

Historical Context

p **GROSS HUMAN RIGHTS VIOLATIONS IN POLITICAL & HISTORICAL PERSPECTIVE**

1 Chief Justice DP Mahomed has said:

For decades South African history has been dominated by a deep conflict between a minority which reserved for itself all control over the political instruments of the state and a majority who sought to resist that domination. Fundamental human rights became a major casualty of this conflict ... the legitimacy of the law itself was deeply wounded as the country haemorrhaged in the face of this tragic conflict ...

- 2 The Promotion of National Unity and Reconciliation Act (the Act) charged the Truth and Reconciliation Commission (the Commission) with investigating and documenting gross human rights violations committed within or outside South Africa in the period 1960-94. In doing so, it was to compile as complete a picture as possible of these events and violations. In its report, therefore, the Commission seeks to reflect fairly and fully the motives and perspectives of both the alleged perpetrators of gross human rights violations and of their victims.
- 3 Before starting on the long journey through these volumes, two major points or themes need to be developed in order to place their context in fuller political and historical perspective. The first of these relates to the fact that this report covers only a small fraction of time - although possibly the worst and certainly, in regard to the wider region, the bloodiest in the long and violent history of human rights abuse in this subcontinent. The second point to be made is that the report tells only a small part of a much larger story of human rights abuse in South and southern Africa.
- 4 In developing these two themes in this chapter, special attention will be given to the role and contribution of two phenomena or factors in the shaping of this country's history, namely violence and the law, and the relationship between them.

p **THE LIMITED TIME FRAME OF THE COMMISSION**

- 5 Reference was made in the opening paragraphs to the limited time frame imposed on the Commission. The purpose was to place in historical context what happened in Southern Africa in the period 1960-94. In a continental context, this represented the last great chapter in the struggle for African decolonisation. In a South Africa-specific context, it was the climactic phase of a conflict that dated back to the mid-seventeenth century, to the time when European settlers first sought to establish a permanent presence on the subcontinent.
- 6 Thus, it is evident that it was not the National Party government that introduced racially discriminatory practices to this part of the world. Nor is it likely that the National Party government was the first to

perpetrate some or most of the types of gross violations of human rights recorded in this report. The probable exception is that category of abuse that falls under the general rubric of contra-mobilisation - exemplified by the deployment of surrogate forces such as the Caprivi-trained Inkatha supporters, the *Witdoeke*, the A-team and other politicised gangs, as well as those forces, such as UNITA, that were used to destabilise the region.

- 7 Hence, the types of atrocities committed during the period falling within the mandate of the Commission must be placed in the context of violations committed in the course of:
 - a The importation of slaves to the Cape and the brutal treatment they endured between 1652 (when the first slaves were imported) and 1834 (when slavery was abolished).
 - b The many wars of dispossession and colonial conquest dating from the first war against the Khoisan in 1659, through several so-called frontier conflicts as white settlers penetrated northwards, to the Bambatha uprising of 1906, the last attempt at armed defence by an indigenous grouping.
 - c The systematic hunting and elimination of indigenous nomadic peoples such as the San and Khoi-khoi by settler groups, both Boer and British, in the seventeenth and eighteenth centuries.
 - d The *Difaquane* or *Mfecane* where thousands died and tens of thousands were displaced in a Zulu-inspired process of state formation and dissolution.
 - e The South African War of 1899-1902 during which British forces herded Boer women and children into concentration camps in which some 20 000 died - a gross human rights violation of shocking proportions.²
 - f The genocidal war in the early years of this century directed by the German colonial administration in South West Africa at the Herero people, which took them to the brink of extinction.
- 8 It is also important to remember that the 1960 Sharpsville massacre (with which the mandate of the Commission begins) was simply the latest in a long line of similar killings of civilian protesters in South African history. It was, for example, not a National Party administration but the South African Party government, made up primarily of English-speaking South Africans, that in July 1913 crushed a series of miners' strikes on the Reef - sending in the army and killing just over one hundred strikers and onlookers. Thrice in 1921 and 1922, this same governing party let loose its troops and planes: first, against a protesting religious sect, the Israelites at Bulhoek, killing 183 people; second, against striking white mineworkers on the Reef in 1922, resulting in the deaths of 214 people³; and third, when the Bondelswarts people, a landless hunting group of Nama origin in South West Africa, in rebellion against a punitive dog tax in 1922, were machine-gunned from the air. One hundred civilians, mostly women, were killed.
- 9 Thus, when the South African Defence Force (SADF) killed just over 600 men, women and children, combatant and non-combatant, at Kassinga in Angola in 1978, and when the South African Police (SAP) shot several hundred black protesters in the weeks following the June 16 events at Soweto, they were operating in terms of a well-established tradition of excessive or unjustifiable use of force against government opponents. This is not, of course, to exonerate them or the force they employed, but simply to put those events and actions in historical context.

- 10 Mention has been made of the social-engineering dimension of the policy of apartheid. Again, it needs to be made clear that the National Party was not the first political party or group to have been accused of social engineering on a vast scale in this part of the world. The post-South African War administration of Alfred Milner was, for example, similarly accused concerning its Anglicisation schemes.
- 11 Indeed, one of most ambitious and far-reaching attempts at social engineering in twentieth century South African history was introduced by the first post-unification South African Party government in the form of the 1913 Land Act. No other piece of legislation in South African history more dramatically and drastically re-shaped the social map of this country. Not only did it lay the basis for the territorial separation of whites and Africans; it destroyed, at a stroke, a thriving African landowning and peasant agricultural sector. It did so by prohibiting African land ownership outside of the initial 7 per cent of land allocated to the so-called traditional reserves and ending sharecropping and non-tenancy arrangements on white-owned farms. The Land Act set in motion a massive forced removal of African people that led, amongst other things, to the deaths of many hundreds of people who found themselves suddenly landless.
- 12 An observer of the impact of the Act on the African people, Solomon Plaatje, commented:

For to crown all our calamities, South Africa has by law ceased to be the home of any of her native children whose skins are dyed with a hue that does not conform with the regulation hue ... Is it to be thought that God is using the South African Parliament to hound us out of our ancestral homes in order to quicken our pace heavenwards? ⁴.

- 13 Plaatje retells a story told to him which illustrates the tragic human impact of the implementation of the Act:

A squatter called Kgobadi got a message from his father-in-law in the Transvaal. His father-in-law asked Kgobadi to try to find a place for him to rent in the Orange 'Free' State.

But Kgobadi got this message only when he and his family were on their way to the Transvaal. Kgobadi was going to ask his father-in-law for a home for the family. Kgobadi had also been forced off the land by the Land Act.

The 'Baas' said that Kgobadi, his wife and his oxen had to work for R38 (18 pounds) a year. Before the Land Act, Kgobadi had been making R200 (100 pounds) a year selling crops. He told the 'Baas' that he did not want to work for such low wages. The 'Baas' told Kgobadi to go.

So, both Kgobadi and his father-in-law had nowhere to go. They were wandering around on the roads in the cold winter with everything they owned. Kgobadi's goats gave birth. One by one they died in the cold and were left by the roadside for the jackals and vultures to eat.

Mrs Kgobadi's child was sick. She had to put her child in the ox-wagon which bumped along the road. Two days later, the child died.

Where could they bury the child? They had no rights to bury it on any land. Late that night, the poor young mother and father had to dig a grave when no-one could see them. They had to bury their child in a stolen grave.

- 14 Plaatje ended the story with the bitter words that even criminals who are hanged have the right to a proper grave. Yet, under the cruel workings of the Land Act, little children “whose only crime is that God did not make them white”, sometimes have no right to be buried in the country of their ancestors.⁵

- 15 TM Dambuzu described the Land Act in these words:

There is winter in the Natives' Land Act. In winter the trees are stripped and leafless.

- 16 But if this was an act of wholesale dispossession and discrimination, so too was the 1909 South Africa Act which was passed, not by a South African legislature, but by the British Parliament. In terms of the South Africa Act, Britain's four South African colonies were merged into one nation and granted juridical independence under a constitutional arrangement that transferred power in perpetuity to a minority of white voters. No firm provisions were made for the protection or improvement of the civil and political rights of the indigenous black majority.
- 17 Admittedly, the British government of the day was responding to pressure from the all-white South African constitutional convention, but Britain had a juridical responsibility to all, and not simply its white, subjects.
- 18 No less of a betrayal was the 1936 Representation of Natives Act, by which Cape African voters were disenfranchised or the 1956 Senate Act, by which the membership of that body was enlarged to enable the National Party to summon a two-thirds majority to strip Coloured males of the vote. This latter piece of constitutional chicanery was only the end of a process of black disenfranchisement begun by the British in 1909.

p THE LIMITED FOCUS OF THE MANDATE

- 19 As noted in the *Mandate* chapter later in this volume, the Commission's governing Act limited its investigation to gross violations of human rights defined as the “killing, abduction, torture or severe ill-treatment” and the “attempt, conspiracy, incitement, instigation, command or procurement to commit” such acts. In essence, therefore, the Commission was restricted to examining only a fraction of the totality of human rights violations that emanated from the policy of apartheid - namely, those that resulted in physical or mental harm or death and were incurred in the course of the political conflicts of the mandate period.
- 20 The Commission's focus was, therefore, a narrow or restricted one, representing what were perhaps some of the worst acts committed against the people of this country and region in the post-1960 period, but providing a picture that is by no means complete. For, simultaneous to the ‘gross’ abuses documented later in this report, millions of South Africans, and more particularly those who were not white, were subjected to racial

and ethnic oppression and discrimination on a daily basis - in pursuit of a system which the *Mandate* chapter describes as “systemic, all-pervading and evil”.

- 21 Furthermore, in applying this system and in seeking to perpetuate it, the government of South Africa let loose upon the wider region a reign of terror and destruction. It was for this reason that Parliament mandated the Commission to include within its scope gross human rights violations that occurred outside South Africa.
- 22 Conceptually, the policy of apartheid was itself a human rights violation. The determination of an individual's civil and political rights by a factor - skin colour - over which he or she has no control, constitutes an abuse of those rights. Of course, such discrimination existed before 1948 and had its roots far back in South Africa's colonial past. Nevertheless, the apartheid state that was constructed after 1948 had dimensions that made it different from the discriminatory orders that preceded it.
- 23 Thus, although many of its laws built on or updated a *de facto* pattern of segregationist legislation (for example, an industrial colour bar and limited African property and voting rights), the apartheid system was of a qualitatively different type. No longer content to tolerate a *de facto* pattern of segregation in which 'grey' areas of social mixing remained - such as in urban residential patterns and inter-racial personal contacts and relationships, including marriage - from 1948, the new government set out to segregate every aspect of political, economic, cultural, sporting and social life, using established legal antecedents where they existed and creating them where they did not. Although making use of the forms of democracy (elections, proper legislative processes and so on), it constructed a totalitarian order that was far from democratic in substance.
- 24 Apartheid sought to maintain the *status quo* of white supremacy through the implementation of massive social change. It was thus an ideology, simultaneously of change and of non-change; or alternatively, perhaps, of reactionary change. To achieve its goals, Parliament:
 - a transformed the *laissez-faire* pattern of pre-1948 segregation into a systematic pattern of legalised racial discrimination, and
 - b constructed a huge internal security apparatus and armed it with awesome legal powers to crush opposition generated by the first process.

Legislation

- 25 With regard to the first process, the key legislative enactments were:

Population Registration Act 1950

- 26 This Act formed the very bedrock of the apartheid state in that it provided for the classification of every South African into one of four racial categories. To achieve this end, it came up with definitions of racial groupings which were truly bizarre:

A White person is one who is in appearance obviously white - and not generally accepted as Coloured - or who is generally accepted as White - and is not obviously Non-White, provided that a person shall not be classified as a White person if one of his natural parents has been classified as a Coloured person or a Bantu ... A Bantu is a person who is, or is generally accepted as, a member of any aboriginal race or tribe of Africa ... a Coloured is a person who is not a white person or a Bantu.

27 Despite the crude and hopelessly imprecise wording of these definitions, the Act was imposed with vigour and determination.

28 President Nelson Mandela wrote:

Where was one was allowed to live and work could rest on such absurd distinctions as the curl of one's hair or the size of one's lips.⁶

29 The result, especially for the coloured people, was human devastation. As John Dugard put it in 1972:

No words can capture the misery and human suffering caused by this legislative scheme which sometimes results in divisions of families owing to the different racial classification of members of the same family⁷.

1950 Group Areas Act

30 In terms of the Group Areas Act, the entire country was demarcated into zones for exclusive occupation by designated racial groups. Implemented from 1954, the result was mass population transfers involving the uprooting of (almost exclusively) black citizens from their homes of generations, and the wholesale destruction of communities like Sophiatown, District Six, Cato Manor and South End in Port Elizabeth. Again, in human terms, the consequence was immense suffering and huge losses of property and income.

The 1949 Prohibition of Mixed Marriages Act and 1950 Immorality Amendment Act

31 According to this legislation, all future interracial marriages were prohibited, as were all forms of sexual contact across colour lines. Like the Population Registration Act, the Immorality Act was energetically implemented for some two to three decades, resulting in untold suffering in the form of harassment, public humiliation and the destruction of marriages and family bonds. Suicide by those caught in the web of the provisions of this Act was not unknown.

1950 Suppression of Communism Act

32 This Act provided not only for the banning of the Communist Party, but also for the legislative means to crush or curb all forms of dissent - communist, radical, liberal, radically religious and just plain annoying. It did this through the inclusion of a definition of communism that was absurd in its breadth and vagueness.

1953 Separate Amenities Act

- 33 This Act designated all public amenities and facilities (parks, libraries, zoos, beaches, sports grounds, and so on) for the exclusive use of specified racial groups. The allocation was made on a wholly unequal basis with the result that most facilities and amenities were closed to black people.

1953 Bantu Education Act

- 34 The Bantu Education Act laid the basis for a separate and inferior education system for African pupils. Based on a racist notion that blacks needed only to be educated, in the words of Dr Verwoerd, "in accordance with their opportunities in life", the Act transferred the control of African schools from the provinces to a central Bantu Education Department headed by Dr Verwoerd himself.
- 35 In addition, state subsidies to mission schools were first reduced and later stopped altogether. This meant that they were either forced into the state school system or had to close - which many (often the better) schools did. The result, in the short term, was the destruction of black mission education in South Africa - that sector of African education that had produced some of the country's finest minds and political leaders. It also stifled the development of a private African school sector by requiring that all non-state schools be registered with the then Native Affairs Department.
- 36 In the longer term, the consequence was exactly what had been intended: namely, the under-skilling of generations of African children and their graduation into an economy for which they were singularly under-equipped. The critical shortage of skills in the economy forty years later and the massive numbers of unemployed African people bear witness to the legacy of this legislation.
- 37 In the next decade - the 1960s - legislation brought coloured and Indian education under state control with similar, though not as severely deleterious, effects.

1959 Extension of University Education Act

- 38 This perversely named law, far from extending opportunities for tertiary education, actually had the opposite effect by denying black students the right to attend their university of choice. It imposed apartheid on the tertiary sector, making it illegal for the existing largely (in the case of the Afrikaans campuses exclusively) white universities to admit black students except with ministerial permission. It resulted in the creation of separate ethnic colleges for Indians, coloureds and Zulu, Sotho and Xhosa-speaking Africans.
- 39 This Act, which was first published in draft form in 1957, was significant in another sense. It signalled a shift in government thinking in relation to the challenge posed by the growing force of African nationalism of the time. Having laid out the framework for the racial compartmentalisation of, particularly, urban South Africa, the government's provision for African tertiary education along ethnic lines flagged an intention to engage in a further bout of racial and social engineering. This theme will be discussed later in this chapter.
- 40 These eight pieces of legislation laid the foundation of the new apartheid order in South Africa. However, other important pieces of legislation passed in the first decade of apartheid rule stripped coloured male voters of their common-roll franchise rights, further limited the rights of African workers to strike and bargain collectively and, by extending pass laws to African women, further restricted the rights of Africans to move from the reserves to the cities and to sell their labour to the highest bidder.⁸

The effects of apartheid legislation

- 41 Overall, what the National Party did in its first ten to twelve years of power amounted, in Leo Kuper's words⁹, to "a white counter-revolution" to forestall the perceived (although, as will be noted later, misinterpreted and exaggerated) growing threat to white supremacy from both local forces and the rising tide of African nationalist sentiment on the continent. This concern was often presented in the popular media as the 'Mau-Mau factor', reflecting a real fear of what African independence represented for the white minority.
- 42 It was also a social engineering project of awesome dimensions through which, from about the mid-1950s and for the next thirty or so years, the inherited rural and urban social fabric of South Africa was torn asunder and recreated in the image of a series of racist utopias. In the process, as indicated earlier, millions of black people and a handful of mainly poor whites were shunted around like pawns on a chessboard. Forced to relocate to places that often existed only on the drawing boards of the architects of apartheid, entire communities were simply wiped out. These included urban suburbs and rural villages, traditional communities and homelands, schools, churches and above all people. Sometimes the demolition was total, as in Sophiatown; sometimes an isolated temple, mosque or church was left intact, as in District Six, South End and Cato Manor; sometimes simply the name remained, as in Diagonal Street.
- 43 Thus, it needs constantly to be borne in mind that, while the state and other operatives were committing the murders and abductions and other violations documented in this report, a much larger pattern of human
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rights violations was unfolding. These may not have been 'gross' as defined by the Act, but they were, nonetheless, an assault on the rights and dignity of millions of South Africans and they were, in large part, the product of the core legislation, and subsequent amendments, outlined above.

- 44 This point is eloquently developed in the *Mandate* chapter. For the vast majority of South Africans, human rights abuse was:

for nearly half a century ... the warp and weft of their experience ... defining their privilege and their disadvantage, their poverty and their wealth, their public and private lives and their very identity ... the system itself was evil, inhumane and degrading ... amongst its many crimes, perhaps its greatest was the power to humiliate, to denigrate and to remove the self-confidence, self-esteem and dignity of its millions of victims.

- 45 Thus, while only some 21 300 persons filed gross human rights violations petitions with the Commission, apartheid was a grim daily reality for every black South African. For at least 3.5 million black South Africans it meant collective expulsions, forced migration, bulldozing, gutting or seizure of homes, the mandatory carrying of passes, forced removals into rural ghettos and increased poverty and desperation. Dumped in the 'national states' without jobs, communities experienced powerlessness, vulnerability, fear and injustice.
- 46 Many of the killings and acts of torture documented in this report occurred precisely because of resistance to the day-to-day experience of life under apartheid. The sixty-nine people killed at Sharpsville were not armed Umkhonto weSizwe (MK) cadres or even human rights' activists. They were just ordinary men and women protesting against the hated *dompas*. Countless, nameless people had their rights trampled trying to save their homes from apartheid's bulldozers. Hundreds died doing no more than demanding a decent education or instruction in a language other than Afrikaans. One did not need to be a political activist to become a victim of apartheid; it was sufficient to be black, alive and seeking the basic necessities of life that whites took for granted and enjoyed by right.

p THE LAW AND ETHNICITY

- 47 The legislation of the early apartheid years and the implementation of those laws were countered by considerable political activity and campaigning in the 1950s. This took the form of non-violent resistance campaigns in the cities, such as the Defiance Campaign of 1952/53, the Congress of the People in 1955, the 1956 bus boycotts, the anti-pass laws campaigns in 1959 and 1960 and so on. There were also sporadic and scattered but sustained rural uprisings in Zeerust, Witzieshoek, Sekhukuneland, Marico, Harding and Pondoland, which involved some levels of violence.
- 48 In the context of this domestic activity, together with growing international hostility and the fever of decolonisation then sweeping Africa, the government responded in two ways. The first was to introduce a battery of security laws; the second took the form of what might be described as its ethnic project.

Domestic opposition

- 49 Internal resistance forces at the end of the 1950s were weak. Despite the militant rhetoric contained in such policy documents as the 1949 Programme of Action, the 1955 Freedom Charter and the 1959 founding document of the Pan Africanist Congress, the nationalist movement lacked the capacity to translate its intentions into effective action. First, it was internally divided: the 1959 breakaway of the Pan Africanist Congress (PAC) was the result of a decade of division within the African National Congress (ANC). Second, neither of these organisations had a mass base and their capacity outside of the cities was small. Third, neither organisation had an effective strategic counter to the state's willingness to employ violence against black protesters. Time and again in the 1950s, non-violence as a vehicle of struggle was shown to be an impotent and ineffective counter to state action.
- 50 Even after the abandonment of non-violence and the adoption of various forms of armed struggle, the South African government had little difficulty containing opposition until well into the 1980s. The reasons for this need not be discussed extensively here, but they bear out the proposition of the American political scientist, Harry Eckstein, that :

In the real world of phenomena, events occur not only because forces leading towards them are strong, but also because forces tending to inhibit, or obstruct, are weak or absent.¹⁰

Politics in the region

- 51 One of the factors that inhibited or obstructed the liberation movements in their efforts to mount a serious armed threat was their inability to develop secure and permanent rear bases in the neighbouring states from which they were obliged to operate. Ironically, the explanation for this is to be found in the very circumstances the Pretoria government had viewed with such trepidation - the recent decolonisation of these states. Thus while, up until 1960, South Africa had, on the whole, enjoyed co-operative alliances with the British and Portuguese colonial administrations in the region, these latter would never have tolerated the cross-border violations undertaken by elements in the South African forces from the mid-1970s. However, the new national entities, politically weak and economically bonded to South Africa, were largely helpless in the face of South African aggression. Moreover, and perhaps to South Africa's surprise, it found that it had the covert support of at least some of the governments and/or their security establishments in parts of the region.
- 52 Given this situation, it is worth asking why it was that South Africa found it necessary from 1975 to wage what became a thirteen-year long full-scale war in Angola. The answer lies in two factors.

The Namibian question

- 53 One of these factors related to the position of Namibia which, because of its contested status in international law, had become the Achilles heel of the South African government. Eventually, South Africa would have to surrender its control over the protectorate. Its ambition was, therefore, to thwart SWAPO (South West African Peoples Organisation) in its ambitions to win independence for a democratic Namibia. From the late 1970s, Angola became SWAPO's forward base.
- 54 The other factor was the spectre of the Cold War, which continued to haunt the global scene in the 1970s and 1980s. In this latter period of Cold War politics, the 'hot spot' or focus shifted from Europe to remote parts of the globe like Afghanistan, Nicaragua and Ethiopia. With British and American encouragement, the major powers came to see Angola as one of a number of regional arenas of Cold War confrontation.
- 55 Thus, largely as a consequence of a particular moment in the politics of the twentieth century, the way in which southern African was perceived underwent a change of perspective. From an arena of racial conflict, it became a scene of active Cold War confrontation. This perception was the result of a chance coalition of interests between the United States and Britain (and their so-called 'special alliance') and a government regarded almost everywhere else as a pariah. Hence, the coming to power in the United States and Britain of Ronald Reagan and Margaret Thatcher, whose political mindset on international issues represented a throwback to the 1950s and its obsession with Communism and the Soviet Union, presented the South African government with a window of opportunity which it adroitly exploited.
- 56 In essence, the struggle to maintain white minority privilege was 'repackaged' as an effort to maintain so-called western civilised values against the godless and evil forces of Communism. Thus it was that conscripts, when they turned up for basic training in the 1980s, could be expected to believe (as one witness related to the Commission): "this story that people tell you that there is a Communist behind every bush is nonsense. There are in fact two."
- 57 This is not to suggest that there were not some - even amongst top state and security officials - who genuinely believed in the threat and who saw themselves as anti-Communist crusaders. It is, however, the view of the Commission that, at heart, the struggle for South and southern Africa was a racial one, and that notions of the 'red peril' were manipulated to justify the perpetration of the gross human rights violations this Commission was charged to investigate.

The 'Vorster' laws

- 58 Details of security legislation introduced in the 1960s are contained in a separate chapter. Suffice it to say here that they amounted to a sustained assault on the principles of the rule of law. The suspension of the principle of *habeas corpus*, limitations on the right to bail, the imposition by the legislature of minimum gaol sentences for a range of offences and limitations on the ability of the courts to protect detainees all contributed to a mounting exclusion of the authority of the courts from the administration of justice, thereby seriously eroding their independence.
- 59 Security legislation also introduced into the law a definition of sabotage so broad and all encompassing as to render virtually all forms of dissent illegal or dangerous. Peaceful protest and non-violent civil disobedience no longer seemed a viable option and, faced with the choice 'to submit or fight', as Umkhonto weSizwe (MK) expressed it in its launch statement, the resort to illegality and armed struggle was inevitable. With the benefit of hindsight, it is now possible to see how, in its efforts to crush all opposition in the early 1960s, the government sowed the seeds of its eventual destruction.

The 'ethnic project'

- 60 The second response of the government, as indicated earlier, was an attempt to counter the growing sense of racial or African nationalist identity, with its aspirations to replace white minority hegemony with majority rule. This it did by attempting to deflect these sentiments along particularistic (ethnic) lines and endeavouring to create avenues for political expression within ethnic categories.
- 61 This was the intention of the Promotion of Bantu Self-Government Act in 1959. This piece of legislation simultaneously abolished indirect political representation of Africans in Parliament and made provision for the transformation of the African reserves (or 'homelands' as they came to be called in the 1960s) through various stages of self-government to eventual fully-fledged independent status.
- 62 There was nothing particularly new or unique to this approach. In fact, it was a resort to long-established colonial practice in Africa. As Mamdani¹¹ has noted, other European colonisers had:

confronted the dilemma that the institutions of racial supremacy inevitably generated a racial identity not only amongst its beneficiaries, but also amongst its victims. Their solution was to link racial exclusion to ethnic inclusion: the majority that had been excluded on racial grounds would now appear as a series of ethnic minorities, each included in an ethnically-defined political process. The point was to render racial supremacy secure by eroding the racial identity of the oppressed, by fracturing it into so many ethnic identities.

- 63 While acknowledging that the National Party was "primarily concerned with maintaining our right to self-determination", former President De Klerk¹² argued that the bantustan project "was not without idealism":

We thought we could solve the complex problems that confronted us by giving each of the ten distinguishable black South African nations self-government and independence within the core areas they had traditionally occupied. In this way we would create a commonwealth of South African states - each independent but all co-operating on a confederal basis with one another within an economic common market

- 64 Beyond political idealism, Mr De Klerk articulated a development dimension, pointing to the construction of ten capital cities:

each with its own parliament, quite impressive government buildings ... several well-endowed universities ... By 1975 some 77 new towns had been established and 130 204 new houses had been built. Between 1952 and 1975 the number of hospital beds in the homelands increased from some 5 000 to 34 689. Decentralised industries were developed and hundreds of millions of rands were pumped into the traditional areas in a futile attempt to stem the flood of people to the supposedly 'white' cities.

- 65 Such intentions notwithstanding, as a political project it failed; though it could be argued that it bought the government some time. However, far from producing the hoped-for political nirvana for the African majority, the bantustans degenerated into what one commentator once described as a "constellation of casinos". More seriously, they became riddled with corruption and, as the expenditure referred to by Mr De Klerk suggests, a never-ending drain on the central government's treasury.
- 66 More significantly, the political idealism of an envisaged ethno-nationalist commonwealth was undermined by homeland leaders who displayed varying degrees of despotism. Far from becoming part of the

government's solution, therefore, the bantustans rapidly became part of the problem, acting as a spur and a means to mobilise for the alternative inclusive and non-racial nationalism of the ANC and its allies.

- 67 Despite this, the manipulation of ethnicity represented by the bantustans became a critical component of the government's contra-mobilisation or counter-revolutionary warfare programme in the 1980s. It was a line of approach which spawned the Caprivi hit squads in KwaZulu and countrywide vigilante forces like the *Witdoeke*, as well as the surrogate armies or elements in the region, like UNITA, RENAMO, the Lesotho Liberation Army and Zimbabwean dissident groups.

p **THE LAW AND VIOLENCE IN SOUTH AFRICAN HISTORY**

- 68 Violence has been the single most determining factor in South African political history. The reference, however, is not simply to physical or overt violence - the violence of the gun - but also to the violence of the law or what is often referred to as institutional or structural violence.
- 69 White dominance in South Africa in the period covered by the Commission's mandate was founded on colonial conquest, a condition consequent upon more than 200 years of near-continuous interracial conflict which began with the first migration of white settlers in the mid-seventeenth century. Initial penetration was relatively simple as the first encounters of these new northward-moving migrants were with nomadic pastoralists with little or no military tradition.
- 70 Beyond them, however, were more formidable opponents. Originally southward-moving migrants themselves, these were now independent and, in some cases, powerful nations; state systems with hierarchic authority structures and deep-rooted military traditions. Like the northward-moving migrants, they farmed land, exploited natural resources and raised stock. Conflict was inevitable and, contrary to the myth propagated by some schools of local historiography, it did not take the form a series of one-sided victories and defeats.
- 71 The reality is that the conquest of the South African interior was achieved only in slow stages and was interspersed with setbacks and even defeats for the white intruders. Inevitably, however, the contest between firearms and assegais could have only one ending. By the twentieth century, the backbone of armed black resistance was broken and the independence of the people surrendered or ceded to 'protectorate status'.
- 72 Indigenous resistance did not, however, cease. It transformed itself into political and constitutional forms of struggle. But neither did the violence of the victors end. Subjugation by the gun gave way to legislative subjugation as one law after another sought to consolidate the gains of two centuries of overt violence. Stripped bare, the 1913 Land Act was an act of violence, a brutal separation of people from their essential means of sustenance. So too was much of the repressive legislation that followed down the years. Laws tore millions of workers from their families, forcing them to work in white areas and live in enclosed compounds to which their families had no access. Laws forced people to work for grossly insufficient remuneration and to endure the indignity of pay scales determined not by competence or experience, but by race. Laws forced people from their homes and communities and from their ancestral lands. Laws dictated with whom one might and might not have sex, marry or even drink. Laws allowed people to die rather than violate 'whites-only' hospital edicts, and then determined in which plot of ground they could be buried.
- 73 This preoccupation of the government with the law, with due constitutional process, with obtaining a legislative mandate for whatever acts (however heinous) it or its security forces committed, was frequently

commented upon favourably by political analysts of the 1960s and 1970s. It was also often used to mount a defence of the system. The argument made was that it was at least a system of law, albeit bad law, and thus preferable to the military or political dictatorships to the north.

- 74 What these analysts failed to acknowledge was that the law was a veneer. Twentieth century law in South Africa, to paraphrase Hannah Arendt, made crime legal. Mamdani made a similar point to the Commission when he described apartheid law as “crime which was institutionalised as the law”.¹³
- 75 Thus, these laws arose not out of reverence for justice and due process, but out of a wish to legitimise the system. Beyond that even, the process of legitimation provided a means to self-justification for those whose task it was to pass, enforce and defend the law.
- 76 However, in the 1980s, when the state was in crisis, it became clear that the law had run its course; that it could no longer do the job. The law had become ineffective, an apparent obstruction to the restoration of what government leaders, seemingly oblivious to the irony, called ‘law and order’. At this stage, real rule-making power shifted from Parliament and the Cabinet to a non-elected administrative body, the State Security Council (SSC) which operated beyond public scrutiny. Nominally a sub-organ of the Cabinet, in reality the SSC eclipsed it as the key locus of power and authority in matters relating to security.
- 77 In his presentation to the Commission on the state's counter-revolutionary warfare principles and strategy¹⁴, Craig Williamson provided an explanation of how this situation came about. He argued that, in the context of insurgency and counter-insurgency theory (particularly as developed by McKuen), a democratic state is often “limited by its laws, values and norms in the methods it can use to defeat an insurgent movement”. Its solution is to resort to “extra-legal counter-revolutionary acts, as long as they are done secretly”. The South African state, he argued, reached this stage in the 1980s:

The counter-insurgency elements of the police and military ... felt that a democratic state using democratic methods could never withstand a concerted Soviet-backed revolutionary effort. Their solution was to suspend democratic freedoms and to militarise South African society ...

78 The result was a:

drift ... more and more towards a militarily dominated state. This expressed itself in para-military action in support of the state, while ensuring that the state's sponsorship thereof was kept secret ... In this context results become more important than legality. The eleventh commandment was well known, especially to those in the covert/special force elements of the security forces. This was 'Thou shalt not be found out'

79 It was not Parliament therefore, but the State Security Council that stood at the apex of the secretive National Security Management System. Initially it targeted members of 'terrorist' groups operating outside of South Africa, as well as their supporters and hosts. Then, from the mid-1980s, it began focusing on its opponents inside South Africa. Of course, the word murder was never used but euphemisms like 'eliminatie', 'verwyder', 'neutraliseer' and 'uitwis' are to be found in some of the SSC policy documents adopted in the 1980s.

80 To many, notably those in the leadership in the government and security forces in the 1980s, the conclusion that the state sanctioned murder may and probably will be an unpalatable assertion. It is also probably not what the Commission expected to find when it started its work two years ago. It is, however, a 'truth' to which it has been drawn by the evidence.