

BRIEFS BRIEFS**Mbeki Day rally**

TOMORROW the giant South African Youth Congress (Sayco) will hold its main Govan Mbeki Day rally at Khotso House in Johannesburg.

Tomorrow's rally will start at noon and is due to end at 2pm.

Sayco declared January 8 Mbeki Day in memory of the birth of the African National Congress (ANC), of which he is a top-ranking member.

In a statement this week, Sayco said: "We want the world to know our position — we are not a front for the ANC, nor do we have any organisational relationship with it. But we recognise its centrality in resolving the South African problems."

Inkatha won't pray

INKATHA members say they may boycott a number of day-long vigils for peace in Pietermaritzburg on Saturday.

Archbishop Denis Hurley has organised day-long vigils in a number of Catholic Churches in Pietermaritzburg, Edendale and Imbali as "an expression of my deep concern over the escalating violence".

But Inkatha peace talks delegate Velaphi Ndlovu has refused to attend, and says he doesn't think other Inkatha members will attend either.

"I don't go inside Catholic Churches. If it was held in a Presbyterian Church, I would go," he said. He did not elaborate on why he thought other Inkatha members, Catholic or not, would boycott.

Nine in court

NINE Inkatha members appeared in court on Monday charged with the New Year's Eve murder of a Cosatu member who was peace-making in an Inkatha confrontation with KwaNdengezi Youth League members.

An official police unrest report said that in KwaNdengezi "a 53-year-old man was attacked and stabbed to death by unknown people."

The nine have been charged with murdering Cosatu member Goldfingers "Press" Vilakazi. They were not asked to plead and the case was postponed for further investigation.

The latest estimated tally in the conflict is as follows: Dead: Inkatha 2, youth league members 5; burnt houses: Inkatha 0, UDF/Cosatu 3; injuries: Inkatha 7, UDF/Cosatu 9.

Dangers of Marxism

THE STAR
In The Star of December 22 there is a review reprinted from *The Sunday Times*, London, of Soviet leader Mr Mikhail Gorbachev's "perestroika". It paints a dismal picture of life in Communist Russia.

"Centralised bureaucracies churn out edict after edict, people do less and less work, become drunken, demoralised and corrupt, the state military machine absorbs an enormous quantity of resources, leaving fearful inadequacies in housing, education and health."

In the same issue, the South African Catholic bishops urge the Government to talk to genuine black leaders, making specific mention of Mr Govan Mbeki.

Mr Mbeki is an avowed communist. He wants for this country the policies which have reduced Russia to a country of "tyranny, inefficiency and starvation on an enormous scale so that even left-inclined commentators like historian Mr A J P Taylor can regard it" (the workers' revolution) as "the tragedy of my time." (Quote from the above-mentioned review.)

Because Mr Ian Smith was forced to treat with Marxists like Mugabe against his better judgment, Zimbabwe is now firmly on the road to a one-party socialist state. The next ten years will see the economic decline of that country to the grave detriment of the unsophisticated peoples who voted him in as a "genuine" leader.



A J P Taylor: Left-wing, but critical of Russia.

The bulk of black South Africa consists of exactly such unsophisticated and easily manipulated peoples who may well have chosen communists as their genuine leaders. But those of us who know better — and this should include the Catholic bishops — cannot allow them to do so both for their sakes and for our own.

If South Africa is to remain part of the West, the present transition period has to be carefully managed to exclude the Marxists, however much support they apparently have.

Anti-Marxist

Johannesburg

Buthelezi's reputation puts Zulu capital on the map

Tony Allen-Mills reports on Ulundi, the diminutive capital of the once-mighty Zulu nation, constructed on the site where the British finally defeated the Zulus.

IN THE ancient Zulu battlefield Ulundi, there is a small monument to the 20,000 impi fighters whose assegais and cowhide shields proved no match for Lord Durnford's Gatling guns in the last great battle of the Anglo-Zulu war.

An inscription on the monument reads: "In memory of the brave warriors who fell here in 1879 in defence of the old Zulu land". A century later, a new Zulu order is springing to life a few hundred yards from the site where the last great Zulu king, Cetshwayo, gave up his throne to British rule.

Ulundi, an isolated rural outpost about 130 miles north-west of Durban, has become the capital of the Zulu kingdom's 20th century incarnation — the black South African homeland of KwaZulu. On a windy plain still littered with wasted British cartridge cases, Mangosuthu Buthelezi has built an ultra-modern Zulu kraal.

The choice of a new KwaZulu capital aroused fierce debate when Ulundi was first proposed in the 1970s. For almost 90 years the focal point of Zulu authority had been the remote trading village of Nongoma, where the Zulu royal family maintained its household, and where King Zwelithini Goodwill still lives today.



A contemporary print of the battle of Ulundi in 1879, at which the back of the Zulu empire was broken by British firepower.

Frank Mdlalose, a veteran Zulu administrator who is currently Minister of Health in the KwaZulu government, says the argument hinged less on the topographical suitability of the rival locations, than on their status in Zulu legend.

"Some people thought Nongoma should be the capital because that's where the King lived, like his father and grandfather before him. But others pointed out that Ulundi was even more historical — Ulundi was where the back of the Zulu empire was

broken."

Ulundi was duly chosen and construction began in 1976. At the time, the area was used mainly for grazing. A dozen families were obliged to move to other farms to make way for a KwaZulu legislative assembly and the headquar-

ters of a homeland government administering more than six million Zulus.

An influx of civil servants and modest service industries has swollen the Zulu capital's population to almost 5,000. Modern housing developments are scat-

tered across the bumpy plain. Ulundi boasts a small airport, a modest shopping centre, and a Holiday Inn that proudly describes itself the smallest in the world.

Although the KwaZulu government employs several dozen whites, some in senior positions, thanks to Pretoria's Group Areas Act they are not allowed to live in Ulundi itself. Most commute daily to Melmoth, a pretty hillside village safely across the KwaZulu border on "white" terrain some 30 miles away.

Chief Buthelezi's offices are located in a handsome modern administrative complex that dominates the local landscape. Because Mr Buthelezi refused to accept independence for KwaZulu — it is technically a self-governing region of South Africa, and not a separate state like Bophuthatswana or Transkei — Pretoria in turn withheld its bonus incentives. No government funds were offered to build Ulundi.

Unless you were going to visit Chief Buthelezi — as a steady stream of dignitaries does — or have a special interest in Zulu war battle sites — there would be few reasons to visit the new capital. It is a ragged, functional, out-of-the-way place offering little in the way of entertainment other than the darts board at the Holiday Inn.

But Chief Buthelezi's growing importance in national affairs, and his determination to establish the Zulus as a force indispensable to any future political settlement in South Africa, looks like securing for Ulundi a permanent place on the map.

SA blacks' views on sanctions 'are now irrelevant in US'

JAN 7 1988

From The Star's
Washington Bureau

The Rangel Amendment, which doubles taxation for American companies operating in South Africa, revealed a US Congress which gave little thought to the consequences of its actions, the *Wall Street Journal* has charged.

The amendment was approved as part of an omnibus, catch-all tax Bill in the final days before Congress completed its work for 1987. There was hardly time for a thorough debate and the Ways and Means Committee approved it after hearing only one piece of testimony.

The *Wall Street Journal*, America's largest daily newspaper and one of the world's most influential financial publications, said further debate might have brought out the fact that the amendment would do more than

cost thousands of blacks their jobs.

"It will have the perverse effect of strengthening white economic dominance of South African society."

The newspaper said studies showed that support for sanctions had fallen among South African blacks.

"Much of the (American) support for further sanctions appears to be driven by by US domestic political concerns. Whether or not blacks support them has become irrelevant."

Meanwhile, American companies trading in South Africa are studying the fine print of the Rangel Amendment to assess the impact it will

have on their operations.

According to trade sources, the studies disclose that the taxation procedures vary widely from company to company and that, in some cases, it may be possible to find legal ways of reducing the impact of the amendment which would prevent the companies from taking tax credits in the US for taxes they pay in South Africa.

The *Wall Street Journal* said yesterday that the measure effectively raised the total tax burden from 57,5 percent to 72 percent.

But sources in Washington say the final increase will be much lower after the accountants and the lawyers have finished their work.

Transkei

THE NEW NATION 7-1-88

party gagged after ANC trip

MEMBERS of Transkei's Democratic Progressive Party (DPP) who visited Lusaka last week have effectively been barred from talking about their meeting with the African National Congress (ANC).

They are among the most seriously affected by the military rule imposed in the Transkei last week.

All politicians to the left and right of the military government have been silenced.

The coup took place six hours after the TPP delegation, led by Chief Ntsikayezwe Sigcau — brother of deposed Prime Minister Stella Sigcau — left Transkei for Lusaka.

Chief Sigcau said told The NEW NATION that soon after they arrived back in Transkei, he was summoned to the Transkei Defence Force offices to see T D F commander General Bantu Holomisa, who is now head of the homeland.

He said Holomisa advised him not to disclose information on the Lusaka visit.

After issuing a press release to local newspapers the next day, Chief Sigcau was told that he and other members of the DPP were not allowed to speak to the press, or engage in any political activity in the territory.

The DPP was planning to launch its youth league in the Transkei over the weekend — but the coup forced them to cancel the event.

Holomisa earlier said all political parties were affected by the ban on politics in the region.

After pronouncing himself chairman of both the military council and council of

ministers in a public meeting in Umtata this week, Holomisa said political parties "will not be allowed to operate as in the past, that is to hold political meetings or canvas for support"

"No-one, no organisation of any kind, will be allowed to propagate any political ideology while the military council is in power. All organisations which were banned before the military takeover remain banned," Holomisa said.

He had previously indicated that he was not opposed to the unbanning of the ANC if a popularly-elected government chose to do so.

Holomisa also told Transkeians to "adapt" to a military style government.

Letters to the Editor

Catholic bishops must not condone the ANC

THE STAR JAN 7 1988

Amid all the rumpus caused by the Anglican bishops blowing hot and cold over the Lusaka Document (having "accepted" but not "endorsed" it) we Catholics are waiting with bated breath to see what the South African Catholic Bishops' Conference will do about the matter in their coming plenary session — (at which Archbishop Denis Hurley had earlier on said the Lusaka Document would be discussed).

We sincerely hope the result will not be the same sort of verbal subterfuge to which the Anglican bishops have resorted. We would ask our bishops in anticipation not to tell us and the ANC that they "understand" why they have recourse to violence.

We all understand that — it is to seize power for themselves unilaterally, and then to establish a "workers' state", as was made clear in a recent statement by Mr Jay Naidoo of COSATU, the darling of the Bishops' Conference.

Nor should our bishops attempt to approve ANC violence "as a last resort when all other peaceful methods have failed" — since the "peaceful methods"

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so far used include brutal intimidation through petrol bombing, stone throwing, car bombs and landmines, and above all, necklacing.

We shudder to think what their "non-peaceful" methods might be.

No one will be fooled by an appeal to the "last resort" theory, for violence is an indispensable ingredient of any communist-backed front, such as the ANC-UDF, at every stage of revolutionary activity — in spite of all their cajoling and pious posturing in the local and world media.

If bishops give sympathetic "understanding" to such terror groups, then they can hardly escape accountability for the blood shed by such groups, and that accountability will be to God, whom they will not be able to fool with quibbling over words.

S O'Connor

Rosettenville

Empty *CITIZEN* threats *7 Jan 88* by the ANC

Now that the festive season has come and gone without the terrorists having inflicted their promised bloodshed on innocent people of our country, two things have once again become quite clear:

Firstly, the RSA's security forces have — as in the past — shown their mettle and, secondly, the ANC/SACP alliance's inability to intimidate others into doing their dirty work for them bodes well for the future of this land and its peoples.

Upon re-reading old ANC propaganda threats, I am struck by the fact that Tambo and his henchmen should have taken over the RSA at least a decade ago. How such liars and murderers propose to govern this country one day remains a mystery.

OBSERVER

Pretoria

UDF's New Year message calls for peace in Maritzburg

The United Democratic Front (UDF) has called on its members in the Maritzburg area to work towards peace and to unite against apartheid.

In the UDF's New Year message, released by Mrs Albertina Sisulu, the organisation said it was still co-operating with the Maritzburg Chamber of Commerce to bring about peace and stability in the region. Twenty-seven people have already died in violence this year.

The UDF said it believed that a permanent solution to the problem could only be found once agreement had been reached on the four basic premises of democracy: freedom of association, movement, expression and organisation.

"We also call on the media, particularly the newspapers, to give a true and balanced account of the situation so as to help in the process of ending the violence."

The UDF also called on whites in South Africa and the international community to break with apartheid and to join the "democratic forces".

"Experience had shown that the National Party is unwilling to bring about peace in the country."

"We remain convinced that until such time as the South African Government agrees to negotiate with the ANC, there will not be peace," the message said. — Sapa.



Mrs Albertina Sisulu ... media must give true account of situation.

Police deny taking sides

MARITZBURG — Police denied on Tuesday that they were siding with Inkatha in the township conflict and stressed they were there merely to maintain law and order.

Acting police liaison officer, Major C du Plessis, was reacting to a statement by United Democratic Front (UDF) president Mr Archie Gumede, that the police reinforcements being sent into Maritzburg's townships were for Inkatha.

Major du Plessis said he wanted to "put the record straight from the police point of view". — Sapa.

Inkatha youth leader dies in smash

MARITZBURG — Maritzburg police have confirmed that the leader of the Inkatha Youth Brigade in the Natal Midlands, Mr Joseph Mabaso, was killed in a motor accident near Edendale on Monday afternoon when a car and a furniture truck crashed at the Sutherland Road intersection.

A spokesman for the family said a memorial service would be held at Mr Mabaso's home in Imbali on Friday afternoon.

The funeral will take place in Msinga, where he was born, on Saturday morning.

Mr Mabaso leaves his wife and two children. — Sapa.

THE CITIZEN COMMENT

7 JAN 88

Gutsy Maggie

IT'S rather sickening when Kenyan President Arop Moi, no great shakes when it comes to human rights, lectures Mrs Margaret Thatcher, the British Prime Minister, on the iniquities of South Africa and chides her for not agreeing to mandatory sanctions.

But then like other anti-South African hypocrites, Mr Moi will never admit his own record is pretty putrid.

Still, Kenya and Britain remain good friends, we are told, despite their differences over South Africa.

This, we suppose, is not surprising, since Mrs Thatcher announced that Britain was going to give Kenya an additional R72 million in aid, taking the total granted during her eight years in office to R700 million.

It does pay to keep on the right side of the Iron Lady.

Having said that, we commend Mrs Thatcher for her doughty defence of her standpoint that sanctions are not the way to bring about change in South Africa.

Yes, apartheid — "an utterly repulsive and detestable system" — must go, she said. But change had to come from within "and it must be peaceful".

In an interview before she flew to Nairobi, Mrs Thatcher said it was utterly repugnant that people who advocated sanctions sat in luxurious hotels saying: "We have a right to decide how many people shall starve in South Africa."

At her meeting with Mr Moi, she argued that change was already under way in South Africa and that sanctions would hurt companies that were at the forefront of bringing about social changes through their hirings.

She also argued that contacts must be maintained in order not to lose the ability to influence the Pretoria government (a view the Americans should note, seeing that their own influence is waning in direct ratio to the sanctions and disinvestment which the US is imposing on South Africa).

Mrs Thatcher did not rule out the possibility of visiting South Africa if that would be helpful, but felt the time was not ripe. Mr Moi did not

object to the idea.

No doubt such a visit would not please the radicals in South Africa, who oppose Mrs Thatcher's stand against tougher sanctions, but the vast majority of South Africans would be delighted to see her here.

We admire her strength of character, her purposefulness and her political astuteness.

We marvel at the fact that she has dominated not only her country's politics — last Sunday she set a record for being the longest serving British Prime Minister this century — but has become an international leader as well.

She epitomises the British bulldog spirit in a way only Sir Winston Churchill did in the war years.

And she has taken her country from the status of a declining power to one whose voice is heard with growing insistence.

South Africans are not always pleased with her. They remember that it was under her Prime Ministership that the Whites and the Black moderates of Rhodesia were sold down the river by Lord Carrington in the notorious Lancaster House agreement.

They remember that her Sports Ministers have taken an uncompromising stand against South African sportsmen and women in terms of the Gleneagles agreement.

They remember that she agreed, however reluctantly, to impose the batch of sanctions introduced by the European Community.

All this notwithstanding, they admire the way she has stood firm against harsher, mandatory sanctions.

It takes guts to stand up to the Commonwealth and the rest of the ratpack of countries that wish to bash South Africa with more and more trade and other embargoes.

But, then, she has not been nicknamed the Iron Lady for nothing.

Yes, we'd love Mrs Thatcher to visit this country.

And though some South Africans might not like what she tells us, whatever advice she gives will be sincere, thoughtful and worth hearing.

23 more unrest deaths herald 1988 in the city

ECHO 7 JAN 88

by Lakela Kaunda

TWENTY THREE people have been killed since the beginning of 1988 in Maritzburg despite calls for peace from leaders of the warring factions.

Many calls for peace were made during 1987, the major one being the peace talks between Inkatha and the United Democratic Front which were convened by the Pietermaritzburg Chamber of Commerce. In rallies held by the two organisations in December, an appeal for cool heads was also made.

KwaZulu Legislative Assembly member for Vulindlela, Mr V.B. Ndlovu said the people of Pietermaritzburg had ignored the call of Inkatha president Mangosuthu Buthelezi to down weapons.

Mr Ndlovu pointed out; "They have ignored the call of our president and the call of everyone else, what can we do now?"

"The people of the other camp do not want to listen to Dr Buthelezi. We will have to wait and see. They have no leaders who are calling for peace, their leaders are far away; this war will only end in Lusaka because that is where it originated. The ANC wants to spread communism to our country."

He added that he personally did not see peace talks as offering any workable solution.

"We are still consulting with Inkatha in Vulindlela and other regions so as to get a mandate to continue or discontinue with the peace talks. When that has been done we will issue a statement."

The president of the United Democratic Front, Mr Archie Gumede could not be reached for comment. However he told The Natal Witness earlier that the chamber should continue with "the peace process and give publicity to whoever may place obstacles in its path".

The chamber's vice president Mr Rob Pater could also not be reached for comment on the latest developments.

Two brothers die in petrol bomb attack

by Lakela Kaunda

TWO Imbali brothers died of burns in Edendale Hospital after their home was petrol-bombed by unknown persons on December 28.

A petrol bomb was hurled into the children's bedroom in the home of Mr Jacob Madolo Nene of Mkhwane Road in Imbali while they were sleeping. His sons Mlungisi (22) and Jomo (15) were rushed to Edendale Hospital with burns. Jomo died on New Year's Day and his brother on January 3. Mr Nene senior was treated and discharged on January 2.

The two brothers were buried at Mountain Rise Cemetery on Tuesday during a restricted funeral service which lasted three hours.

Mr Nene said it was a miracle that he survived. "We heard a loud bang and everyone escaped. I was trapped inside. Mlungisi called his friends and they returned into the house to rescue me. That is how he received severe burns.

The neighbours took us to hospital. When I regained consciousness, I saw my sons lying next to me. A few days later, they died."

He said he did not know to which organisations his children were affiliated. Friends of the Nene brothers said they belonged to the black consciousness orientated Azasm.

Another member of Azasm, Mlungisi Mkhize is still missing after his friends reported he had been attacked by some people in November last year. His family have tried every means to find him.

Said an Azasm spokesperson who asked not to be named: "It would be much better if the conflict between Azasm and the Natal Students Congress could be resolved soon before schools were re-opened. We want to talk with them, but they will not co-operate. Our parents should take this seriously, especially if Sobantu is to be made accessible to all of us, peace has to be made.

No outsiders — Inkatha

by Lakela Kaunda

CLAIMS that Inkatha based Durban supporters to the city at the weekend to help them defend their Maritzburg colleagues have been rejected as false by the organisation's leaders.

Rumours were rife Edendale that the Maritzburg branch of Inkatha had invited supporters from the Lindelani squatter camp in Ntuzuma.

It was said they were stopped by the SAP as they entered Edendale. It was reported they were led by prominent Inkatha leader, Mr Mandla Shabalala.

KwaZulu Legislative Assembly MP for Vulindlela Mr Velaphi Ndlovu said the allegations were false. "We've never sought the assistance of any outsider and have no intention to do so."

A police spokesman was not available at the time we went to press.

SA's judges stand accused

JOHN DUGARD

Professor of Law and Director of the Centre for Applied Legal Studies, University of the Witwatersrand



□ JOHN DUGARD

If the Appeal Court's decision rejecting the challenge to the emergency regulations in the Omar case last year is a warning of judicial policy, and if it is followed by similar judgements, the position of the "moral judge" committed to doing justice in the traditions of the common law may become untenable, writes Dugard in the South African Journal on Human Rights

Business Day. JAN 7 1988

THE OUTCOME of the Omar v Minister of Law and Order appeal was a disappointment to those who naively believed the Appellate Division was becoming more rights conscious.

Recent decisions had given rise to hopes that the judicial dark ages had ended and that the Appellate Division had embarked upon a course in which fundamental common-law rights would be given preference over interests of national security and governmental bullying in the interpretation of ambiguous statutes and the review of administrative action.

The Omar case suggests this optimism was misplaced and that we are back to square one, which in judicial terms is *Rossouw v Sachs*, 1964.

The judgement in Omar concerns the weight of fundamental common-law rights in the interpretation of the emergency regulations. Can emergency regulations that exclude the right to counsel and the *audi alteram partem* rule without clear authorisation, express or implied, in the enabling statute, be good in law?

The legislative and judicial facts necessary for an understanding of the Omar judgement are briefly as follows:

The Public Safety Act 3 of 1953 permits the State President to declare a state of emergency and to "make such regulations as appear to him to be necessary or expedient for providing for the safety of the public, or for the maintenance of public order and for making adequate provision for terminating such emergency or for dealing with any circumstances which in

his opinion may have arisen or are likely to arise as a result of such emergency".

In 1985 and 1986 the State President declared a state of emergency and issued regulations which authorised the arrest of any person whose detention was, in the opinion of a member of the police or armed forces, necessary for "the maintenance of public order or the safety of the public or that person himself".

Such a person might be detained for a period not exceeding 14 days, but the Minister of Law and Order might "without notice to any person and without hearing any person" extend the period of detention.

No person, other than a State official, "shall have access" to such a detainee "except with the consent of and subject to such conditions as may be determined by the Minister or the Commissioner of the South African Police".

Finally, in terms of rules issued by the Minister of Justice acting under reg 3(9), it was provided that no detainee might be visited by any person, except with the permission of the person in command of the prison "provided that if a legal representative desires to visit such a detainee, the permission of the Minister of Law and Order or the Commissioner of the South African Police shall be obtained for such a visit" — rule 5(1).

In Omar v Minister of Law and Order the validity of detentions was challenged on two grounds: first, that reg 3(3) was *ultra vires* because it excluded the common-law right of a detainee to be heard

at the time of the extension of his detention beyond 14 days; and, secondly, that reg 3(10)(a) and rule 5(1) were *ultra vires* because they deprived the detainee of this fundamental right of access to his legal adviser.

Judge Vivier, with Judge Presi-

dent Munnik concurring, rejected both these challenges; but Judge Friedman, dissenting, upheld the challenge to reg 3(3), finding that:

"However wide the State President's powers might be under the Public Safety Act to make regulations providing for the detention of persons, there is nothing in that Act which either expressly or by necessary implication permits the State President, in promulgating regulations for detention, to override the fundamental procedural rule of fairness and of natural justice embodied in the *audi alteram partem maxim*".

In Omar the Appellate Division was faced with the first challenge to the validity of the emergency regulations of 1985-1986 on the basis of their incompatibility with fundamental common-law rights.

The importance of the appeal was underlined by the fact that the issues before the court had been considered by at least 16 judges in five divisions of the Supreme Court, with the judges fairly evenly divided.

In these circumstances one might be forgiven for having expected: first, that the court would have been constituted to include, in addition to the Acting Chief Justice, the most senior judges of appeal; and, secondly, that the court would have delivered a carefully reasoned judgement, with a full consideration of all the relevant authorities and arguments.

Both of these expectations were unfulfilled.

First, the court was composed of

Acting Chief Justice Rabie and Judges of Appeal Joubert, Viljoen, Hoexter and Boshoff (acting). Senior judges such as Jansen and Corbett were excluded, and little attempt was made to include judges perceived to be non-executive minded.

Secondly, the majority judgement, delivered by Rabie, hardly reads like a judicial response to a matter of major public importance.

Written in the style of a judgement on the interpretation of a hire-purchase agreement or municipal by-law rather than a law that has authorised the detention without trial of many thousands, it cites little authority, fails to deal adequately with the arguments canvassed in the provincial and local divisions and even omits to respond to the arguments by dissenting judge Hoexter.

The majority judgement rejects the argument that reg 3(3) is *ultra vires* on the grounds of unreasonableness. The challenge to the validity of reg 3(10)(a) and rule 5(1), based on similar arguments, is likewise dismissed.

In both instances the court finds that the wide powers conferred on the State President permit him to take drastic actions that he considers to be "necessary or expedient" for dealing with the emergency situation, even if this results in the violation of fundamental rights.

In his dissenting judgement, Hoexter adopts a different approach to the exclusion of fundamental rights by subordinate legis-

lation, stressing that the *audi alteram partem* rule is to be presumed to apply in the case of an enactment empowering an official to make an order prejudicially affecting the rights of another unless there is a manifest intention to exclude it.

As reg 3(10)(a) and rule 5(1) purported to apply to persons held for their own safety, as well as to those detained for the safety of the public, they were beyond the contemplation of Parliament and bad in law.

Strangely, this persuasive argument, which links the right to counsel with the declared purpose of a detention in reg 3(1), is not considered by the majority in Omar.

In cases of this kind it is appropriate to consider the reasons for the exercise of a judicial choice. Judges who refuse to accept the exclusion of basic rights without statutory authorisation are generally guided by a determination to protect individual rights against infringement from the State, and have no hesitation in articulating this philosophy.

However, when judges are guided by interests of national security or loyalty to the executive they often prefer to leave the considerations which influenced their choice inarticulated.

This is certainly not true of the judgement of Judge M T Steyn in the Bloem case, which expounds a "total onslaught" theory as an inspiration for a pro-executive approach, but it does describe the approach of the majority in Omar,

for Rabie refuses to articulate the reasons for his choice, beyond a general expression of judicial subordination to the executive and hints about the need to protect "sensitive information".

In his controversial inaugural lecture ("Judge and Injustice," 1984) Professor Raymond Wacks argues that South African judges properly allow themselves to be guided by the "morality" or "institutional history" of the white community in exercising their choice in the interstices of the law.

I believe that Wacks is wrong. Racist and repressive statutes must be interpreted in accordance with the principles of equality, liberty, reasonableness and natural justice wherever the law permits of more than one interpretation.

There can be little doubt, however, that Omar gives support to Wacks's view.

The lack of concern shown by the court for rights judged to be fundamental by the common law, and the failure of the court to consider adequately decisions extolling the importance of these rights, suggests that it was guided, not by considerations to be found in the inherited values and principles of the common law, but by subconscious, inarticulated assumptions about the preservation of existing power structures — which Wacks would describe as a component of white "community morality".

Rossouw v Sachs, 1964 expounded a pro-executive judicial policy which was to guide not only the Appellate Division but also the provincial divisions until the early Eighties.

Thankfully, there is evidence to suggest that many of our present judges in the provincial divisions are unlikely to accept policy directions from the Appellate Division on matters affecting individual and state in this way.

However, if Omar is a warning of judicial policy from Bloemfontein, and if it is followed by similar judgements — as was Rossouw v Sachs — the position of the "moral judge" — the judge committed to doing justice in accordance with the traditions of the common law — may become untenable.

If the Appellate Division acts in accordance with the views expounded by Raymond Wacks, resignation may become the only decent option for the "moral judge".

□ Extracts from Focus on Omar, South African Journal on Human Rights, Vol 3 Part 3.