Memory and reparations:
Beyond human rights reconciliation under neoliberal capitalism
A comradely response to Jody Kollapen
By Dennis Brutus and Patrick Bond, Johannesburg, 3 April 2009

*Examining shaky foundations**
by Dennis Brutus

When conditions are so unseemly
even the blind are made aghast
and police are firing rubber bullets**
in defense of the indefensible
it is time Messers Makgoba
and Mandela and others of your ilk
to reassess your gains and efforts -
more importantly, reassess your
measuring rods, question your values

Respectfully I offer, you cannot construct
an edifice on dishonest roots
cannot hope it will stand:
structures built on shards
or crumbled fragments of tortured bone
must, of necessity, crumble

Structures built on deceit and lies,
such structures cannot survive:
in the harsh light of everyday
under scrutiny they will
not survive

Bring out from padded rags
those covered lies, deceptions
deceits, distortions, misrepresentations
all contrived to preserve the myths
heroic mythology of our unsullied cause

Dig out the shabby skeletons:
jaunty Sol Kerzner with his handy 'copters
and that ready wad to shut inquiring eyes
the Koornhofs who could bend apartheid laws
licentiously, lubriciously:
Brett Kebble's muliple ambidexterities

There is no way to build a truthful narrative
if you begin your tale with a tissue of lies:
fabrications, deceptions, contrivances
striving to preserve old inequities
striving only to secure your share
of those same inequities under a gloss
of iconic virtues and integrities
carefully nurtured to complaisant media
complaisant handmaidens of their
corporate lords

We may aspire in our dreams
for the Nile, the Mountains of the Moon,
storied wisdom from the Valley of the Kings***
but Southward headed we may slosh
through Antarctic iceflows - worse
gurgling in Kakpype of Kwazekele beach: ****

To Begin: let's name the criminals:
DeKlerk and Koornhof, Kebble, Oppenheimer,
Let us begin a new, a clean beginning
one true, respecting the people's hope
for a different better world:
or let us else make an end
and no more talk of human rights

Let us, at least, be truthful to ourselves

3/4/09

* Poem prepared for the conference on 'Reconciliation and the Work of Memory in Post-Apartheid South Africa: A Dialogue', Nelson Mandela Foundation, Johannesburg, 2-3 April 2009
** an attack by Durban police on UKZN students protesting socio-economic injustices, in which a blind student – amongst a dozen others - was injured by rubber bullets, 23 March 2009
*** currently in educational circles, the wisdom of Egypt, and of the Valley of the Kings, is being touted
**** Kakpype = shitpipes: Port Elizabeth sewage pipes emptied into the area where black people were allowed to swim in my youth

We thank you for this opportunity to participate in this important discussion, particularly because we admire Jody Kollapen as much as we do any fighter for social justice and it is an honour to provide a comradely critique of his paper. We also commend the conference organizers for what we perceive to be a genuine attempt to examine the roots of our present predicament and to arrive at an honest reexamination of the distortions, misrepresentations and deceptions which we have been subjected to.

Kollapen begins his paper with the most expansive agenda possible *within* capitalism today, claiming that the human rights discourse "provides the foundational principles for a diverse range of challenges that face the global community. These include international relations and global governance, human development, climate change and now the global financial crisis."

The amplification of human rights *is* of global importance, as we see in the immediate wake of a G20 meeting in London, yesterday, which made no substantive inroads into resolving the international capitalist crisis, but instead offered another $1.1 trillion of taxpayer funding to the people who caused the crisis in the first place: bankers (the main beneficiaries of so-called "stimulus" packages) and the International Monetary Fund, that font of unending advice to pursue financial liberalisation.

The shameful role of South Africa in relegitimising and recapitalizing the IMF is worthy of our comment, for it was only last Friday that finance minister Trevor Manuel chaired a major IMF Commission and issued a report requesting more explicit political interventions in the agency's activities, and also an additional $500 billion in funding. Manuel did not reveal that while the IMF's policy recommendations for the North can be considered "Keynesian" (budget expansion into deficit territory), for the South it's the same old Washington Consensus medicine.

Even here in South Africa, the IMF's latest Article 4 consultation last October recommended more privatization, less state spending, fewer protections against global economic turmoil, higher interest rates and reduced worker rights. Nor should the memory of the IMF during apartheid be lost from our memory, for its financing in 1976 after the Soweto crisis and during the early 1980s – more than $2 billion – kept apartheid well oiled, financially. Its 1993 loan of $850 million carried structural adjustment straight from the National Party to the African National Congress. Reparations are in order from the IMF to black South Africans for this and much more.

But the IMF has diplomatic immunity. So in this paper, we will address capital directly, under the title "Memory and reparations: Beyond human rights

reconciliation under neoliberal capitalism." The reason for addressing capitalism quite so quite explicitly is because Kollapen has left out of the big picture one pertinent factor: the mode of production. He has also neglected agency, aside from a positive remark at the outset and a very dubious one at the end, which we return to.

For Kollapen, rights talk is justified because "there has been increased reliance on the discourse by oppressed groups and many movements in the developing world as they seek to break the hegemony of power." But let us ask whether this reliance by oppressed people on human rights within neoliberal capitalism is appropriate. We'd offer five caveats.

First, can we please add context? We agree with Kollapen that 1948 is an interesting point of reference, and that the Universal Declaration of Human Rights was, for its time, "a common rallying point for advancing social justice and human development." But political memory is vital to understand why: at that time, 1948, the East Bloc represented a political and ideological threat to Western powers, hence Eleanor Roosevelt's anxious efforts to give the Declaration socio-economic rhetorical flourishes (such as the right to work!) that, in reality under Western capitalism, were never really on the negotiating table. So if we want a turn back to rights discourses in sites like the G20 in London yesterday, or other elite sites – even the (thoroughly disappointing) United Nations financial commission run by Joseph Stiglitz – then we need countervailing anti-capitalist social power sufficiently strong as to threaten these elites. (We do not endorse what was the Stalinist project in the East Bloc, of course, but do recognize that the allure of the word socialism during and after World War II was one reason the UN Declaration appears so radical in retrospect.)

What context have we got today? Kollapen's hope for a rights discourse providing "foundational principles" for the "global community" is potentially dangerous, for it legitimizes the *global* scale when in reality there is no hope whatsoever in the near future of using multilateral fora in a progressive manner. Not only does the foundation of market power overwhelm human rights rhetoric – as we know from the persistence of Kyoto Protocol carbon trading as a "false solution" to climate crisis, or the trillions in bankster bailouts while grassroots and shopfloor misery spreads – but even on their own terms, the elites cannot sort out the problems they have created. They have failed on every occasion – Kyoto climate, Doha trade, Bretton Woods reform, UN Security Council democratization and so on - to establish workable global governance frameworks. (The last meaningful global-scale reform was, perhaps, the 1996 banning of ChloroFluroCarbons in Montreal, and nothing since reflects any integrity for problem-solving at the global scale, much less any possibility for reinjecting rights discourses.)

Moreover, there is no "global community" to work with, instead there is a revived imperialism to work against, especially as it has been given new energy by US president Barack Obama. While we may be happy that the virulent neoconservative version of imperialism has been replaced, it worries us that a potential return to rights rhetorics may confuse naïve observers into celebrating a rejuvenated multilateralist neoliberalism driven by the IMF. This global project is fused onto Obama's domestic crony capitalism with Wall Street (hence the rising disgust at Obama's payback to his financial industry campaign donors).

The problem is partly the talk-left walk-right role of civil/political rights in justifying a long-standing US imperialist agenda, e.g. the limited human rights of women in Afghanistan as a rationale for removing the Taliban in 2001. But it is not only "the use of non defensive force" that we must be concerned with, as is Kollapen. It is day-to-day oppression caused by patriarchy, racism, ecological destruction and exploitative capitalism. To be precise, the "rights of power" are exercised over people through market mechanisms, a point Kollapen's paper for some reason cannot acknowledge at its core, where it must be understood so we can transcend the power of the market.

Second, to add context and build power for social justice, our memory needs to be capable of breaking out of liberal conceptual boxes. The most constraining box we find in South African liberalism is the notion that apartheid was a racial crime against humanity, *full stop*. For Kollapen, formal apartheid's 1948 birth was "the beginning of a new and dark chapter in our history." Yet there was nothing "new and dark" about a durable foundation of apartheid, namely separation of black labour from white society.

"New and dark"? No, old and extremely profitable: from the race/class/gender/environment nexus of apartheid-capitalism, dating to the 19th century in its organized mode, several of the most damaging features of today's South Africa can be traced. The list of such features would include migrant labour (with its implications for xenophobia, AIDS, gender violence and other problems); residential racial segregation; the onset of black mass-production and white hedonistic mass-consumption systems which racially mimic the dominant US model; and the distorted SA 'minerals-energy complex' economy with its extreme CO2 emissions aimed at satisfying foreign mining capital.

So when Kollapen laments that "the political, economic, social and indeed the personal [were] all premised on a hierarchy of humanity with Whites at the top and Africans at the bottom with Indians and Coloureds in between", the invisibility of class, gender and environment in this quick definition of apartheid is striking. The same can be said of the ANC statement (1987) favourably cited by

Kollapen: "To end apartheid means, among other things, to define and treat all our people as equal citizens of our country, without regard to race, colour or ethnicity." These "other things" presumably would not include class, gender and environment, because, as Kollapen puts it, "The political compromise that heralded the end of legal apartheid created its own constraints" and in each case, matters have degenerated (albeit for women there have been some undeniable foundational improvements in the form and content of their rights).

While Kollapen mentions only "amnesty, the absence of criminal and civil accountability and in many instances the retention of the status quo" as such constraints, the post-apartheid elite's adoption of neoliberal market philosophy as the principle behind nearly all *new* socio-economic and environmental policies deserves much more attention. This is especially the case in areas most contested by rights advocates, such as water, land, housing and healthcare. As a result of these neoliberal policies, the post-apartheid elites can claim two astounding statistical accomplishments from the first 15 years of democracy: the rising Gini coeffiecient of inequality (Trevor Manuel, Tito Mboweni and Alec Erwin deserve the greatest opprobrium for their neoliberal, sado-monetarist economic policies) and the crash of SA's Human Development Index ranking (largely because of the hundreds of thousands who died unnecessarily thanks to former President Thabo Mbeki's AIDS policy).

The reason the socio-economic and environmental status quo was not only "retained" but *worsened* is, contrary to Kollapen's memory, not "almost a universal willingness to embrace [rights discourse's] healing and redeeming powers" but the opposite: a much-contested socio-economic and environmental rights debate over whether property would trump justice. Those who have advocated that a genuine rights agenda stretch from dismantling racial apartheid and into class apartheid fought hard and won some rhetorical concessions in Chapter 2 of the Constitution. But after 15 years we can conclude that the advocates of market power won all the substantive battles and the war itself, perhaps with the exception of access to decommodified AIDS medicines.

Hence third, we would pose a warning about how human rights debates take on concrete form in the courts. To illustrate this caveat, consider the various problems that arose in last month's decision of the Supreme Court of Appeals (SCA) in Mazibuko et al v Joburg Water, a judgment which has already received eloquent, highly critical commentary – and a forthcoming Constitutional Court appeal – from the Coalition Against Water Privatisation and Centre for Applied Legal Studies. Asked by the plaintiff's lawyers to join the case as a friend of the court, the Human Rights Commission declined, in a disgraceful reflection of the institution's positionality (though we suspect that such a decision was not one Kollapen personally would have made).

The SCA ordered, whimsically, a decline in free water available per person from 50 each day (by judge Moroa Tsoka in the Johannesburg High Court in April 2008) to 42, *if the consumer can prove household 'indigency'.* The SCA also found that prepayment meters are illegal according to Joburg's own water policy, but that Joburg doesn't have to remove its illegal meters in Phiri, and instead can "legalise the use of prepayment meters" by changing policies on disconnections to permit them without any administrative-justice process.

On the first point, the Coalition Against Water Privatisation argues that 42 lcd

> falls short of what is universally accepted and recognised as the minimum amount of water needed for basic human needs and dignity. Even more problematic though, is that the SCA's order to the City to provide this amount, is conditional. The very same City that has, at every opportunity, resisted the legitimate claims and demands of poor communities for adequate amounts of free basic water, is effectively allowed carte blanche (through its own assessment of what constitutes 'reasonableness' and 'through available resources') to determine the timing, character and extent of changes to its existing 'free water policy'.

The Coalition further objects that "the City's Indigent Register is a complete administrative mess and institutional disaster and those that are registered constitute less than a quarter of poor households in Johannesburg. In making such an order, the SCA allows the City, once again, to unilaterally determine and manage who enjoys their constitutional right to water and when."

Moreover,

> the City can continue to forcibly install pre-paid meters in poor communities (while providing wealthier residents with full credit metered water systems and thus allowing those with the means to do, to consume as much water as they want as long as they can afford it). This is a legal cop-out. The constitutional issues around discrimination and representation/administrative justice in relation to the pre-paid water meters that were properly addressed in the High Court ruling have simply been ignored. As such, water provision remains in the realm of privileged commodification – the full enjoyment of the right to water still being determined by ones' class status and geographical location.

The Centre for Applied Legal Studies agreed, "The relief granted by the Court is neither appropriate nor effective… [and[fails to address the City's constitutional obligations to progressively realise the amount of water it provides."

Kollapen may regret the SCA's judgment, but it is not atypical of rights judgments (the worst of which may have been Grootboom): highly conditional and reinforcing of *status quo* power relations, failing to compel a change in the state's executive branch policies and practices when even egregious harms are obvious, based on thinking that is consistent with the essential process of commodification-of-everything demanded by capitalism.

Fourth, the whole basis of rights discourse (not just bad judgments like the SCA's) tends to exhibit these problems, in its 'domestication' of the politics of need. The Critical Legal Studies scholarship that has emerged in recent years makes this point, and Kollapen cites a foundational critique by one local critical scholar, Tshepo Madlingozi of the University of Pretoria. But still, much more can be said about the intrinsic role of rights law within neoliberal capitalism from this standpoint.

Daria Roithmayr of the University of Southern California debates a central assumption in liberal rights analyses, which also applies to Kollapen's paper:

> The liberal perspective is that when human rights aspirations are not being fulfilled, it is because a sound idea suffers flawed implementation. In contrast, the radical critique of human rights suggested that the whole project is flawed from the ground up in its design. This is because as framed, human rights discourse serves not to resist but to legitimize neoliberalism.
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> Scholars like Costas Douzinas have argued that the discourse of human rights is a necessary companion to neoliberalism and privatisation. In a world (or a country like SA) in which people will become increasingly economically differentiated and unequal, governments have to offer something that appears to protect the increasing number of people at the bottom.
>
> The discourse of human rights pulls a sleight of hand by giving moral claims a legal form that dilutes them, waters them down, and robs them of any real power. The legalization of human right does this in two ways. First, human rights discourse offers only very limited recognition of moral claims in certain circumstances. Second, even these limited moral claims by design are then converted into bureaucratic, technical legal problems that cannot be solved because legal rights are indeterminate.
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> You see this in South Africa. First, the moral claims are limited. Every protected right is immediately watered down because, under the Constitution's limitations clause, government can restrict people's rights so long as they are doing so "reasonably." Likewise, socio-economic rights are only progressively realizable and only within available resources.

> Second, these limited claims become technical problems with no determinate answers. We should not be at all surprised that the right to reparations and access to justice became a technical question over the scope and reach of the TRC. We should not be surprised that a universal moral human right to housing was converted to a technical question over the reach of supervisory jurisdiction, as we see in the Constitutional Court's wrangling over housing in Grootboom. This isn't failure of implementation. This is failure by design.
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> Maybe more importantly, human rights discourse leaves in place the class structure that reproduces racial inequality in SA. So much of what reproduces inequality in South Africa is structural and class based. Racial inequality persists because whites still own 80 percent of the land and are able to pass down the cumulative wealth to the next generation. Whites pass down to their kids the ability to afford former Model C schools, their good old boy network contacts in businesses, and their ability to define the rules of distribution in any company, institution for higher education, etc. in their favor.
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> Human rights discourse bleeds off any real move to dismantle these processes by making change all about consciousness raising and recognition rather than redistribution and reparation.
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> One could imagine a set of human rights that really subjected to withering critique the inequality produced by neoliberal project. But certainly not as either human rights at the global level or in SA has been framed at present.

Marius Pieterse of Wits University argues in a paper – evocatively entitled "Eating Socio-Economic Rights" - that "the transformative potential of rights is significantly thwarted by the fact that they are typically formulated, interpreted, and enforced by institutions that are embedded in the political, social, and economic status quo." This is quite dangerous for society, since "the social construction of phenomena such as 'rights' and 'the state' legitimize a collective experience of alienation (or suppression of a desire for connectedness) while simultaneously denying the fact of that experience."

Pieterse provides a delightful illustration of this alienation – one we suspect is felt by Phiri residents – in asking us to conceive of

> the South African socioeconomic rights narrative as a dialogue between society (as embodying the social and economic status quo) and certain of its members (a social movement, interest group, or individual seeking to assert herself against the collective of the status quo) over the satisfaction of a particular socioeconomic need. Behold, accordingly, the following three-act drama:

ACT 1: On the Streets
Member/Citizen: I am hungry.
State/Society: (*Silence*) . . .
Member/Citizen: I want food!
State/Society: (*Dismissive*) You can't have any.
Member/Citizen: Why?
State/Society: You have no right to food.
Member/Citizen: (*After some reflection*) I want the right to food!
State/Society: That would be impossible. It will threaten the legitimacy of the constitutional order if we grant rights to social goods. Rights may only impose negative obligations upon us. We cannot trust courts to enforce a right to food due to their limited capacity, their lack of technical expertise, the separation of powers, the counter-majoritarian dilemma, the polycentric consequences of enforcing a positive right, blah blah blah. . .
Member/Citizen: (*Louder*) I want the right to food!!
State/Society: (*After some reflection*) All right, if you insist. It is hereby declared that everyone has the right to have access to sufficient food and water and that the State must adopt reasonable measures, within its available resources, to progressively realize this right.
Member/Citizen: Yeah! I win, I win!
State/Society: Of course you do.

ACT 2: In Court
Member/Citizen: I want food, your honor.
State/Society (Defendant): That would be impossible, your honor. We simply do not have the resources to feed her. There are many others who compete for the same social good and we cannot favor them above her. If you order us to feed her you are infringing the separation of powers by dictating to us what our priorities should be. We have the democratic mandate to determine the pace of socioeconomic upliftment, and currently our priorities lie elsewhere.
Member/Citizen: (*Triumphantly*) But I have the right to food!
State/Society (Court): Member/Citizen is right. It is hereby declared that the State has acted unreasonably by not taking adequately flexible and inclusive measures to ensure that everyone has access to sufficient food.
Member/Citizen: Yeah! I win, I win.
Everyone: Of course you do.

ACT 3: Back on the Streets
Member/Citizen: I am hungry.
State/Society: (*Silence*) . . .
Member/Citizen: I want food!

State/Society: We have already given you what you wanted. You have won, remember? Now please go away. There is nothing more that we can do.
Member/Citizen: But I am hungry!
State/Society: Shut up.
(*Member/Citizen mutely attempts to swallow the judgment in her favor*.)

Further, Danie Brand of University of Pretoria writes, in a paper on "The 'Politics of Need Interpretation and the Adjudication of Socio-Economic Rights Claims in South Africa" that "The law, including adjudication, works in a variety of ways to destruct the societal structures necessary for politics, to close down space for political contestation." Brand specifically accuses courts of "domesticating issues of poverty and need" so that they depoliticized, "cast as private or familial issues rather than public or political", a strategy that also entails the "personalization of need and dependence" (as the SCA did by refusing to promote a universal right to water and instead endorsing an indigency policy which is invoked case by case once residents prove they are the "deserving poor"). To illustrate, leading state policy maker Joel Netshitenzhe has, Brand reminds us, invoked a supposed "culture of dependency" that a Basic Income Grant would create, as a way to blame the victim and reject the church/labour policy demand. Brand does a good job in deconstructing the main rights cases before the Constitutional Court – Soobramoney, Grootboom, Treatment Action Campaign, Khosa, Port Elizabeth Municipality and Modderklip – and the points he makes seem to apply equally to the Mazibuko et al v Johannesburg Water case, which hopefully will get a rethink at the ConCourt this year.

Only to some extent does Kollapen's paper recognize this problem. But the place to make it even more forcefully is in the discussion he begins – but leaves hanging - on reparations.

Fifth, we would submit that the political movement for reparations is a crucial site for expanding the content, form and geographical scope for reconciliation and memory – as well as for disincentivising anything like apartheid anywhere else.

For Kollapen, "The TRC did not constitute an adequate basis for addressing the past in particular the need for restitution, redistribution and transformation." We appreciate this needed critique of the TRC. But just as close to the hearts and minds of the Jubilee and Khulumani movements, what about reparations for victims of economic apartheid?

Profits made by transnational corporations during apartheid, in violation of popular demands for sanctions, boycotts and disinvestment, are the basis for the Alien Tort Claims Act lawsuit which last year reached the US Supreme Court,

and is now back in the New York circuit courts where the momentum has shifted decidedly in favour of the plaintiffs by all accounts (even Simon Barber in *Business Day* is sounding very frightened). The reparations case should be not just a matter of exercising memory, but also compensating apartheid's victims.

Moreover, the South African demand for reparations from corporations involved in supporting crimes against humanity stretches further, for example, to firms active in and paying taxes to the states of Israel, Burma ("Myanmar") or Sudan. If Jewish Holocaust victims, black South Africans, Niger Delta communities and others using the ATCA continue to be successful, they then send a clear signal that corporations had better pull out of those contemporary regimes, pronto (Palestinian civil society calls for a boycott of Israel are increasingly urgent). Hence, not only are memory and reparations served by this cause, but South Africans are generating a disincentive for the worst ravages of neoliberal capitalism in future, and expanding their solidaristic heritage.

Not only does the South African government continue standing in the way. The TRC was also useless for this noble cause, and utterly failed the society by limiting its own investigations of corporate profiteering to a couple of days of superficial hearings. The critique of the TRC that is most compelling, from this standpoint, comes from Ugandan scholar Mahmood Mamdani, who observed that the economic beneficiaries of apartheid got off scot-free – both corporations and the five million middle-class and upper-class whites (and a few black compradors) – while because of elite transition compromises especially over economic policy, the masses have in most cases gotten poorer, suffered higher unemployment, live in smaller and shabbier housing, pay more for basic services (now subject to disconnection moreso than during apartheid), live in a demonstrably worse environment, and suffer from an expanded (Southern African) migrant labour system with all that it implies for the rural women of the region in reproducing labour power so inexpensively, in a regional articulation of modes of production.

Kollapen appears less concerned with the structural and wider-ranging implications of our post-1994 class apartheid system, preferring to blame only those who did the dirty work and those who suffered murder and torture: "those perpetrators have not only held on to their privileges but qualified for new ones from the democratic state while many victims still languish in poverty." The definitional box that the TRC put on apartheid was far too small for us to do serious rights advocacy within, and we must break out of it.

This problem is amplified by Kollapen's refence to the band of victims of gross human rights violations (murder and torture), for which he approvingly cites Judge Mohamed's allegedly "wider concept of 'reparation'". But Mohamed's argument does not address the damage done by daily apartheid capitalism, for it

still does not define victims as other than the murder/torture victims - not the workers, the women, the youth, the aged, the disabled, the gays and lesbians, and all the others who suffered by the racist, patriarchal, anthropomorphist and heterosexist kind of capitalism that the old and new elites decided to retain, exacerbate in many ways, and partly deracialise in others.

Indeed we need Kollapen and the Human Rights Commission to put many more forms of oppression onto the agenda, not shrink the liberal rights box further. For Kollapen and too many others, "the illegality of apartheid" has "definitional limitations… no one had to account for conduct during apartheid other than acts which were criminal in terms of apartheid law." So Kollapen does recognize that beyond liberal individualist law, "apartheid was a system of collective benefit. From a rights perspective it was paradoxical in that as we commenced a new rights dispensation that was expansive and bold, we were at the same time dealing with rights violations of the past in narrow and confined ways."

However, the "expansive and bold" routes he proposes simply do not meet the challenges of our time. Such socio-economic challenges were implicitly denied by former President Mbeki at the national Racism Conference in 2000, when he said that "[i]f white South Africa is fearful of the future because of what it might lose, black South Africa looks forward to the future because of what it will gain." Kollapen asks, "If this is correct, have these fears and expectations shaped much of what has happened or stood in the way of what should have happened?" (He answers unambitiously, by citing the predictable failure of Carl Niehaus' initiative to change white fears, A Home for All.)

This still represents thinking within the liberal box, for of course white South Africans were not losers, in the main, they were the main socio-economic beneficiaries of the *demise* of apartheid (a point government statistics confirm in many ways). As for frustrated black South African aspirations, Kollapen notes just three: fights over "names of cities and towns" (and Durban streets!), "land redistribution has proceeded at snails pace… Employment equity has also not achieved the outcomes that were set".

As a result of such small ambitions, Kollapen misreads the possibilities for genuine change: "There is a growing culture of demand and the threat of violence or ungovernability should the demand not be met." Of course we do not endorse violence (though presenting here, in this home of the founder of Umkhonto we Sizwe, we will not push this point), and indeed we are very concerned that conflating violence with ungovernability in this sentence reflects a lack of attention to the legacy of Martin Luther King, Jr, Mahatma Gandhi, and so many other practitioners of non-violent civil disobedience.

We would also insist that without the "culture of demand" and ungovernability strategies, such as the Treatment Action Campaign's numerous direct actions, we would be counting many more than the 350,000 people who died early thanks to Mbeki. Today around 700,000 people get medicines because of the culture of demand and because of ungovernability strategies and tactics. Without these *tree-shakers*, we would say to Kollapen, the lawyers filing rights lawsuits and the Human Rights Commission can never become *jam-makers*.

Finally, in conclusion, let's agree to agree. There is one point at the end of his paper where we come back to a meeting of the minds with Kollapen: "At the international level we appear to have relegated our rights commitments and elevated trade, economics and political solidarity above the demands of human solidarity." Yes, the Dalai Lama has been taught that lesson, and once again the courts have sided with oppression by dismissing the case on his behalf by former Home Affairs minister Gatsha Buthelezi and the Tibet solidarity campaign. But can we not ask Kollapen and the Human Rights Commission to put on the agenda the fact that *economics* – racist, patriarchal, ecodestructive neoliberal capitalism – also relegate rights commitments to mere rhetoric, *at the domestic level?*