, it has played no small role in marking out the parameters of Germany's political development.

In the late 1960s, when the Christian Democratic opposition attacked Chancellor Willie Brandt on the grounds that his social democratic programme would curtail economic freedom, the court let the legislature know it would not stand on the sidelines of Germany's most pressing debate.

Germany's constitution "establishes that in the recurring tension between the property interests of the individual and the needs of the public, the public interest may, in case of conflict, take precedence," the court said in 1968.

"The constitution," the court warned, "does not leave the resolution of this conflict to the legislature but settles the issue itself."

Eight years later, the court upheld the Social Democrats' flurry of industrial co-determination laws, giving workers 50% representation on the boards of large and medium-sized enterprises.

Once again, the court reminded co-determination's opponents of the primacy of the public interest over economic freedom, pointing out to Germany's car manufacturers that their decisions have massive public consequences.

In so doing, the German court wandered onto terrain institutions like the US Supreme Court have long regarded as untouchable.

The German court declared the principles of economic organisation were constitutional questions, and no legislature could reshape the economy without its approval.

Twenty-five years later, the world has altered considerably and Chancellor Gerhard Schröder, leader of Brandt's own party, is arguing that much of the latter's work must be undone.



Judge Arthur Chaskelson

Faced with a dearth of foreign direct investment, Schröder has announced plans to cut social spending and review labour law.

The constitutional court is unlikely to watch from the sidelines. "Bit by bit, the courts will adjudicate the entire economic reform process," says Berlin state constitutional court judge Renate Möcke.

"Schröder's first proposed move is a cut in annual pension increases. If the legislation is passed it will be taken to the constitutional court. Those who argue the court is sure to give it the green light are counting their chickens," he says.

Möcke's court in Berlin is about to hand down judgment on the proposed privatisation of 49% of the state's water parastatal. "The crucial issue is whether an item that fulfils a basic human need can be sold privately under the profit principle," says Möcke.

"A weighty principle is at stake. If privatisation wins, we will have given judicial approval to a concept that is anathema to traditional social democracy: that essential services cannot be sold privately."

The very parameters of this debate should turn SA heads. Can one imagine SA's Constitutional Court unpicking the legislative threads of the growth equity and redistribution (Gear) strategy?

SA's left has neither the political independence nor legal creativity to contest Gear in the courts. Also, it is unlikely that the constitutional court would meddle in President Thabo Mbeki's economic plans.

Yet SA has a comprehensive and far-reaching list of socio-economic rights while Germany's constitution has only a vague and abstract social principle. Why does the German constitution appear to stretch so much further?

The answer has much to do with the different political cultures the two courts find themselves in.

Germany's historical memory is tainted with self-doubt and shame. Fidelity to constitutionalism, and

its acceptance that public life is subject to constitutional approval, is about a wary and cautious nation taking stock. It is also about putting a brake on the mischief of unchecked political adventure.

"The Germans' respect for constitutional law, its insistence that major political faultlines be closed by judicial arbitration and its acceptance of the judiciary's presence in every facet of life is the product of a nation that has looked over the abyss," historian Gordon Craig wrote.

SA's democratic majority, by contrast, is unhaunted by any memory of its own dark deeds.

The will of the political elite has far more power in SA than in post-war Germany. The result is an electorate which may prove far less amenable to the intervention of judges in the country's affairs, and a generation of politicians and public servants quick to scorn a court that meddles in its decisions.

There are other factors at play. That one political party is set to govern SA for a generation will probably provoke permanent minorities to litigate increasingly in the Constitutional Court.

As political feuds of the day come to the court, so its work will become sharply political.

In such a context, a restrained and conservative court quickly loses legitimacy.

The space in which the Constitutional Court can manoeuvre will be partly shaped by its composition. Ironically, the more personal and ideological history jurists share with those wielding political power, the more space the judiciary is likely to carve out for itself.

In a country where the politics is the politics of liberation, the wisdom of former freedom fighters may just carry weight as an antidote to the wisdom of politicians.

□ Steinberg is a senior consultant at the Centre for the Study of Violence and Reconciliation.

Making legal aid accessible to all

Structural and institutional defects in the system should be reassessed, writes Shadrack Gutto

TRANSFORMATION of the justice system appears to be much slower and more protracted than transformation in other areas in the life of the new SA.

The problems and challenges associated with the justice system are manifest in several areas of crises

Among these are the current public debate on the social awareness and competence of some judges and magistrates or productivity in some courts, the apparent low level of competency and efficiency in sections of the police and prosecutors, lack of a co-ordinated functional synergy between the two institutions, and the collapse of the antiquated, poorly managed legal aid system. The issue of the role of the police and prosecutors in the transformation of the justice system is a subject for a separate discussion. The same goes for the debate about the judiciary.

The focus here is on the legal aid system crisis, the legal profession's role in this, and the potential for lawyers to play a more constructive role in creating new public legal aid services.

SA is one of the very few countries in the modern world still clinging to the British feudal tradition of a divided legal profession—solicitors and barristers.

We call them attorneys and advocates. Most former British colonies have moved away from this heritage and have fused the legal profession.

Specialisation in fields of practice does take place, not because of some legal prescriptions by the state but because of personal professional choices informed by societal needs and demands.

The divided profession is a luxury a developing country like SA cannot afford. In the provision of public legal aid services, the cost of providing quality legal advice and representation is paid out of taxpayers' money allocated for special constitutional cases as well as for those who are poor.

In a divided profession, the simple truth is that if a case is argued in a high court, the Supreme Court of Appeal or the Constitutional Court, instead of paying for the services of a single "integrated" lawyer, three legal practitioners are paid. There is the attorney who interacts with the client and prepares the case and an advocate, who is most probably a senior counsel, he, in turn, is assisted by a junior advocate/counsel.

No wonder then that the bulk of the budget for legal aid services is squandered in a few high-profile cases among a few legal practitioners while millions who really deserve legal services are told money is not available.

However, the divided profession is just one of the problems to legal aid services. The other is monopolistic prices charged by private legal practitioners.

The Legal Aid Act, which was written in 1969, confined provision of paid legal services to "legal practitioners", narrowly defined to exclude lawyers and paralegal service providers who are not admitted as attorneys or advocates.

Thus, the public is denied the use of services of a large pool of professionals who ordinarily resolve difficult legal problems at minimal cost.

Bourgeois and upper-middle-class lifestyles or aspirations of most attorneys and advocates must be maintained by charging inflated fees. Negotiations to agree on affordable fixed tariffs seem to be delayed endlessly.

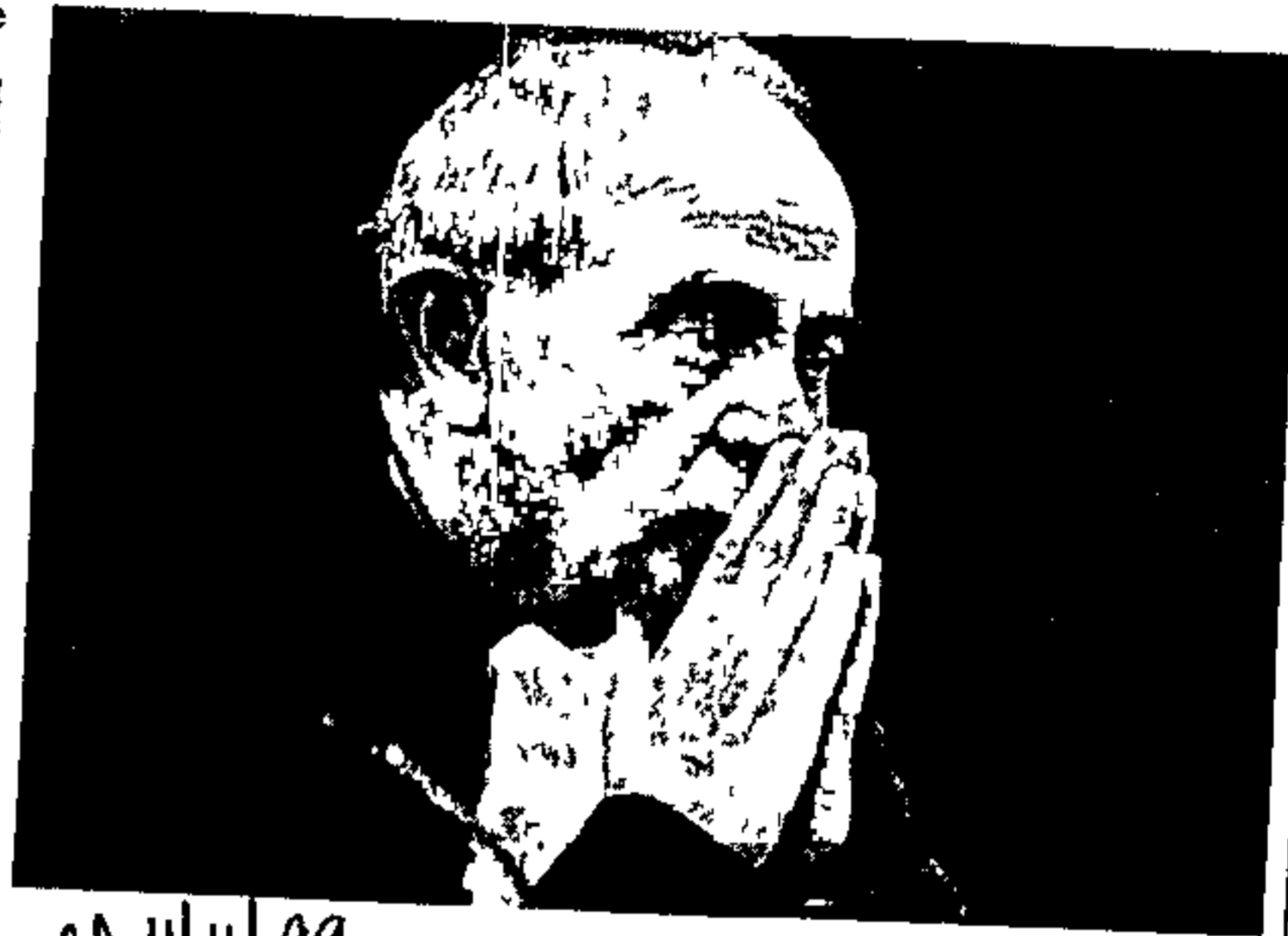
There are also a few real "killer sharks" in the profession. This group makes false claims on services not rendered, or for services rendered for less than one-tenth of the time they charge for. Their brethren (excuse the gendered term) are presently under investigation for defrauding the poor under the Road Accident Fund.

Judge Mohamed Navsa, chairman of the Legal Aid Board, is busy shuttling all over the country trying to discuss with lawyers the ways of reducing the fees paid to them from the limited board budget. He is also trying to assure those who have rendered services but have not been paid by the management at the board's offices in Pretoria that they will be paid eventually.

Let us hope that some amicable solutions will be found.

There is absolutely no excuse for the taxpayers to continue paying for a dysfunctional bureaucracy of a statutory body. Surely, there are mechanisms within the labour law regime to allow for firing or relocation of deadwood.

Some very disturbing responses from some of the really spoilt legal practitioners have greeted Navsa's crusade. One of the lawyers present at a meeting between Navsa and the practitioners in Cape Town claimed a lawyer with a high public profile told the judge to "Go and



Judge Johann Kriegler

DD 11/11/99
tell your (his) government that it has adopted a luxurious Constitution, and it must pay for it."

Another lawyer is reported to have asserted they had a "constitutional right" to be briefed by the Legal Aid Board and that they intended to challenge the justice and constitutional development department's move to employ more salaried lawyers and paralegals and to cut down on jud care—the hiring of the services of private practitioners by the board.

The mindset and attitudes reflected in these statements are rather worrying, to say the least.

For lawyers to disparage the constitution on one hand and claim it provides them with entitlements to carry on with their costly practices at the expense of justice to the poor masses on the other, is frightening.

A careful reading of Section 22 of the constitution, which provides for freedom of choice of trade, occupation and profession, and its judicial interpretations so far, ought to dispel any delusion the state has a constitutional obligation to subsidise private businesses of any specific professional group.

Sections 28 and 35 of the constitution also guarantee legal representation to children, prisoners and accused per-

sons at state expense in cases "where substantial injustice would otherwise result". They do not obligate the state to make use of the services of private legal practitioners, neither do they prescribe the tariffs to be used in paying the legal representatives.

It seems, then, careful reassessment is needed of inherent structural and institutional defects in the legal aid system, as it has existed up to now.

This should be followed by devising a new and more creative alternative system to redress some of the most crying needs of the poor and disadvantaged for meaningful legal services attainable within the limited resources.

One hopes this would be co-ordinated with a thorough restructuring of the legal profession and the judicial processes in the courts.

The legal profession as a whole should participate constructively in this process.

Blackmailing government and the public seems to me to be the wrong approach. The discourse about the role of lawyers in society, continuing since the '80s, is more relevant than ever today.

□ Prof Gutto is associated with the Centre for Applied Legal Studies and School of Law at the University of Witwatersrand.

More teeth for rights action group

ROBERT BRAND

JOHANNESBURG The Commonwealth is expected to approve new proposals this weekend to give its trouble-shooters more teeth to act against governments that violate human rights.

Speaking ahead of the Commonwealth Heads of Government Meeting in Durban, Secretary-General Emeka Anyaoku said the organisation intended to become more pro-active in dealing with human rights abuses and suppression of minority rights in member states.

Anyaoku said the meeting would discuss guidelines enabling the Commonwealth Ministerial Action Group to intervene more decisively in countries that do not conform to the organisation's democratic principles.

Up to now, the action group's mandate has been restricted to military regimes. If the new guidelines are accepted, they would enable the body

to intervene in countries with civilian regimes but poor human rights records.

"The guidelines seek to address a situation where you may have democratic institutions but where the performance in specific areas falls short of the standards of the Harare Declaration," Anyaoku said.

The action group was established in 1995 as a response to the military coup in Nigeria. It has since also intervened in Gambia and Sierra Leone following military coups.

The Harare Declaration, adopted in 1991, commits the Commonwealth to principles of democratic governance and human rights.

Anyaoku would not be drawn on Zimbabwe, Kenya, Sri Lanka and Zambia, singled out in a report by the London-based Foreign Policy Institute this week, which called on the Commonwealth to suspend those countries for

their poor human rights records.

Anyaoku said the report had no official status and was not on the agenda. The 47 heads of state attending the meeting will engage in several executive sessions today and tomorrow morning, before leaving for Fancourt near George.

They return on Sunday to finalise conference resolutions ahead of the closing ceremony on Monday.

● Diplomats in Durban engaged in frantic lobbying over Pakistan, currently suspended but facing possible expulsion after its junta laid charges against the country's deposed prime minister Nawaz Sharif that carry the death penalty.

British Foreign Secretary Robin Cook warned Pakistan against staging a show trial. Other diplomats urged the organisation to take a tough stance against the new regime.

● See Page 8

Shoot 'em up. Since 1994, one million applications for firearm licences have been approved.

PHOTOGRAPH BY SIDDIQUE DAVIDS



One million gun licences

By Barry Streek
Mxg 12-18/11/99 (252) (34)
Highest number in 1994, when 236 033 applications were approved.

Despite pending gun control legislation, more than one million applications for firearm licences have been approved in the democratic South Africa "but the rate of stolen" firearms is lower this year than the previous two years.

This was revealed by Minister of Safety and Security Steve Tshwete when he replied to a question tabled in the National Assembly by the United Democratic Movement's Annelize van Wyk.

Between January 1994 and September 1999 1 104 081 applications for firearm licences were approved with the

By September this year, 18 717 firearms had been 'stolen', an average of 2 080 a month or 70 a day.

In 1998, 30 195 firearms were stolen. This is an average of 2 516 a month or 84 a day while in 1997, 29 292 firearms were stolen, averaging 2 450 a month or 82 a day.

Tshwete explained that the term 'stolen' included firearms reported as lost, stolen or missing.

He told Parliament that in the first nine months of this year, 154 043 applications for firearm licences were received and 142 670 had been approved by the end of September.

Odds were against Eikenhof Three

(252) Mxg 12-18/11/99
Stefans Brümmer

A criminal justice system in transition provided the backdrop to the release of the Eikenhof Three. But not everyone in the east acted their roles as expected in a simple morality play.

Pretoria High Court Judge David Curlewis sentenced Siphwe Bholo and Siphu Gavin to death in 1994 and Boy Titi Ndweni to 17 years. He had refused to accept that "confessions" signed by Bholo and Ndweni resulted from police torture.

But it was Judge Curlewis's refusal last month from a hearing of new evidence that opened the way for the Eikenhof Three to be freed without a lengthy retrial. Judge Curlewis acknowledged his own potential bias when he recused himself.

Ex-police major Charlie Landman, formerly of the Braxton murder and robbery squad, arrested the Eikenhof Three. He denied accusations his men tortured "confessions" out of Bholo and Ndweni, but a credible body of subsequent evidence has shown that Braxton detectives routinely used torture techniques similar to those the accused described.

Last year, in the trial of apartheid hit-man Ferré Barnard, a Pretoria High Court judge appeared to accept testimony that Barnard and Landman had conspired to bomb Landman's own police car during the Eikenhof trial, and that this was to promote Landman's "profile".

Deputy National Director of Public Prosecutions Jan d'Oliveira, formerly Transvaal attorney general, prosecuted in the 1994 trial and remained a prime opponent to attempts by Eikenhof Three lawyers to have the case reopened.

D'Oliveira earned a reputation as a progressive prosecutor when he secured convictions such as that of police hit-squad commander Eugene de Kock, but the Eikenhof lawyers claimed that during the 1994 trial, D'Oliveira's team had withheld evidence in favour of the accused.

When Judge Curlewis recused himself last month, D'Oliveira's brief in the matter ended as he had already been promoted to the national prosecutions directorate, leaving the decision not to force a retrial in the

hands of Silas Ramaite, his successor as Transvaal prosecutions head. Deputy Transvaal Director of Public Prosecutions Anton Ackermann found himself in open opposition to D'Oliveira when the Eikenhof Three legal team used an affidavit he penned in an application two months ago to the Supreme Court of Appeal in Bloemfontein.

Ackermann listed in his affidavit a substantial body of evidence tending to prove the innocence of the Eikenhof Three. This included forensic evidence that a gun found in possession of Phila Dolo, the Azanian People's Liberation Army (APLA) member who claimed responsibility in 1997, had been used in the attack, secret APLA report-backs on the attack, a state witness subsequently changing his story, and eye-witnesses having identified APLA members.

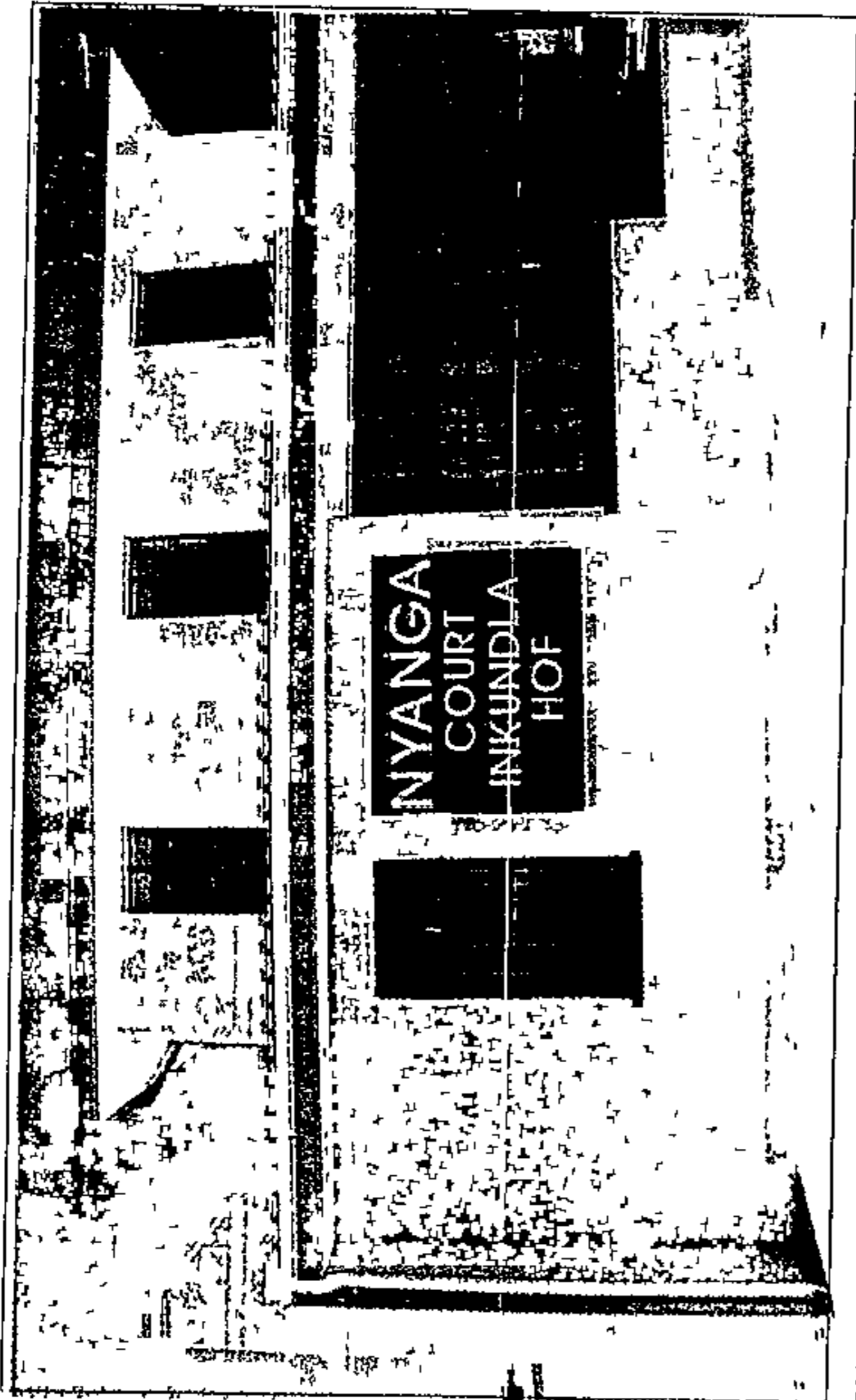
National Director of Public Prosecutions Bulelani Ngcuka fielded serious criticism from a Pretoria High Court judge last year when he decided not to oppose a new bail application by the Eikenhof Three. Rejecting bail, former Broederbond member Judge Piet van der Walt hinted Ngcuka's failure to oppose was politically motivated.

But Ngcuka stuck to his guns this week when he ratified Ramaite's decision not to prosecute when a retrial became the only alternative. Dolo's 1997 confession laid the groundwork for Bholo, Gavin and Ndweni's release. His amnesty application is still to be heard by the Truth and Reconciliation Commission, but the APLA cadres who allegedly did the actual shooting have not applied — and have missed the deadline. Dolo claims he knew them only by their operative names, but says police have known all along who they are.

X is the unnamed informer who supposedly received the R250 000 reward for leading Landman to the Eikenhof Three. In his affidavit, Ackermann says Landman took him to a secret location to meet X. Ackermann stated: "[X's] version did not convince me. Inter alia, he/she could not provide satisfactory answers about what had become of the reward."

Questions remain whether X was real, and whether the reward money was really paid out to him or her.

Justice is moving closer to townships, writes Lenore Oliver



BRIGHTER PROSPECTS the colourful building which is the home of the first court in a black township in the Western Cape. The building will be officially opened on November 27



LIGHT TOUCH Justice department regional head Hishaam Mohammed back right and court officials Brenda Mipaku, back left and Simon Wana try out the new style, welcoming magistrates court furniture

Nyannga gets first magistrates court

(A7A) ARGUS 13/11/99

Street justice could soon be a thing of the past if the opening of the first magistrates court in a Western Cape township achieves its goal of bringing justice to the people. It is hoped that after a steady increase in vigilantism and kangaroo courts in black townships true justice will be seen to be done when the court in Nyanga opens this month.

The court, in the Wetton-Lansdowne-Philippi Corridor, will aim to strengthen the justice system in surrounding areas and to break the spiral of vigilante action. Its jurisdiction will stretch across Philippi, Nyanga, New Crossroads and Guguletu.

Justice department regional head Hishaam Mohammed said "In recent months there has been a

steady increase in gangsterism in Cape Town's black communities particularly Nyanga, Guguletu and Philippi.

"This has sparked a vigilante backlash from the community tantamount to an expression that society has lost faith in the ability of the system to deliver safety, security and justice."

Mr Mohammed said that in the past 10 years the area's population had increased to more than 500 000.

A whole new approach has been adopted with the establishment of the court from the bright orange walls and light wood furnishings and floors to the people-friendly courtrooms with its pastel blinds.

There are spacious offices for two magistrates, two prosecutors, an interpreter and a lay assessor. There will be two courts, one for

criminal cases and one for civil. According to Mr Mohammed the emphasis will be on bringing justice to the people.

Access to justice has always been a stranger to many people in this country, particularly those in previously disadvantaged areas. This neglect and imbalance was based on racial grounds and formed the core of the previous government's strategies and policies of separate development.

"In order to correct historical imbalances the department re-demarcated magisterial boundaries to accommodate and reintegrate all communities.

In the past some communities did not have access to the services of the courts in their neighbourhood and would be referred to a court 40km or 50km away.

The Nyanga court will provide a one stop service concentrating on family violence interdicts, maintenance, rehabilitation, deceased estates and insolvencies. It will sit on Saturdays.

For many years these areas fell under the jurisdiction of the Mitchell's Plain Magistrates Court.

About 500 cases a month emanate from Nyanga, adding to the huge backlog at Mitchell's Plain which has also been unable to open a sexual offences court because of lack of space.

The new court will reduce the backlog at Mitchell's Plain and create space for a sexual offences court.

All Nyanga cases ready for trial at Athlone and Mitchell's Plain will be transferred to the new court.

The official opening is on November 27.



WOMEN-IN-WAITING the Nyanga court has a special waiting room in the maintenance section. Here several women await their turn to be heard.

Basson trial told of front companies

(252)

FORMER SA Defence Force surgeon general Niel Knobel testified in the High Court trial of Dr Wouter Basson yesterday and gave a general background to Project Coast that was launched in the early 80s to create a defensive chemical and biological warfare capability for SA.

He said the top priority had been to defend South African troops in the then South West Africa and Angola against attacks with chemical and biological weapons.

Basson, who did the initial investigation into various Eastern and Western countries in the late 70s, was chosen to head the project because of his qualifications.

Knobel said former defence minister Magnus Malan had approved the formation of a number of front companies that were deemed necessary to keep the

project from being linked to the SADF.

A separate company was later formed to supply Roodeplaat with animals for research.

Knobel said it appeared that deadly biological weapons were going out of fashion internationally at that stage and such weapons were available on the black market.

South Africa clandestinely bought such weapons on the black market, but the SADF also looked into the field of incapacitators, which were growing in popularity as weapons.

Such arms were not deadly but incapacitated the enemy so that it could be attacked by more conventional methods. It also cut out the logistical problem of having to get rid of a large number of bodies killed with deadly biological weapons.

Meanwhile, Judge Willie

Hartzenberg ruled yesterday that the record of Basson's bail proceedings was not admissible because the prosecution had acted "unreasonably" during the proceedings.

He said the state had acted unreasonably during the bail proceedings by refusing Basson access to documents that the state intended using against him.

Hartzenberg said the state had also unreasonably changed the bail proceedings into an interrogation, simply to serve as the basis for cross-examination in the criminal trial.

The prosecutor who questioned Basson in the bail proceedings was also a chief investigator of the Office for Serious Economic Offences, who had questioned Basson for 40 days before the bail hearing.

The trial continues - Sapa

16/11/91

Lack of legal aid cash leaves scores in prison

(252)
Sowetan 17/11/99

HUNDREDS of prisoners awaiting trial in Nelspruit, Mpumalanga, will spend Christmas in jail because the Legal Aid Board has failed to pay local defence lawyers about R1 million in fees

Magistrates and lawyers warned that innocent people had also been jailed for long prison terms after being left to defend themselves on serious offences that were based on fabricated charges

"We have a real crisis here and people are taking a chance by defending themselves. Their right to legal advice is also a right to a speedy and fair trial," local Black Lawyers Association chairman Mr Seuntjie Ngobe said yesterday

Mr Henk Frey, a representative of an informal committee of Nelspruit attorneys who provide legal aid, said most of his colleagues had withdrawn from cases because they no longer believed they would be paid for their work

"Besides the fact that we no longer believe the promises of the Legal Aid Board, our tariffs have also been cut. We now receive only R650 for the completion of a case in the regional court and an additional R57 for any postponement, regardless of the time factor," Frey said.

He said that in some cases small law firms with only two partners had to deal with losses of up to R100 000

Many could not continue to take on

new cases although they believed that often the accused had been framed

Ngobe said it was time the state stepped in to protect the constitutional rights of prisoners awaiting trial. "The state, by crying poverty, is leading everyone around the bush. The real ones who are prejudiced are those awaiting trial"

Nelspruit chief magistrate Mr David Ngobeni agreed. "The fact that cases are not disposed of as soon as possible is a serious infringement of the constitutional rights of those charged. It is a big problem because the mechanisms for guaranteeing legal representation are not in place," he said

However, Justice Ministry spokesman Paul Setsese disputed the report, describing it as misleading

"There are many lawyers who are taking on cases despite the financial crisis of the Legal Aid Board. For example, the General Council of the Bar and members of the National Association of Democratic Lawyers association have committed themselves to work with both the Department of Justice and Legal Aid Board in executing the constitutional mandate of providing defence to those who need state assistance. However, people do have the option of choosing to represent themselves if they so desire" - Sapa

Bullies stand to lose guns

(34) (252)

Tshwete unveils tough firearm bill

ARG 18/11/99

Spouse bashers and people convicted of serious crimes of violence are among those who will be banned from owning firearms by new legislation approved by the Cabinet

Full details of the Firearms Control Bill, which has been the subject of months of speculation and controversy, were unveiled by Safety and Security Minister Steve Tshwete and top officials at a news conference today

The bill will be put to Parliament early next year and the Government hopes it will be approved by the end of April

Drafters acknowledged part of the bill could be challenged as unconstitutional, but they believed the seriousness of the need to combat crime could justify limitation of some rights

The bill introduces a system of regular re-licensing of owners and their firearms

A period of grace will be given, until about 2004 for gun holders to comply with the law

Private gun owners will be allowed to have one firearm, either a handgun or shotgun, for self defence and their licences will be renewable every five years

Businesses requiring guns, such as security firms, will have to re-licence every two years

Owners of restricted firearms, for example, semi automatic weapons, will have to re-licence every two years

A person or "class of persons" will be

CLIVE SAWYER
Political
Correspondent



allowed to apply for licences for restricted firearms, where it can be proved that one firearm will not be enough

People classed as "occasional" hunters or sport shooters will be allowed to have three additional firearms

Those classed as "dedicated" hunters or sport shooters will not be subject to any limitation on the number of guns they may have

Drafters said the justification for this was that statistics showed that firearms for hunting and sport were seldom used for crimes

There will also be no limit for people who use guns for business, or for collectors

Ammunition limits will be 200 rounds per calibre in the holder's possession, with a total of 2 400 rounds per gun a year

An innovation is that state-owned firearms will also be subjected to new controls

State departments will have to upgrade their databases and inspections, and

introduce permit systems. This means even a defence force soldier will have to have a permit for a weapon

Control measures include creation of "firearm free zones", which could include churches, schools, gambling premises and pubs

Punishment for criminal offences will become much heavier

Illegal dealing in firearms will carry a maximum jail sentence of 25 years and illegal possession up to 15 years

At present illegal possession carries a term of up to two years

A controversial provision in the bill is for an administrative fine of up to R5 000 for a first offence and R15 000 or forfeiture for further offences

The measure, intended to prevent worsening the workload of ordinary courts could be subject to a constitutional challenge

A person will be declared unfit to possess a firearm if convicted under the new Domestic Violence Act scheduled to come into effect next month, or if convicted of a crime of violence or dishonesty and jailed for more than 12 months

Other circumstances under which a licence may be revoked include abuse of liquor or drugs or deterioration of the mental condition of the gun owner

Radebe admits that he sent parcel bomb

252 / Sowetan 18/11/99

By Gershwin Chuenyane

FORMER Attorneys, Pretoria, resident and Vlakplaas operative Simon Radebe admitted to the Truth and Reconciliation Commission (TRC) amnesty committee this week that he had posted the parcel bomb that was meant for Dirk Coetzee.

Radebe, a former member of the security police, told the TRC amnesty committee that he had delivered the parcel bomb destined for Coetzee at the Jeppe Street post office in Johannesburg.

"On the day whose date I cannot remember I was at Vlakplaas when I was approached by Mr Ruan Bellingham and Mr Tait. Bellingham wanted to find out if I was busy, but I told them I did not have anything to do at that time I

was then given a parcel and instructed to post it at the Jeppe Street post office, Radebe said.

His lawyer Mr Schaik Hugo said the reason Radebe was sent to post the parcel bomb was that he was one of the more trusted operatives

Radebe was testifying before the TRC amnesty committee about the role he played in the death of African National Congress lawyer Mr Bheki Mlangeni.

Mlangeni was killed in 1991 when he attempted to play a tape on a personal stereo which was a bomb meant for Coetzee.

Coetzee had chosen not to open it, but had instead returned it to the sender. The address of the sender on the parcel was that of Mlangeni.

Radebe has also applied for amnesty for his role in two other

incidents: the abduction, torture and murder of Japie Maphonya and the abduction of Ntombi Khubeka from Durban in the 1980s.

An askari, Xola Mbane, who accompanied a group of Vlakplaas operatives including Radebe, during the Khubeka incident, revealed in his affidavit that Radebe had killed a comrade who was introduced to them by Khubeka.

"While we were in the car, Simon Radebe decided to shoot this man in the head and we took him out of the car next to the Executive Hotel in Durban.

We reported the matter to our seniors Mbane said.

The incident was denied by Radebe during his testimony at the amnesty hearings held in Durban on his role in the Khubeka incident

Cabinet approves new firearm laws

252 / Sowetan 18/11/99

By Waghied Mishach (34) (252)

THE Cabinet has approved the Firearms Control Bill for consideration and finalisation by the National Assembly

Safety and Security Minister Steve Tshwete expected to announce further details soon. The new legislation gives police wider search powers and allows for stricter control of gun ownership. It allows for:

- Police to search vehicles and buildings and to seize guns and ammunition. The police will also be given wider powers to investigate anyone found in a vehicle or a building where illegal firearms have been found.

- New offences to be created, for instance such as being in possession of a gun while under the influence of alcohol. The Bill also recommends harsher sentences for illegal possession.

- The Minister to have greater powers to declare certain areas or places firearm-free zones.

- State-owned firearms to be registered with the Central Firearms Registry, and for much stricter control over the distribution and ownership of firearms by state employees and parastatal organisations.

- Much stricter control of the licensing of firearms to the general public.

- Licences to be renewable every five years to determine whether people are still fit to own a gun, and

- A limit on how many guns can be owned for self-defence. This would, however, not affect hunters, collectors or sport shooters.

CT 18/11/99 (252)

New draft gun law approved

(35)

ANDRE KOOPMAN

FIREARM owners would be re-tested regularly for competence to own weapons, and limits would be imposed on the private ownership of guns in terms of a strict new draft gun-control law, approved by cabinet yesterday.

According to reliable sources, controversial provisions, such as psychometric testing, as part of firearm licensing, will not be included in the new law

However, harsh penalties for the illegal possession of firearms, including sentences of between five to 10 years, have been mooted.

While the law intends imposing stringent limitations on private ownership of firearms (one per person) bona fide sportsmen and hunters would be accommodated in the new law, sources said



SAFETY CATCH ON: Safety and Security Minister Steve Tshwete.

The government's chief communicator, Joel Netshitenzhe, yesterday said government was intent on bringing the legislation before Parliament as soon as possible.

The draft legislation has to be

vetted by state law advisors to check the technical details and to ensure that it complies with the Constitution

But government, if it had been able to, would have liked to have seen the law approved before the National Assembly rises this week.

Safety and Security Minister Steve Tshwete is on record as saying that the new gun law should boost police powers of search and arrest and increase the "powers of police to search vehicles and buildings and to seize guns".

In the face of strong opposition from the pro-gun lobby, Tshwete recently said. "I would like to reiterate that the aim of the new legislation is not to disarm law abiding citizens and police officers

"(We want to) develop a culture of responsible gun ownership and reduce violent gun crime in South Africa"

Watered-down gun law plans get itchy fingers off trigger

(34) (252)

Opposition 'reservations' on bill remain

ARG 19/11/99

CLIVE SAWYER
POLITICAL CORRESPONDENT

Watering-down of the proposals on gun control has slightly cooled opposition to the bill.

The Firearms Control Bill, approved by the Cabinet on Wednesday and to be tabled in Parliament next year, provides for stricter control over the issue and renewal of firearm licences to individuals, and stricter control of state-owned firearms.

New limitations on gun ownership include a maximum of either one handgun or shotgun per owner for self defence, with licences renewable every five years.

'Occasional' hunters and sport shooters will be limited to three of four firearms, depending on whether they own a gun for self-defence.

The bill places no limit on "dedicated" hunters, sports shooters and collectors, but licences will be renewable every 10 years.

Owners of restricted firearms, such as semi-automatic weapons, will have to renew licences every two years, as will those using firearms for business purposes, such as security companies.

A five-year period of grace for people with existing licences will come into effect when the bill is approved.

Spouse bashers and drug abusers will be banned from owning firearms. Serious controversy is expected on proposals to allow police to use fingerprinting to eliminate suspected offenders, a limitation of the constitutional right to privacy.

The bill will also allow police to take the fingerprints of all the occupants of a vehicle in which an illegal firearm

has been found.

The section on criminal offences provides that illegal dealers in firearms could be jailed for up to 25 years, while those in possession of illegal firearms would get 15 to 25 years.

The official opposition Democratic Party labelled the bill as "more sensible" than earlier versions but said it had concerns about some aspects.

The DP demanded Safety and Security Minister Steve Tshwete launch a campaign to clean out illegal firearms. "This should include harsh sentences amnesty, rewards and compensation, where necessary."

Boy Geidenhuys, New National Party spokesman on safety and security, said the draft was a "huge improvement". But the party had reservations about the limitations on the number of firearms that could be held.

Bid to halt nepotism in government

CLIVE SAWYER
POLITICAL CORRESPONDENT

Urgent steps should be taken to prevent nepotism at all levels of government, a parliamentary committee has recommended.

Annual reports by government departments should include details of relatives in the same chain of command, the committee said.

The recommendation was made by the public service and administration committee, in response to a report by Public Protector Selby Baqwa on allegations of nepotism in government.

Mr Baqwa found no substance to the allegations, made by the New National Party, and strongly criticised parties which brought vague allegations to his office.

Adequate measures were in place to prevent nepotism among public servants.

However, while nepotism was not endemic in South Africa's administration, there was no reason to be complacent, Mr Baqwa said.

There was a need for a code of conduct for officials employed by municipal governments, because currently there was only a code for elected councillors.

The committee endorsed Mr Baqwa's report including his finding that the fact that sound selection and employment practices were in place did not mean they were fully in use.

It said that it was as important to avoid the perception of nepotism as it was to avoid nepotism.

"Direct superior or subordinate relationships between relatives and control over fiscal and personnel status by one relative over another should be avoided." But this principle should not be used to discriminate unfairly, the committee said.

Members criticised the failure to publish a code of ethics as envisaged in the 1998 Executive Members Ethics Act, which governs the conduct of national and provincial members of executive government.

The committee urged President Mbeki to publish such a code by June next year.

The committee called on Parliament to consider developing a code of conduct for MPs which would include measures aimed against nepotism.

Speak ers of provincial legislatures should be asked to follow suit.

Bid to speed up payment of reparations

ARG 19/11/99 (252)

PARLIAMENTARY BUREAU

The Government was considering the establishment of a national organisation with provincial structures to facilitate reparations payments to apartheid victims identified by the Truth Commission, Justice Minister Penuell Maduna said yesterday.

The Government had already paid out R16-million to 4 600 victims and was processing another R65-million going to 17 000 more. A total of R300-million had been allocated to the President's Fund for reparations, he said in a written reply to a parliamentary question by New National Party MP Sheila Camerer.

But there was concern that some victims, especially those in rural areas, were experiencing difficulties in obtaining the urgent interim relief to which they were entitled.

The Government was considering provincial structures that would act as focal points for urgent interim reparations claims, with a mechanism to "coordinate reparations on a national level", Mr Maduna said.

The report said that Basson's "recovery actions" had included as stealing — R40m worth of bearer bonds that the Vatican had paid to the Croatian government for weapons. This was done with the help of a Danish secret agent.

Basson assured Knobel that he was, after negotiations with Croatian government officials, given permission to retain \$5m of the bearer bonds, which he intended exchanging or selling to cover the outstanding Swiss funds. But he was arrested by Swiss police when he tried to exchange the bearer bonds at a Swiss bank.

The defence force had to pay his bail and he never got back the security — Sapa

Basson, blackmail and the Vatican deal

Court hears of scheme involving bearer bonds worth \$40m

ARG 19/11/99 (252)

THE Pretoria High Court heard yesterday that chemical warfare expert Wouter Basson stole bearer bonds worth \$40m in 1993 which the Vatican secretly paid to the Croatian government to buy weapons.

Basson, who headed SA's chemical and biological warfare programme in the 1980s, allegedly wanted to use the bearer bonds to blackmail Croatia to return to SA \$1.6m that had apparently been confiscated.

This elaborate scheme was revealed in top secret documents handed in as evidence by the state. Basson is facing 61 charges ranging from murder to fraud and drug dealing.

Gen Niel Knobel, surgeon-general of the former SA Defence Force (SADF) said Basson completed a report on a 1992 transaction with Croatian government officials to buy 500kg of chemicals used in the making of Mandrax. The report was at the request of the defence minister in the document. Basson set out how \$2.6m was paid into a Swiss bank account to act as security for payment for the chemicals, that would be delivered by four Croatian officials, including the energy minister. On being paid, the four would then sign release forms so that the security could be returned to SA.

About \$900 000 was paid to two of the agents through a Swiss secret agent, Capt Jurg Ja-comet, but the rest of the money was confiscated by the Croatian government.

Although Basson retired from the SADF in March 1993, he went on several secret trips to Croatia and Europe in 1993 to try to get the money back and to

trace Jacomet, with whom he had apparently lost contact.

The report said that Basson's "recovery actions" had included obtaining — Knobel described it as stealing — R40m worth of bearer bonds that the Vatican had paid to the Croatian government for weapons. This was done with the help of a Danish secret agent.

Basson assured Knobel that he was, after negotiations with Croatian government officials, given permission to retain \$5m of the bearer bonds, which he intended exchanging or selling to cover the outstanding Swiss funds. But he was arrested by Swiss police when he tried to exchange the bearer bonds at a Swiss bank.

The defence force had to pay his bail and he never got back the security — Sapa

Basson hung on to top secret state material

General tells how expert deceived him

ART 20/11/99 (272)

ZELDA VENTER

Documents that are so top secret that they cannot even be revealed to the court and which are the target of international espionage against South Africa were found in a trunk belonging to Dr. Wouter Basson.

This was in spite of assurances by the chemical and biological warfare expert that these documents were destroyed following instructions from the then Minister of Defence, Magnus Malan, former surgeon general Niel Knobel yesterday told the Pretoria High Court.

Gen Knobel said after Dr Basson's arrest in 1997 he discovered the documents, which only he (the general) was supposed to have seen.

No one else was to even know

about these documents, he said.

He explained that Dr Basson had been instructed to head the process of putting all the data contained in the top secret Project Coast files on CD-Rom. He was then to destroy the documents, either by burning or shredding them.

Gen Knobel said the information was regarded as a top secret national asset that had to be preserved in case of further research at a later stage.

The CD-Rom was placed in a safe in Gen Knobel's office to which only he and another officer had keys. Former president FW de Klerk later asked the general to step up the security measures in view of the sensitivity of the information, which he subsequently arranged.

However, after Dr Basson's arrest he was asked by National

Intelligence Services to go through the trunks and he discovered a number of the sensitive documents in it, along with other documents belonging to Dr Basson.

It was clear that these were part of the documents that should have been destroyed. They contained information about the research done at front company, Delta G and Roodeplaat Research Laboratories, as well as information about South African defence strategies, Gen Knobel said.

These documents would interest any foreign country and would give them the ability to develop similar weapons, he said.

When he saw Dr Basson after his arrest, he asked him how the documents came to be in his trunk. Dr Basson again assured him that he was convinced that the documents were destroyed.

Idasa proposes limited form of jury system

Wyndham Hartley

CAPE TOWN — SA needs to return to a limited form of the jury system to adjudicate complaints brought under proposed equality laws, says Idasa.

Richard Calland, who heads Idasa's parliamentary monitoring unit, and colleague Thabani Masuku will tell Parliament today that a tribunal with a small jury taken from the community would be better than the equality courts currently provided for by legislation.

They will make a submission to the special parliamentary committee dealing with the Equality Bill, kicking off a series of public hearings on the legislation today.

Calland said yesterday a low-level tribunal with jurors would allow public participation and "we are calling for serious consideration to be given to the jury system."

If, for example, a complaint was to be heard about the discriminatory nature of lobola in traditional areas, the small jury system could be used with a legal expert to head the tribunal and an expert on marital law to assist. The other places on the jury could go to a man and a woman from that community, and a community leader.

"There is a need to bring in ordinary folk from those communities," Calland said.

There is a lot of wisdom there and this could bring common sense into the adjudication of these matters.

Calland said there were complaints that a jury system was expensive. While jurors would be paid a small allowance, and subsistence and travel for the duration of the hearing, this was unlikely to be as expensive as an equality court.

The suggested jury system would be more affordable for government and citizens and it would be more accessible and quicker, Calland said.

The promotion and protection of the values of this bill must not be left in the hands of a few privileged individuals. The promotion of equality will require the participation of all sectors of the community. That participation will benefit from representative views and in effect legitimise the decisions of the tribunal.

A justice department spokesman has said that about R50m will be needed to implement the Promotion of Equality and Unfair Discrimination Bill.

Lawrence Bassett, chief director of the department's legislation branch, said the money would have to be spent on training magistrates and judges who would serve on the proposed equality courts. Payment would possibly also have to be made to court assessors and funds would be required to popularise the legislation, Bassett said.

R60 000 claim 'for victims'

EDWIN NAIDU (352) and ROGER FRIEDMAN

POET and former political prisoner Dennis Brutus, who spent time with former president Nelson Mandela in Robben Island Prison, is to claim R60 000 in reparations from the government in an attempt to end the "dithering" over the awarding of compensation to apartheid victims.

Brutus, University of Pittsburgh professor emeritus of African studies, said his application for reparations related to his being shot in the back in 1963 and his wrongful arrest, imprisonment, injury and banning from 1961 to 1966.

In its final report, published a year ago, the Truth and Reconciliation Commission recommended a complex formula for reparations. This had five pillars: Urgent interim reparation, individual reparation, symbolic reparation, com-

munity rehabilitation programmes, and institutional reform.

The report included an incomplete list of nearly 100 pages of names of victims of gross violations of human rights. Brutus' name does not appear among these. The TRC estimated that individual reparations would be payable to 22 000 victims who would qualify for a payout of no more than R23 000 a year, at a cost to the country of nearly R3 billion over six years.

But R30m is a lot of money and other than paying urgent interim relief (most commonly R2 000) to some victims, the government has done little to get the reparation process under way.

Some people found to have been victims have died without receiving reparation. The government recently announced a new

□ Turn to Page 3

Et tu, Brutus?

□ From Page 1

set of measures to speed up this "urgent" process. The Promotion of National Unity and Reconciliation Act required the TRC to make recommendations to the government, but did not require the government to implement these.

There have been unofficial indications from people in government that victims may have to make do with symbolic reparations, institutional reform and community rehabilitation and forego individual monetary compensation in exchange for giving up their civil rights to claim damages.

None of the foregoing impresses Brutus.

Speaking over the weekend at a summit on a "Debt-Free Millennium" in Midrand, he said the government had accepted all liabilities of the former National Party government and therefore should be liable for reparations. "Nothing has happened and this stalling should not be allowed to continue," Brutus said.

By making a specific claim, he hoped to kick-start the process for many who had not received compensation.

Brutus was a teacher in Port Elizabeth, where he had grown up. He was active in opposing racism in sport and a leading figure in the campaign for South Africa's expulsion from the Olympic Games.

He was arrested at the offices of the South African Olympic Committee in 1961, banned from teaching, writing and attending meetings and later placed under house arrest for five years. He was jailed on Robben Island in 1964 and 1965.

In 1966 Brutus was given an exit permit to the United States. He returned to South Africa in 1989.

In his latest book, *No Future Without Forgiveness*, TRC chairperson Archbishop Emeritus Desmond Tutu said one of the major weaknesses of the commission process was that perpetrators were granted amnesty as soon as their applications were deemed acceptable, whereas in the case of victims the commission could only make recommendations to the president.

Three years after the commission had begun its work, no final reparations had been made, yet more and more perpetrators were being granted amnesty. Tutu wrote:

The recommendation that individual grants of money be paid raised a number of questions, among them: Could a monetary value be given to suffering? Could the country afford it? Weren't all who suffered under apartheid victims?

With all these questions and others in mind, the commission had recommended that only those victims who approached it should qualify for reparation.

"It would have been unmanageable for the government to commit itself to paying reparations when we had no way of estimating how many victims there were."

Killers want amnesty review

PD 23/11/99

(2/3)

A support group is challenging the truth commission's decision through the courts

A RIGHT-wing group supporting Clive Derby-Lewis and Janusz Walus have taken the truth commission to court for not granting the two men amnesty for the assassination of SA Communist Party leader Chris Hani.

The Afrikaner Political Prisoners' Support Group said yesterday its lawyers had lodged papers in the Cape High Court on Friday, challenging the commission's decision. The commission has 30 days to respond.

The papers ask for a review of the amnesty decision.

Walus gunned down Hani in front of his Boksburg home on April 10, 1993.

The two right-wingers, Derby-Lewis and Walus were sentenced to death for the killing.

Their sentences were com-

muted to life imprisonment after the abolishment of the death sentence in 1995.

On April 7 this year, the amnesty committee rejected their amnesty application for the murder on the basis that they failed to prove the killing was politically motivated.

The committee also found that the men had failed to make a full disclosure, another prerequisite for amnesty.

Walus, a Polish immigrant, and Derby-Lewis, a former Conservative Party parliamentarian, claimed in their amnesty application that the murder was politically motivated and that they had taken their cue from the Conservative Party.

The committee said it was common cause that the appli-

cants were not acting on their express authority or orders from the party.

Chairman of the support group, Pikkie Coetzee, said the group had taken action against the commission because "we feel that the two men did not get a fair hearing."

He said the documents included a number of examples where the committee had granted amnesty to people whose cases were "thinner" than those of Derby-Lewis and Walus. The examples included the amnesty granted to Amy Biehl's killers and those responsible for the St James Church bombing and the Heidelberg Tavern massacre.

In an earlier statement, Coetzee said the applicants' need to approach the court for relief was

precipitated by the belief that they should have been granted amnesty. He said the legal team also felt their clients' case was severely prejudiced by the more than 40 calls by prominent political figures, including former president Nelson Mandela, that the two men should not be granted amnesty.

Coetzee said when the two men wanted to appeal against the decision earlier they were told that the Legal Aid Board apparently did not have money to assist them. A fund was established and enough money was donated by supporters to finally take the matter to the Cape High Court, Coetzee said.

The commission said it would most probably oppose the application. — Sapa

'Libya one of SA's main allies in apartheid era'

ZELDA VENTER (1572)

PRETORIA — Libya was one of South Africa's main allies in the heyday of apartheid and helped to establish the country as one that had one of the most successful chemical and biological warfare capabilities in the world, the Pretoria High Court heard.

In answering questions put to him by Wouter Basson's advocate Jaap Cilliers, former Surgeon

General Niel Knobel said yesterday that he knew that Basson had close ties with the Libyan intelligence service and that he had in fact negotiated contracts on behalf of other state institutions with the Libyans.

Cilliers said that his instructions were that Libya played an important role in supplying technology and strategic substances to the SA government's top secret chemical and warfare programme

code named Project Coast

Knobel said he became aware of Basson's close ties with Libya only after Basson retired at the end of March 1993. But Basson had never hidden the fact that he often travelled to Libya.

The court heard that when sanctions against South Africa were in force, Basson had clandestinely obtained substances and technology needed for Project Coast from countries such as

Russia, the then Czechoslovakia, Croatia, Libya, China, Britain, East Germany, the United States

What made this even more remarkable was that Basson infiltrated these countries without a single secret agent ever being aware of his dealings with them, the court heard.

Knobel testified that former President Nelson Mandela and President Thabo Mbeki were instrumental in re-appointing

Basson in 1995 on a permanent basis after his retirement, in order to keep tabs on him.

He explained that the British and American intelligence services were worried about the fact that Basson, after his retirement, could move about freely, including making visits to Libya.

They had asked Mandela to restrict his movements, but this Mandela had refused to do, Knobel said.

TRC grants amnesty to MK officer

(1572) CT 24/11/99

MOTSHIDISI MOKWENA

FUMANEKILE BOOI, a former commander in uMkhonto weSizwe (MK), was granted amnesty for his part in the murder of a SAP officer and the attempted murder of two other officers on July 7, 1990.

Booi applied for amnesty last month for killing Sergeant Nicholas Els in a shootout between Booi's unit and police. George Beeslaer and Gavin Moyes were injured in the shootout. The Amnesty Committee said Booi had complied with all the requirements

set out by the committee.

Booi was arrested and charged with robbery, murder, attempted murder and possession of an unlicensed firearm and ammunition.

Although only murder and attempted murder were mentioned in the amnesty application, the Amnesty Committee said Booi had indicated at the hearing that he was also applying for amnesty for the possession of a Makarov pistol and 38 rounds of ammunition and handgrenades.

The application for amnesty was unopposed because relatives of the

dead could not be traced. In his testimony, Booi spoke about his part in the MK underground structures since 1979. He testified that, together with three others, who have since died, he was sent on a mission to counteract Askans.

He told the hearing that they did not find the Askans, who had been in Gugulethu, and then drove along Lansdowne Road, where they were followed by a police van. A gun battle ensued in which Els was killed and Beeslaer and Moyes were injured. Booi said he was congratulated by Chris Ham for bringing his unit's members back.

Bill to create gun-free zones

(252)
(34)

M+G 19-25/11/99

Among other things, the new Firearms Control Bill will deny people guilty of crimes of violence the right to own a firearm **Barry Streek reports**

Gun free zones such as bars and casinos, are to be created in terms of the new Firearms Control Bill, and ordinary people will not be allowed to carry firearms there.

People who are guilty of crimes of violence, including someone who is a wife-basher will be prevented from acquiring a firearm licence, Minister of Safety and Security Steve Tshwete said this week.

Tough penalties have been proposed — up to 25 years in jail for people dealing in illegal firearms, and 15 years for the possession of illegal firearms.

Safety and security legal adviser Louis Koch says a calculated risk has been taken with some of the provisions of the Bill but he and the legal experts they had consulted, including Paul Pretorius, SC Matthew Chaskalson and Jan d Oliveira, were convinced they could argue before the courts that the Bill complied with the provisions of the Constitution.

Koch said, however, that they expected some challenges to the provisions of the Bill, particularly in regard to the new presumptions that had been developed and for the extended policing powers.

In terms of the Bill, police will be able to fingerprint all the occupants of a motor vehicle where an illegal gun has been found and seized. Tshwete says this will help establish ownership and possession.

"The presumptions and penalties contained in the Bill are very tough but necessary. We will relentlessly address the unacceptably high levels of firearm related crimes and violence in our society," Tshwete said.

He added that the Cabinet was sending a loud and clear message that the government had dealt a decisive blow to violent criminals, given that guns are the common denominator in crimes ranging from rape to domestic violence, hijacking and robbery.

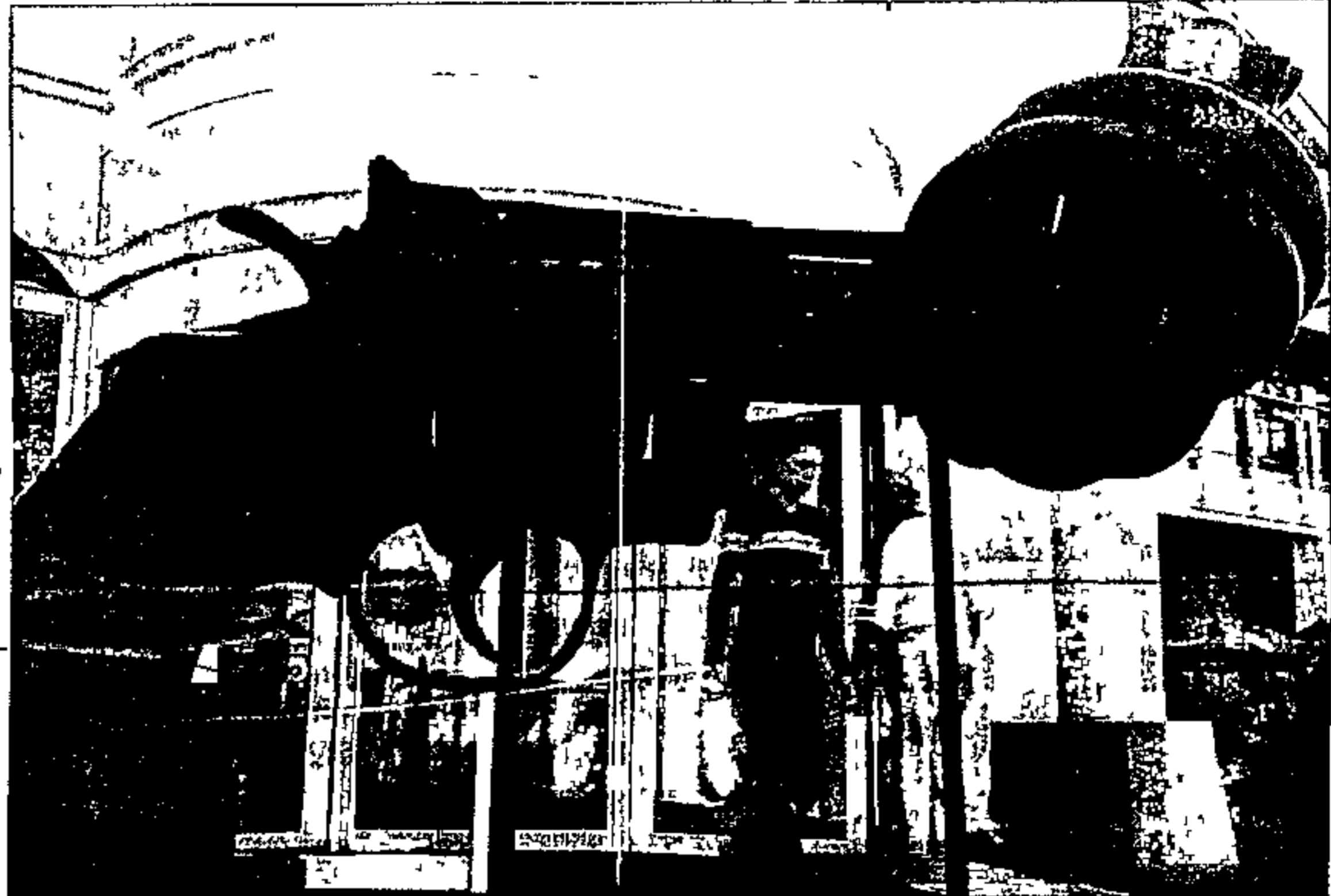
"The focus of the Bill is the criminal element that has terrorised law abiding citizens for too long," Tshwete said.

Koch said the Bill is only the start of the process in the development of policy in regard to firearms, but emphasised that the situation is extremely serious, particularly in regard to the use of handguns, which are used in most firearm related crimes.

The number of murders where firearms were used rose from 11 134 in 1994 to 12 298 in 1998 — 49% of murders. Robberies where firearms were used increased from 51 004 to 74 854 over the same period — and firearms were used in 85% of robberies.

South Africa has approximately 1,9 million licensed firearm owners who hold licences for about 3,5 million firearms.

The provision for gun free zones would apply to places such as bars and gambling premises, where it



No guns, please Ordinary people will no longer be able to carry firearms in places such as bars and casinos **PHOTOGRAPH AP**

will be illegal to possess a firearm, "obviously without compromising the security of those places".

The Bill provides that people could apply for a single firearm, a handgun or a shotgun, for self defence purposes, while the occasional hunter and sports shooter could possess up to four firearms, which could include a handgun.

It had been shown that weapons belonging to dedicated hunters and sports shooters and collectors were not generally used in criminal activities. It had, therefore, been decided that no limit would be imposed on the number of firearms they possessed.

Ordinary licence holders would be limited to be in possession of 200 rounds of ammunition and to the purchase of 2 400 cartridges a year.

Critical to the implementation of the Bill's provisions is the establishment of a computerised database, which would be directly linked to all weapons manufacturers and all arms dealers, so that up to date information including current addresses of licence holders, is readily available.

Tshwete said there would be an increased budget for the database and more staff would be recruited.

Deputy Minister of Safety and Security Joe Matthews said the new database would, in the long run, be cost saving because of the costs involved in running the ancient system being used at present. The modernisation of the system will make it cheaper.

Koch said among the aims of the Bill was to cut off the sources of illegal firearms and recover illegal firearms. It also provides for stricter controls over state-owned firearms. South African National Defence Force soldiers would, for instance, in normal circumstances be obliged to carry licences on them.

The new system will be phased in, and existing firearm licences will remain valid for five years after the new Act comes into force. New licences for restricted firearms, such as semi-automatic weapons, will have to be renewed every two years, as will firearms used for business purposes, such as by security firms.

Firearms acquired for self-defence purposes will have to be renewed every five years, while those owned by hunters, sharpshooters and collectors

will remain valid for 10 years.

People who will lose their right to possess firearms include those who have been convicted of certain offences in the Domestic Violence Act who have received sentences of 12 months for crimes of violence, who have been convicted of drug and alcohol abuse or whose mental condition has deteriorated.

Tshwete said the full contents of the Bill were available on the Internet and it would be published in the *Government Gazette*. It would also be forwarded to the National Assembly's portfolio committee for safety and security where the process of full public consultation will be initiated. We anticipate constructive debate during the public hearings which are expected to take place early in the new year.

"The drafting of this Bill has required complex and extensive understanding and balancing of often conflicting needs and requirements of a variety of interest groups. It will be central to our campaign to create a new and responsible culture of firearms ownership and will be supported by ongoing education and awareness initiatives," the minister emphasised.

Human rights commission subpoenas departments

THE SA Human Rights Commission has sent subpoenas to more than 30 provincial and government departments which have failed to supply information on measures taken to realise economic and social rights.

The commission said yesterday failure to comply with the subpoenas would result in further legal action against the provinces and departments. The departments will appear

before the commission from December 8 to 10.

The commission said it had a constitutional obligation to report annually to Parliament on socio-economic rights. It would be difficult to do this if organs of state did not co-operate.

It was the second year that the report was being compiled. Similar problems were experienced last year with the Eastern Cape and North West

Subpoenas will be withdrawn against departments which send their protocols before the date of their subpoena hearing.

The departments which will appear on December 8 include the Free State departments of agriculture, environmental affairs, finance and expenditure and health, as well as the national departments of trade and industry, welfare and agriculture. The Mpumalanga departments

of finance, local government and traffic, health and education and the Gauteng departments of finance and health will appear

Departments from North West, the Eastern and Western Cape and Kwazulu-Natal will appear on December 9. Departments from the Northern Cape and Northern Province will have to explain their failure to comply with the provisions of the constitution the next day — Sapa

(Sapa)

PD 25/11/99

Basson had control over 'vast sums'

(252)

Bowman 25/11/99

By Themba Molefe

FORMER apartheid chemical warfare mastermind Dr Wouter Basson had full control of millions in state funds, with which he could bribe, steal, buy and lie his way to maintaining a project to eliminate the then government's enemies

Retired surgeon general Niel Knobel said in the Pretoria High Court yesterday that the SA Defence Force, for which he and Basson worked, had sanctioned the coordinating control committee that gave Basson control over vast amounts of money

Under cross-examination by Basson's defence counsel, Advocate Jaap Cilliers, Knobel said he was not aware that Basson had these "exclusive" powers and did not want to know why he had them

"I never knew he had signing powers," Knobel said

He admitted, however, that Basson had had access to the money

"for the purposes of spreading his knowledge of chemical and biological warfare globally"

Cilliers has already pointed out that Basson had knowledge of every country that involved itself in chemical warfare, without a single secret agent in these countries being aware of it

Knobel agreed the SADF had given Basson a free hand over the projects and other services it paid for

Basson has pleaded not guilty to 61 charges, including 16 murder counts, the manufacture and possession of drugs and fraud

Meanwhile, *The Star* newspaper reported yesterday that Namibia had asked the SA Government for records of the case against Basson

Last month Pretoria High Court Judge Willie Hartzenberg ruled that Basson could not be tried in South Africa on charges of conspiring to murder Swapo members if the alleged murders were committed in

another country He said a 1989 amnesty proclamation issued by South Africa's last administrator-general in Namibia protected Basson from being prosecuted in SA for crimes committed in Namibia

If the Government accedes to this request, it will set a precedent and open the door to many apartheid crimes - such as the murder of prominent Namibian lawyer Anton Lubowski and the drugging of 200 Swapo guerrillas who were then dropped into the ocean - being revived

"After studying these records, the ministry will be in a position to determine steps that could be taken to bring Basson to book for the alleged atrocities committed during the Namibian liberation struggle," the Cabinet said on Tuesday

Namibian justice department permanent secretary Mr Albert Kawana confirmed the request for the court records

Super-prosecutors tackle justice logjam

APR 27 11 1999

(2/12)

Western Cape quartet will control court clusters

MOSES MTHETHLELI MACKAY
STAFF REPORTER

The efficiency of four Western Cape magistrate's courts has been boosted by the appointment of chief prosecutors, a move designed to help get rid of the huge backlog of cases.

Provincial Director of Public Prosecutions Frank Kahn said the new posts were part of a national strategy to manage courts more effectively.

The newly appointed people bring a wealth of professional experience and management ability. The posts will be largely management posts designed to enhance the efficiency of courts and address the backlog of cases.

About 25 people have been appointed to the key posts around the country. The Western Cape's four new chief prosecutors will assume their duties on December 1.

They are Mark Wakefield, at present senior prosecutor, and Alma Smith, at present assistant senior prosecutor at the Cape Town Magistrate's Court, Esther Cross, at present senior prosecutor at the Bellville Magistrate's Court, and Ben Walters, presently senior prosecutor at the Wynberg Magistrate's Court.

Mrs Smith will stay at the Cape Town Magistrate's Court as chief prosecutor, Mrs Cross will be the new chief prosecutor in the Bellville Magistrate's Court, Mr Walters moves to the George Magistrate's Court and Mr Wakefield goes to the Wynberg Magistrate's Court.



Andrew Ingram
New managers: recently appointed chief prosecutors, from left, Mark Wakefield, Esther Cross and Alma Smith discuss crime-combating strategies.

Mrs Smith will control other courts including Mitchell's Plain and Goodwood.

Statistics from April to August this year showed a total of 20 050 criminal cases waiting to be finalised in the province's magistrate's courts and 7 000 cases in the regional courts.

Hisham Mohamed, head of the justice department in the Western Cape, said the new chief prosecutors would manage and be accountable for the performance of the offices in clusters of 15 to 20 magistrate's offices.

They would perform such duties as regular inspection of office administration, and report to the director of public prosecutions.

The chief prosecutors would advise the authorities on the budgetary requirements of the offices and manage relief prosecutors within their clusters.

They would gather court statistics and identify factors affecting court performance and assist in remedying the situation. They would also have to assess training and liaise with other parts of the criminal justice system.

New team faces stiff challenge

STAFF REPORTER

Newly appointed chief prosecutors view their appointments as a challenge to bring better services to communities and to reduce the number of cases on court rolls in district and regional courts.

They also say they will increase prosecutors' sensitivity to gender issues and make them friendlier to the communities they serve.

Mark Wakefield, 36, of the Strand, is currently state prosecutor at the Cape Town Magistrate's Court. He moves to the Wynberg Magistrate's Court as chief prosecutor.

He said "Prosecutors need guidance, assistance and training from more experienced colleagues in order to effectively and efficiently secure convictions."

Chief prosecutors would improve delivery of prosecution services to delivery to communities, especially in small towns where prosecutors had very little experience or training.

"We have been mandated to find innovative ways to improve services so we can live up to our motto of being loyal to the community."

Mr Wakefield said the prosecution service was beginning to be seen as a career path for young lawyers who wanted to make a difference in combating crime in the country. "There is light at the end of the tunnel for prosecutors. I appreciate what Bulelani Ngcuka, the National Director of Prosecutions, has done for us."

Legal profession agrees on community service

(a72) 10/29/11/99
Taryn Lamberti

MEMBERS of the legal profession are in agreement that government should introduce compulsory community service for law graduates to alleviate the strain on the ailing Legal Aid Board, but financial restraints could put a damper on the plan.

Members of the legal profession met in Pretoria at the weekend to thrash out regulations which govern the future of legal practice in SA, legal education and qualification.

The justice department recently announced drastic cutbacks in the provision of legal aid because the board was on the brink of insolvency.

It is the board's task in terms of the constitution to provide legal assistance to poor people, but the task has become too massive for the board to cope with. The volume of legal aid instructions issued has grown 500% in the past decade.

Compulsory community service for law graduates, as a requirement for qualification to practice, would assist the government in providing legal services to the poor.

The problem is that graduates require supervision and training. The cost of the scheme would be too high for government because it would not only have to pay the graduates salaries, but would also have to provide a structure to accommodate the 2 000 to 3 000 law graduates produced by the universities each year.

Cheryl Loots from the justice department's policy unit said government was

wary of going the compulsory route when we know that we cannot fund it."

She said the costs could not be built into the departmental budget before April 2001, but there was an international donor who might help with funding.

"The only way that community service will make a significant impact upon the delivery of legal services and the efficiency of the administration of justice is if all legal practitioners, interns and law students are required to do a minimum period of 'community' service," Loots said in a discussion paper on the transformation of the legal profession.

Board chairman Mohammed Navsa said community service should be introduced for law graduates because it would give them greater understanding of the needs of the poorer communities in the country.

He said any aspirant corporate lawyer could only benefit from having represented unionists during a period of internship.

□ The editorial in the December issue of attorneys' journal *De Rebus* accuses government of having ignored repeated warnings of the impending financial crisis the board was facing.

The journal says attorneys have expressed anger at the drastic measures introduced last month to save the legal aid system.

"We believe that, had the authorities acted with more urgency when the problems at the (board) were first identified, the financial blow to many attorneys who do legal aid work, especially those from underprivileged backgrounds, could have been softened."

BRAIN FUNCTIONS PERMANENTLY CHANGED

Basson's research terrified the world

By SA 30/11/99 (252)



SA
PRETORIA

THE SA Defence Force was involved in highly secretive research in the early 1990s to permanently change the brain function of human beings, the Pretoria High Court was told yesterday.

Jaap Cilliers, counsel for the apartheid government's chemical warfare expert, Wouter Basson, put it to state witness, former SADF Surgeon General Niel Knobel, that this research had "terrified the world" because it was feared it could permanently alter people's brains to make them either passive or highly aggressive.

Knobel said he had been aware that highly specialised equipment was imported to South Africa for Aids research and knew this equipment was also used in research on substances — including the drugs Mandrax and ecstasy — to incapacitate crowds.

However, he found it difficult to comment on claims by Basson that the same equipment was also used in studies on permanently altering brain functions.

Whereas drugs such as Mandrax and ecstasy only had a short-term effect on the brain, the potential existed that the brain could be permanently altered through peptides (a basic protein compound), Cilliers said.

"This could have the effect of making an aggressive person very passive or a normal person abnormally and uncontrollably aggressive."

He said that because of this, a decision was taken in 1992 to exchange the specialised equipment for a batch of the raw material used in manufacturing ecstasy. Shortly after this, the then

Knobel agreed that the SADF's chemical and biological warfare programme, Project Coast, did research on deadly substances in the early 1980s, but said this had been to protect South African troops. This included research on cholera.

He said he had been highly upset by a 1992 decision of De Klerk to fire 23 SADF officers, including Basson, on the strength of a verbal report by General Niel Knobel. As Project Coast was in a very delicate stage, the SADF could not afford to lose Basson. Knobel tried to speak to De Klerk, but each request was refused.

He said there was some confusion about the identity of Basson, especially as there had been several W Bassons in the SADF and the police — one of whom was allegedly involved in the murder of human rights activist Antron Lutwowski in Namibia.

Eventually, Knobel took Basson to the holiday residence of the then chief of the SADF, General Kat Liebenberg, who spoke privately to Basson.

Liebenberg later told Knobel he was satisfied with the decision that Basson should retire.

According to Basson, Liebenberg emphasised that the communication and pay channels, established in other countries for Special Forces (that had nothing to do with Project Coast), should not be compromised.

An agreement was later reached that Basson would, privately, continue working for the SADF. Cilliers put it to Knobel that Basson would deny ever stealing money from the SADF or failing to reveal vital facts with regard to Project Coast to Knobel.

SADF brain research 'terrifying'

By SA 30/11/99 (252)

PRETORIA — The SA Defence Force (SADF) was involved in highly secretive research in the early 1990s into changing people's brain functions, the Pretoria High Court heard yesterday.

Jaap Cilliers, counsel for the apartheid government's chemical warfare expert Dr Wouter Basson put it to former SADF surgeon-general Niel Knobel that the research "terrified the world" because it was feared it could be abused to permanently alter people's brains to make them passive or aggressive.

Knobel said he had been aware that highly specialised equipment was imported for AIDS research and knew this equipment was also used in research on substances to incapacitate crowds — including the drugs mandrax and ecstasy.

However, he found it difficult to comment on claims by Basson that the same equipment was also used in studies on altering brain function. The then defence minister decided it would be in SA's best interest to scrap the programme and destroy all drugs the SADF had bought shortly before.

Knobel agreed with Cilliers that the whole idea to stockpile drugs on a large scale had been approved by former state president FW de Klerk.

Knobel expressed surprise that Gen Lothar Neethling, former forensic head of the SA Police (SAP), had been aware of the SADF's involvement in research on drugs, although he knew the SAP had provided drugs, confiscated in police actions to Basson for research.

He confirmed the defence minister had given permission to the SADF to possess drugs for research. Cilliers revealed Basson had, at the height of the apartheid era, bought raw materials for the manufacture of drugs from the Croatian government in a joint operation with the Swiss secret service which he believed, would get "nuclear technology" out of the deal.

Killer Mbambo and cohorts get amnesty

By CHRIS HLONGWA

FLAMBOYANT playboy Romeo Mbambo and his co-assassins, Gcina Mkhize and Bertwell Ndlovu, walked away free men on Friday from Westville prison in Durban after being granted amnesty for more than 100 murders in the province in the mid-1980s and early 1990s.

They were secretly trained by the apartheid SA Defence Force in the Caprivi Strip, Namibia, in the mid-1980s as part of a group of 200 Inkatha Freedom Party trainees. Their mission, kill anti-apartheid activists.

Their commander, Daluxolo Luthuli, a former Umkhonto weSizwe marksman who was later to become an IFP "killing machine", and David Dlamini and Bhekisisa Khumalo were also granted amnesty by the Truth and Reconciliation Commission

Israel Hlongwane, whose other crimes of kidnapping, attempted murder and murder could not be forgiven because no political motive could be linked to them, stays in prison.

During their amnesty applications - Mbambo and Luthuli sought pardon for 27 offences each (including incidents where they killed an unknown

number of people) - the group implicated top IFP leaders and apartheid masters.

They implicated Vlakplaas commander Eugene de Kock, the IFP's Philip Powell as the supplier of their weapons, IFP senior member MZ Khumalo and former defence minister General Magnus Malan

All those implicated have denied the allegations. (252)

The pardoned men were involved in the notorious KwaMakhutha massacre in 1987 in which 13 people, including children, were murdered during a prayer meeting

Luthuli's offences included the murder of well-known Clermont township businessman Zazi Khuzwayo and the attempted murder of Pam Shabalala of the same township.

Mbambo caused mayhem, especially at Esikhawini in northern KwaZulu-Natal. In one instance he killed people in a bus, said TRC spokesperson Mbulelo Sompetha

Hlongwane was refused amnesty for the kidnapping and attempted murder of Fihle Ncala from Mpumalanga township, and for the kidnapping, rape and murder of Stella Mso-mi from Unit 2 in the same township

Sowetan 28/12/99

FOCUS

Equality bill is unfair to SA's highly trained judiciary

PUBLIC debate, or what passes for it in SA, is increasingly polarised. Apart from the implications of this for a young democracy, another result is that legislation — sound in concept but hopelessly flawed in detail — is finding its way on to the statute books.

A good case in point has been the recently gazetted Promotion of Equality and Prevention of Unfair Discrimination Bill.

Although the polemic has not yet reached the levels associated with the introduction of the Employment Equity Act, the bill has divided most South Africans into one of two camps: those totally opposed and completely dismissive, and government supporters who will not countenance any criticism.

Criticisms levelled against the proposed act include high cost implications of implementation that government has once again misdirected funds that could be used more urgently

elsewhere, and that it is Orwellian in concept and effect.

One might wonder why existing bodies such as the Human Rights Commission, the Constitutional Court, the labour tribunals and the criminal courts are not more than adequately equipped to deal with any allegations of unfair discrimination.

But the constitution requires that legislation be passed within three years of the date on which the constitution came into effect. As Alan Fine pointed out (Business Day, November 3), such legislation is not unheard of elsewhere in the world.

The principles of the bill cannot be faulted.

However, as much as government professes to espouse and give effect to the principles of democracy, certain practices that are slowly creeping into the way things are done belie these

good intentions. One of the most pernicious examples of this subtle undermining of laudable principles is the fact that the bill intends to sensitise judges sitting in the special equality courts to the gist and aims of the bill.

A cornerstone of the foundation of democracy, on which this country is supposedly built, is the independence of the judiciary — put in place to fetter the power of Parliament, and ensuring that laws are not in conflict with our constitution.

An independent body, the judiciary is institutionalised to provide the safety valve, the acid test for open and democratic law making free from the type of draconian actions our citizens suffered from under the apartheid regime.

Almost everybody would immediately concede to the imbalances created by privilege in the

past and the fact that the scale is yet merely poised on adjustment. However, to tip the scale by ensuring government policies are enforced through specialised courts borders on social engineering.

Although the commission has been mindful to create a bench that is more representative, the nomination of potential candidates is only from the ranks of those deemed to be competent.

We have specialised courts in SA and thus the type of court envisaged in the act is nothing new. But appointments to these benches are based on proven underlying experience.

To suggest, as the bill indirectly does, that there are judges who would not be able to adjudicate on these issues without some training, is insulting to some of the eminent judges at

who enjoy standing and respect among their peers.

The selection process specifically designed to exclude the type of political interference that dogged appointments to the bench in the past.

Although the commission has been mindful to create a bench that is more representative, the nomination of potential candidates is only from the ranks of those deemed to be competent.

We have specialised courts in SA and thus the type of court envisaged in the act is nothing new. But appointments to these benches are based on proven underlying experience.

To suggest, as the bill indirectly does, that there are judges who would not be able to adjudicate on these issues without some training, is insulting to some of the eminent judges at

ready sitting on our bench.

Not only do these judges enjoy a formidable reputation in the area of human rights, a significant body of jurisprudence has already developed around the issues of both equality and unfair discrimination, enshrined in the constitution.

The bill does provide for assigning cases to "presiding officers who (are suitable) by reason of his or her training, experience, expertise and commitment to the values of equality and human rights".

This bill aims to provide for at least one presiding officer and "equality assistant" in each court in SA, including both magistrates and high courts. Policy directions will be given that will provide for uniformity in the application of the bill through the courts.

It is this aspect which is wor-

Provision of special training for specific law is insulting to eminent judges already on the bench, writes Marleen Potgieter

their interpretation on the piece of legislation.

Herein lies the independence of the judiciary.

To suggest that this bill needs special training and recognition amongst its presiding officers begs the question of the quality of the jurisprudence evolved around the bill of rights.

The bill sets out to help facilitate litigants' access to the courts on issues around inequality and discrimination, thus providing speedy resolution to disputes. Not only is the envisaged training expensive, but to interrupt a matter for a referral to the special equality court as envisaged by the bill will result in more delays.

As Oscar Wilde points out in his usual pithy fashion "Democracy means simply the bludgeoning of the people by the people for the people."

□ Potgieter is a director of a Cape Town law firm.

(252) BD 2/12/1999

CT 2/12/99

Basson refused offer of amnesty

ZELDA VENTER

JOHANNESBURG. Wouter Basson was offered amnesty by the TRC without having to testify at a public hearing, provided he made a full disclosure about the Defence Force's chemical and biological warfare programme, the Pretoria High Court heard yesterday.

Basson's counsel, Jaap Cilliers, asked National Intelligence Agency (NIA) deputy director-general Mike Kennedy if he was aware of this, adding that the TRC had promised that if Basson played along, they would ensure that the Medical and Dental Council did not take steps against him or any other medical doctor who may have been involved in the programme.

Kennedy said he had arranged two meetings with the TRC for Basson, but that Basson's attitude was that he had done nothing wrong and that he did not need amnesty.

Kennedy said he knew that Basson had close ties with Libyan Intelligence and that some of them had stayed at Basson's house for some months.

Cilliers asked Kennedy whether he knew Basson had even brought a high-level Libyan into the country to meet former president Nelson Mandela. Kennedy said he did.

Kennedy, who has been with the NIA for 34 years and specialised in counter espionage, said he was only officially briefed about Project Coast in 1993, although he had been aware of it since 1989.

He had found out about it by detaining spies, and had known enough about it at the time to brief former president F W de Klerk in November 1989. He then already suspected that the programme may have been abused.

While Military Intelligence had been in charge of the security of the project, the NIA had kept an eye on allegations of abuse.

Kennedy said he had confirmed with the British and American intelligence services that Basson's life was in danger. Two of Basson's colleagues in Europe had received a message that if they went back to Libya, their lives would be in danger.

The trial was postponed to January 24.

A rich stew of fact and fiction

Jerry Richardson was this week back before the TRC's amnesty committee, but no more coherent than during his last testimony; reports Piers Pigou

MTG 3-9/12/99

Between November 1988 and February 1989, Jerry Vusumzi Richardson and other members of the Mandela United Football Club went on a killing spree that resulted in his arrest, prosecution, conviction and 20 year sentence for the killing of Free State child activist Moekeetsi Stompie Seipei.

This week, he applied for amnesty for Seipei's murder three other killings and one attempted murder during this period. He claimed that he had committed these crimes under instruction from Winnie Madikizela Mandela. She categorically denies the allegations.

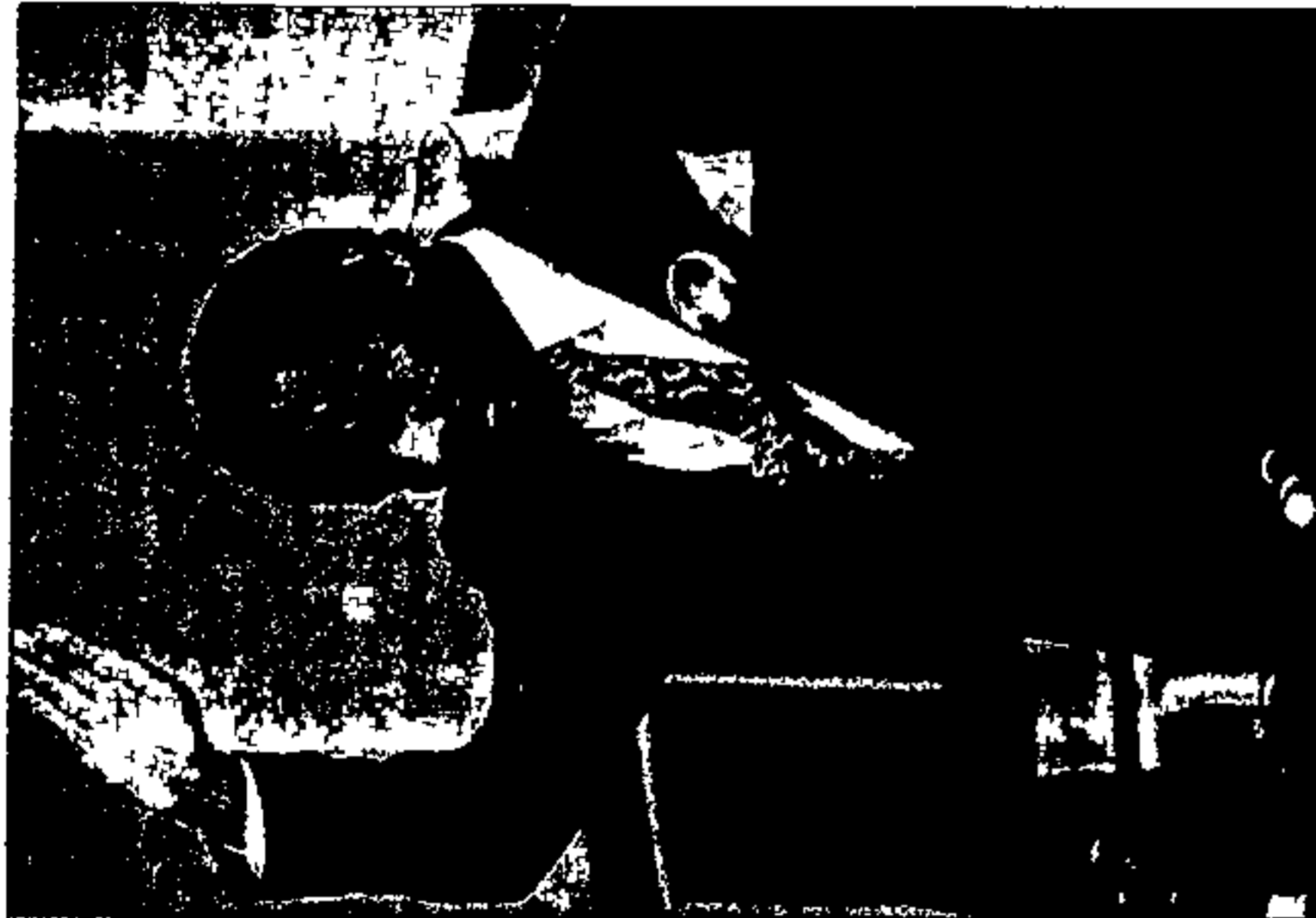
In contrast to the media circus that descended on Mayfair two years ago for the football club hearings, only a handful of journalists turned up to see whether Richardson would add anything new to the story. Nobody really expected he would.

His antics at the last hearings did not inspire confidence that he was going to provide a coherent version this time around, and, sure enough, as soon as the cross examination began, he completely lost the thread of what was being asked and what he was saying.

This prompted Richardson's attorney Tony Richards to ask the amnesty committee to postpone the matter to allow his client to undergo a psychiatric evaluation.

Madikizela Mandela and her counsellor objected, charging this was some sort of underhand tactic to prevent them undoing the damage done by Richardson the day before when he gave relatively coherent evidence-in-chief. Not surprisingly they felt cheated of their opportunity to tear Richardson's version of events to pieces.

In light of Richardson's ramblings however it seemed that his



Rambling on Jerry Richardson's incoherence during his amnesty application this week prompted his lawyer to ask for the hearing to be postponed so that he could go for a psychiatric evaluation. PHOTO: AP

sequently the South African National Defence Force, where he was located and questioned by the police in 1986. There is no record of the interrogation, and he has subsequently left the army.

Jabir Sithole was also arrested and charged in the Seipei case. He also absconded before trial to join the ANC and warrants for their arrest remain valid. Sithole was located by the TRC working for airport security at Johannesburg International. He has not been questioned and the arrest warrant has not been executed.

The person in the most invidious position is Michael Seakamela, who on more than one occasion corroborated the version that Madikizela-Mandela was present when Sono was taken badly beaten to his parents' house in November 1989.

The uncle to Zuzi Mandela's first child, he is particularly compromised as he is clearly unhappy about testifying yet knows he is the crucial witness in a possible kidnap charge against Madikizela-Mandela.

It seems unlikely however that there will be either the political will or investigative resources to pursue the matter further. The desperation of the Sono family's search for their sons bones is not, in the greater scheme of things, regarded as a priority issue.

But spare a thought for the victims, who came again to the TRC in the hope that some more light may be shed on the events that transpired during those four months of madness.

Once again they have gone away empty handed. Once again the mud has been flung in Madikizela-Mandela's direction, without proving or disproving a thing. And as for Richardson even if the amnesty process collapses he has served over half of his sentence and will be eligible for parole in a few years.

Piers Pigou is a researcher at the Community Agency for Social Enquiry and was a TRC investigator involved with investigations into the Mandela United Football Club

in the Seipei affair and skipped bail to join the ANC in exile.

Khubeka was subsequently given indemnity in November 1994 for the attempted murder of Seipei. Khubeka is also implicated by several witnesses in the abduction and beating of Loko Sono, who along with his friend Sibusiso Tshabalala, was accused of "selling out" the cadres that died at Richardson's house.

Sono was last seen by his parents and one other witness badly beaten and accused of being a spy in the custody of Madikizela-Mandela and several club members including Khubeka.

Then there is "Slash" Mshahini implicated in the murders of Seipei, Tshabalala and Sono as well as several other incidents. He also joined Umkhonto weSizwe and sub-

some credibility. He provided information to the police in 1995 which led to the identification of the body of Kuki Zwane who Richardson said he killed in December 1989 and for whose murder he is also seeking amnesty.

He also provided a considerable amount of detail that was corroborated by others or that corroborated the versions of others. This of course doesn't make him entirely credible. But it also doesn't mean that he is lying about everything.

As with many TRC-related matters separating fact from fiction and truth from lies within the constraints of the process appears an impossible task. Several key witnesses and implicated persons have yet to be located and questioned by the police and in the general community. This includes Gubbun Khubeka, who was charged

with the murder of Seipei. Richardson's testimony was full of contradictions and inconsistencies. He seemed to be saying what he thought he should say to get through the hearing.

There are, it seems, unending contradictions in the various versions that Richardson and other witnesses have put forward. As such his testimony would be regarded as unreliable in a court and may well be by the Truth and Reconciliation Commission's (TRC) amnesty committee if the hearings proceed.

But Richardson has established

TRC refuses amnesty for 'Lappies' Labuschagne

MTG 3-9/12/99 (252)

Wally Mbhele

A senior policeman who once targeted the present-day chief of the South African National Defence Force (SANDF), General Siphwe Nyanda, for assassination, and abducted and tortured Nyanda's wife, was this week bluntly denied amnesty by the Truth and Reconciliation Commission (TRC)

Amid strong opposition to his application from victims' families, Senior Superintendent Frans "Lappies" Labuschagne — at a hearing that lasted less than five minutes — was not pardoned, on the grounds that he applied after the cut-off date for amnesty applications

Once an apartheid hit-squad heavyweight, Labuschagne currently commands the police intelligence unit as well as internal security

and serious crimes in Mpumalanga

Labuschagne's list of victims includes former high-ranking African National Congress national executive committee member Cassius Maahe, Umkhonto weSizwe (MK) commander Paul Dikeledi, and an MK special operations chief, Theophilus "Viva" Dlodlo

Dlodlo's murder was supposed to top the list of the amnesty hearing. It was Dlodlo's former wife, Felicia Mathe, who spearheaded opposition to Labuschagne's amnesty bid

As he clung to his cellphone yesterday after hearing the bad news, Labuschagne began to face a difficult future, with possible prosecution and civil action by families of his victims

The role of a police informer — a woman who allegedly received approximately R7 000 for information that led to most of Labuschagne's

murders — was threatening to make the hearing explosive

The woman informant is known to the victims, is believed to be working for a parastatal, and is "very close to senior people in the government". They have known each other since the 1980s when the ANC — which once detained her — was still a banned organisation

Labuschagne is also known for being removed from police investigations into the rest of foreign affairs official Robert McBride in Mozambique, on charges of gun-smuggling

He was removed after the *Mail & Guardian* reported about his apartheid assassinations as well as victims' plans to sue him

He missed a golden opportunity for amnesty when TRC investigators initially approached Labuschagne, towards the end of 1996, for

questioning about the murder of a former United Democratic Front activist, Stanza Bopape

Bopape was murdered by the security police in 1986 before his body was disposed of in a crocodile infested river in Middelburg, where Labuschagne is based as a policeman

He told TRC investigators that there was nothing in his police career that could make him apply for amnesty

That was before another hit-squad master, Eugene de Kock, implicated him in the Swazi land murders of ANC activists

In July 1998, Labuschagne hurriedly applied for amnesty after hearing of De Kock's confessions. The TRC's cut-off date for amnesty applications was May 1997

This is what formed the basis for victims' families opposing his amnesty bid

Legal circles abuzz as Maduna poses obstacle to black judge

ST 5/12/99

(252)

CARMEL RICKARD

THE Minister of Justice, Penuell Maduna, has acted to keep the black heir apparent to the job of Cape Town High Court Judge President out of the post for at least another year.

It emerged this week that Maduna had asked the Judge President of the Cape Town High Court, Edwin King, who was due to retire at the end of this year, to stay on in an acting capacity until October.

This means his obvious successor, Deputy Judge President John Hlope, cannot be officially considered for the job until the end of next year at the earliest.

The decision was made without consulting either the Judicial Service Commission or Chief Justice Ismail Mahomed, and has left the legal community speechless.

The chief justice had not known of the minister's decision to ask Judge King to stay on until October. He was only aware that Judge King would stay on until April, when the

Judicial Service Commission is next scheduled to meet and hold interviews.

Maduna has been an emphatic supporter of transformation of the Bench, and uses every opportunity to say that more black judges should be appointed to senior positions.

Maduna's spokesman Paul Setsetse declined to say why Judge King was asked to stay on. But with the minister's silence on the reasons for his decision, legal circles are abuzz with talk that extending Judge King's tenure is aimed at preventing Judge Hlope from acceding to the job and indicates Maduna's displeasure with Judge Hlope's independent judicial decision-making.

During his term at the Cape Town High Court, Judge Hlope has taken two decisions which will not have endeared him to the government: he found in favour of PAC official Patricia de Lille in her fight with the ANC parliamentary leadership and he ruled that the law providing for military court martials was unconstitutional.

There is also talk that the min-

ister, by delaying the date on which Judge Hlope will be interviewed, hopes to find an alternative candidate who could be fielded against Judge Hlope.

Some say Maduna has a political gripe with Judge Hlope over his allegedly unsympathetic attitude to ANC exiles in London while the organisation was banned in South Africa.

Since his appointment as deputy to Judge King, Judge Hlope has won widespread support among his Cape Town High Court colleagues, regardless of their colour.

It is well known that relations between the judge president and his deputy are strained, and the new decision is expected to exacerbate the situation. There has also been a great deal of controversy relating to Judge King as an administrator.

At 40, Judge Hlope is younger than most judge presidents but youth has not appeared to count against black candidates. He was appointed as deputy judge president in April, which would have given him some experience of the requirements for the top job.

Judge King's

tenure renewed

CT 6/12/99 (277)

RONALD MORRIS
THERE is disquiet in legal circles about the legality of Minister of Justice Penuell Maduna's decision to extend the tenure of Judge Edwin King as Judge President of the Cape after he had reached the mandatory retirement age.

Judge King, who turned 70 in September, will complete 15 years service on the Bench this month, but in an unprecedented move, will stay on until October next year.

King's announcement to his colleagues on Friday caused dissatisfaction among judges and top members of the legal fraternity who believe the move is to frustrate the chances of Justice John Hlophe, the Deputy Judge President of leading the Cape Provincial Division of the High Court.

Judge King told the *Cape Times* last night he had "no comment on that sort of speculation".
 Judge King has presided over a troubled Bench for the past 14 months. Legal sources said judges at the Cape Bench have been in a high state of dissatisfaction over Judge King's performance as an administrator.

"When he made the announcement (that he would be staying on) there was absolute silence. The judges then had a debate. Everybody wanted him to go. He leaves at 4 10pm and when his judges need him he's not there. He rarely goes into court," a top lawyer said.

The belief in legal circles is that Judge Hlophe has not endeared himself to the government by

ruling against the Speaker of the National Assembly Frene Ginwala, who suspended PAC MP Patricia de Lille from parliament for 15 days last year after she alleged in the National Assembly that 12 prominent ANC members had been apartheid-era spies.

Judge Hlophe, with Justice King, found that Parliament was subject to judicial scrutiny and was subordinate to the constitution.

An attempt by Ginwala to stop court proceedings by issuing a certificate to the effect that the steps against De Lille concerned the privilege of Parliament, was untenable the judges said.

Any certificate issued in terms of the Powers of Privileges of Parliament Act undermined the independence of the courts and interfered with their functioning.

Therefore, it was unconstitutional and invalid, the judges said. The Supreme Court of Appeal subsequently upheld the judgment of judges Hlophe and King.

Judge Friedman stepped down to give him (King) a chance but he is not prepared to step down to give Hlophe a chance," another prominent legal source said.
 "He will never forgive Hlophe for running against him as Judge President."

"The Bench and the bar are dissatisfied. The hour has come Hlophe should be the next Judge President."
 "It is pretty obvious that King cannot get over the fact that Hlophe had the temerity to have himself nominated as a candidate for Judge President."

A senior lawyer who also spoke on condition of anonymity, said that in terms of the 1989 Judges

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in that matter, but they would have expected that kind of judgment from King.

"These guys want their own people. They want compliant people. The more sycophantic you are the better."

Another legal source said the minister's action "bears the hallmark of a bull in a china shop".

"There is scepticism as to why he's doing it. The concern is that it is not legal. There was no consultation with the Chief Justice."

Paul Setsetse, spokesperson for the Minister of Justice, said the minister was committed to making the judiciary representative both in terms of race and gender. Setsetse dismissed suggestions that there was a deliberate attempt to block Judge Hlophe.

"When an appointment is made in a position of this nature the process of doing so is a very open and consultative one."

"It is not true that the extension of Judge King's tenure is due to the fact that somebody, or the minister, is not willing to allow Hlophe to be the next Judge President."

BID TO CONTROL BENCH DENIED

Bill 'will make judges more accountable'

MOTSHIDI MOKWENA

THE draft bill on judicial discipline and the proposed code of ethics for judges should not be seen as attempts to strip the judiciary of its powers, but as mechanisms to create good relations between the bench and the public, the Department of Justice and Constitutional Development says.

The draft bill has been criticised by opposition politicians and members of the judiciary. Department spokesperson Paul Setsetse said fears were unfounded that the attention behind the code of ethics was for a political body to oversee the functioning of the judiciary.

"Contrary to the allegations, the body will not be a tribunal," he said. "There is absolutely no substance in the allegation that there is a systematic attempt to control the bench. This draft bill on judicial discipline was drafted with good intentions and the department believes there are judges who understand this."

Setsetse said the draft bill was supposed to provide guidelines for assessing judicial conduct and whether it was unbecoming to the office. It was also intended to help judges deal with ethical and professional issues.

Some critics say it is ambiguous, vague and fails to define "misconduct".

Warning against the merits of the draft bill being debated in the press, Setsetse said the JSC was handling all submissions and inquiries.

Political parties have expressed concern about the bill. They say it would be a negation of the separation of powers, flagrantly unconstitutional and contrary to the spirit of democracy.

The national chairperson of the United Democratic Movement (UDM), Masilo Mabela, said his party would oppose any measure that would call individual judges and magistrates to account before Parliament and other attempts to wield political influence over the courts.

"This would seriously undermine the independence of the judiciary and would be destructive to the essence of our democracy and Constitution," he said.

A number of judges have criticised several elements in the draft bill and have objected that they were being rushed into submitting their comments to the Judicial Service Commission.

It has been reported that Chief Justice Ismail Mohamed has promised that judges will be given enough time to submit their comments and objections.

Setsetse said judges had been aloof and removed from the public. The department saw a need to make the judiciary more accountable and accessible.

The structure proposed for judges would be similar to the Magistrates Commission, which had not tampered with magistrates' independence, Setsetse said.

"Instead it serves to protect them." The draft code of ethics was drawn up by a committee of four judges, Lawrie Ackermann, Cecil Somyalo, Gerald Friedman and Louis Harms.

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Bill to allow complaints against judges will not affect their independence, says Maduna



ANDRÉ KOOPMAN
PARLIAMENTARY BUREAU

A DRAFT bill which provides for the disciplining of judges would not affect the independence of the judiciary, Justice Minister Penuell Maduna said yesterday after certain judges claimed that the proposed law would interfere with their independence.

Maduna said the draft Judicial Matters Amendment Bill, which provides for "a complaints mechanism for the public

or any interested parties regarding the conduct of a judge", was in line with the Constitution.

The independence of the judiciary would not be affected since only the Judicial Services Commission (JSC) could remove judges, he added.

Several judges have expressed concern about the draft bill and have petitioned the UN's special representative on the independence of the judiciary, Param Cumaraswamy.

that in terms of the Constitution national legislation may be passed to provide for any matter concerning the administration of justice, including procedures for dealing with complaints about judicial officers. "At present no such legislation exists."

The Constitution provides for the removal of a judge from office only if the JSC finds that he or she suffers from a incapacity or gross misconduct or guilty of gross misconduct.

Maduna said there was no legislation

dealing with a complaints mechanism against judges "the procedure to be followed in following up a complaint against a judge or steps which may be taken against a judge, where his or her misconduct does not justify removal from office."

The draft bill containing proposals regarding the setting up of such a complaints mechanism within the JSC, emanated from within the JSC as long ago as 1997. Maduna added.

He emphasised that the Constitution

guaranteed the independence of the courts.

"The government cannot interfere with the courts in the exercise of their judicial functions and does not desire to do so as they must remain independent."

The bill would not provide for a "tribunal to pass judgments on rulings and sentences by judges" as claimed in some media reports, he said.

The JSC had appointed a committee from its own ranks to consider the proposed complaints mechanism and to

make submissions to the commission which would consider legislation from various other countries regarding the matter, Maduna said.

Only after these steps were followed would the JSC make a formal recommendation to the government "as to the possible introduction of such legislation."

Maduna said the bill did not interfere with the functioning of the courts. It was regrettable that some judges had chosen to raise their concerns through the media and not with the JSC as required

Justice ministry refutes accusation

By Jimmy Seepo
Political Correspondent

THE proposed Judicial Complaints Committee Bill, which is currently under discussion within the Judicial Service Commission, will not interfere or erode the power of judges and magistrates, the Justice Department said yesterday.

The department's statement follows concerns by judges, magistrates and political organisations that the Judicial Complaints Committee Bill, which will function as an oversight committee, could lead to the Government interfering in the courts.

Judges and other parties have claimed that the Bill will call a tribunal to pass judgment on rulings and sentences by judges.

Justice spokesman Paul Setsetse said the ministry refuted statements that the draft Bill would provide for a tribunal against rulings and sentences.

Setsetse said the draft legislation would in no way interfere with the functioning of the courts.

"The constitution guarantees the independence of the courts. The Government cannot interfere with the courts in the exercise of their judicial functions and does not desire to do so," he said.

Setsetse said the Bill aimed to provide a mechanism and procedures for dealing with complaints about judicial officers.

Some of the important features that the Bill would provide are:

- A complaints mechanism for the public or any interested parties regarding the conduct of a judge.
- The procedure to be followed in a complaint against a judge, or
- Steps which may be taken against a judge where his or her misconduct does not justify his or her removal from office.

"The Bill is currently being circulated among members of the judiciary with a view to obtain comments. These will then be considered by the Judicial Services Commission (JSC)," he said.

Setsetse said the decision to investigate and to draft proposals about such a mechanism emanated from within the JSC as far back as 1997. "The draft Bill is in the early stages of consideration by the JSC" he said.

The United Democratic Movement expressed its concern about "the Government's plans for a judicial complaints procedure to review judgments of the courts. The organisation said the proposed plans will negate the separation of powers in the Constitution and therefore be flagrantly unconstitutional and anti-democratic."

The movement proposed that the Chief Justice be consulted in devising a system by which he might account to Parliament for the functioning of the judiciary and important related matters such as sentencing policy and the transformation of the bench.

It said it would oppose any measure which would call individual judges and magistrates to account before Parliament to review or discuss any specific decision of any court.

Truth commission 'gave victims voice'

Nomavenda Mathiane

THE truth commission has empowered South Africans to speak out about their experiences to avoid a situation where they could claim not to know that human rights were violated, commissioner Yasmin Sooka said yesterday.

Addressing a delegation of the Association of West European Parliamentarians for Africa, accompanied by Burundian and Rwandan parliamentarians, Sooka said because of the commission's hearings, which took place even in remote areas of the country, no South African could say "we did not know."

However, she said while the commission was successful in exposing gross human rights violations, it failed to investigate all the cases brought to it.

"We were naive to think we would be able to investigate every single person's case."

Sooka said that "We were able to investigate a small fraction of all the cases that came to the TRC (truth and reconciliation commission)."

On the negative side, she criticised the ambiguous stand the government had taken with regard to reparation.

"We could have delivered earlier on a clearer policy regarding reparations. Instead of what we have now — a situation where the government is saying one thing and the truth commission is saying something else."

She suggested that government set up a directorate, to be situated in the President's Office, to deal solely with the victims of human rights violations.

She said reparations, which would take the form of symbolic amounts, should be paid out over a period of five years.

Ntombi Mosikare, representing Khulumani (a support group for victims of violations) said the commission compromised their rights to civil claims and that, as victims, they were angry and frustrated by the lack of transparency and progress in government's dealing with reparations.

Explaining what Khulumani stands for, Mosikare said the organisation came about in response to the setting up of the commission, providing victims with the opportunity to speak out about their hardships.

She said Khulumani offered security to victims who were concerned that they might be victimised if they made submissions to the commission.

"We exposed our wounds in public on the understanding that it was necessary to speak out as part of the commission process. Instead we are discovering that it was a cynical ploy by politicians to score points," she said.

She also said the commission in some instances failed to expose the truth.

"Some of the truth came out during the amnesty hearings with perpetrators confessing their actions," said Mosikare.

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Draft bill aims to deal with complaints against judges

BD 9/12/99

(252)

David Greybe

CAPE TOWN — The chief justice, Constitutional Court president and provincial judges' president will be authorised to dismiss public complaints against judges and will not be obliged to refer them to a complaints committee, states draft legislation.

The draft Judicial Service Commission Amendment Bill is presently with various people, including judges, for comment.

The draft bill proposes an 11-member committee consisting mostly of judges — no politicians — to adjudicate complaints from the public about "alleged misconduct" by judges.

The committee would be chaired by the deputy chief justice, and members would be appointed for up to three years. The draft bill allows for their reappointment. The committee would be permitted to co-opt two extra members for any particular inquiry.

"The functions of the complaints committee shall be to inquire into complaints of alleged misconduct by any judge and, where appropriate, to take disciplinary steps against that judge or to make recommendations to the (Judicial Service) Commission regarding such steps," the draft bill states.

Several judges have publicly

expressed concern about the draft bill and have petitioned the UN special representative on the independence of the judiciary.

Justice Minister Penuell Maduna yesterday reiterated government would not interfere in the judiciary's independence.

His office said a complaints committee for judges would fulfil a similar function to that of the Magistrates' Commission, "which has operated without interference".

The draft bill defines three categories of judges for the purposes of reporting complaints:

- Complaints against the Constitutional Court president, the deputy chief justice, an appeal court judge or a judge president of a high court, "or of any other court of a status similar to the High Courts" must be reported to the chief justice,

- Complaints against the chief justice, Constitutional Court deputy president or a judge of that court must be reported to the president of the Constitutional Court, and,
- Complaints against a high court judge or one of any other court of a similar status must be reported to the relevant judge president of the high court or other court concerned.

Upon receipt of a complaint of alleged misconduct by a judge "lodged by any person by means

of an affidavit or affirmed declaration", a copy must be submitted to the judge concerned who, in turn, must "submit his or her written admission or denial of the alleged misconduct".

The complainant must be given a copy of the judge's reply, and must comment thereon.

After consideration of all the information, the chief justice, Constitutional Court president or judge president concerned may either

- Dismiss the complaint against the judge concerned,
- Find the judge guilty of misconduct, or
- As soon as possible refer the matter to the complaints committee to conduct an inquiry into the matter.

The bill proposes committee hearings be held in camera, with provision for legal representation on both sides, the calling of witnesses and their cross-examination, as well as access to all documentation.

Sanctions for judges found guilty of misconduct are limited to a maximum a R10 000 fine, a transfer to another high court or similar court, a caution, a reprimand or a postponement of any action for up to a year.

The bill does not define misconduct. The chairman does not have to publish the findings, but must report to the commission.

TRC pays out a pittance

M+G 10-16/12/99 (252)

Barry Streek

The Truth and Reconciliation Commission (TRC) is to give an average of only R3 000 to each of the 16 700 victims of apartheid identified during its hearings

"It is very little," TRC commissioner Hlengiwe Mkhize acknowledged this week, saying the awards would be merely "symbolic" "It is simply an acknowledgment of their pain and suffering. It was intended to restore people's dignity, but it really does not fulfil that function."

The TRC proposed far higher compensation, said Mkhize, but the government came back with a more modest proposal.

News that the pay-outs will be so paltry follows details of the government's reparations budget announced by Minister of Justice and Constitutional Planning Penuell Maduna in Parliament last month. R100-million in the 1998/99 financial year and a further R200-million during the current financial year.

Pay-outs have already begun. In reply to a question tabled by the New National Party's Sheila Camerer, Maduna conceded that the government lacked "adequate financial resources" to "implement all the recommendations."

He added the TRC pay-outs had also been hit by logistical problems. "There is concern that some of the victims, especially those located in rural areas, are experiencing problems

in communication with the national office currently handling reparations."

The TRC verifies the claims, then submits them to the President's Fund, which makes the payments through bank accounts which TRC officials have helped to open for the victims to help prevent abuses. Victims are also advised to get documentation on other costs, such as medical and school costs, for the service component of the awards.

The basic payment is R2 000, but with the service component the average payment is R3 000. Mkhize says the highest payment she could recall was R10 000 to a wheelchair-bound victim who could not urinate without assistance.

"It is not really compensation," Mkhize points out. "It is aimed at getting people access to services, but it is not reparation in the true sense of the word."

The reparation and rehabilitation committee said in its November report that it had continued pressing the government to form a reparations co-ordinating structure at national and local levels to be responsible for the implementation of the long-term reparation process as the locus of responsibility after the life of the committee.

"It is essential that the proposed co-ordinating structure is located within government as from the beginning of December 1999, so as to allow government officials time to master information related to the reparation process before the end

of March, when the committee intends to close down its operations. There cannot be a hiatus in the process."

Maduna, however, merely said the government is "giving consideration" to provincial structures to act as focal points for urgent interim reparations claims, and to the establishment of a national co-ordinating mechanism.

It is also giving consideration to the establishment of a reparations trust fund to which all segments of society, including the private sector and organs of civil society, can contribute because "we believe the duty of promoting reconciliation in our country falls on all South Africans."

Mkhize says there is an ongoing dialogue on these issues but "we have to put them on the table."

People are still suffering from trauma and they could be treated in co-operation with NGOs. Many people who were convicted as young people are now being given amnesty and being released without any skills. They need rehabilitation and support.

The government will have to decide what action should be taken on these issues, including the creation of memorials.

The TRC does not have the powers, the budget or the authority, "but we have the ideas", says Mkhize. "It is now a political decision."

Making an ass of the law

Goats, wasps and donkeys unsettle the scales of justice in a dilapidated court

CARMEL RICKARD

TWO goats wander through the Bothitong courtroom and drop a fresh load of dung pellets in the middle of the public gallery. Court orderly Joba Khosieng rolls his eyes — he knows who will have to clean up before the next hearing.

Khosieng, a sergeant based at the police station next door, says the goats are the least of his troubles. When they become a nuisance, you can just chase them away. But the wasps — they are another story.

For the past nine years the Bothitong periodical court has been sitting in a dilapidated stone barn, apparently forgotten by the authorities. And it's easy to see why.

More than a tough hour's drive from Kuruman, in the middle of North West Bothitong just doesn't feature.

As for the "courthouse", locals say it was built over a century ago, originally as a stable for the police station's horses. The three windows have no frames, no glass. A door in the middle of one wall serves little purpose, for the fourth wall is missing.

Twice a week, a magistrate makes the hour long trip on a punishing dirt road from Mothibstad to hear cases.

Once he pulls up under a tree outside the barn, says magistrate Vincent Sehume, his car becomes his office. He sits in his vehicle doing administrative work or writing judgments until a case is ready, and then walks across the hot red sand into court.

When it rains, court is cancelled, the water pouring through the window holes soaks the officials and their documents. In winter, everyone freezes. Goats, donkeys and other beasts seek shelter in the barn at night or when it's raining and cold. There's never been any electric light.

"We feel very unsafe," Sehume says. "The accused and witnesses stand face to face in front of the magistrate's desk, just a metre apart. Sometimes you expect that they will pick a fight at any moment."

And then there are the wasps. Scores of nests sprout from roof trusses, walls and crevices, and Khosieng says he and many other people have been stung.

According to Sehume it was always intended that the court would sit here only until other arrangements could be made. But despite repeated requests and reminders it's still here, nine years later.

Now, almost by accident, Bothitong's plight has resurfaced on official desks and it



BARNYARD JUSTICE. Joba Khosieng and magistrate Ray Nelson in the court (top) and the 'courthouse'. Pictures: RICHARD SHOREY

seems that change is finally on the way. The National Directorate of Public Prosecutions recently analysed information from courts across the country to ascertain how many hours a day each heard cases.

Some statistics caused serious concern, and the Justice College in Pretoria, responsible for training magistrates and prosecutors, offered to send a team to those which seemed most in need of help to find out the cause of their problems.

When magistrate Ray Nelson and prosecutor Tshepo Meki arrived to find out why Mothibstad and its satellites were one of the top six "problem courts" in North West, "we could hardly believe our eyes," said Nelson. "They were holding a proper court session in a stable."

Nelson and Meki identified two major causes of Mothibstad's poor record. First, it was short of one magistrate, and second, the forms sent out to capture national statistics has no space where court staff could record the hours spent travelling. Magistrates and prosecutors at Mothibstad run five satellite courts, of which Bothitong is the closest. Travelling time each month is therefore considerable and yet this is not reflected in the statistics. Figures are similarly skewed against other rural courts.

Sehume identifies another problem. Desperately poor people often walk many hours to consult a rural magistrate on land rights, pension problems and other issues. "They are destitute and desperate for an answer to their difficulties," he says. "We can't simply tell them we are going into court and send them away."

The new Director-General of the Justice Department, Vusi Pikoli, says he has instructed that Bothitong be given priority. "If we want the public to have confidence in our courts, the buildings must at least look like houses of law. We cannot afford to allow Bothitong to operate from a stable. When I heard about it, I called the department responsible for accommodation and told them something must be done now."

Pikoli said he intended visiting the staff at Mothibstad. "I pay tribute to the work they are doing, and they must know that we are committed to upgrading these conditions. We need soldiers of justice like them."

Word of Pikoli's interest has reached Sehume and Khosieng and they seem to believe that something might at last be about to happen. If they are right, then never mind a place at the inn — this could be the last Christmas that justice competes with donkeys and cattle for room in the stable.

No amnesty for 9 ex-security men

Sowetan 14/12/99

THE Truth and Reconciliation Commission refused amnesty yesterday to nine former security policemen, including former Vlakplaas commander Eugene de Kock, for their role in the murder of four colleagues in 1989

TRC spokesman Mr Nhlanhla Mbatha said De Kock, Daniel Snyman, Nicholaas Janse Van Rensburg, Gerhardus Lotz, Jacobus Kok, Wybrand du Toit, Johannes Vermeulen, Marthinus Ras and Gideon Niewoudt were responsible for the death of Warrant-Officer Mbalala Mgoduka, Sergeant Temba Faku, Sergeant Daliwonga Mpipa and Sergeant Xolile Sekati.

The four died when the police vehicle in which they were travelling was blown up in Port Elizabeth. According to the applicants, the four were involved in a fraudulent scheme which entailed intercepting and appropriating for personal gain,

cheques mailed to various trade unions and political organisations. Police were under pressure to charge them, but the four had allegedly threatened to expose the unlawful activities of the security police.

According to Mbatha, the committee found De Kock and Niewoudt had provided different reasons for the murder, and on those grounds, they did not comply with the requirements. The TRC also refused amnesty to Yizaya Siyali, a former security policeman who attempted to kill Bongani Jonas, an ex-MK cadre, in 1987. Mbatha said Siyali had also applied for - and was refused - amnesty for his police activities in Cape Town between 1985 and 1992.

Afrikaner - Weerstandsbeweging member and former policeman, Johannes Olivier, was granted amnesty for his role in the 1994 aborted plan to plant a bomb on the East Rand. Ten former United Democratic

Front members were also granted amnesty for, among other things, murder, arson and dealing in and distributing firearms and ammunition.

They are Anthony Maci, Ellen Barnabus, Manase Boo, Sipho Mkhonto, Thulani Nhlapho, Sipho Maduna, Themba Buthelezi, Victor Moloi, Bruno Skhosana and Thambiso Zakwe.

They were all residents of Thokoza on the East Rand and were involved in a territorial war with the rival Inkatha Freedom Party-aligned hostel inmates late in the 1980s and early in the 1990s.

Two former self-defence unit members John Radebe and Fannie Mkhwanazi were granted amnesty for murder, attempted murder and possession of illegal firearms and ammunition.

The two shot and killed Martha Ndumo, Maletsatsi Marumo and tried to kill Elsie Mokoena at Sebokeng in the Vaal Triangle in August 1993 -

Sapa

Law takes on violence in the home

AACT 14/12/99

(253)

ASHLEY SMITH
STAFF REPORTER

Thousands of women – and men – who are living in the hell of domestic abuse will be thrown a lifeline tomorrow when the new Domestic Violence Act comes into force.

Experts say the new act, which replaces the old Prevention of Family Violence Act, will dramatically increase the help the police and courts can offer to the one in four women who are reportedly abused by their partners in South Africa. No figures are available for men.

Key aspects of the new act include the extension of the definition of domestic abuse and the fact that protection orders, which replace interdicts, will be available from courts day or night and will be served free of charge. Before, victims were charged R75 for this service.

The act allows the police to arrest alleged abusers without a warrant and makes provision for the seizure of firearms and other dangerous weapons from the alleged abuser.

Police doctor Tertius Geldenhuys said about 2 000 personnel were training the rest of the service in what to do at the scene of domestic violence and how to treat the victim.

This is good news for Western Cape women, with recent statistics from the University of Cape Town's health research unit reporting that 50% of women attending a community health centre in the province claim that they have been abused.

More than 80% of these women suffered significant physical or mental health consequences as a result, while 65% of them reported that their abuser used a weapon in the assault.

Rodney Johnson of the Family Life Centre in Athlone which has 400 families on its books, said areas like Mitchell's Plain, Kraaifontein and Macassar had shown a dramatic increase in alcoholism and drug abuse, which in turn led to sexual, emotional and physical abuse.

But Palesa Makhetha of People Opposing Women Abuse (Powa) told the Cape Argus yesterday that this was just the tip of the iceberg, as many cases of domestic violence were still

being filed under common assault.

The victims were both women and men, Ms Makhetha said.

She said a key aspect of the new act was the extension of the definition of domestic abuse beyond married couples to include victims who were dating, co-habiting, involved in same-sex relationships or in any kind of domestic relationship with their alleged abuser. Men were included in the definition of victims in the act.

Naomi Webster from Tshwaranang Legal Advocacy Centre, a non-governmental organisation which deals with domestic violence and the law, said that in terms of the new act if a woman did not want to face her abuser in court when applying for a protection order, an organisation could represent her.

"It also compels police arriving on the scene of domestic violence to tell victims that they have the right to ask for police assistance to protect themselves and their children."

I'm fighting back from a living hell, page 3

Amnesty denied for killings

DD 14/12/99

Simphiwe Xako
and Sapa

NINE former security branch policemen, including former Vlakplaas commander Eugene de Kock, were refused amnesty yesterday for their role in the 1989 murder of four of their colleagues in Port Elizabeth.

Nhlanhla Mbatha, a spokesman for the truth commission, said that the committee found that the acts by De Kock, Daniel Snyman, Nicholaas van Rensburg, Gerhardus Lotz and five others in killing three policemen, Mbalala Mgoduka, Amos Faku, Dalwonga Mpipa and an askari called Xolile Sekati, also known as Charles Jack, had not been politically motivated.

Jacobus Kok, Wybrand du Toit, Johannes Vermeulen, Marthinus Ras and Gideon Niewoudt were all denied amnesty, along with De Kock.

Mbatha said the committee found the applicants' statements contradicto-

ry and that the victims were murdered after they had threatened to "spill the beans" about the security branch's illegal activities.

Mbatha said the four victims were involved in a fraudulent scheme entailing the interception and appropriation of cheques mailed to trade unions and political organisations. They died when their vehicle was blown up.

Afrikaner Weerstandsbeweging member and former policeman, Johannes Olivier, was granted amnesty for his role in the 1994 aborted plan to discharge a bomb on the East Rand.

Ten former United Democratic Front members were also granted amnesty for murder, arson, malicious damage to property, possessing and distributing illegal firearms and ammunition.

The 10 were residents of Thokoza in the East Rand and were involved in a territorial war with the rival Inkatha Freedom Party-aligned hostel residents late in the 1980s and in the early 1990s.

Vlok wins (252) amnesty for Cosatu blast

AAG 14/12/99

STAFF REPORTER AND SAPA

Johannesburg - The former Minister of Law and Order, Adriaan Vlok, and 22 former members of the security police have been granted amnesty for their involvement in the 1987 bombing of Cosatu House in Johannesburg, the Truth and Reconciliation Commission announced today.

Mr Vlok, former chief of the security branch Johannes Velde Van der Merwe, former Vlakplaas commander Eugene de Kock, former Witwatersrand divisional commander of the security branch Nicholas Gerrit Erasmus, Willem Frederick Schoon, Deon Greyling and expert on explosives Charles Alfred Zeelie were part of the group that attacked the offices of the Congress of South African Trade Unions in May, 1987, the TRC said.

Although no one was killed in the bombing, the building was extensively damaged.

In their amnesty applications the group said there was a revolutionary climate at the time and prohibited meetings to promote that climate were held at Cosatu House.

However, De Kock was among nine former security branch policemen who were denied amnesty for their role in the murder of four colleagues in 1989.

TRC spokesman Nhlanhla Mbatha yesterday said De Kock, Daniel Snyman, Nicholaas Janse Van Rensburg, Gerhardus Lotz, Jacobus Kok, Wybrand Du Toit, Johannes Vermeulen, Marthinus Ras and Gideon Niewoudt were responsible for the death of Mbalala Glen Mgoduka, Amos Temba Faku, Desmond Daluwonga, Mpipa and Xohle Shepherd Sekati.

The four died when the police vehicle they were travelling in was blown up in Port Elizabeth.

Police were under pressure to charge them but the deceased had allegedly threatened to expose the unlawful activities of the security police.

Amnesty for Vlok, De Kock

DARREN SCHUETTLER (252)

CT 15/10/99

JOHANNESBURG Notorious apartheid-era killer Eugene de Kock was granted amnesty late yesterday by the Truth and Reconciliation Commission (TRC) for his role in the murder of the Cradock Four

Earlier yesterday, De Kock and former law and order minister Adriaan Vlok were among 23 security officers given amnesty for the 1987 bombing of Cosatu House

The four UDF activists — Matthew Goniwe, Fort Calata, Sparrow Mkonto and Sicelo Mhlaui — disappeared outside Port Elizabeth on June 27, 1985

Their burnt and mutilated bodies were found a week later in the dunes of a vacant stretch of coast. Police initially claimed they had been killed by vigilantes, but an inquest in 1993 revealed apartheid security forces had received orders for Goniwe's "permanent removal from society".

Seven ex-security officers, including De Kock, subsequently applied for amnesty after the TRC began its probe into apartheid-era crimes in 1996

While the TRC gave De Kock amnesty, it said six former members of the Port Elizabeth security branch had not fully disclosed their role and it rejected their applications

Earlier yesterday, De Kock and his former boss, Vlok, were among 23 ex-security officers given amnesty for the bombing of Cosatu House

"The decision was made on the basis that their objectives were political," a TRC spokesperson said

"I am very glad and extremely grateful," Vlok said yesterday after learning of the TRC's ruling

He said security forces believed Cosatu House was being used as a base for anti-apartheid activities and decided it must be made unusable. Nobody was killed in the blast, but the building was extensively damaged.

"We were involved in a war and it was a dirty war," Vlok said. "But after we finished the war, I said it was wrong and I applied for amnesty," he added

New courts to slash Cape case backlog

(252) ARC 15/12/99

The Western Cape will get five new regional courts early next year to reduce the 7 000 case backlog

The new courts will relieve magistrates of administration work and are aimed at improving their efficiency in court

The Western Cape Justice Department has joined forces with the office of the director of public prosecutions and the chief magistrates of Cape Town and Wynberg to implement the strategy, which took six weeks to complete

The new measures will see at least a 20% increase in the number of regional court cases heard annually in the Western Cape and are expected to have a dramatic effect on the backlog next year

Director of Public Prosecutions Frank Kahn said a "slight" restructuring of the current system to relieve magistrates of administrative work would create the capacity for the five new courts

The courts would be in Cape Town, Wynberg, George, Paarl and another Boland town

The Western Cape already has 30 regional courts

Mr Kahn said "The new system is essentially a separation of powers

"Some magistrates have been doing a lot of administrative work and what we have done is taken under utilised magistrates working in the smaller courts and relieved them of administrative duties

"The result is that we have more magistrates whom we can use more effectively

"This is an exciting development specifically because we have been able to utilise resources at a low cost to taxpayers"

He said part of the reason for the backlog in courts was the problem of getting awaiting trial prisoners from the various prisons to court on time

Another problem was giving lawyers

JEREMY LAWRENCE Staff Reporter

enough time to consult with their clients

Reforming the court system would include the need to review the recess system at the Cape High Court and also the possible introduction of a public defender system, Mr Kahn said

"It's more productive and cost effective to expand the regional courts, which don't close for recess

"We are clearing the backlog by running courts more efficiently, but we still need extra courts"

The Department of Justice head in the province, Hishaam Mohamed, said the ability to keep costs low and make the justice system more efficient reflected a commitment to service delivery

"We formulated a task team to look at how we could find extra magistrates and discovered that there were four magistrates who were not doing sufficient bench work

"They were, in fact, doing more administrative work than judicial work"

A similar process was used to find extra prosecutors who could work in the additional courts

To this end, four prosecutors were released from the Cape Town, Wynberg, George and Paarl courts

Mr Mohamed said seven prosecutors were needed to run the extra five regional courts and he was confident that three extra prosecutors would be appointed before February,

Vlok, 22 former policemen are granted amnesty

Taryn Lamberti
and Sapa

(252)
BD 15/12/99

FORMER law and order minister Adriaan Vlok and 22 other members of the former security police were granted amnesty for their involvement in the 1987 bombing of Cosatu House in Johannesburg, the truth commission said yesterday.

Vlok, former Vlakplaas commander Eugene de Kock, former police security branch chief Johann van der Merwe and former Witwatersrand divisional commander Nicholas Erasmus, as well as Willem Schoon, Deon Greyling and explosives expert Charles Zeelie were involved in the attack on the headquarters of the Congress of SA Trade Unions (Cosatu), the commission said.

De Kock, who is serving a 210-year prison sentence for the crimes he committed during his years as the commander of the notorious Vlakplaas C10 unit, is applying for amnesty for eight murders and a host of other crimes.

The amnesty granted for the Cosatu House bombing would not affect his jail sentence, his lawyer, Schalk Hugo, said yesterday.

Vlok also applied for amnesty for the bombings of the SA Council of Churches head office, Khotso House, and cinemas that showed Cry Freedom, a film about murdered black consciousness leader Steve Biko.

Vlok, De Kock and Van der Merwe were among 17 people granted amnesty for the 1988 bombing of Khotso House.

Commission spokesman Nhlahlhla Mbatha said it was satisfied that the group had been acting to further a political objective.

They received amnesty for the damage caused to Cosatu House, unlawful possession of arms and ammunition and defeating the ends of justice in covering up the cause of the bomb.

Meanwhile, six former members of the Port Elizabeth security branch were refused amnesty for the murder of the Eastern Cape activists who came to be known as the Cradock Four.

Amnesty was, however, granted to De Kock, who helped the other applicants to discard the firearm after the crime had been committed. Former United Democratic Front activists — Matthew Goniwe, Fort Calata, Sparrow Mkhonto and Sicele Mhlauli — were killed near Port Elizabeth in June 1985.

De Kock, Vlok get amnesty

TRC rules on Cradock 4 killing

ARG 15/12/99 (252)

Johannesburg - Apartheid's chief assassin, Eugene de Kock, was granted amnesty late yesterday by the Truth and Reconciliation Commission for his role in the murders of the Cradock Four.

In a separate decision earlier, De Kock and former law and order minister Adriaan Vlok were among 23 given amnesty for the 1987 bombing of Cosatu House.

The four United Democratic Front activists - Matthew Goniwe, Fort Calata, Sparrow Mkonto and Sicelo Mhlaui - disappeared outside Port Elizabeth on June 27, 1985.

Their burnt and mutilated bodies were found a week later in the dunes of a deserted stretch of coast.

Police claimed they had been killed by vigilantes, but an inquest in 1993 revealed apartheid security forces had received orders for Mr Goniwe's "permanent removal from society".

Seven ex-security police, including De Kock, subsequently applied for amnesty for the killings.

Although the TRC gave De Kock amnesty, it said six former members of the Port Elizabeth security police had not fully disclosed their role in the killings and it rejected their applications.

De Kock, who is serving a 262-year jail sentence, is seeking amnesty for 107 counts of murder, torture and fraud committed while in command of the Vlakplaas death squads.

Earlier yesterday, De Kock and his former boss Vlok and 21 former security forces personnel were given amnesty for the bombing of Cosatu House, home to the Congress of SA Trade Unions.

"The decision was made on the basis that their objectives were political," TRC spokesman Nhlanhla Mbatha said.

Vlok, minister of law and order from 1986 to 1994, was forced to seek amnesty for three covert police bombings after former police commander, General Johan van der Merwe, accused him of ordering the attacks.

"I am very glad and extremely grateful," Vlok said yesterday - Reuters

Victims of violence to get compensation

LENORE OLIVER

The first practical step has been taken to correct one of South Africa's great injustices - the lack of compensation for victims of violent crime.

Now there is hope for the thousands of people, most with no insurance, whose lives have been ruined by violent crime and who have nothing to show for their suffering.

The SA Law Commission has asked for research experts to examine how a state compensation fund for crime victims could work.

The researchers will have to look at where the money will come from - whether from taxpayers or from fines imposed on criminals.

The fund should be set up by late next year.

Similar funds exist in the United States, Canada, Britain, New Zealand and New South Wales in Australia.

The researchers will examine international examples. Once this has been done, draft legislation will be published for comment after which a bill will be presented to parliament for consideration.

Those who could qualify for compensation include:

- People with injuries resulting from violent crimes or dependants who suffer loss or damage as a result of the death of victims

- People who may be defined as "good Samaritans" who are injured in attempts to arrest criminals, assist law enforcement officers in their duties, prevent crime or restore

law and order. In terms of the rules of similar funds overseas, failure to report crimes or co-operate with law enforcement officials within a reasonable time is considered good grounds for not awarding compensation.

"The motivation in which compensation serves as an incentive to victims to report the commission of crimes in the future," said the commission's principal law adviser, Willie van Vuuren.

Setting up the fund was top priority for the commission and the government.

"The plight of victims of crime is a pressing issue and can be relieved in many different ways. One of these is financial," he said.

Although there were no definite guidelines,

the fund would probably concentrate on compensating victims for monetary loss.

"Since it's impossible to compensate victims for all physical injuries, most schemes attempt to compensate for injuries that can be determined in financial terms."

Overseas schemes did not tend to pay compensation for non-financial losses such as pain and suffering, loss of life's pleasures and amenities and life expectancy.

Neither did most overseas compensation funds cover loss of personal property.

Mr Van Vuuren said researchers would look at various ways to fund the scheme.

"We are looking at all the solutions and possibilities. Maybe the taxpayer will have to pay a portion, but that is not yet definite."

AAJ 18/12/99 (34) (252)

Juvenile criminals back stiff sentences

Young offenders surveyed in wake of new draft Bill

BOBBY JORDAN

MOST child criminals believe children who commit serious crimes should be given long-term sentences, according to a country-wide survey of juvenile offenders.

The survey comes in the wake of the draft Child Justice Bill, expected to pass through Parliament next year.

Results showed 57 percent of juvenile offenders supported long-term sentences compared with only 1,7 percent in favour of corporal punishment.

More than 50 percent of children polled said 14 years should be the minimum age for prosecution, while 30 percent chose 12 years and 19 percent said

there should be no minimum age.

At present the minimum age is seven — one of the lowest in the world and a cause for concern among social workers.

The survey, compiled by the National Institute for Crime Prevention and Reintegration of Offenders, aims to bring South African juvenile law into line with international standards and has been handed to the SA Law Commission.

According to the SA Law Commission, figures showed there were 10 children aged seven to 13 serving jail sentences in South Africa at the end of April this year. Four children were jailed for aggressive offences, two for sexual offences and two for economic offences. One had a 15-20 year sentence.

The draft Bill, says, those

younger than 18 should be separated from the adult criminal justice system. It also suggests the minimum age should be raised to 12 or 14.

A lot of money has been spent on various initiatives to get children out of prison and into places of safety but still the numbers in prison are on the increase," said Professor Julia Sloth Nielson, spokesperson for the Project Committee on Juvenile Justice.

She said there had been a marked increase in children in prison awaiting trial — reminiscent of the child detentions under apartheid.

"Because so many people had experience of prison during the apartheid era and had seen children in prison, the focus has now shifted to reforming the juvenile justice system to help

children in prison for criminal offences," Sloth Nielson said.

She said the survey represented the first genuine attempt to consult with children about SA criminal law.

Most of those surveyed had a negative perception of the police, describing the experience of being arrested as frightening, confusing and humiliating. Most (75,9 percent) felt time in police cells should be limited.

One of the children polled said: "I think it is best to await trial in a place of safety, because you are much more comfortable at Pollsmoor they don't care about anything you do or need. That's why I prefer that they should remove the young from the old."

Some children committed suicide (because) of that. I could another

(CNA) ST (CM) 9/12/99

Death penalty gets strong support in poll

ARG 23/12/99

(252)

Public calls for harsher sentences

JASHLEY SMITH
STAFF REPORTER

Nearly all South Africans believe court sentences for violent crimes are far too lenient. There is also the belief that lenient sentences, imposed by judges and magistrates, play a "major role" in the country's crime surge.

These are some of the findings of a study mapping South Africans' growing disillusionment with sentencing for serious crimes like murder, rape, and hijacking.

The study was done by the Institute of Security Studies, the Institute for Human Rights and the Criminal Justice Studies unit at Technikon South Africa.

And at the same time sympathy for vigilante-style reaction to crime seems to be growing.

The study found 80% of South Africans believed that:

- Harsher sentences were directly associated with lower crime levels.
- Compared to 1994, there was a lot more crime in South Africa.
- Lenient sentences had played a major role in the increase in crime since 1994.
- Harsher sentences would bring down the crime rate.

The study also revealed that 75% of people interviewed wanted to see the return of the death penalty.

In respect of vigilante crimes, 80% of respondents were more lenient in their sentencing options than the new minimum sentencing law.

The new law has been used effectively in recent cases including the

sentencing a week ago of former supporter Dawood Osman for several charges including four murders.

However, the new law and more specifically the judiciary's implementation of mandatory minimum sentences, was plunged into controversy in October this year when a Cape High Court judge sentenced a 54-year-old man to seven years for raping his teenage daughter.

Alan Jackson, director of child welfare in the Western Cape, said the incident had highlighted the need to educate judges especially about the effects on victims of crimes like rape.

High Court Judge, Judge of Justice in the province said although the courts were implementing the new minimum sentencing law, what was lacking especially in the regional courts was a more victim-centred approach to sentencing.

Cape Town national court president Gadiya Khan said people often did not understand the procedures involved.

trial and subsequent appeal of Peter Makhaya Ntini was a prime example. The public judged him long before the trial started and at the end of the day the appeal court found him to be innocent," she said.

Martin Schönteich of the Institute for Security Studies said the survey on the public attitude to sentencing suggested that the perception of leniency by the judiciary was because of not enough information about a case reached the community.

"At the same time expectations that harsher sentences will bring down the crime level should be tempered," he added.