

Negotiation News

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Compromises on the cards Bilateral brilliance in the bush?

A bilateral deal guaranteeing a period of power-sharing could be the focus of negotiations between the South African government and the ANC when the two parties head for a high-profile bush summit early in December.

Compromises are on the cards. Looking for a quick resumption of negotiations, rapid progress towards a settlement, and a chance of stability for a future government, the ANC may be prepared to offer the government a package guaranteeing a strong regional dispensation, short-term power-sharing, and job protection for incumbent civil servants.

The government, in turn, could be prepared to abandon its demand for longer term power-sharing, and might soften its federalist stance to accommodate the ANC concern for adequate central government control in a future dispensation.

The summit could clinch the first of a projected series of bilateral agreements that could prevent the embattled negotiation process from grinding to a halt again.

President FW de Klerk and ANC president Nelson Mandela will lead the two

delegations that are expected to be engaged in extended discussions lasting up to a week. Talks behind the scenes between Constitutional Minister Roelf Meyer and ANC secretary-general Cyril Ramaphosa have continued since the sign-

After wavering for some time, the ANC now strongly supports the resurrection of Codesa in the format that developed following the second plenary ... the government now favours a more inclusive restructured forum.

ing of the Record of Understanding, with the aim of determining an agenda for the summit.

Finality needs to be reached on a number of issues that could still stall the transition process. The fragments left in limbo by the collapse of negotiations at the Con-

vention for a Democratic South Africa (Codesa) will have to be picked up systematically to provide the framework for further agreements.

Both the government and the ANC recognise the agreements reached at Codesa. These agreements would simply have to be formally endorsed by a future multi-party forum. The character of this forum will be an agenda item for the bush summit.

After wavering for some time, the ANC now strongly supports the resurrection of Codesa in the format that developed following the second plenary. With the collapse of the working groups, deliberations continued in an expanded Codesa Management Committee in which all parties were represented.

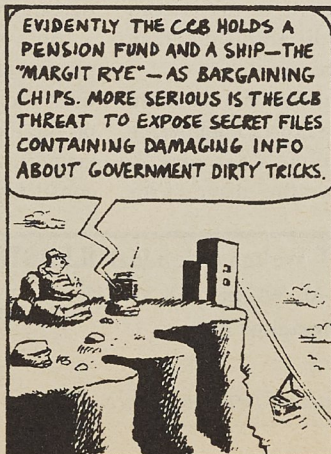
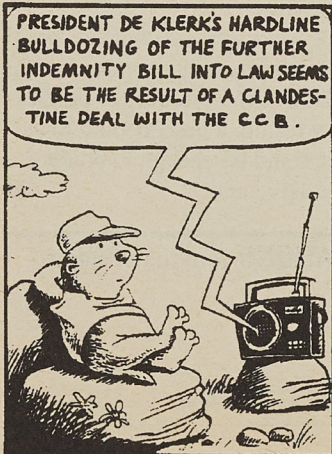
The government, on the other hand, has favoured a more inclusive restructured forum which would attract those who formerly rejected participation in Codesa.

Although the ANC also claims to favour an inclusive negotiated settlement, it appears ready to reach bilateral agree-

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ments with the government in key areas before taking the process back to a multi-party forum where a number of issues would have to be ratified, including existing Codesa working group agreements, general constitutional principles and the transitional constitution.

Potential for conflict lies in a number of areas. Agreement needs to be sought on the powers of the transitional executive councils that will come into being as soon as an election date for an interim government and constituent assembly has been agreed, and the general principles that will guide the constitution-writing process.

Although the sphere of operation of these transitional executive councils was agreed, other aspects of their functioning have not been determined. The same applies in other areas. Although parameters were set for a constitution-writing body and an interim government in the Record of Understanding signed by Mandela and De Klerk on 26 September, crucial details still need to be fleshed out.

Other items on the ANC shopping list include:

- ◆ Securing free political activity in all areas, including the homelands and self-governing territories. As the custodian of the bantustans, the government is expected by the ANC to guarantee this on a bilateral level;
 - ◆ Adequate address of security issues such as covert operations, the future of the security forces, and repressive legislation;
 - ◆ Adequate guarantees of free and fair elections, acceptable terms of reference for the proposed Independent Electoral Commission, international monitoring of elections, and the formation of an independent media commission to ensure independent public media during the period of transition.
- On the government side, spokespersons have reiterated a number of issues on which they will be seeking agreement:
- ◆ Meyer has identified the formation of an expanded multi-party forum as a priority;
 - ◆ The dissolution of Umkhonto we Sizwe, a demand bolstered by repeated threats from the Inkatha Freedom Party that it will not return to negotiations before this has happened;

- ◆ A number of key government negotiators have indicated that they will press for an ANC guarantee that there will be no further mass action;

- ◆ De Klerk's objectives have centred on entrenching an autonomous regional dispensation to secure a devolution of power and so eliminate the possibility of domination in a new dispensation.

A broadly acceptable interim regional policy may not be far off. The ANC's draft regional policy document expresses support for control of second-tier government by interim administrations of the existing provinces.

The ANC goes further, however, suggesting that for the interim the independent homelands and the self-governing territories should also fall under the interim provincial administrations.

Political flirtation across the spectrum has characterised the past weeks, as the two key negotiating parties intensify their efforts to lobby the smaller groupings in order to consolidate strong negotiating positions.

The ANC has been meeting with its Alliance partners and a number of other parties and homeland leaders. At a Patriotic Front meeting on 29 October attended by the ANC and its ten alliance partners the ANC sought support for rapid negotiations and a position that there should be no more delay.

The government has had to face a number of set-backs. Relations with the Inkatha Freedom Party have deteriorated into a public exchange of insults. De Klerk has vowed to do everything in his power to repair the damage and resume talks with the IFP. However, the IFP's flaunting of cultural weapons in direct defiance of both the Record of Understanding and SAP rulings at two marches last month added insult to injury.

Closer to home, the critical reception De Klerk and senior Ministers received at the Cape Congress of the National Party which followed the signing of the Record of Understanding highlighted disunity over crucial issues in the party.

De Klerk is in an unenviable position. He and his party have taken a hammering in recent weeks. He himself has gone to great lengths to improve the image of his

party, going so far as to express regret that the National Party had clung to separate development for too long.

In Parliament De Klerk admitted that the country faced a deep crisis. For the economy to improve, he said, violence had to stop and state spending had to be curbed. In neither area has there been any sign of improvement, however.

The short session of Parliament in mid-October proved disastrous for the government. For the first time since becoming president, De Klerk resorted to the autocracy of the PW Botha era, using the President's Council to force into law the universally unpopular Further Indemnity Bill after it had been rejected by Parliament.

Another humiliation for De Klerk has been the rash of reports exposing corruption and mismanagement in government departments and structures, in the homelands and at central government level. This state of affairs has been widely condemned, with opposition parties calling for De Klerk's resignation.

As if this were not enough, the recent resignations of key Nats Gerrit Viljoen and Stoffel van der Merwe further demoralised the party.

Another depressing area for the party is the failure of government negotiators to achieve much success in bringing the right wing into the negotiation fold. The rift in Afrikaner ranks seem to be deepening.

Even in its attacks on the ANC the NP rhetoric has been hollow, repetitive and reminiscent of the anti-communist propaganda of the "total onslaught" years.

But the NP is not the only party faced with disunity in its ranks. The ANC has had a volatile few weeks, with differences over strategy hotly debated. Leading voices in the party are deeply opposed to the notion of any power-sharing arrangement with the government, and fantasise again about a revolutionary "seizure of power" while pragmatists argue for the inevitability of negotiated compromise.

Both negotiating teams will be dragging some unenthusiastic members to the bush indaba. But the prospect of progress on the rocky road to a peaceful and democratic future could be enough to produce a constructive agreement. ■

Women launch rights project

Remember the gender issue? Almost forgotten in the hype of national negotiations and deadlocks, the demand for women's rights gained a new focus on 9 November when the Women's National Coalition launched their campaign to develop a charter of rights for women.

The campaign announcement failed to gain any significant media attention but the outcome of the proposed Campaign for Women's Equality could engineer the necessary impetus for constitutionally entrenched rights for women in South Africa.

The campaign is unique in all aspects. It is probably the first time in the world that the women of a country will be canvassed directly as a precursor to the writing of a charter of women's rights that will have status within or alongside a justiciable bill of rights.

At the Convention for a Democratic South Africa (Codesa), the first broadly recognised multi-party negotiating forum, all parties present committed themselves to the achievement of a non-racial and non-sexist South Africa. However, since men command the front (and most) seats in the campaign for a new non-racial order, the demand for women's rights fails to arouse equal passion.

The male-dominated process of constitutional negotiation takes off again this month in the absence of any visible attempt by any political party to bring women into the mainstream of transition politics. The Women's Coalition campaign therefore will confront overwhelmingly male negotiating teams with a *fait accompli* - in the form of a charter of women's rights - which elected representatives will be compelled to consider when they finally sit down to commence writing a future constitution.

The suggestion that a guaranteed quota of women should be part of the constitution-writing process has received nothing but a bad press, while the national list system proposed for proportional party representation is generating fierce competition among all aspiring politicians. Women's chances of having an equal say in the process of writing a constitution look slim

therefore. A constituent assembly is almost bound to consist of many men and the same derisory numbers of women who currently sit in high places.

In the context of this level of sexism, and in the current climate of division, conflict and intolerance, the formation of the Women's National Coalition is an achievement in itself. It brings together 70 political, religious and social interest groups representing hundreds of thousands of women throughout the country. The fact that they could find common ground is indicative of the wide support for putting the issue of discrimination against women on to the national political agenda.

The Women's Coalition was launched

A strong belief that the charter should not be a document handed down by experts has provided the impetus for the enterprise of distilling the charter from the views of women across South Africa through wide-ranging research.

in April 1992 with the sole objective of uniting women to ensure equality for women in a new South African constitution and to formulate and secure the adoption of a charter of women's rights as part of that constitution.

The campaign launch on 9 November was chaired by international women's rights campaigner and development expert Flora MacDonald, who also chaired a donor conference for the campaign. MacDonald, a former Canadian foreign minister, is chairperson of the International Development Research Centre, which has emerged as a major sponsor for the project.

The Women's Equality Campaign is regarded by the Women's Coalition as a unique opportunity for South African women to have the principles of non-sexism incorporated into the country's ground rules. The success of the campaign hinges on the ability of women to make early interventions in the current negotiating and transition process.

It is generally recognised that ending discrimination against women in South Africa is going to take a lot of doing - and that the doing will have to be done by women themselves.

Prevailing social, political, religious and cultural customs limit South African

women's lives and status in myriad ways. Patriarchy and chauvinism prevail on all levels and in all sectors. Only active intervention and legal protection can adequately facilitate women's empowerment. A justiciable charter of women's rights is a necessary instrument in the struggle for justice for women.

The Women's Coalition envisages that the charter campaign will be conducted in phases and completed within 12 months. A mammoth research project, involving over a hundred researchers crisscrossing South Africa, will be the first step.

A strong belief that the charter should not be a document handed down by experts has provided the impetus for the en-

terprise of distilling the charter from the views of women across South Africa through wide-ranging research.

"The process will elicit in women's own words their concerns, demands and aspirations. It will be bottom-up and not top-down and must be consultative and participatory," a campaign document states.

The primary goal of the research project is the production of the Charter of Women's Rights. However, the findings will be of importance in future policy formulation and the initiation of gender-balance initiatives which could guarantee equal representation for women in public office.

The process is the first major research effort aimed at canvassing the views of South Africa's women, who make up 52% of the population. It will produce a demographic analysis of women in South Africa, including location, age, language, religion, literacy, education, and so on. It is envisaged that the work of the research teams will stimulate South African women to articulate their needs, concerns and demands for constitutional change, and raise the level of understanding of gender issues amongst both men and women. ■

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ANC fears 'feuding bureaucrats'

After much delay and speculation the ANC has finally published a draft policy document on regional government. The document seeks to secure central government control but also recognises the need for regional government that has some autonomy.

The draft Regional Policy Document reiterates the ANC position that the form of the future South Africa, including the role, powers, functions and boundaries of regional and local government, must be decided by an elected constituent assembly, which will be bound only by general constitutional principles agreed beforehand and by the requirement of a two-thirds majority to take decisions.

The draft document emphasises the need for democracy at all levels; popular participation at every level of government; and concurrent powers at national, regional and local level, with overriding powers reserved for the central government.

The bottom line remains securing central government control. In terms of the draft document, the central government is to have exclusive jurisdiction over key areas such as Foreign Affairs, Defence, Internal Security, Constitutional Affairs and Administration of Justice. Mining, commerce, land and agriculture are also to fall under central control.

While overall control of fiscal policy is envisaged as being in the hands of the central government, the policy document proposes the creation by Parliament of a permanent Advisory Fiscal Commission (AFC). The AFC would be answerable to Parliament and would be structured on a non-party political basis. It would be empowered to advise on the redistribution of public revenue to regional and local government.

The document recognises that both regional and local government should have some power to raise revenue. However, it argues that only the areas of income in respect of which the central government will have exclusive right should be constitutionally entrenched.

Contrary to accusations levelled at the ANC, the policy document does not exalt over-centralised control. It calls for neither a unitary nor a federal system – the terms

are scarcely mentioned. It recognises regional autonomy in respect of certain issues, and specifically recognises that it is possible that different political parties may be in power at different levels of government.

What the document rejects is the "creation of mini-states ruled by ethnically based parties and pulling in different directions".

It proposes that the final constitutional dispensation should serve to de-racialise the country and discourage political mobilisation on the basis of race, ethnicity or language.

Rejecting existing proposals from government and other quarters for an almost total devolution of power to second-tier governments, the draft argues that the country could never succeed with a "multiplicity of conflicting policies carried out by a multiplicity of feuding bureaucracies".

The philosophical approach of the document inclines towards flexible government and a harmonious integration of services on all levels.

It refers to the need to redress historical inequalities and reiterates that an elected constituent assembly should sanction the final distribution of powers. However, there is a sober recognition that there will be a considerable degree of give and take on all issues.

The policy document accords to regional governments law-making and executive powers in designated areas, with the proviso that regional legislation will have no force where it is contrary to national laws.

The powers and functions accorded to regional government in terms of the policy document are:

- ◆ the imposition of taxes in accordance with a national policy framework;
- ◆ education other than tertiary education;
- ◆ health services, including hospitals;
- ◆ welfare;
- ◆ housing;
- ◆ transport;
- ◆ markets and pounds;
- ◆ works;
- ◆ traffic control;
- ◆ the environment;
- ◆ industrial and other development;
- ◆ horse racing and gambling;
- ◆ town and regional planning;
- ◆ the imposition of punishment for contravention of any regional laws;

◆ all other matters delegated to it by Act of Parliament.

A new policy element in the document is consideration of metropolitan government, in terms of which the country's major metropolitan areas, such as Greater Johannesburg, Durban and Cape Town, could be regarded as separate regions and governed on the same basis, with the same powers and functions, as other regions.

Although the document is not prescriptive in this regard, it does argue for the formation of metropolitan governments on the basis that this could serve to unify, de-racialise and democratise the areas within and surrounding the country's major cities.

No fixed boundaries or number of regions are specified in the document, which confines itself to setting out two options. The first duplicates an earlier ANC draft policy document which favoured 10 regions, with delimitation based on the country's existing nine development regions plus a tenth – the so-called Border/Kei region.

The second option is approximately 15 regions, with the Cape Province divided into five regions, the Free State into two, Transvaal into three, and Natal into two. The metropolitan areas of the PWV, Cape Town and Durban are added as separate regions.

The document argues that the final delimitation is not the function of one political party and should be undertaken by a Delimitation Commission after the basic number and siting of regions has been agreed on.

The document proposes that the regions should be governed by elected councils with an administrator elected by each regional council. The administrator would have the authority to appoint an executive council. It argues against proportional representation on the regional executive on the basis that it would entrench conflict and disharmony.

The draft proposes that the existing four provinces provide the basis for the reintegration of the "independent" homelands and the self-governing territories during the period of transition, pending the adoption of a democratically drafted constitution.

It argues that the provinces already have the necessary infrastructure to provide services and facilities for the homeland authorities to be collapsed under their jurisdiction. ■

ANC struggles over strategy

A bilateral pact between the ANC and the government about power-sharing arrangements in a new South Africa is being proposed in strategy documents doing the rounds in the ANC.

The proposal, developed during the process of redefining strategy before the resumption of constitutional negotiations, has set off a heated debate within the ANC Alliance

A period of power-sharing, a shared vision of a future regional dispensation, some security for civil servants, and undertakings that will promote reconciliation, are the centrepieces of the two documents that have evoked the controversy.

One of the pro-compromise documents emanates from the ANC's Negotiations Commission, the other from South African Communist Party (SACP) chairperson Joe Slovo. The basic acknowledgement in the documents that the government is "not a defeated enemy", predictably does not have the support of all within the ANC Alliance.

Sharp retorts have been forthcoming from NEC members Pallo Jordan and Harry Gwala, and the SACP's Blade Nzimande.

Strategists Jeremy Cronin and Raymond Suttner have taken on the dissenters, while at the same time critically exploring the proposed compromises first mooted by Slovo in the latest issue of *The African Communist*, and subsequently contained in a strategy document of the ANC's Negotiations Commission which is to be put forward for adoption by the organisation's executive.

The Slovo paper argues that the cur-

rent political conflict will inevitably be settled by a negotiated agreement; that compromise will be unavoidable; and that notions of an imminent (or long-term) "seizure of power" are not sustainable.

In order to speed up the political transformation, Slovo urges upon the alliance consideration of the following compromises:

- ◆ a sunset clause providing for compulsory power-sharing for a fixed number of years after the adoption of a new constitution;
- ◆ a bilateral understanding with the government, before a constitution-making body assumes its work, on the details of future regional government in order to secure a common commitment and position from the key parties;
- ◆ an early expression of support for a general amnesty that possibly could also be expressed in a bilateral agreement;
- ◆ a bilateral deal on the civil service and security forces (SAP and SADF), which would take into account the existing contracts and retirement compensation of these state employees, should be considered as an early counter to any potential acts of destabilisation from these quarters.

Slovo argues that these compromises would be conducive to achieving a breakthrough in negotiations.

Close on the heels of the Slovo paper followed the ANC Negotiations Commission draft, which attempted to consolidate a new strategic perspective.

The draft document, like the Slovo paper, dismisses visions of a revolutionary

seizure of power and holds up negotiation as the only realistic option. It pleads for adoption of a long-term view with an emphasis on securing the stability of a new government by means of power-sharing and guarantees. It also urges the ANC to secure early bilateral agreements with the government on key issues.

The advocates of compromise were attacked by Nzimande and Jordan, who felt that such a strategy would entrench white minority privilege. Both questioned whether Slovo's sunset clauses would deliver the projected breakthrough.

ANC Natal Midlands chairperson Harry Gwala also castigated Slovo for not promoting a winner-takes-all position. He questioned Slovo's concern for civil servants while he remained silent on the fears of the majority in the country. Political "expedience" would lead to disaster, said Gwala.

Jordan rejected the argument that the mutual need to move the peace process forward provides an objective basis for substantial co-operation between the government and the ANC Alliance. He insisted that the government should be regarded as "opposition".

In a response to Nzimande and Jordan which he titled "Dreaming of the Final Showdown", Cronin rejected their all-or-nothing logic and charged Nzimande with presenting a distorted vision that still held to the fantasy of a seizure of power if negotiations failed.

Cronin defended the negotiation process as holding out a very real prospect of democratic elections for a sovereign constituent assembly. ■

talk talk

by ZAPIRO



BILLY COBBETT

Man with a mission



Billy Cobbett, the ANC's national co-ordinator for local and regional government, played a pivotal role in securing government commitment on safety measures relating to hostels in the negotiations that preceded the Record of Understanding signed by the government and the ANC on 26 September.

As policy planner, strategist and adviser, Cobbett has been closely associated with far-reaching agreements impacting on local government and grassroots socio-political transition.

Born on 27 December 1957, William Cobbett grew up in Johannesburg's northern suburbs, the third of seven children of David (a stockbroker) and Angela Cobbett. The strong political views of his mother, who participated in liberal protest politics, laid the foundations for a critical view of apartheid politics.

On matriculating from the liberally inclined non-government Woodmead High School in 1976, Cobbett used his British passport and a one-way ticket to leave South Africa to evade a military call-up.

During seven years in London he worked as a buyer of china and glass for an Oxford Street department store and completed a BA Honours degree in Modern European History and English Literature at the Middlesex Polytechnic.

Facing retrenchment in 1983, Cobbett registered for a Ph.D focusing on the Free State township of Botshabelo. His research, conducted under Harold Wolpe and Norman Levy, paved the way for his return to South Africa.

While doing research for his doctorate, Cobbett worked part-time as a stage manager for the Save the Greater London Council socialist theatre group and gained technical staging expertise which he later put to good use as site manager at various ANC conferences and at Codesa.

Cobbett returned to South Africa in June 1984 and worked in the University of the Witwatersrand sociology department. The following year he was appointed tutor in the departments of sociology and industrial sociology, and joined the Wits-based Labour Monitoring Group.

Cobbett and his wife, Mary Cliverd, lived at the Wilgespruit Fellowship Centre where she was working. In 1986 a large number of teenage refugees from the East Rand town of Leandra arrived at the centre, which subsequently endured a four-hour police raid in which several children were injured and several arrested.

Cobbett and his wife, who had been acting as caretakers of the young refugees, instituted court action to have them returned. Subsequently the couple returned to England, where Cobbett continued political research and contributed in the writing and editing of various publications.

In 1988 he returned to South Africa as co-ordinator of Planact, a progressive pol-

icy research group providing advice on local government issues, housing and hostels.

In December 1988 Planact was called upon by the Soweto People's Delegation to produce a policy proposal on the question of the rent boycott. Their investigation broke the mould of previous urban analyses, showing that Soweto was in fact subsidising Johannesburg, and not the other way round. These findings became the basis for "one city, one tax base" demands.

Cobbett represents the ANC on the National Electricity Forum and the National Housing Forum, where he chairs the working group on land and services and sits on the working group on hostels. He is on the executive of the ANC's Johannesburg East branch.

Cobbett, who is monitoring the government's performance on agreements reached on hostels in the Record of Understanding, says he would like to contribute to offering migrant workers a message of hope about the reintegration of hostel dwellers into broader communities.

Cobbett lives in Troyeville with his wife Mary, who works for the Community Banking Project, and their three children. He reads in his spare time, with a preference for books on politics and history. ■

A commission's work is never done

In the face of hostility and rejection from major political players, and the deafness of the government to its recommendations, the Goldstone Commission soldiers on in pursuit of the truth about the unending violence that is threatening to destroy South Africa.

After the recent exposure of covert Military Intelligence operations aimed at discrediting the ANC's armed wing Umkhonto weSizwe, the Goldstone Commission has called for a broader brief, increased powers, and larger resources.

In particular, head of the commission Justice Richard Goldstone seeks the power to investigate fully all South African security forces – inside and outside the country.

At a press conference on 16 November, the judge said the commission was certain that political violence would not be curbed until such an investigation had taken place. He also said that the commission did not have the resources to search the hundreds of Military Intelligence files seized, let alone conduct the proposed investigation.

In the 14 months since the Commission of Inquiry into the Prevention of Public Violence and Intimidation started work it has laboured in an ambience of ambiguity, with few parties embracing its findings with enthusiasm.

The reports from the Goldstone Commission, totalling nine so far, have assigned blame in all directions. The response to most of the criticism in the reports has been hostile rejection. The government has consistently turned a deaf ear to recommendations in the reports.

When plans for the commission were first announced by President F W de Klerk in Parliament in April 1991, the late Tiaan van der Merwe, Democratic Party spokesperson on Law and Order, responded critically, claiming that a quick-response monitoring system would be more effective than a standing commission of inquiry.

The recent appointment of Goldstone's so called "untouchables" – an elite task force of police officers and lawyers charged with investigating political murders – lends retrospective support to this criticism.

Another factor that excited criticism was that the commission was precluded from inquiring into anything that had occurred before the Prevention of Public Violence and Intimidation Act of 1991 came into effect – in other words, anything that had happened before 17 July 1991. Goldstone, however, insisted that anything relevant to current political violence and intimidation should be investigated, regardless of the date of occurrence.

Another criticism was that the State President would have sole discretion over the publication of the commission's findings – one that has proved to have substance. The government's manipulation of the release of findings has come under fire from Goldstone himself.

After the commission delivered its Second Interim Report to the State President, all hell broke loose when the government released selected sections of the report before the whole document was made public. A statement composed by the Justice Department, without consultation with Goldstone, claimed that the report exonerated the security forces and identified the ANC and IFP as main instigators of violence.

The ANC immediately launched a bitter attack on the commission, which responded by criticising the government for "unfairly and selectively" making public the views of the commission which had led to "unfortunate confusion".

It recommended that all interested parties and particularly all signatories to the National Peace Accord, should be in possession of any commission report before government or police spokespersons commented on it publicly.

The Goldstone Commission was part of the government response to the ANC withdrawal from negotiations early in 1991 on the grounds of government inaction in the face of unacceptable levels of violence in the country.

The plan to establish the commission

was announced by De Klerk in Parliament in April 1991, shortly after expiry of the deadline set by the ANC, who required the government to meet certain demands by that date as a condition for the resumption of constitutional negotiations.

Five months passed – months of intensified political acrimony and violence – before the commission was established with other structures when the Peace Accord was signed in September 1991.

The commission was launched formally on 29 and 30 October, with the following tasks:

- ◆ investigating the causes of violence and intimidation;
- ◆ recommending measures capable of containing the cycle of violence;
- ◆ recommending measures to prevent further violence;
- ◆ initiating research programmes for the establishment of empirical data on violence;
- ◆ making recommendations concerning the funding of the process of peace.

In the commission's brief, "public violence and intimidation" were defined as violence and intimidation committed to achieve political aims. The commission was to make recommendations to the State President in this regard, did so, and subsequently sharply criticised the government for "ignoring" these recommendations.

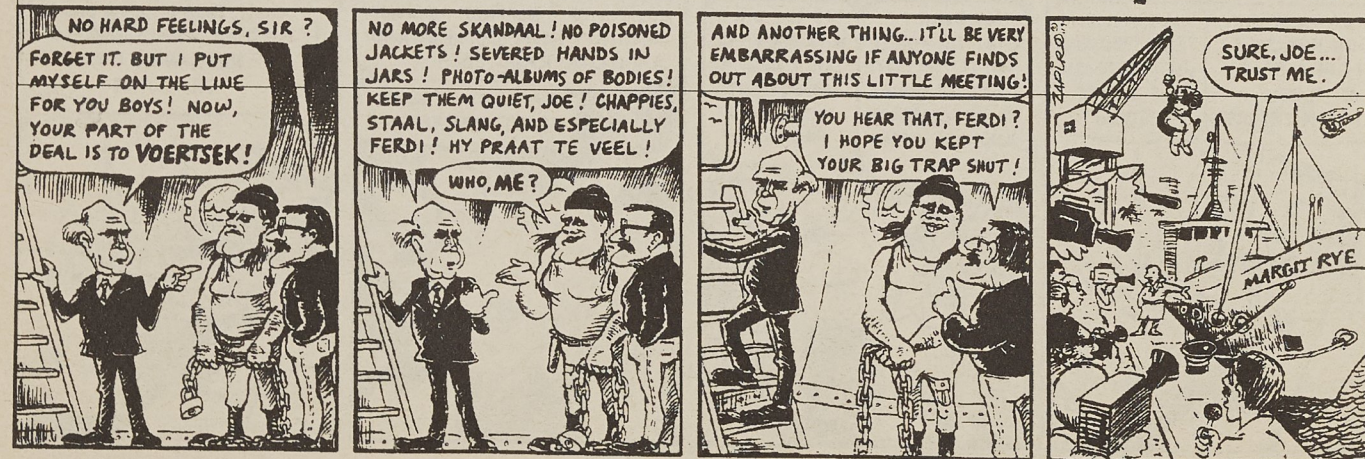
From the outset the commission has been at pains to emphasize its independence. It was stressed that inquiries conducted by the commission would be confined to public violence or intimidation being conducted or alleged to be conducted on a national level. The commission as a whole would endeavour not to become involved in hearings concerning local or regional incidents or issues.

However, since the first committee of the commission was established last September, the commission has been inundated with claims and allegations from

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all quarters. Its first inquiry was into the violence which erupted in the East Rand township of Thokoza in September last year.

The violence which erupted following the stayaway on 4 and 5 November and caused the injury and death of miners at the President Steyn Gold Mine gave rise to the establishment of the commission's second committee.

On 6 December 1991 Goldstone announced the constitution of a third committee of inquiry. He himself was to chair the inquiry which was to focus on procedures relating to the organisation of mass demonstrations, the conduct thereof, and the role and duties of the police or other security forces.

Towards the end of last year it had become obvious that many were viewing the commission as the conduit for all complaints. Goldstone had to emphasise that the commission did not replace normal state structures and mechanisms such as police investigations, judicial inquests and prosecutions by the attorney-generals. But the failure of normal law and order channels to bring relief brought even more complaints to the commission.

In the course of its work the commission has repeatedly criticised provocative statements by members of political parties, in particular the ANC and IFP.

By 14 January 1992, the commission's fifth committee of inquiry had started hearing evidence on the violence which had erupted in Bruntville, Mooi River, on 3 and 4 November 1991.

On 4 February this year the commission commenced an inquiry into allegations made by the *Weekly Mail* on 3 January that the SADF was funding certain "front organisations" to sponsor violence in townships. Both the government and the ANC had requested an investigation into the allegations.

The commission subsequently announced that it could find no evidence of current or recent funding by the SADF of such front organisations for the purpose of sponsoring political violence and intimidation. However, Goldstone announced that an inquiry would be set up to investigate allegations about the violence and intimidation committed recently by persons trained in camps allegedly set up by organisations which formerly had been funded by the SADF.

This inquiry focused on the present whereabouts and activities of some 200 persons allegedly trained at a base named

Goldstone commission's work cut out

"Hippo" in the Caprivi Strip during 1986, and thereafter at the Mkuze Camp in KwaZulu; the training and activities of the group in Wesselson (Ermelo) known as "The Black Cats"; and the present and recent operations of a number of firms alleged to be support structures.

In February the commission launched a high-profile *in loco* investigation, with the assistance of the SAP, after a swoop on a farm alleged by the ANC to be used for the training of hit squads. Goldstone announced that the raid, which lasted nine hours, had uncovered no factual basis for the ANC's allegations.

A month later, on 24 March, the commission had to deal with Inkatha allegations that the ANC/SACP Alliance was about to launch a "terror campaign" against IFP leaders, members and supporters, and in particular residents of Inkatha-supporting hostels. The commission immediately intervened to establish the "sources" of the allegations and a public inquiry date was set for 23 April.

Goldstone indicated that the inquiry into violence in Thokoza would be extended to include an investigation of the eruption of violence at Kathlehong and

the Zonkhezizwe squatter camp near Vosloorus.

The commission's attention was kept focused on the East Rand with a raid by the SADF's 32 Battalion on Phola Park on 8 April in which two people were killed and more than 100 injured or violated. Goldstone immediately extended the terms of reference of the Thokoza inquiry and requested an urgent interim report on the raid.

The escalating violence in the PWV area and the resulting displacement of victims became the subject for another inquiry on 13 May.

Allegations made by the *Weekly Mail* on 8 and 15 May that members of the SAP operating from secret police bases were planning or instigating violence in the southern Transvaal became the subject of another inquiry at the request of the SAP.

By May the commission was redirecting its attention to Natal where violence had flared again. On 15 and 16 May preliminary inquiries were held into violence in the three worst-hit areas of Natal - Empangeni, Umlazi, and Imbali - and evidence was heard from the SAP, SADF, Inkatha and the ANC.

The Boipatong massacre of 17 June in which hostel dwellers attacked residents of the Slovo squatter camp and caused the death of 39 people, became the subject of another inquiry.

Severe criticism of the SAP for their handling of the situation resulted in the appointment of an international assessor, Justice P N Bagwati, former Chief Justice of India, to the inquiry. Goldstone also invited Dr P A J Waddington, the director of Criminal Justice Studies of Reading University, and Commander Tom Laidlaw and Detective Superintendent David Don of the British Metropolitan Police to evaluate police investigation of the tragedy.

Growing allegations of state and government complicity in the violence led to a report from Goldstone on 6 July which said that no evidence had been submitted to the commission which in any way justified allegations of any direct complicity in or planning of current violence by the State President, any member of the Cabinet, or any highly placed officer in the SAP or SADF.

However, in the same report Goldstone took the government to task for ignoring commission recommendations on hostels,

which were a flashpoint of violence in many townships.

He also regretted that commission condemnation of the deployment of 32 Battalion in peace-keeping operations had been met with an "unhelpful response from a senior member of the SADF".

"The commission by no means expects that recommendations made by it should necessarily be accepted or implemented. It does expect, however, that they will not be ignored," he said.

A month later the commission was requested by the State President and the Minister of Local Government to reconsider its recommendations on the fencing of hostels. The commission responded by expanding the inquiry to hear further evidence from all interested parties.

In August Goldstone backed the recommendation made by the Secretary-General of the United Nations that the commission investigate the functioning of the SADF, SAP, Umkhonto weSizwe (MK), Apla, the KwaZulu Police and certain security firms.

Goldstone recommended that amnesty procedures be considered by all parties to facilitate these investigations. A witness

protection programme was brought into operation by late August.

On the recommendation of the UN Secretary-General, the commission's monitoring force was boosted early in September by the secondment of selected police officers to conduct investigations. Attorneys and advocates were appointed to monitor progress on a full-time basis.

For the first time the Goldstone Commission had its own investigative units that could respond quickly to acts of violence. The main aim of the new units was to monitor incidents of political violence and intimidation and the reaction to these of the SAP, SADF and police forces of the self-governing territories.

The Goldstone squads would also be expected to make prompt recommendations, respond swiftly to issues raised by the Peace Accord structures, and investigate any unlawful activities of armed groups within the borders of South Africa and the homelands.

For this purpose, nine attorneys, two advocates, 12 SAP members and three SADF officers were appointed. The largest group was almost immediately dispatched to Natal where they were soon joined by UN observers.

Yet, the commission's work continued unabated.

The Bisho massacre of 7 September became yet another area of investigation and the increase in political violence in various parts of Natal has been a major concern for the commission. The death of 20 people at Folweni on 20 October precipitated a renewed investigation, focusing on the persistence of violence since May in Folweni, Empangeni, Port Shepstone, Richmond and Pietermaritzburg.

Other issues that have received the attention of the commission are: the taxi wars in the Cape and Transvaal; claims of intimidation during the National Education, Health and Allied Workers Union (Nehawu) strike; the death of Eastern Cape farmer André de Villiers; the murder of IFP leader Fana Nzimande in Richmond, Natal, in August; resurging political violence in Northern Natal; the killing of 10 IFP Youth members near Port Shepstone; ANC allegations that Renamo rebels had been brought into Natal by the IFP to participate in hit squad activities; the increased use of automatic weapons in political killings; and allegations by SADF chief George Meiring that ANC special teams disguised as security force members were involved in violence.

Can the Peace Accord bring peace?

It is estimated that 4 000 people have died in South Africa since the signing of the National Peace Accord in September last year. In Natal alone 300 people died in August and September this year. The question is: can the Peace Accord bring about peace?

The three main components of the National Peace Accord - the National Peace Committee, the National Peace Secretariat and the Goldstone Commission - have made little headway against violence in South Africa, although they have spearheaded several initiatives to create conditions for peace.

Since the signing of the accord much of the focus of these institutions has centred on building adequate structures and exploring working procedures.

More recently, National Peace Committee chairperson John Hall has undertaken a heavy schedule of shuttle diplomacy between ANC president Nelson Mandela, Inkatha Freedom Party leader Mangosuthu Buthelezi and President F W de Klerk in an effort to bring the three main

signatories of the National Peace Accord face to face under the auspices of the Peace Committee. If Hall brings this off - and it is less than likely in the context of growing acrimony between the ANC and Buthelezi particularly - it will be the first time since the signing of the accord 14 months ago that the three sit down around the same table.

However, a meeting of the National Peace Committee has been called for 24 November, raising hopes for a meeting of signatories to the accord. The challenge then would become drawing up an agenda which both the ANC and IFP would support.

Buthelezi called at first for a bilateral meeting with Mandela and a review of the peace structures. The ANC responded that violence could not be ended by a simple meeting between two individuals. Mandela subsequently expressed the organisation's support for a top-level meeting of signatories of the Peace Accord.

It is generally recognised, however, that a meeting between leadership figures will not be

sufficient to stop the violence on the ground. Active commitment to promoting and implementing the accord, particularly its Code of Conduct, among the rank and file of contending organisations is what is required from the signatories, who include homeland leaders.

In the light of the Bisho massacre and mounting tensions in KwaZulu and Bophuthatswana, signatories will be expected to sign an undertaking to allow normal political activity within their territories "against the guarantee of the suspension of unconventional activities, which include violence and intimidation".

A commitment will be sought from leaders to find a way to guarantee the right to political expression and activity without jeopardising peace. The findings of the Goldstone Commission on the Bisho massacre and the National Peace Accord's recognition that political groupings do have the right to assembly and peaceful protest, have necessitated this kind of agenda.

The National Peace Accord has moved increasingly into the realm of government jurisdic-

tion. Both the Commission of Inquiry into the Prevention of Public Violence and Intimidation and the National Peace Secretariat (NPS) are now statutory bodies falling under the Department of Justice. Members are appointed to both these bodies by the State President, albeit within the framework of multi-party consultation.

After functioning initially under the auspices of the National Peace Accord, the NPS became a statutory body on 4 November. It operates from offices in Pretoria and is assisted by 21 full-time staff from the newly created government Directorate of Internal Peace Institutions.

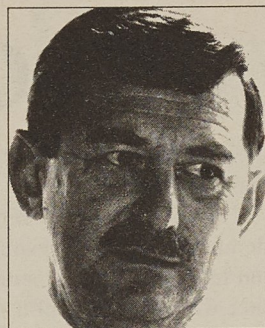
Since the establishment of the NPS in November last year, 11 Regional Dispute Resolution Committees (RDRCs) have been established, each with a minimum of 20 members. So far 50 Local Dispute Resolution Committees (LDRCs) have been established.

All the infrastructure necessary for the proper functioning of the National Peace Secretariat, the RDRCs and LDRCs is provided by the Department of Justice.

TERTIUS DELPORT

New boy on the block

Not counting the customary stint in student politics, Tertius Delpport has been a politician for only five years. Despite this he is making his mark on the national stage as one of the "new boys" in the Cabinet.



Jacobus Tertius Delpport was born on 16 October 1939 in Humansdorp in the Eastern Cape. He matriculated from the Kirkwood High School in 1956. In 1961 he graduated with a BA LLB from Stellenbosch university where he was actively involved in student affairs and politics.

Delpport became chairperson and subsequently national vice-president of the Afrikaanse Studentebond – the traditional launch-pad for a career in the National Party. He also made his mark as a rugby player at Stellenbosch. He enjoys recalling how he kept fellow Cabinet minister and former Springbok captain Dawie de Villiers out of the Matie first team. Delpport later played for Eastern Province.

Delpport's legal career took him to the Magistrate's Court in Bloemfontein, the office of the Attorney-General in Pretoria, and the Bar and an attorney's practice in Port Elizabeth.

His academic career began in 1964 when he was appointed senior lecturer in Private Law at the University of Port Elizabeth. He served as Dean of the Law Faculty from 1978 to 1987.

He resigned his academic post and entered active politics in March 1987 when he successfully contested the Sundays River seat in the general election. As a back-bencher he soon made an impact and was appointed chairperson of the Joint Parliamentary Committee for Constitutional Development, Foreign Affairs and Development Aid in 1989.

In May 1990 Delpport was appointed Deputy Minister of Planning and Provincial Affairs, a portfolio which took him into the core of National Party strategy. By November he had Constitutional Affairs added to his portfolio. As deputy to Gerrit Viljoen, he became instrumental in the planning phase of national negotiations.

In the 1991 parliamentary session it was Delpport's task to pilot the unpopular Interim Measures for Local Government Bill through Parliament. The so-called Delpport Bill was a unilateral government attempt to force the formation of non-racial local government structures during

the period of transition. It was rejected as too racial and too prescriptive.

A cloud moved over Delpport's career when *The Sunday Times* reported in July 1991 that he had acted as an intermediary for controversial Sicilian businessman Vito Palazzolo at a series of late night meetings with a journalist. The newspaper said Delpport had offered the journalist R75 000 to write an authorised biography of Palazzolo.

It was believed that Delpport's head might roll. Delpport hastily called a press conference where he denied that he had acted as an agent for Palazzolo, and ascribed his attempts to persuade the journalist to write articles showing Palazzolo in a good light to bad political judgement.

The incident obviously didn't damage Delpport's standing in the Cabinet. In the months preceding the launch of Codesa in December last year he played a central role in policy and strategy development.

With Viljoen's health declining, Delpport moved to the forefront of tough bargaining in the Codesa working group which concerned itself with South Africa's constitutional future. During Codesa 2 on 15 and 16 May, Delpport was one of the key protagonists in the battle which precipitated the demise of the forum.

With Viljoen not well, it was Delpport who articulated the government's strong views on the need for autonomous regional government and the adoption of a fully fledged interim constitution. He became a key campaigner for prescribed power-sharing in government and a strong federal dispensation awarding considerable autonomy to regions.

In October Delpport was appointed successor to Leon Wessels as Minister of Local Government Affairs – an area with which he is not unfamiliar. A difficulty that awaits him in this role is widespread opposition to the Interim Measures for Local Government Act, which he helped to have passed into law.

Delpport is a member of the Suid-Afrikaanse Akademie vir Wetenskap en Kuns. He is married to Anna Aletta de Bruyn. They have three children. ■

Centre will not hold but the fringes flourish

A variety of negotiation processes are flourishing at local, regional and even national level despite – and perhaps because of – the impasse at the national constitutional level.

Negotiations about local government and development issues have gathered momentum at local, regional and even national levels, despite the continued impasse in the transition process at national level.

Three distinct trends are evident: specialist forums at national level, economic and development forums at regional level, and multi-issue forums at local/metropolitan level.

Despite pessimistic predictions some months ago about the long-term consequences of centralising negotiations at national level, it is now possible to predict the emergence of a multi-polar process involving numerous initiatives that may not necessarily complement one another. It is the dominance of national leaders in media coverage of these issues that leads outsiders to the incorrect view that the negotiation process is monolithic and centralised.

On the national level, the most coherent initiative is the National Housing Forum (NHF). The other functioning national initiative is the Economic Forum, which has terms of reference that overlap with the NHF mandate with respect to certain development issues.

The National Energy Forum has run into problems and is limping along in a small working committee. There is also talk of a National Transport Forum to deal with the rapidly deteriorating transport system in the country's major cities, a situation aggravated by the government's attempts to decentralise fiscal responsibility for transport to the metropolitan level.

The newcomer on the national level is the proposed National Negotiating Forum (NNF) on Local Government mooted by Minister Leon Wessels and the South African National Civic Organisation (Sanco). While agreement has been

reached on the need to establish this forum, debate continues about its powers, functions, composition and scope.

An emerging point of consensus seems to be that it should comprise the "establishment" local government people currently represented in the statutory Council for the Co-ordination of Local Government Affairs (CLGA), and the "anti-establishment" local government people represented by Sanco but including the ANC, Cosatu and the South African Municipal Workers Union.

A more significant point of agreement is the view that the NNF should be an advisory body on local government matters for the soon to be established transitional executive authority and, later, interim government. In other words, it will not itself be an executive body and therefore could replace the CLGA.

The significance of the National Negotiating Forum is that it is the forum that will establish national guidelines for regional and local negotiation processes. There is no suggestion that regional and local negotiations will cease after the establishment of the NNF; on the contrary, they could be reinforced.

NEW ANGLES

The ongoing debate about constitutional local government negotiations has become increasingly complex and heated. There are two reasons for this.

The first relates to the problem of how the cities are to be governed after a national interim government has been installed. Three regions in particular (Transkei, Northern Free State and Central Rand) have lobbied national ANC and civic leaders to agree to the concept of elected interim local governments.

The second relates to the impact of the regional government debate. Recent ANC and NP policy statements on regional government point to a convergence on the need for regional government, but differences on what powers this level of government should have.

No matter what happens, the future of local government will depend heavily on the outcome of the debate on regional government. In sum, the stronger the regions, the weaker the local level will be.

Regional forums such as the Border-Kei Development Forum, which participants see as an embryonic regional government, will directly influence the out-

come of this debate. The same applies to the Orange Free State Forum, which will get going from late November onwards after being suspended since Codesa 2, and the now operational PWV Economic and Development Forum.

However, the problem is that, with the exception of the OFS Forum, the regional forums are focusing on economic and development issues and not on local/regional government restructuring. This is the result of a problematic distinction between the service functions of the public sector and the economic functions of the private/community sector.

TRENDS

On 11 November the Central Witwatersrand Metropolitan Chamber (CWMC) released a bombshell package that outlined proposals for elected interim local and metropolitan government.

In essence, the proposals suggest that local governments should be elected by a non-racial voters roll on the basis of proportional representation. In addition, the interim metropolitan government, together with the city's major sectoral stakeholders (civics, ratepayers, business, labour) should constitute a Metropolitan Constitutional Conference to negotiate a final model for the region.

The CWMC proposals not only focus attention on the need for elected interim government at all levels, they also point to the fact that the CWMC has defied national ANC, civic and even government calls to stop constitutional negotiations at local level.

Civic Associations of Johannesburg general secretary Cas Coovadia said in a press statement that civics were not prepared to allow white councils elected by a small minority of the region's population to have sole control over the expenditure of budgets of nearly R4 billion. Nor were the civics prepared to call for the resignation of councillors and do nothing about filling the vacuum left in the wake of their departure.

Northern Free State ANC leaders have already argued that a national interim government will be meaningless if existing white local governments are left in charge of the towns and cities. In the homeland areas, the 800 or so tribal authorities are collapsing and local ANC and civic leaders are calling for permission to "take them over".

The most dramatic statement on the subject has come from ANC Local Government head Thozamile Botha. His closing argument at an ANC policy research conference in Cape Town in October suggested that it was high time to go beyond the simplistic demand for the resignation of black councillors.

Instead, he argued, the democratic movement should demand the resignation of all sitting local government councillors followed by non-racial elections for interim local governments.

There are many indications that the government will support the concept of elected interim local governments. The reason for this is that neither the collapsing black local governments nor the unrepresentative white local governments have the legitimacy to effectively administer the towns and cities.

Certain provincial administrations have already discussed this concept with the Cabinet. This is probably why the Transvaal Provincial Administration was able to support the CWMC resolution on elected interim local government.

There are also strong reasons from a peace perspective for supporting elected interim local government. One major cause for the violence is the existence of a political vacuum at local level that rival parties try to fill through use of force rather than due electoral process. The establishment of a national interim government will not fill these local vacuums – only elected local structures can.

Should there be elections for interim regional governments which will also resolve the problem of homeland leaders? If no consensus is reached on this question, and if the regional debate gets hitched to the local government debate, then the entire movement towards democracy at the local level to ensure a peaceful passage through the transition could be scuppered.

It seems, therefore, that a centralised uni-polar negotiation process to guide the transition is unlikely. As these processes at local and national level gather momentum, they provide a foundation upon which renewed constitutional negotiations can take place at national level. Ironically, it is the absence of progress at national level that has provided the space for the proliferation of many local, regional and national transition-making processes. ■

'No option but to nullify illegitimate amnesty'

THE government has not been immune to the storm of criticism that greeted the tabling of the Further Indemnity Bill on 16 October and its dubious passage into law, despite rejection by Parliament, by means of the President's Council rubber stamp.

In a sudden *volte face*, Justice Minister Kobie Coetsee announced the scrapping of the Bill's secrecy clause, which guaranteed that the crimes that had been committed by applicants for indemnity would remain secret.

After persistently defending the secrecy clause, Coetsee announced on 11 November that not only the names but also the crimes committed by those for whom indemnity had been approved would be published in the *Government Gazette* in future.

Coetsee announced this change of heart when he released the names of those who are to serve on the government-appointed National Council on Indemnity. In terms of the provisions of the Further Indemnity Act, this council will advise President F W de Klerk on the release of political prisoners and those seeking indemnity for punishable crimes.

The council, whose members are Appeal Court judge M T Steyn, judge H H Mill and retired judge R A Solomon, had its first meeting in Pretoria on 12 November.

De Klerk brought the storm down on his own head by using the President's Council for the first time in his presidency to force the Bill into law against the wish of every political party in and outside Parliament, and in the absence of endorsement from the parliamentary Joint Committee on Justice.

The government has insisted that the Further Indemnity Act is necessary to implement the provisions of the Record of Understanding signed with the ANC on 26 September. One of the terms of this agreement was the release before 15 November of political prisoners identified by the ANC. However, the ANC rejects this justification for the legislation, saying that it is aimed at protecting government officials.

When he tabled the Bill in October, Coetsee said that information on the crimes committed by those granted indemnity would remain under lock and key in the care of the Judge President or a judge nominated by him.

The name of the indemnified person would be published but not the specific crime. Those appointed to the National Council on Indemnity would be sworn to secrecy. The contents of any evidence or statement submitted to the council for the purposes of applying for indemnity would be privileged and would not be admissible in any judicial process, Coetsee said.

He rejected the assertion from critics of the Bill that the secrecy provisions were designed to prevent full public disclosure of human rights violations that had taken place in South Africa.

The Democratic Party argued in Parliament that these secrecy provisions fatally undermined one of the major premises for amnesty – the full disclosure of the facts and circumstances of human rights violations and outrages committed in South Africa.

The DP also asked whether the president, who is also the head of a political party, should have the final say on an issue as sensitive as indemnity from prosecution in respect of serious offences.

Coetsee said that the date for a final political amnesty, beyond which no crimes would be condoned, had to be decided in future multi-party negotiations. He said the government view was that this could be agreed on before the introduction of an interim government.

He argued that the objective of the Further Indemnity Bill was to supplement existing procedures adopted in the 1990 Indemnity Act. It would give legal status to the releases of prisoners in accordance with the Record of Understanding reached with the ANC.

Emphasising that the objective was not to establish a blanket or general amnesty, Coetsee said the government believed that "general indemnity, or amnesty for that matter, must be negotiated on a multi-party basis before the commencement of the transitional process" as this "would be an essential prerequisite for a general political settlement in South Africa".

On 20 October Coetsee said he was proceeding with the Further Indemnity Bill in spite of the deadlock in the Joint Committee on Justice. He said he was continuing discussion with the House of Delegates, who would not pass the Bill, in an attempt to overcome the problem of their opposition to it.

The Bill required a simple majority in all three houses of Parliament to pass into law. On 26 October the Bill was referred to the President's Council which acts as an arbitrator when disagreement arises between the three houses.

On 2 November, De Klerk vigorously defended the Bill in an interview on national television. He even defended the secrecy clause, stating that nobody would claim amnesty if he knew his name would be published afterwards. He insisted that the individuals concerned needed to be protected, reiterating that he would not free any political prisoners without the backing of proper legislation.

De Klerk argued that the proposed legislation was merely an extension of the 1990 Indemnity Act – with two main differences. In the first place, the 1990 Act excluded provision for people who had committed serious crimes, while the Further Indemnity Bill provided for such serious crimes. The second difference was the introduction of a National Indemnity Council instead of the indemnity committees which had functioned up to now.

De Klerk repeated that without the proposed legislation there could be no further releases of people who had committed serious crimes. The Further Indemnity Bill therefore had to be rushed into law to meet the deadline of 15 November for the release of prisoners set in the Record of Understanding.

He argued that the ANC itself had asked for the suspension of trials in anticipation of the legislation.

De Klerk denied that the legislation had been formulated because the government's hands were soiled. "I want to state categorically that I have sat in Cabinet since 1978 and was never present where a decision was taken to commit a crime," he said.

However, although he defended the secrecy provisions of the Bill on the basis that no people would seek indemnity if they knew that their crimes would be exposed, he indicated that the government would reconsider the matter.

De Klerk argued that he was not prepared to use presidential power to award indemnity at random without covering his own signature with objective legal advice from a judge who had no political interest in the releases.

"It is good law to do what we are doing," he said. "That is how justice will

be seen to be done. Justice is not seen to be done always in the sense that everything is public. There are certain rules when, for instance, evidence is given in camera, for good reasons – and there are good reasons.

"Why, if you want to clean the slate, is it [disclosure] necessary? If you want people to come to the fore so that you can close the docket and say 'now that docket can be closed', he or she won't come unless there is some form of protection built into it – security that it will not be suicide for him or her to come to the fore."

In a statement rejecting the Bill, the ANC reiterated its warning that it would nullify any amnesty legislation introduced by the present government.

"The ANC believes that President De Klerk's desperate attempt to force the Further Indemnity Bill through Parliament is an indication of the seriousness of the crimes he is trying to prevent becoming known," the statement said.

It reiterated that there was no link between the Bill and the Record of Understanding. It argued that De Klerk had acknowledged that he already had the power to implement the agreements reached in the accord and that therefore no further legislation was necessary.

Human rights groups also attacked the Bill. Lawyers for Human Rights (LHR) warned that the government had no legitimacy and could therefore not grant amnesty.

LHR said the government had no mandate from those who had suffered the horrendous consequences of the National Party's massive human rights violations. Amnesty was not only an ethical question. It was also an issue of paramount importance for the reconciliation process. To command support and contribute to reconciliation in any meaningful way, amnesty could take place only through national consensus.

LHR chairperson Brian Currin said in a statement that President De Klerk ran the risk of giving South Africa's first democratically elected government no option but to nullify an illegitimate amnesty and proceed with the prosecutions necessitated by popular demand.

Currin said that good faith was an essential ingredient in the negotiation process and this could be damaged if the government attempted to absolve itself. ■

'Sinister implications'

On 23 October the New York-based human rights group Africa Watch, which is an arm of the internationally renowned Human Rights Watch, sent President F W de Klerk an urgent appeal to drop the Further Indemnity Bill. The appeal came in a letter to De Klerk signed by Human Rights Watch executive director Aryell Neier and arguing strongly against the implementation by his government of amnesty procedures.

Extracts from the letter follow:

"We do not believe that an amnesty law which allows those who have committed serious crimes in the name of apartheid to receive complete immunity from the consequences of their actions, with no condition other than a review by a secret commission and the publication of a list of names, can make any good contribution to the process of transition in South Africa. We urge you to accept the verdict of Parliament, which rejected your proposed legislation, and not to pass the measure through the mechanism of the President's Council.

"We believe that no decision can be made to forgive crimes before the truth of those crimes are known. Moreover, Africa Watch maintains that an amnesty for those who have committed the most serious abuses is invalid under international law in any circumstances. The implications for the character of a future regime if this legislation becomes law are enormous and sinister. If South Africa is to move forward to reconciliation and nation-building, it must face more honestly the question of accountability for past abuses.

"The question of accountability has become increasingly important around the world in recent years, as different states attempting to make a transition to democracy have struggled to achieve a balance between retribution and forgetfulness in the interests of national reconciliation. Some of the most notable efforts to come to terms with a brutal past have been made in the Latin American countries recovering from decades of military dictatorship, where commissions have been appointed to unearth the truth of their terrible histories, and – in some cases – prosecutions have been undertaken to mete out justice to the perpetrators and grant a measure of compensation to the victims.

"The experience of Latin America shows that it may be difficult to achieve a full legal accounting for violations, especially where there is a degree of continuity from the old regime to the new, but that it is possible to achieve accountability at the highest levels for even the worst crimes, if the political will is there. The very process of subjecting previously all-powerful figures to the full scrutiny of a court of law is a dramatic step towards re-establishing in the eyes of the whole population the credibility of the legal system, the independence of the judiciary, and the ability of a new government to deal with abuses of power without the need for extra-judicial action.

"Americas Watch, which is with Africa Watch a part of Human Rights Watch, has

monitored and commented on these efforts, and has developed its own policy on accountability for past abuses. The most important lessons from our report *Accounting for the Past: The Lessons for South Africa from Latin America* are: that if a country is to come to terms with its past and successfully turn its attention to the future, it is essential that the truth of the past be officially established. It is impossible to expect 'reconciliation' if the one part of the population refuses to accept that anything was ever wrong, and the other part has never received any acknowledgement of the suffering it has undergone or of the ultimate responsibility for that suffering.

"In South Africa, in particular, it is illusory to expect that a transition to a new non-racial society will be achieved without acknowledgement by those who supported and benefited from government policies – overwhelmingly white – of the atrocities that were committed in the name of apartheid; or without the opportunity being given those who were the victims of atrocities – overwhelmingly black – to testify about their experience before a body that is impartial and authoritative, and to see human rights violations comprehensively investigated and officially condemned.

"The experience of Latin America shows that it may be difficult to achieve a full legal accounting for violations, especially where there is a degree of continuity from the old regime to the new, but that it is possible to achieve accountability at the highest levels for even the worst crimes, if the political will is there. The very process of subjecting previously all-powerful figures to the full scrutiny of a court of law is a dramatic step towards re-establishing in the eyes of the whole population the credibility of the legal system, the independence of the judiciary, and the ability of a new government to deal with abuses of power without the need for extra-judicial action.

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Mea culpa, says Mandela

The ANC has accepted responsibility for abuses committed in its detention camps after accepting the report of its internal Commission of Inquiry into Complaints by Former ANC Prisoners and Detainees, which records a finding of "staggering brutality" and horrific human rights violations in the camps.

The commission's report listed accusations that ANC officials still employed in the ANC's security department had tortured detainees held in the camps.

"As leadership, we accept ultimate responsibility for not adequately monitoring and therefore eradicating abuses," ANC president Nelson Mandela said at a press conference on 19 October where the report was released.

He said the ANC would accept full responsibility for what had happened and would look at ways of addressing the errors of the past. He undertook to appoint an independent and impartial body to further investigate allegations of torture and murder in the camps.

However, the ANC stopped short of formally apologising to those who suffered maltreatment in its camps, saying that such an apology was one of the commission's recommendations and was still under consideration.

The commission found that: detainees were incarcerated without trial for periods ranging from three to seven years; conditions of detention were consistently harsh; "injustices done to those accused of being traitors without ever being tried is of the gravest sort"; abuses of "the most chilling kind" were perpetrated in the Quatro Camp in Angola, described as a concentration camp, where there was a lack of adequate health treatment, no running water, and inmates consistently suffered assault and injuries at the hands of their captors; abuses were mostly inflicted on detainees suspected of being government agents.

The commission's recommendations include:

- witnesses detained without trial should have allegations against them unequivocally and unconditionally withdrawn, and they deserve a clear apology for the wrongs they suffered;
- all witnesses who suffered maltreatment should receive monetary compensation;
- detainees who lost property should be

- compensated for such loss;
- an independent "impartial" structure should be created to document cases of abuse, give effect to the recommendations of the report, and investigate all allegations of disappearance and murder;
- urgent attention should be given to identifying and dealing with those responsible for the maltreatment of detainees;
- no person who is guilty of committing atrocities should ever be allowed to assume a position of power;
- two reports of commissions of enquiry – that into the death of Thami Zulu and the Stuart Commission into the 1984 mutiny – should be made public. ■

In among the 'aliens'?

Supporters of an Afrikaner homeland are still battling to find consensus on where such a homeland should be. The aim is to arrive at a unified position with which to enter constitutional negotiations.

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From page 13

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Mea culpa, says Mandela

The ANC has accepted responsibility for abuses committed in its detention camps after accepting the report of its internal Commission of Inquiry into Complaints by Former ANC Prisoners and Detainees, which records a finding of "staggering brutality" and horrific human rights violations in the camps.

The commission's report listed accusations that ANC officials still employed in the ANC's security department had tortured detainees held in the camps.

"As leadership, we accept ultimate responsibility for not adequately monitoring and therefore eradicating abuses," ANC president Nelson Mandela said at a press conference on 19 October where the report was released.

He said the ANC would accept full responsibility for what had happened and would look at ways of addressing the errors of the past. He undertook to appoint an independent and impartial body to further investigate allegations of torture and murder in the camps.

However, the ANC stopped short of formally apologising to those who suffered maltreatment in its camps, saying that such an apology was one of the commission's recommendations and was still under consideration.

The commission found that: detainees were incarcerated without trial for periods ranging from three to seven years; conditions of detention were consistently harsh; "injustices done to those accused of being traitors without ever being tried is of the gravest sort"; abuses of "the most chilling kind" were perpetrated in the Quatro Camp in Angola, described as a concentration camp, where there was a lack of adequate health treatment, no running water, and inmates consistently suffered assault and injuries at the hands of their captors; abuses were mostly inflicted on detainees suspected of being government agents.

The commission's recommendations include:

- witnesses detained without trial should have allegations against them unequivocally and unconditionally withdrawn, and they deserve a clear apology for the wrongs they suffered;
- all witnesses who suffered maltreatment should receive monetary compensation;
- detainees who lost property should be

- compensated for such loss;
- an independent "impartial" structure should be created to document cases of abuse, give effect to the recommendations of the report, and investigate all allegations of disappearance and murder;
- urgent attention should be given to identifying and dealing with those responsible for the maltreatment of detainees;
- no person who is guilty of committing atrocities should ever be allowed to assume a position of power;
- two reports of commissions of enquiry – that into the death of Thami Zulu and the Stuart Commission into the 1984 mutiny – should be made public. ■

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Quest for economic health kicks off in triplicate

Growth, equity and participation are to be the cornerstones of the work of a new body that unites business, labour and the government in a quest for national economic health.

After months of persistent pressure from labour and business for government participation in a consensus-driven tripartite body aimed at addressing the country's economic woes, the National Economic Forum was finally launched on 29 October.

One of two working groups entrusted with finding consensus solutions will immediately focus on crippling economic problems such as unemployment, and the lack of adequate training programmes, certification and facilities.

A suspension of unilateral economic restructuring by the government can also be expected.

The participants have declared themselves committed to finding ways to resolve "conflict" in the national economy in a manner that will promote growth and development. They emphasised the urgency of the need for co-operation and declared in a joint statement that "the government, labour and business have agreed to enter this process with a view, as a matter of urgency, to encourage both economic growth and social development, including the addressing of imbalances in the present economic and social structure".

The signing of this economic pact was made possible by the thaw in relations between the government and the ANC Alliance, which includes Cosatu, after the signing of the Record of Understanding.

The Record of Understanding opened the door to the resumption of constitutional negotiations between the government and the ANC and persuaded Cosatu to withdraw its threat of industrial action. This chain of events created a climate conducive to the formation of the new forum.

Three documents which will underpin the work of the NEF have been formally adopted and are now publicly available. They are:

- ◆ Growth, equity and participation – the road to the new South Africa;
- ◆ The National Economic Forum;
- ◆ Structures and *Modus Operandi*.

The document on growth, equity and participation stresses the importance to the success of the wider process of political transformation in South Africa of both sustainable economic growth and addressing social and development needs. It also recognises the "distortions caused by large scale unemployment and severe inequality in incomes, skills, economic power and ownership in the country".

The document declares that "major economic stakeholders" need to develop co-operative mechanisms for addressing:

- ◆ the generation of high and sustainable economic growth;
- ◆ social and development needs;
- ◆ improving the productive utilization of all South Africa's resources – human and capital;
- ◆ the linkage between internal economic developments and changes in the global economy, including changes in the Southern African region;
- ◆ distortions, imbalances and inequality

in the economy;

- ◆ improving the participation of all major stakeholders in economic decision-making; and

- ◆ the creation of stability.

The document first surfaced in business quarters and was amended to incorporate a broader vision.

The National Economic Forum document is the extensive memorandum drawn up by Cosatu, Nactu and organised business as far back as May this year, which sets out the aims and objectives of the proposed NEF. (The document was published in full in issue No.1 of *Negotiation News*).

The last document provides for a plenary, a process committee, working groups, and a secretariat. With regard to *modus operandi*, the emphasis is on "rapid progress", with a review after six months.

The work of the NEF will be co-ordinated and driven by a process group, who will also define the mandates of the working groups. Three representatives each from business, labour and the government, as well as representatives from the two working groups will serve on the Process Committee.

The working group whose task is addressing short-term needs is expected to focus immediately on the potential for job creation. In the face of escalating unemployment, this focus would incorporate strategies for developing and expanding training initiatives. The working group focusing on long-term economic needs will systematically re-evaluate the country's macro-economic policy.

Detailed agendas for the working groups are to be decided shortly. ■

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