

tesque and superficial comparison. But the point would remain that as a society we have opted for compulsion.

2 This in turn has implications for reconciliation and the sense of social obligation within it. For all the failures and missed opportunities of the last decade, I have a sense of a commitment within civil society to redress. This is a commitment inspired by the kind of transformative vision inspired by President Mandela, Archbishop Tutu and others. Will it flourish under a regime of equality inspectors and strident litigation? Restitution driven by statute may foster race-mindedness.


3 There is a danger that the State's own role in fostering inequality will be lost from sight. A few weeks ago the Supreme Court of Appeal described the provincial government in the Eastern Cape, in resisting the claims of the old and disabled to statutory pensions, as being "at war with its own citizens".¹⁸ A probe by the auditor-general into the spending of the Department of Welfare has showed

that less than 1% of the funds allocated for poverty relief in 1998/9 was actually spent.¹⁹

4 Will these measures work: to what degree, at what social cost? South Africa is not a Singapore, not a Malaysia, not a Pakistan, certainly not a United States. The experiences there – in the courts, on the factory floors, on the campuses – are instructive, but no more than that. It is our place and time which will determine what the consequences are of South Africa's answer to tonight's question.

I hope this description of South Africa's attempt to grapple with its own pathology of inequality has been of interest to you. It is only one attempt, in a particular and peculiar society, to wrestle with a ubiquitous societal demon. It is also inevitably a flawed attempt. But then it is as well to remember what James Baldwin wrote: not everything that is faced can be changed, but nothing can be changed until it is faced.

Endnotes

- 1 *Fraser v Children's Court, Pretoria North* 1997 (2) SA 261 (CC) at para [20]. See also *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs* 1999 (3) SA 173 (C) at 186J-187A.
- 2 *Prinsloo v Van der Linde* 1997 (3) SA 1012 (CC) at para [31].
- 3 1992–1993 *South Africa Survey* (SA Institute of Race Relations), citing official statistics.
- 4 World Bank Development Report 1997, cited by De Waal et al *Bill of Rights Handbook* (4th ed 2001) 199 footnote 6.
- 5 *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1996 (1) SA 6 (CC) at paras [60] – [61].
- 6 De Waal *op cit* 203, 204-6.
- 7 Note 5 above, para [18].
- 8 *President of the RSA v Hugo* 1997 (4) SA 1 (CC).
- 9 *Pretoria City Council v Walker* 1998 (2) SA 363 (CC).
- 10 *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs*, note 1 above.
- 11 *Harksen v Lane NO* 1998 (1) SA 300 (CC).
- 12 *Hoffmann v South African Airways* 2001 (1) SA 1 (CC).
- 13 2000–2001 *South African Survey* (SA Institute of Race Relations) 512.
- 14 Act 55 of 1998.
- 15 *Ibid.*
- 16 *Business Day* 11 October 2001, citing official figures of the Judicial Service Commission.
- 17 2000-1 *South Africa Survey* 513.
- 18 *The Permanent Secretary, Department of Welfare, Eastern Cape Provincial Government v Ngxuzza* 2001 (4) SA 1184 (SCA) at para [15].
- 19 2000–2001 *South Africa Survey* 213. 

Attack on public defender scheme

The Bar believes that a salaried defender system would be a step backwards for British justice. The [then] chairman of the Bar Council, Roy Amlot QC, said it is likely to be more expensive and bureaucratic but less efficient and client focussed.

Mr Amlot said that comparisons with public defender schemes in other jurisdictions were 'outdated and highly selective'.

'Throughout the world, public defender systems have grossly exceeded their budgets, and unless the CDS is properly funded the result will be an inadequately funded body of overworked lawyers, held in low esteem by both colleagues and the public.'

Pointing out that the independent Bar provided a flexible, cost-efficient and effective service with low overheads, Mr Amlot said a CDS would be burdened with the surplus costs and regulation of other government agencies. 'We have to ask why it is right to add such costs to the legal system when there are no significant gaps in the provision of criminal defence services, even in the most remote areas of the country.'

The government was set to create a second tier, second class system for those not rich enough to pay for their choice of legal representation.

'That would be a huge setback for access to justice.' Meanwhile, amended proposals in respect of crime suspects or defendants choosing their legal representatives have been set out following responses to a Lord Chancellor's Department consultation

exercise. The changes include that defendants will be allowed to make reasonable change of their legal representation at any time during their criminal proceedings; the decision on whether a defendant may do this should remain the responsibility of the court."

Counsel The Journal of the Bar of England and Wales April 2001.

Language is a human right

"Is language a human right?*" Not according to one interpreter who summed up the situation in trenchant terms: 'If you want to understand the language of the proceedings, forget about being a political refugee or a burglar, be a mass murderer.' For any trial to be fair, should not all parties have a right to give evidence and follow the proceedings in a language they understand?"

* Language is a human right, First European Congress on Court Interpreting and Legal Translation, Graz 1998, publ FIT.

From "The search for truth" by Dr Ellen Moerman (a freelance interpreter, translator and lecturer) in *Counsel* The Journal of the Bar of England and Wales October 2001.