

Apartheid, in its statutory form, may be dead and nearly buried. But the legacy created by the monster of racial oppression and exploitation cannot be easily removed, both in its physical form and in the hearts and minds of the people.

Look around the cities and the eye settles easily on the enormous success of the grand design of group areas, with their careful demarcations, cordoned off by strategic highways which consign the majority to the grim townships and the minority secluded in the splendid suburbs, behind their walls. Look at the homelands, the dumping ground of "surplus" people and you will see the poverty and deprivation arising from forced removals and the rigorous application of the Land Acts.

Apartheid has resulted from the pursuit of man-made policies, although divine providence has been invoked in the past as a justification. If the robbery of the land and the pain, the suffering,

torture, assassination and aggression against Angola and Mozambique have been committed by human beings, has there been any understanding, by those who hold power, of the damage done to our society? Are there any moral or legal means to provide remedies for these grievous wrongs?

Other countries which have faced a transition from a dictatorship of the left or the right have tried to grapple with this issue. In Argentina, they prosecuted the torturers and murderers after the restoration of democracy and set up a Commission for Truth and Reconciliation to purge the past of the horrors of dictatorship. Even in Chile, while Pinochet is still head of state, there is a slow attempt to bring to book some of the evil men who destroyed the democracy of Allende. In the Soviet Union the past is being exhumed so that some insight can be provided into the degradation and perversion which gripped the Soviet people under Stalinism.

The most remarkable recogni-

tion of the way that the past must not be allowed to die altogether is the history of the compensation that Germany has paid to the victims of Nazism both in Germany and in occupied Europe. Since the 60s the land and property taken away, especially from Jews, has been returned to the victims or their descendants. Where such a return was impossible, compensation has been paid. The total compensation for property and other wrongs has totalled over 80 billion German marks.

Yet in South Africa there is silence on the part of those who held or continue to hold power. It is the silence of insensitivity. We cannot build a culture of rights and respect for the constitution unless there is some acknowledgement of the grievous wrongs committed in the name of apartheid. But the contrary is the case. We have been told, on the highest authority, that apartheid has proved to be "irrelevant", "outdated" or "inefficient".

IMMORAL

But apart from Leon Wessels, no senior National Party politician, including De Klerk, has had the courage to say that apartheid has been wrong or immoral. Refusal to make such an acknowledgement is part of the political approach which rejects any attempt at the payment of reparations or compensation for land grabbing or what in effect was confiscation under the Hitlerian group areas legislation.

More important has been the assertion, from De Klerk downwards, that the apartheid regime is the properly constituted and lawful government of a sovereign independent state and cannot therefore surrender any of its powers to an Interim Government of national unity. Any attempts to interfere with its rights will be stoutly resisted.

Such an approach is an attempt to roll back the whole tide

Human rights and reparations

The new democratic order will be like a house built on sand if there is no measure of reparation in favour of victims of apartheid, argues Kader Asmal of the ANC's Constitutional Committee.



of legal and political history since the 50s. The policies of apartheid have been universally condemned not because the world did not like the violations of human rights. Other countries also violate such rights, as successive South African foreign ministers from Eric Louw to Pik Botha have been quick to point out.

White South Africa became a pariah because the policy of apartheid conflicted with legal rules of great importance among the international community – the denial of self-determination, crimes against humanity, policies akin to the worst kind of international crime, genocide, the systematic or mass violations of human rights and the crime of apartheid.

These are forbidden under international law. It is for this reason that the highly prestigious international body, the International Law Commission, has included apartheid in its list of

Crimes against the Peace and Security of Mankind in its draft of July 1991.

In effect a government which practiced such criminal activity is a criminal conspiracy and cannot speak for or represent the country. It is an illegitimate entity, although it has de facto control over the state.

NUREMBERG

The International Law Commission, reflecting what happened at Nuremberg at the trial of Nazi war criminals in 1946, refers to the individual responsibility of persons for such crimes. Whatever South Africa's law may have said, the description of such a crime arises independently of the internal law of a state. The draft emphasises that even if apartheid was not punishable under South African law, this does not affect the criminal na-

ture of the acts nor their punishment.

It is necessary to draw attention to the application of these rules of international law to our situation because a veil cannot be drawn across the vile and unspeakable acts committed in our country.

We have had an apartheid state and a racist government. The National Party would like the state to stay as it is, with minor modifications. But the struggle against apartheid has not been a simple matter of replacing one government with another.

The new democratic order which we have struggled for requires a recognition of the act of self-determination which will take place when, for the first time, the excluded majority will play a part in their destinies. It is as if the decolonisation process has resulted in independence, except that the former colonialists



The demand for human rights is a theme common at mass meetings.

will become co-citizens with us all, as the Freedom Charter has promised.

In other words there will be a break with the past, not a continuation of the old order. When the Nazis were overthrown, the war criminals were charged with their horrible offences against civilians, prisoners-of-war and for conducting barbaric war. On the basis that there has to be reconciliation, such a route will not be followed by us. However, hit-squad members and their political superiors must be warned that they will be accountable to a free government, regardless of any immunity conferred on them from now on.

But reconciliation not only requires liberation – after all a slave and a master can hardly ever establish a free relationship – but also justice. There can be no real protection of human rights in a free South Africa unless some redress is provided for the wrongs

carried out by the apartheid regime. How could anyone provide for respect for personal property rights, such as your home, your small farm and personal belongings in a future South Africa unless the victims of forced removals and group areas and those whom the land acts reduced to a state of permanent inadequacy are able to obtain compensation or the return of their land and property?

FRUITS OF APARTHEID

Decency, equity and fairness require that we address the issue now, if our sacred texts dealing with our constitutional and human rights are to be respected. The effects of apartheid cannot all be undone quickly but the fruits of apartheid cannot permanently be left in the hands of those who profited from apartheid.

The National Party's proposals of September will maintain the

status quo. There will be no reparations, no affirmative action and change will be impossible because the presidency and the government decisions will only be able to decide all issues by consensus. In other words small parties will be able to veto crucial decisions. In addition, the central government will lose its powers to regions and local authorities whose powers will be constitutionally entrenched. It is a recipe for total inaction.

These proposals must be rejected not only because they will frustrate governmental action but also because no hope can be offered for the millions who have suffered so much and for whom some restoration of their land is an immediate priority. This is the way towards reconstruction and development, to build a new society so seriously shattered by apartheid. We have the legal right to do so. Many feel that we are under a duty. ♦