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Delmas judge breakthrough on legal view of war

JOHANNESBURG/ Three African National Congress guerrillas were sentenced to hang last week when two assessors of the Supreme Court outvoted a judge who considered that their military training was a mitigating factor.

He said, in a view regarded as the first judicial acknowledgement of civil war conditions, that military training might have influenced the minds of the accused as to reduce the moral blame that attaches to murder, writes a correspondent.

Mr Justice de Klerk, sitting in the Transvaal town of Delmas, declared that he considered it inappropriate to impose the man awry death sentence on Obed Masina, TingTing Masango and Neo Potsane, who had been convicted of murder for actions performed as an ANC squad.

Mitigating circumstances for their actions lay in the fact that the accused had been exposed to 'intense influence during their military training and had come to view themselves as soldiers and freedom fighters - to who even assassination was acceptable.

The two assessors, however, outvoted the judge and compelled him to sentence the men to death. The fourth man was given an effective 25 years imprisonment for attempted murder.

A lawyer at the Witwatersrand University Centre for Applied Legal Studies said it was impossible to exaggerate the legal significance of De Klerk's judgement. It was the first real acknowledgement by a South African judge of legal implications of civil war conditions.

The ANC men refused to mount any form of defence and were silent except to explain their refusal as soldiers to participate in a civil trial.

For the last three days of the trial the men appeared in olive green military uniforms.

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ANC on their berets and  
pockets.

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