

VIEWS AND ANALYSES FROM THE AFRICAN CONTINENT

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# REGIME CHANGE in LIBYA

## Africa sidelined



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# Mandela's legacy

Dear Reader...

**F**rancophone Africa has learnt with dismay these past weeks of allegations by French lawyer Robert Bourgi, who claims he was instructed on many occasions to transport briefcases full of cash from various African countries to former president Jacques Chirac and his former prime minister Dominique de Villepin.

The money is said to have come from heads of state such as the late Omar Bongo of Gabon, Congo-Brazzaville's Denis Sassou-Nguesso, Senegal's Abdoulaye Wade, Blaise Compaoré from Burkina Faso and former Ivorian president Laurent Gbagbo. Bourgi claims that each of these politicians sent several millions of dollars for Chirac's 2002 election campaign.

Such allegations are nothing new. It is alleged that in return for the funds raided from the state coffers of poor African countries to finance presidential elections in France, the countries' autocratic rulers can buy immunity from criticism and get help if the opposition party becomes too powerful – a cynical pact between corrupt leaders.

Looking back at the patronising speeches at Franco-African summits from Nice to Ouagadougou about multiparty democracy leaves a bitter taste in the mouth.

**South African** newspapers reported recently that former president Nelson Mandela has now retired permanently to his home in Qunu in the Eastern Cape.

The images of thatched huts, herdboys and grassy hills in the distance – in contrast with Mandela's busy life in Johannesburg – bring a feeling of sadness. At 93, Mandela is apparently content now to read his paper and watch the cattle peacefully grazing from the window.

It has been said many times that we all owe a lot to Mandela: a stable, albeit conflicted, democracy in South Africa; the result of a peaceful negotiated settlement to bring an end to the apartheid regime.

It could have been very different.

Those who were involved in the negotiations on the future of Sudan say almost unanimously that if John Garang, the former SPLM leader, hadn't died just months before the implementation of the Comprehensive Peace Agreement, things would not have turned out the way they did.

Today, South Sudan is an independent country, to be built from scratch, with war constantly looming in its border regions.

If Garang were around, he would surely have made sure that his dream of a 'new Sudan' – a reformed, democratic Sudan that could accommodate everyone – became a reality.

There are many similar examples. But can all of Africa's ills really be blamed on the absence of strong leadership?

**Sudanese** magnate Mo Ibrahim believes he can make Africa a better place by giving incentives to leaders not to bankrupt the state coffers while in power. It's a great pity that he and his committee of judges haven't yet found a suitable candidate for the \$5 million prize for retired African heads of state.

Others, like Africa expert Stephen Ellis, think this gives Africans a false sense of a quick-fix solution, while political strife, economic decline and social ills are actually due to much deeper structural factors than just which individual happens to be ruling the country.

What is clear though, is that the choice of leaders has a profound impact on the way a country's future is shaped.

In South Africa, it seems as if corruption will never be tackled while president Jacob Zuma, accused of getting kickbacks from the infamous arms deal, is in power.

**As we go to print**, Zambia is having a closely contested election between president Rupiah Banda and his long-time rival Michael Sata. In a country with a growth rate of over 7% and the income from copper skyrocketing, a lot is at stake.

In October, Cameroon is scheduled to go to the polls, as is the Democratic Republic of Congo in November, with fairly predictable outcomes.

The transparency of these elections is to be watched closely, since whichever way you look at it, leadership counts.

**Liesl Louw-Vaudran**  
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**COVER**  
A Libyan woman flashes the V sign during a gathering on the Green Square renamed Martyrs Square in Tripoli, Libya

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## South Africa: ANC withdraws controversial Information Bill

The South African Parliament's ad-hoc committee on the Protection of State Information Bill (the Secrecy Bill) adopted a final draft to be tabled before the National Assembly on 20 September. Following public protest, however, the Bill was withdrawn on the eve of the vote.

Several contentious issues arose in the deliberation between African National Congress (ANC) MPs, opposition MPs and civil society groups.

Opposition parties objected to the inclusion in the bill of 'economic secrets', which could legitimise the rules that govern bank loans that financed the Arms Deal.

If it is eventually passed, the Bill could override the Promotion of Access to Information Act (PAIA), meaning that if there is a conflict between the need to access information through PAIA and the need to protect information, the Secrecy Bill will always trump PAIA.

However, the greatest problem with the Bill is its omission of a public interest defence clause, pushed for inclusion by civic groups and the media.

Numerous civil society and opposition party voices consider the exclusion of public interest defence to be unconstitutional and undemocratic. The rights of access to information, as well as freedoms of the media and speech, will be curtailed.

The exclusion of the public interest clause could also lead to the prosecution of whistle-blowers.

## DRC: impending elections amidst key concerns over insecurity

The security situation in the Democratic Republic of Congo (DRC) remains fragile despite the efforts by various national, regional and international actors to stabilise it. The impending presidential and parliamentary elections, scheduled for 28 November, are also likely to affect the security of the country and the region. The DRC announced the adoption of a one-round electoral formula in which the president will be elected through a one-round ballot, but opposition parties expressed discontent at this proposal, which they perceive as being in favour of Joseph Kabila.

The result of the elections will have various implications for the peace and security process in the DRC as well as for relations between Kinshasa and its eastern neighbours, particularly Uganda and Rwanda. The outcome is also likely to impact on the agreements signed between the DRC government and armed rebel groups. A likely scenario, if President Kabila wins, would be widespread rejection of the election process, which could result in armed groups mobilising people to protest. But there are also concerns from security experts that the DRC could witness renewed fighting in the event that Kabila loses the election.

## Sudan: political stability eludes the country

Following the gaining of independence by South Sudan in July, political stability continues to elude Sudan, with reports of renewed fighting in Blue Nile state between the army and members of the Sudan People's Liberation Movement-North (SPLM-N). The fighting mirrors the recent skirmishes in South Kordofan between the Nuba people and the Sudan Armed Forces (SAF).

The fighting caused the Sudanese government to declare a state of emergency in Blue Nile and President Omar Al Bashir appointed a military governor to replace the state's governor Malik Agar, who heads the SPLM-N party. Khartoum signed a deal with the SPLM-N in August recognising it as a political party, but the party's offices have since been closed by the government in a move that is only likely to cause further hostilities.

Blue Nile is home to many supporters of the South's SPLM and these affiliations make Khartoum uneasy.

There are concerns that the increased tensions could lead to another secession battle. The recent clashes involving the army could signal Khartoum's realisation that it has to control all the regions within its borders to prevent the risk of another 'south in the north'. The fighting has displaced thousands of people, who have been forced to flee to Ethiopia.

## Private broadcasters to be allowed in Algeria

The Algerian authorities in early September announced media reforms that would allow the private sector to operate radio and television broadcasting stations, which will effectively end state monopoly in the broadcasting sector. The cabinet further approved a proposal to remove prison sentences for journalists convicted of libel. The changes will come into effect once parliament votes them into law. However, the legislative body is controlled by the various political formations supporting President Abdelaziz Bouteflika, including the historical National Liberation Front (FLN) party. Already, some media groups, such as El-Watan, have announced their readiness to venture into the TV industry. To this date, El-Watan only exists in print (El-Watan, 14 September). It should be recalled that the opening up of the media space is in line with the proposed political reforms announced in April by the president in a bid to 'immunise' Algeria against the popular protests witnessed in other countries in the region. Consequently, some critics have been sceptical of these proposed media changes, interpreting them as government strategies to avert public protests.

Source: ISS African Conflict Prevention Programme, Peace Missions Programme



RIGHT2KNOW

# A continent's right to media freedom

## KEY PRINCIPLES OF THE DECLARATION ON ACCESS TO INFORMATION ADOPTED BY DELEGATES AT THE AFRICA PLATFORM ON ACCESS TO INFORMATION IN CAPE TOWN ON 19 SEPTEMBER 2011

### 1 Fundamental Right Accessible to Everyone.

Access to information is a fundamental human right, in accordance with Article 9 of the African Charter on Human and Peoples' Rights. It is open to everyone, and no one should be privileged or prejudiced in the exercise of this right on account of belonging to a class or group howsoever defined, and whether in terms of gender, class, race, political association, occupation, sexual orientation, age, nationality, HIV status, and other bases as cited in many African constitutions. It is not required that anyone has to demonstrate a specific legal or personal interest in the information requested or sought or otherwise required to provide justification for seeking access to the information.

**2 Maximum Disclosure.** The presumption is that all information held by public bodies is public and as such should be subject to disclosure. Only in limited circumstances set out in these principles below may disclosure be denied.

**3 Established in Law.** The right of access to information shall be established by law in each African country. Such law shall be binding and enforceable and based on the principle of maximum disclosure. The law shall take precedence over other conflicting laws that limit access to information.

**4 Applies to Public Bodies and Private Bodies.** The obligations of ATI shall apply to all public bodies, as well as to private bodies (i.e. the private business sector as well as civil society organisations) that utilise public funds, perform public functions, provide public services or exploit public resources (with regards to said funds, functions, services or resources), or which are in possession of information which is of significant public interest or where the release of such information is needed for exercising or protecting other rights.

**5 Clear and Unambiguous Process.** The law shall include procedures for the exercise of the right. The process to obtain information should be simple, fast and at low or no cost and take advantage of new information and communication technologies where possible. Bodies falling under the scope of the ATI law should provide assistance to requesters in order to ensure that they receive the information they need. The information provided should be provided in a form understandable to the requestor. Information should be disclosed within a clear and reasonable deadline provided for by law.

**6 Obligation to Publish Information.** Public and relevant private bodies shall be obliged to proactively release information in a timely manner about their functions, powers, structures, officials, decisions, expenditures, budgets, and other information relating to

their activities that is of public interest. The dissemination should use all reasonable means of communication, including ICTs, to maximise access to all communities and sectors of society.

**7 Language and Accessibility.** To the greatest extent possible, information should be available in the language of the person seeking it, and in a format that is as accessible as possible.

**8 Limited Exemptions.** The right of access to information shall only be limited by provisions expressly provided for in the law. Those exemptions should be strictly defined and the withholding of information should only be allowed if the body can demonstrate that there would be a significant harm if the information is released and that the public interest in withholding the information is clearly shown to be greater than the public interest in disclosure. Exemptions shall be overridden when the public interest in disclosure outweighs any harm. Information can only be withheld for the period that the harm would occur. No information relating to public interest, such as about human rights abuses, corruption, or imminent dangers to public health or safety, may be withheld. Privacy can be a legitimate limitation on access to information except when over-ridden by public interest.

**9 Right to Personal Data.** All persons have a right to access and correct their personal data held by third parties.

**10 Whistleblower Protection.** To ensure the free flow of information in the public interest, adequate protections against legal, administrative and employment-related sanctions should be provided for those who disclose information on wrong-doing and other information in the public interest, in accordance with Principle IV (2) of the Declaration of Principles on Freedom of Expression in Africa.

**11 Right of Appeal.** Everyone has a right to appeal administratively any refusals of access to information requests (and failure to proactively disclose information?), to further appeal to an independent body and to seek judicial review of all denials of their right of access to information.

**12 Duty to Collect and Manage Information.** Public and relevant private bodies have a duty to collect and manage information on their operations and activities on behalf of their citizens. This includes procedures for ensuring that the information is easily accessible.

**13 Duty to Fully Implement.** Public and relevant private bodies have an obligation to ensure the law is fully implemented. This includes internal procedures and processes and the designation of responsible officials. An independent body such as an ombudsman or commissioner should be established to monitor and ensure implementation.

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REUTERS

**Will the Diaspora let President Paul Biya down?  
For the first time Cameroonians abroad are allowed  
to vote in presidential elections on 9 October**

## 9 OCTOBER Cameroonian presidential election

The incumbent President Paul Biya is representing the ruling Cameroon People's Democratic Movement (CPDM) against 51 other presidential hopefuls. These include John Fru Ndi, the long-time chairman of the main opposition party, the Social Democratic Front (SDF). Among the other candidates are three women, including 45-year-old Edith Kabbang Walla, a social entrepreneur whose candidacy is said to have re-kindled the Cameroonian public's interest in the electoral process.

However, political observers have noted that such a large number of presidential candidates could indicate a governmental strategy to further splinter the opposition and ensure majority votes for the ruling party. Despite these concerns, there is a real opportunity for political opposition groups to

use the government's record of inefficiency, exemplified by rising corruption and political patronage. The Cameroonian parliament's adoption of a new law in July, which allows citizens living abroad to vote in the presidential election, could bolster the opposition parties' chances in the poll if they manage to tap into the diaspora electorate. With as many as five million Cameroonians living abroad, the outcome of the election could well be determined by those in the diaspora.

## 11 OCTOBER Liberian presidential election

Liberia's 24th president, Ellen Johnson Sirleaf, faces a strong challenge from opposition parties in her bid for re-election on 11 October. It is claimed that the recent referendum that saw Liberians reject four proposed constitutional amendments is a clear sign that her popularity has waned. However, one thing

is certain: the impending election will be an interesting one. Just as was the case with the closely contested previous election, the balance of political power is relatively even and it is not clear who will win.

## 12 OCTOBER UN International Day for Natural Disaster Reduction

The day will be observed on 12 October to raise awareness and promote a global culture of natural disaster reduction, including disaster prevention, management, mitigation and preparedness. Many people have lost their lives, families, homes or access to essential services,

such as healthcare and education, due to natural disasters including droughts, tsunamis, floods, earthquakes, hurricanes and cyclones. Some of these disasters have caused irreparable socioeconomic damage to the countries in which they occur. The UN acknowledges the need to raise awareness through education, training, and information exchanges, which are effective means to help global citizens become better equipped in dealing with natural disasters.

## 16 OCTOBER UN World Food Day

This year's commemoration comes against the backdrop of food price swings that continue to raise serious concerns and threats to food security across the world, particularly in developing countries. Running under the theme 'Food prices – from crisis to stability', the day aims to highlight trends in food prices and efforts that should be made to minimise their impact on the most vulnerable. In 2010-2011, rising food costs have pushed nearly 70 million people into extreme poverty. The UN revealed last month that as many as 750 000 people could die as Somalia's drought continues and some 12 million people across the Horn of Africa region are in desperate need of food aid, highlighting the gravely precarious food security situation faced by the world today.

## Other important dates

- 16 October:** Mauritanian parliamentary elections
- 17 October:** UN International Day for the Eradication of Poverty
- 24 October:** UN World Development Information Day

NATO's intervention in Libya has created a rift between Africa and many of its traditional partners. **Paul-Simon Handy** argues that the AU could have done things differently.



**TOO CLOSE?** South Africa's president Jacob Zuma visited Libyan leader Muammar Gaddafi in Tripoli twice since the start of the crisis

# AU's illusions of dogmatic pacifism

**T**he African Union's position on the Libyan crisis – trying to secure a negotiated settlement – found substantial (although not unanimous) support across Africa.

Non-African states, however, saw the AU's approach as being too timid, naïve and, possibly, partial towards the former leader Muammar Gaddafi.

In any case, most Africans are upset about the outcome of NATO's operations in Libya. The AU and some African heads of state, as well as the African intelligentsia and large swathes of public opinion, consider that what happened in Libya was

not a revolution such as those of Egypt and Tunisia, but a coup d'état orchestrated by a heteroclite coalition of putschists helped by NATO under the pretext of its responsibility to protect.

Like many other international actors, the AU was caught by surprise in Tunisia and Egypt. In Libya, it took time to intervene but finally came out strongly in favour of a settlement based on its 'road-map' to peace. The AU should take an honest look at why it shunned military intervention. It should accept its limitations and engage with Western powers strategically, through negotiation rather

than confrontation. It should also revise its key peace and security texts to deal with scenarios like the Arab spring.

## UNSC RESOLUTION 1973: A POLITICAL DECISION

Although it had been approved by the UN's African non-permanent members (South Africa, Nigeria and Gabon), Resolution 1973's imposition of a no-fly zone over Libya with the aim of protecting civilians from the Gaddafi regime's repression went beyond planned limits.

Indirectly helping the rebels to topple Gaddafi's regime, however tyrannical he

may have been, has set a precedent that won't be without consequence for possible future interventions in the name of the responsibility to protect.

Decisions about military intervention are always political and almost never purely humanitarian, as Africa knows only too well.

### THE AU HAS SOME SOFT POWER BUT NO HARD POWER

Another lesson is that the AU was relatively easy to sideline due to its lack of hard power.

Soft and hard power are two sides of the influence continuum. Therefore, the availability of power resources is less important than actively using them to influence behaviour. This can be done through persuasion, dissuasion, negotiation, incentives, and so on. The issue of the forms of security cooperation promoted by the AU in Africa is more than just an academic debate.

The Libyan war and, in a different way, the North African revolutions, have highlighted the tension that exists in Africa between the doctrine against unconstitutional regime change and the non-existence of a framework to regulate internal stability through democratic norms.

In other words, the major progress achieved by the AU in establishing a relatively solid doctrine against unconstitutional changes of government is challenged by the absence of a governance architecture that prohibits non-democratic forms of government.

The AU is fully in role when it rejects attempts at overthrowing a government through armed conflict, as was the case in Libya. But is it still in role when it tolerates massive governmental repression of a population's democratic needs?

The non-binding character of Nepad's African peer-review mechanism and the weakness of current regional courts of justice are indicators of a huge imbalance in the AU's normative architecture.

More so, the Libyan crisis has indicated that the AU and some African states do sometimes support the use of force in a way that accounts for dogmatic pacifism.

Although the AU was the only actor advocating for a negotiated settlement to the crisis, it failed to convince all parties that a political solution would address the root causes of the Libyan problem.

But in reality, the AU's reluctance to threaten the use of force in the face of massive human rights violations is due less to high moral standards than to the scarcity of material power in the continent. The lack of military might and financial capacity to sustain a military effort is key to understanding the AU's behaviour, despite its efforts to build the African Standby Force.

### AFRICA'S WEAK LEADERSHIP

The Libyan crisis has come at the worst possible time, when Africa is lacking the type of leadership that helped build the AU in the last decade. Because decision-making authority is still concentrated in the hands of heads of state, it will take visionary national leadership and foresight to position the AU for future challenges.

Big African states like South Africa and Nigeria haven't provided the AU with the type of leadership it deserves. Even worse, they seem to differ on fundamental matters of peace and security (such as in Côte d'Ivoire and Libya). South Africa's sometimes-erratic decision-making has raised

## Big African states like South Africa and Nigeria haven't provided the AU with the type of leadership it deserves

questions about the predictability of its foreign policy, which seems to have lost consistency and adopted a diplomacy of anger.

In addition to urgent structural reforms to strengthen the AU commission's prerogatives against heads of state, the AU would benefit a great deal from the more active involvement of some important member states. South Africa has always claimed to see Africa as its foreign policy priority but it has failed to translate this into multifaceted support for the AU. It is difficult to understand why South Africa

has no commissioner or substantial staff numbers working to bring their expertise to the commission.

More importantly, the Libyan crisis has again outlined the need for some large African states to create an informal, mini-lateral forum to help create consensus through regular exchanges on major issues facing the continent. If such a framework had existed, some of the publicly expressed divergences between South Africa and Nigeria over Libya could have been avoided and the African position would have appeared stronger and more credible.

As the AU prepares to celebrate its 10th anniversary, its peace and security institutions are facing their biggest challenge ever: the North African revolutions. Whether due to their intensity, their diversity or the modes of international interaction required for their resolution, the uprisings confronted the AU with unprecedented events that have called for an innovative reading of its fundamental texts.

Over the past ten years, the AU's Peace and Security department developed a substantial capacity that saw the young organisation taking the lead in many conflict situations in Africa. Even more than the noticeable increase in the number and quality of its military interventions (such as in Somalia, Darfur and Burundi), the AU's biggest achievement so far appears to be its role in promoting norms and implementing security regimes throughout the continent.

The prohibition of unconstitutional changes of government, and the more-or-less systematic enforcement of this norm throughout the continent, have been seen by many as important milestones insofar as they have transformed multilateral relations within the continent as well as Africa's relations with the international system.

Having a stronger impact in regulating modes of political governance in Africa still remains a challenge for the AU, and this is one of the causes of the differences of opinion on the Libyan case. ■

The NATO-backed National Transitional Council (NTC) in Libya faces internal divisions and a lack of credibility both at home and abroad, believes **Issaka K Souaré**.



## A dark cloud over Libya's

**A**fter four decades of uninterrupted rule by Colonel Muammar Gaddafi, it is clear that Libyans deserve better. But the way Gaddafi was overthrown raises serious concerns for the country and for Africa.

Is the joy on the streets of Libya – characterised on international news channels by pictures of young rebels firing guns into the air – really the expression of a nationwide popular uprising? Everything seems to indicate that it would be a mistake to compare the rebellion in Libya with the revolutions in Tunisia and Egypt.

The new rulers in Tripoli did not come to power through peaceful protest, and

they are tainted by both their regional affiliations and their foreign backing.

There is also still a huge risk of reprisals against thousands of sub-Saharan Africans living in Libya, and possibly also black Libyans, leading to even more human rights abuses across the country.

### WAS THE NATO INTERVENTION JUSTIFIED?

Gaddafi's fall was made possible by the actions of powerful states in flagrant violation of the mandate initially conferred by the UN Security Council through Resolutions 1970 (26 February 2011) and 1973 (17 March 2011).

While the UN did authorise an international force to ensure the 'protection of civilians' and initiate political dialogue, the NATO countries that decided to implement the resolutions sided with the rebels and refused to consider the option of political process unless on the condition of regime change.

In retrospect, it is now clear that some of the countries engaged in the campaign never intended being bound by the UN mandate – unless they had it their way.

In an article by Alex Bellamy and Paul Williams in the June issue of the journal *International Affairs*, it is clear that NATO began moving ships to the Libyan coast at



**LIBYAN REBELS** were by mid-September still surrounding the towns where they thought Gaddafi could be hiding

AP PHOTO/ALEXANDRE MENEGHINI

# future

least a week before the UNSC had passed Resolution 1973 – the same tactic used in Iraq in 2003 by the United States.

Now that Gaddafi has fallen, and given that history is always written by the victors, all the deaths in Libya are likely to be blamed on him. But many people were killed by the rebels, and it is also a fact that the NATO forces' bombing campaigns made them culpable of what they were meant to prevent: the killing of civilians.

These points relate to the norms and principles of international law. But international relations being what it is, a teleological approach (concerned only with finalities and outcomes) could justify a

course of action that violates the norms but leads to the desired outcome: the ends justifying the means.

However, the way in which Gaddafi was overthrown does little to guarantee the declared desired outcome – to ensure peace and stability in Libya in a climate of participatory democracy and equal prosperity for all Libyan people.

## TROUBLE FOR THE NEW LEADERSHIP

The Transitional National Council (NTC), the new ruler in Libya, faces myriad problems likely to compromise peace and the successful transition to democracy.

The perception that the rebellion is mainly led by long-time foes of Gaddafi from the east is the first of these.

It is well known that the overthrowing of King Idris Al Sanusi by Gaddafi in September 1969 was a blow to the eastern domination of the country, with political opposition to his rule coming mainly from the east while Gaddafi promoted his own tribesmen.

It is therefore not surprising that the overwhelming majority of Libyan rebels are still from the east, where the current uprising/civil war started, or that they are using the flag of the Libyan kingdom (1951-1969) in a stark reminder of these historical fault lines.

Also, almost all of the 13 known members of the NTC are from the same region. This is likely to fuel instability in the country, with the NTC leadership insisting on trying all those who were associated with Gaddafi even though its head, Mustafa Abdul Jalil, was Gaddafi's Justice Minister for many years.

Gaddafi still has many genuine supporters, at least from within his own tribe, as well as supporters by default among those who now fear rebel reprisals.

There is a very real possibility that the new rulers' legitimacy will be compromised by their regional base, and that those who are not from the east (historical Cyrenaica, with its capital in Benghazi) will be marginalised.

It is no secret that the NTC is not a homogenous force, and battle lines are

likely to be drawn between those of its members who once served Gaddafi and those who did not.

There is also tension between those who opposed Gaddafi from within and the intellectuals returning from the Libyan diaspora, mainly originating from eastern Libya. These returned exiles may want to take part in the post-Gaddafi Libya and believe they are better educated than those who stayed behind.

When the uprising began, the rebels armed many young men who had no political affiliation, giving them very little training and no real command structure. These groups are effectively militias. It remains to be seen how tolerant the new rulers will be towards all the disparate groups that fought in their ranks and how they will be able to integrate them. Some have already refused this move despite calls from the NTC after the assassination of Abdel Fattah Younes.

**It is now clear that some of the countries engaged in the campaign never intended being bound by the UN mandate – unless they had it their way**

## FOREIGN BACKING

The way in which Gaddafi fell will clearly prove most favourable to the NTC's foreign backers. Some of the countries engaged in the campaign have placed fairly malleable people in power who can be manipulated in exchange for certain benefits from the very rich North African country, including oil and lucrative contracts for rebuilding infrastructure or supplying weapons.

In fact, according to the 1 September edition of French newspaper *Libération*, the French government signed a contract with the NTC as early as April, when the rebels conceded 35% of Libya's crude oil to Paris in exchange for its support.

As for the US, its US Africa Command (AFRICOM) was very active in the early days of the military campaign in Libya >>

(as confirmed by the US Naval War College's Jonathan Stevenson's 9 May article in *Foreign Affairs*, AFRICOM's Libyan Expedition). Negotiating to place the military unit's African base in Libya, with that country's strategic location between Egypt, Tunisia and the Sahel, would surely be considered a success for the Americans. It should be recalled that in 1970 Gaddafi closed the American Wheelus Air Base, which had been located near Tripoli since the country's independence in 1951.

It is not clear whether the rebels' various foreign backers will be unanimous on the future political and economic directions of the country, and this could lead to each siding with their favoured factions.

Indeed, the Western backers are already creating huge problems of credibility. Although Libya was seen as being pro-Western in the Cold War-era (in fact the USSR opposed Libya's initial application for UN membership in 1955 on the grounds that it was too pro-Western), Gaddafi worked hard to dismantle this image, particularly in the early years. Today a more pronounced pro-Western policy in Libya is likely to be opposed by some of those who supported the NTC on nationalistic or religious grounds.

In spite of NATO's declared objective of a peaceful and democratic Libya, the campaign to overthrow Gaddafi has raised fears that a situation reminiscent of that in Iraq or even Somalia could take hold of Libya in the short term.

There are already several pockets of resistance by Gaddafi loyalists in both the capital and other cities that may not be subdued easily.

At the time of going to print, Gaddafi's whereabouts and those of his sons Saif Al Islam and Mohamed were not yet known. They may thus continue leading an armed resistance, even in a guerrilla-type conflict.

The NTC's regional character and vengeful approach to past or present Gaddafi loyalists, as well as the heavy Western involvement in the country, will only strengthen this resistance. Much of Libya's future stability will depend on how Gaddafi



**A POPULAR REVOLT?** The writer argues the Libyan uprising was not really part of the Arab Spring

REUTERS/ESAM AL-FETORI

loyalists and supporters are treated.

Among the many problems of a post-Gaddafi era is the question of revenge attacks and whether those guilty of human rights abuses will be punished.

Since the start of the rebellion, many reports have been published about alleged human rights abuses by the Gaddafi regime. Many of these have formed the basis of the arrest warrants issued on 27 June by the International Criminal Court (ICC).

Meanwhile, NATO should not be

## All indications are that the new rulers in Libya will be anti-AU in the short term

exonerated for the deaths of some of the more than 1 000 people reported to have died in Libya during the six months of war, as its aerial bombardments continued throughout. For example, Irina Bokova, the Director General of Unesco, described a NATO airstrike that killed three journalists at the Libyan television station on 30 July as being in violation of UNSC Resolution 1738 (2006), which condemns acts of violence against journalists, and 'contrary to the principles of the Geneva Conventions that establish the civilian status of journalists in times of war, even when they engage in propaganda.'

### A ROLE FOR AFRICA

All indications are that the new rulers in Libya will be anti-AU, even if only in the short term. The treatment of migrants and black Libyans, commonly seen by the

rebels as being pro-Gaddafi fighters, is already creating huge bitterness against the new rulers.

Gaddafi's important role in African affairs since the late 1990s and the rebels' perception that the AU opposed their cause have also soured relations.

But does a new government in Tripoli really need the backing of the AU?

Some argue that the AU has rendered itself irrelevant in Libya since it does not have the support of the most powerful nations, while others say that the AU's Road Map for a political solution was useless and the conflict was ended through military means. This is very simplistic and myopic. To be ignored by the powerful does not mean that a position was not good, and as for the second point, we should not assume that the ultimate aim of all involvement in Libya was to overthrow Gaddafi.

In fact, a solution to the Libyan crisis will only be found when there is a true political transformation in a climate of peace and stability.

The AU has so far refused to recognise the NTC as the official ruler of Libya – a strategic decision that could be useful in negotiations with the NTC in order to ensure a more inclusive governance system, as was noted in the communique of the 14 September meeting of the AU's High Level Panel on Libya. **E**

• Also read 'How Africa should have recognised the NTC' by Mehari Maru on [www.the-african.org](http://www.the-african.org)



# 'Libyans wanted regime change'

Abdallah Alzubedi, former Libyan ambassador to South Africa, is now representing his country's National Transitional Council (NTC). **Liesl Louw-Vaudran** spoke to him in Pretoria shortly after Muammar Gaddafi was ousted from Tripoli.

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**Q When the rebellion broke out, you asked for Gaddafi to step down, but you still wanted to stay on as ambassador. Why?**

I made a statement on behalf of myself and the other embassy staff on 28 February, just one week after the revolt started, declaring our defection and that we no longer represented him.

We asked him to find a speedy and peaceful solution to the crisis, which means that we asked him to step down. But we didn't want to disrupt our work with students in South Africa and other services at the embassy, so I didn't resign. He immediately reacted and sent a recall letter saying that I was no longer his ambassador.

**Q Have you been replaced?**

He wasn't able to send anyone else. They tried to do it in an underhand way, but now the embassy is being run by the chargé d'affaires, who was already here.

**Q Have you been recognised by South Africa as the official representative of the NTC?**

No, there is an understanding at the higher level that goes back to May this year but it is not official. I started representing the TNC in April, even at African Union meetings in Addis Ababa.

**Q Do you believe the South African government will eventually recognise the NTC, since President Jacob Zuma is portrayed as being pro-Gaddafi?**

I'm sure they will eventually recognise it, yes. I think it is a matter of time. They made the right decision to vote for [UNSC] Resolution 1973 [authorising the no-fly zone] and I think they will make the right decision again.

**Q Why do you think South Africa is so reticent about recognising the NTC?**

I think it is because of the AU's position and South Africa's membership of the ad hoc committee of the AU on Libya. And maybe because of the local politics.

**Q Do you think that NATO's role in overthrowing Gaddafi influenced what the South Africans and Africans in general are feeling towards the NTC?**

No. If it wasn't for NATO there would have been another genocide, and I don't think anyone wanted another Rwanda. In Rwanda no one intervened, and you know what happened. If it wasn't like Rwanda it would have been like Somalia – a slow genocide. Both of those situations are totally undesirable.

**Q Yet Libyans have always been quite nationalistic, and now you needed Western powers to intervene?**

We did the fighting on the ground; it wasn't NATO. NATO attacked his planes and his tanks, cannons and rockets, but the fighting on the ground was done by Libyans.

Some of the fighters were people who had defected from the regime, the brigades, but only a small percentage. The rest were normal people, doctors, professors, engineers, who left their jobs to take up arms against the regime. Most of them had never used a weapon before. This is why these people differ from the brigades, Gaddafi's troops. The brigades just kill and detain people. The fighters of the uprising don't do those things.

**Q Are they rebels or freedom fighters?**

Freedom fighters of course. Some call them fighters of the uprising, because in the first 44 days Gaddafi was massacring people en masse and nobody came to help them. Are you then going to say, 'No, NATO can't come and help them'?

The decision to intervene was by the UN Security Council and binding to all nations. It wasn't just a NATO decision. It was supported by the Libyan people, by the Arab League, by African countries, by the Islamic Conference and by the Non-Aligned Movement. The alternative would have been disastrous. The French and the UN didn't do anything in Rwanda and everyone is still blaming them. Now, when they come to help, people say, 'Why are you helping?'

Did they want Gaddafi to continue to massacre the people? Look at what is happening in Syria, in Yemen; nobody is helping those people. Look at Somalia, what can the AU do in Somalia? They've been trying for 21 years and they haven't been able to do anything.

**Q Some say that this wasn't part of the Arab Spring; it was only a localised uprising from Benhazi by people who had always opposed Gaddafi.**

That is not true, it was all over the country. What about the uprising in Misrata? Gaddafi left it almost 85% destroyed. What about Zuwarah, Zawia and Zintan in the west? What about my own hometown, Zintan, about 150km west of Misrata? There was also an uprising in Tripoli when the revolution started, but they didn't have leaders and were suppressed by the regime. There are now just a few pockets left of people loyal to Gaddafi, only about 10% of the population. In places like Sebha there are perhaps only 100 soldiers still fighting. They are snipers, holding people hostage and using them as human shields, which is what he has been doing throughout the uprising.

**Q People still criticise the intervention, saying the aim was not protecting civilians but regime change.**

The Libyan people wanted regime change because the regime was not reformable. It was one man with a lot of resources micro-managing a country of six million people. Libya was an absolute dictatorship.

**Q Yet you were ambassador for that regime for a long time.**

In Libya you had about one million people out of a population of six million working for the state. Secondly, the regime put so much fear into everybody; it made us believe that it was impossible to get rid of it. On 17 February the people broke that barrier of fear, and this gave us more courage to declare our support for the uprising.

As diplomats we were in any case just troubleshooting most of the time, cleaning up after him. Because every visit, every-



thing he did, all his statements, were always inconsistent behaviour for a head of state. It was not an easy job for us. Just look what he and his sons have been doing. When he came to Durban in 2002, he had 614 people with him. Each foreign trip would cost up to \$100 million. We probably should have abandoned the regime a long time ago, and some did, but others thought the regime would change. Every few years we were promised reform, a constitution, but these were things that never happened. Then, after what had happened in Tunisia and Egypt, the revolution broke out.

**Q Were you disappointed that after initially supporting the no-fly zone, the African countries then withdrew their support?**

I don't think they withdrew their support. They thought it would be possible to have a peaceful solution with a man like Gaddafi. But Gaddafi has never been a man of peace, as Africa knows very well. They know that when he intervened in Uganda, a long time ago, thousands of people got killed because he supported Idi Amin. In Chad thousands were killed; in Liberia; in Sierra Leone, to name a few. He has been interfering in the internal affairs of almost every African country through mobilising the opposition leaders in those countries.

**Q Yet after the Lockerbie negotiations, he actually kept his word.**

You cannot negotiate with him when it comes to the Libyan people. He wanted to stay in power. He came to power through a coup d'état and he continued to rule the country illegally until he was toppled.

**Q So was Africa mistaken in thinking you could negotiate a peaceful departure?**

It was offered to him on many occasions – even before the Africans made their initiative, the TNC proposed a ceasefire – but he turned it down, thinking he was winning. But his history of ruling the country was one of atrocities and killing.

The killing in Libya started at least as far back as 1976, when he started hanging students. In Libya we have our own 7 April – the same date as the start of the Rwandan genocide. From 1976 to 1985, 7 April was Hanging Day, when students were hung just for showing opposition. It was shown on television as part of the entertainment during Ramadan.

When Libyan students peacefully demonstrated in London in 1984, they were shot at from the windows of the embassy. A British policewoman was killed. In 1996, there was a peaceful demonstration in Abu Salim prison, to ask for better conditions for po-

litical prisoners, but in a matter of three and a half hours, 1 269 people were killed. Massacred. And we never had an election in Libya. Joining a party was an act of treason.

**Q Are you going to try to reverse Libya's suspension from the AU?**

We are part of Africa, we share the same continent and we have common interests. The suspension is pending the establishment of an all-inclusive government, which is going to happen anyway since we have members of the former regime with us. We won't make the same mistake as other countries of excluding any sector of the population.

**Q Many people here are also very worried about the way African immigrants in Libya are being maltreated by the rebels.**

The difficulty is that there were mercenaries, not only from Africa but also from elsewhere. Serbians were brought in as snipers. There were even some from South America. Some were workers recruited by the regime, which either gave them money or forced them to do it.

This was unfortunate, but they caught many, many mercenaries. They're not mistreating them; they just want to make sure they are not sleeping cells. They interrogate them to make sure, but they are doing it according to international law. There is no torture or any unlawful methods being used. During the Gaddafi regime they used to massacre African immigrants.

**Q What do you think will be the future of relations between Libya and the rest of Africa?**

We will have normal relations with Africa. We already have the recognition of 21 countries in Africa. What we want to do now is to start rebuilding our country, almost from scratch, especially the democratic institutions. Gaddafi destroyed everything, even our nascent institutions.

We don't even have an army. There were only his brigades, led by his sons and family members. We have no political and economic institutions. We had only institution; it was called Muammar Gaddafi. **E**

The issuance of an arrest warrant for former Libyan leader Muammar Gaddafi remains controversial. The African Union claimed that the actions by the International Criminal Court (ICC) precluded a peaceful solution in Libya.

**Antoinette Louw** takes a closer look.

# A wanted man

**O**n 27 June, the judges of the ICC's Pre-trial Chamber 1 issued arrest warrants for Libyan leader Muammar Gaddafi, his son Saif Al Islam and intelligence chief Abdullah Al Senussi for alleged crimes against humanity committed in Libya since mid-February this year. The decision is a significant but not unexpected development in a process begun by the UN Security Council when it passed Resolution 1970 (2011) on 26 February, which, among other things, referred the situation in Libya to the ICC.

The judges' ruling was widely welcomed. However, for the AU and for some African leaders, the arrest warrants are of major concern. At its 17th Assembly on 1 July, the AU decided that because the Gaddafi warrant complicated efforts to negotiate a political solution in Libya, its member states would not cooperate with the ICC in precipitating Gaddafi's arrest and surrender. South African President Jacob Zuma, who hosted a meeting of the AU's High Level Ad Hoc Committee on Libya the day before the warrants were announced, expressed 'extreme disappointment' with the timing of the ICC decision.

Relations between the AU and the ICC have been frosty for some time. Added to this is the opposition of many African leaders to the NATO-led military operation in Libya authorised by UN Security Council Resolution 1973. The AU has also repeatedly stated that only a political solution can bring peace to Libya – a position that explains the tendency on the continent to separate efforts to achieve justice and accountability from those aimed at negotiating political settlements.

Criticisms of ICC action in Libya overlook the context in which Resolution 1970 was passed and the fact that justice was an explicit part of the international community's response to the unfolding crisis. All 15 members of the UNSC – including Gabon, Nigeria and South Africa – voted in favour of Resolution 1970. The decision was based on widespread concerns from the Organisation of the Islamic Conference, the Council of the League of Arab States, the AU and the UN's Human Rights Council about government-led attacks on civilians. Libyan diplomats who had distanced themselves from their government also called for the ICC to intervene.

Several months later, the urgency and unanimity expressed by the international community are easily forgotten. At the time, UN Secretary General Ban Ki-moon

chamber to issue arrest warrants for Gaddafi and his co-accused on 16 May. Less than two months later the warrants were confirmed. This prompt action drew criticism for being poorly timed. Looking back, it is arguably some of the decision makers who agreed to vote for Resolution 1970 that miscalculated the timing of events, rather than the ICC.

Coming so soon after the long-term presidents of Tunisia and Egypt were toppled within a month and 18 days respectively by popular uprisings, some states supporting ICC action in Libya no doubt anticipated that Gaddafi would also soon be ousted. The odds were that with one of Africa's longest serving rulers removed by his own people, those voting in favour of an ICC intervention would find themselves on the right side of history, and the

ICC could then proceed in a relatively uncomplicated political environment. Instead, the conflict has dragged on.

As the humanitarian cost of the crisis mounted, so too did the pressure to find a political

**Looking back, it is arguably some of the decision makers who agreed to vote for Resolution 1970 that miscalculated the timing of events, rather than the ICC**

welcomed the UNSC's firm action, stating that although it would not, by itself, end the violence and repression, it was a clear expression of the will of a 'united community of nations'. UNSC members expressed solidarity with the people of Libya, hoping that their 'swift and decisive' intervention would bring them hope and relief.

The ICC did indeed act swiftly. After completing the preliminary investigations, the prosecutor requested the pre-trial

settlement. With negotiations a priority, Resolution 1970 has come to be seen by some in the international community (including, no doubt, the African states that voted in favour of ICC intervention) as an impediment to peace rather than a 'swift and decisive' action on behalf of the Libyan people.

Resolution 1970 did, however, make it clear from the outset that justice and accountability would be central to the inter-

national community's response. Justice cannot now be set aside because investigations revealed that the former Libyan leader may be responsible for the attacks on civilians. Human Rights Watch's Richard Dicker cautions: 'Justice, to be credible, must run its independent course.' As an independent judicial institution, the ICC, and its pre-trial chamber in particular, is not something that can or should be influenced from outside.

Moreover, it is far from clear that the Gaddafi arrest warrant did indeed prevent a negotiated settlement since statements by both sides to the conflict show that the stalemate between Gaddafi and the opposition National Transitional Council predates the announcement of the ICC arrest warrants. It was also unlikely that after ruling for 42 years, a dictator as brazen as Gaddafi, who has led Africa's charge against the ICC, would feel cornered by the court's indictment.

In the case of Libya and the Gaddafi arrest warrant, the ICC acted independently in accordance with its political mandate from the UNSC and the legal provisions of the Rome Statute. Africa and the AU are right to be concerned about developments that limit opportunities for resolving the conflict in Libya. But can peace and stability be achieved by setting aside justice to appease one of the continent's longest serving dictators, who is wanted by the ICC for allegedly directing violence against his citizens and has repeatedly threatened to fight to the last man, woman and bullet?

If Gaddafi now finds himself in a corner, this should be attributed, first and foremost, to his regime's actions since mid-February. In direct response to those actions, UNSC Resolution 1970 was deliberately aimed at undermining Gaddafi's legitimacy and isolating his regime through an ICC referral, travel bans, asset freezes and an arms embargo, in the hope that these measures would help end his government's repression of the Libyan people. **E**

- Read Antoinette Louw's *Situation Report, Perspectives on Africa's response to the ICC's arrest warrants in the Libya situation*, at [www.issafrica.org](http://www.issafrica.org).

## THE DAY I MET GADDAFI

**A**s reporter for *Channel Africa*, the international broadcasting service of the SABC, veteran South African journalist Janine Coetzer also attended numerous summits of the African Union (AU) and its predecessor the Organisation of African Unity, where former Libyan leader Muammar Gaddafi would 'make sure to be late'.

One of these summits was in Gaddafi's hometown of Sirte, where an ultra-modern conference centre had been built that Gaddafi wanted to sell to African leaders as the headquarters of the AU. A number of African leaders, including then-president of South Africa Thabo Mbeki, put a stop to it and the AU headquarters remained in Addis Ababa.

'During the summit in Sirte, all the journalists had to stay on a boat in the harbour since there was no room for all the delegates,' says Coetzer. But of all the times she saw the former Libyan leader, the strangest was during a visit by a delegation of South African politicians, journalists and businesspeople in May 1999, at the end of the mandate of former president Nelson Mandela.

The visit followed the intervention by Mandela earlier that year to negotiate the end of UN and US sanctions against Libya, in exchange for extraditing those held responsible for the Lockerbie bombings. The delegation included former deputy minister of foreign affairs Aziz Pahad and former minister of mining Penuel Maduna, as well as Mandela's former aide Jakes Gerwel.

'It was the first South African flight allowed to Libya after the embargo, directly to Sirte,' she explains.

Coetzer describes the scene as follows: 'We were told to wait and that we were going to have the privilege of meeting the "Brother Leader". We spent two days in these hot dreary apartments waiting for the meeting. Finally, while we were having dinner, the summons came: the Brother Leader was ready. We were taken in a convoy of stretch limos, the drivers racing through the desert at top speed as they always do. Then the limos stopped and we had to climb over into 4x4s to drive into the desert to this huge tent. It was so enormous and beautiful it gave you goose bumps.

'Around the tent were soft couches and a white chair where the Brother Leader was to sit. We had been briefed beforehand to call him "Brother Leader" and not "Mr President".'

'Finally he walked in and sat on the lounge chair. We were told we had to be lower than him, so we basically sat on the ground at his feet. As usual, he spoke in Arabic, and no one could understand a word. He sort of whispers. I plucked up my courage and asked if he could speak English. Our ministers choked in their tea, but to everyone's amazement he went ahead with it. With his outrageous outfits and otherworldly expressions, he definitely wasn't very approachable.

'And of course there was security everywhere, wherever he went.'

– Liesl Louw-Vaudran



**JOURNALIST** Janine Coetzer and Muammar Gaddafi in Sirte. In the background is former South African foreign minister Aziz Pahad

At the end of November, up to 15 000 delegates are expected to descend on Durban for two weeks of negotiations around climate change.

**Trusha Reddy** looks at the chances of reaching a meaningful deal in the face of huge obstacles.

# Lowering our ambitions for a Durban compromise



International climate change negotiations are starting to read like an endless series of procrastinations. As COP17, more officially known as United Nations Conference of the Parties, 17th session, rolls into Durban, South Africa on 28 November, one thing is becoming clear – the governments involved will be hard at work not finalising a deal.

The first big deadline for deciding on a post-2012 treaty and the terms of the second commitment period to the Kyoto Protocol from 2013 was missed at the 2009 COP15 in Copenhagen, Denmark. But two months earlier, then-UN climate chief Yvo de Boer had already announced there would be no treaty but only a ‘political framework’ sub-agreement. The message of self-defeat was delivered even earlier for COP16 in Cancún, Mexico. And this time around we have already been told, months ahead of the South Africa COP, that we can only hope for a ‘balanced outcome’ – meaning no deal. What is behind this

tendency to lower ambitions? Are governments the world over COP-ping out of a deal to save our planet from catastrophic climate change?

## RELY ON SCIENCE

A recent UN Environment Programme report shows that country pledges for emission reductions are way below what is necessary to avert dangerous climate change, and could even lead to a five-degree rise in temperature. This level of global warming, unprecedented in human history, would have a catastrophic effect. Failing to meet deadlines and host open, democratic and accountable climate change summits is setting the planet on a dangerous trajectory. What appears to be missing from talks is a science-based sense of urgency, and this is something that the South African COP presidency must now address.

‘We don’t want South Africa to be the death of the Kyoto Protocol,’ Environment

Minister Edwina Molewa said recently, referring to the outcomes aspired to by the South Africa COP17 presidency.

## KYOTO VERSUS PLEDGE AND REVIEW

Most countries are calling for a second commitment period to Kyoto, as the first one ends in 2012. The Kyoto Protocol, which came into effect in 2005, is the only legally binding international agreement on greenhouse gas emissions. It commits 38 developed nations to cut their emissions by 5.2% to below 1990 levels in the period up to 2012.

However, the US never ratified Kyoto on the basis that it would harm its economy. Emerging economies also argued that their first priority was development, which requires higher energy use. A US-led group of countries including Canada, Russia and Japan now wish to see the demise of Kyoto’s binding targets and the introduction of a ‘pledge and review’ sys-



**AS WAS THE CASE IN 2010, when environment NGO Greenpeace staged a giant life ring on Cancun beach, activists are again worried in the run-up to COP17 in Durban**

REUTERS/HENRY ROMERO

tem instead. The result of 'killing Kyoto' would be to consolidate the two separate tracks first agreed to at the 2007 COP13 in Bali: one with binding targets, the other with comparable national efforts and a long-term vision.

The main motivation for killing Kyoto is that some developed countries want to lower their level of commitment or avoid taking on internationally binding emission reduction commitments altogether. Initially it seemed that the main motivation for this position was to force advanced developing countries, such as China, India, Brazil and South Africa, to take on internationally binding obligations to reduce their greenhouse gas emissions. But, argues Lim Li Lin of Third World Network, 'If the Kyoto Protocol is abandoned and a single new agreement negotiated, this will mean risking that the new international climate change treaty may take many years to enter

into force, or it may never enter into force if insufficient countries ratify it. The negotiations will be more complicated and controversial, and could also likely take a very long time. This is something that the planet and the poor cannot afford.'

'Pledge and review' is seen as an attempt to deregulate the international system of climate pollution controls. Civil society commentators have argued that the proposed system will include no check to see whether emission reductions are in line with science, and no way to make sure they are actually followed. They also view it as a

dangerous backtracking on promises made by three US presidencies to join the international system of binding commitments, which will ensure 'atmospheric anarchy' at the moment when the world needs fair global governance of carbon pollution.

Martin Khor of the South Centre predicts that the deregulated system will demotivate developing countries 'when they see those who are supposed to lead the process falter instead'. Currently, 65% of the reductions pledged could happen in countries in the global South and just 35% in rich countries, despite the fact that 75% of all emissions have historically come from developed countries.

### A LEGAL COMMITMENT

Kyoto is meant to be a legally binding agreement, with only the first commitment period coming to an end in 2012. The subsequent commitment period is meant to commence by 2013, ensuring there is no gap between the two commitment periods. The negotiations are really meant to be about amending Kyoto to ensure stricter and more ambitious targets in line with current science. However, the discussion has become one of developing a 'political' instead of a 'legal' commitment. Not only will this violate the legal agreement and consequently further erode international trust and the will to deal effectively with climate change, it also does not bode well for the continuity of the pledges.

There is also need for a more nuanced debate that will include serious consideration of the failings of Kyoto. The Kyoto-set targets of 5.2% reductions from 1990 levels were far below the scientifically calculated requirement of 50%-70% reductions from the same baseline. This has contributed to a situation where emissions around the world are actually increasing. In fact, a recent report by the Stockholm >>

**If the Kyoto Protocol is abandoned and a single new agreement negotiated, the new international climate change treaty may take many years to enter into force... This is something that the planet and the poor cannot afford**

Environment Institute reveals that the current rules of accounting, which decide what is an emission and what is not, could result in climate pollution from industrialised countries actually increasing by 2020 – this very creative accounting will lead to a huge breach of trust. This may be due to the fact that although Kyoto set targets, it also created loopholes to help certain countries avoid meeting those targets.

The cornerstone of Kyoto is carbon trading, a flexible, market-based system of pollution trading that has had the effect of shifting emissions around instead of reducing them.

Worse, Kyoto's offsetting component, in which so-called emission-reducing projects are developed in southern countries, simply shifts the burden of emissions reductions from north to south and has been accused of lacking environmen-

tal integrity and giving rise to socially unjust outcomes.

Furthermore, many of Kyoto's meagre commitments have not been met by developed countries, and there is no compliance mechanism to sanction against this. In essence, any debate on just the legal form of a new treaty will detract from the real issues of who should be taking responsibility for emission reductions and how best to ensure commitment to those reductions.

#### **A POSSIBLE LIFELINE FROM THE EU**

Former UN climate boss Yvo De Boer does not believe that the US will ever agree to become a signatory to the Kyoto Protocol and take on legally binding emission-reduction targets: 'My sense is that unless negotiators manage to resolve the future, or non-future, of the Kyoto

Protocol at Durban, there won't be progress on the other issues [within the UN-FCCC negotiations].' Others believe that the European Union will throw Kyoto a lifeline in Durban.

The EU, however, says that it accounts for just 11% of world greenhouse gases and will therefore need ample support for this effort. 'I wonder how wise it is to criticise the party that without comparison delivers the most, instead of trying to help us put pressure on all the big players who do not commit,' said European Climate Action Commissioner Connie Hedegaard.

Perhaps the best bet, concedes Molewa, would be to take key elements of the Protocol and fashion them into a new, more comprehensive agreement. The key issue then would be whether it is the positive or the flawed elements of Kyoto that are retained. **E**

### **THE ROAD TO DURBAN**

#### **A SPLIT APPROACH TO ACCOMMODATE THE US**

One of the most pivotal moments in recent climate negotiations was the COP13 in Bali, Indonesia, in 2007.

The Bali Action Plan decided on a two-pronged approach: one targeting the signatories to the 2005 Kyoto protocol to discuss new targets for developed countries, and one targeting those who refused to be bound by Kyoto – essentially, the US. It was feared that the special treatment of the US may instigate a 'great escape' from the Kyoto Protocol by the other developed countries.

Many also see the Bali conference as having signalled the marginalisation of civil society by turning attention away from science towards more business-orientated, market-friendly approaches to climate change.

#### **SHADY BACKROOM DEALINGS IN COPENHAGEN**

There were serious rumblings of disagreement at the COP14 held in Poznań, Poland, in 2008, but the 2009 COP15 in Copenhagen, Denmark, was branded a disaster after leaders failed to impose legally binding carbon reduction targets. The Copenhagen Accord, a backroom deal worked out between the US and a group of fast-growing developing countries including Brazil, India, China and South Africa (now coined the BASIC group) represented a violation of the multilateral UN process that sought to bring all parties to consensus. It was also seen as being anti-poor and anti-environment.

When some countries in the South refused to sign, they were blackmailed with the possibility of having their climate finance withdrawn, so some agreed to sign under duress.

#### **THE MEXICAN (OR CANNOT?) COP**

The Mexican COP16, held in Cancún at the end of 2010, was marked by similar unwillingness by countries, now steeped in self-interest and further embroiled in the US power play, to conclude a deal. The most significant achievement was the agreement on the establishment of a UN Green Climate Fund to finance climate-change prevention efforts in impacted regions. It also asked that new market and non-market mechanisms be considered for agreement in Durban.

Meanwhile, those disheartened by the events at COP15 held a 'people's summit' at Cochabamba in April 2010. The Bolivian summit prioritised people vulnerable to the impacts of climate change, and stressed issues of the historically unfair use of atmospheric space. These outcomes were eventually included in the official negotiation texts.

**REDUCED** emissions are at the heart of the complex climate change negotiations

In preparation for the upcoming Climate Summit in Durban, South Africa is trying to involve the rest

## AFRICA divided

of Africa in the discussions. **Romy Chevallier** highlights the challenges this presents.

**S**outh Africa's negotiating stance is informed by numerous national and regional considerations, with the key objective of encompassing the continent and drawing the most vulnerable into the centre of the debate. This event, dubbed 'the African COP', represents an opportunity for the continent to heighten its presence in the current multilateral system and influence the decision-making processes. To do this, South Africa needs to consolidate its own

competing national priorities and interests with those of its region and work alongside AU member states to help strengthen their common voice.

Since 2009, the Africa Group has tried to use its collective bargaining weight to influence international processes and to encourage the re-examination of contemporary conceptual and theoretical frameworks. In many cases, the increased capacity, enhanced diplomatic capital and mobilisation of developing countries >>

have influenced climate change negotiations, successfully demanding more equitable structures of environmental governance. However, the African countries' ability to mould the climate change agenda is still limited – and in many respects this mirrors the stereotypical division between industrialised and developing economies.

The 54-member bloc, which holds 36% of UN membership, needs to further harmonise its position in order to gain real political clout in international negotiations. However, the Africa Group itself is divided by varying national priorities, defined by the respective population sizes; geography; economy composition and emissions profiles of the countries involved. The challenges of climate change are felt locally, and the countries respond according to their national circumstances.

For example, Algeria, Angola, Libya and Nigeria, members of the Organisation of Petroleum-Exporting Countries (OPEC), focus primarily on response measures, concerned that any decrease in the use of petroleum products and increased investment in renewable energies will have a negative impact on oil-exporting countries. Small Island Developing countries (SIDs) are experiencing climate impacts now and seek urgent adaptation and disaster risk management solutions, while South Africa is a major carbon emitter that faces pressure to overhaul its energy sector in an attempt to move away from its dependency on coal.

The UN-led programme to Reduce Emissions from Deforestation and Forest Degradation (REDD) is an effort to create financial value for the carbon stored in forests, offering incentives for developing countries to reduce emissions from forested lands and invest in low-carbon paths to sustainable development. The discussions on REDD+ (which include the role of

### SA SHOULD GET ITS HOUSE IN ORDER

**C**OP17 has put South Africa's own mitigation commitments under the spotlight.

As the host nation, South Africa is expected to guide by example and illustrate climate leadership, which requires it to complete a great many pending national policy processes so that it has something solid to highlight at Durban.

This includes signing off and implementing incomplete and delayed policy documents such as the National Climate Change Response White Paper, the Second National Communication (SNC) to the UNFCCC and the Integrated Resource Plan (IRP II).

Clarity is also needed on South Africa's renewable energy feed-in tariff regulation and the design of the proposed carbon tax – policies that will demonstrate the seriousness of the country's intent through practical action. It is also hoped that South Africa's efforts will extend beyond showcasing its progress at COP, and translate into real, long-term changes to its consumption and production patterns.

South African society needs to take stock of the complex mixture of variables that inform its actions and reactions at the forthcoming climate change summit in Durban. Pretoria has renewed its voluntary commitment to reducing carbon emissions below a business-as-usual baseline by 34% by 2020 and 42% by 2025, subject to the availability of adequate financial and technical support.

But these commitments have not yet been actualised, and it is unclear how South Africa will proceed if financing is not forthcoming and an internationally binding agreement is not finalised. The commitments require political will and leadership at a national level to implement sufficient domestic actions and long-term strategies to support South Africa's pledges on the international scene. This is particularly challenging as the country's future development and growth plans seem to be coupled with increased emissions and coal use.

– Romy Chevallier

conservation, sustainable management of forests and enhancement of forest carbon stocks) and agriculture are essential to the negotiating positions of Central Africa.

So, too, is adaptation, as the countries located nearest to the equator will experience the worst impacts of climate change. Given such divergent national interests, as

well as different capabilities and negotiating skills, the African Group is not always coordinated in its approach – especially in pressurised circumstances. Preparations are underway to manage the various factions, led by the Group's Chair, Tosi Mpanu-Mpanu from the DRC.

At a multilateral level, South Africa can use its leadership position to champion countries to support the African agency. In 2009, South Africa joined the BASIC alliance. Although fragmented in their individual outlooks and with very different economic capabilities, South

**The country's role in burgeoning 'club diplomacy' groups raises important questions about how South Africa is perceived by its region and whether its diplomatic and political communities are really promoting the idea of an African COP**



**LEADING THE TALKS:** Maite Nkoana-Mashabane, South Africa's minister of international relations and co-operation, speaking at the Climate Investment Funds Partnership Forum in June this year

PHOTOGRAPHER: FRANZ DEJON

Africa views Brazil, India and China as increasingly important partners, most notably for their strong united voice around the developmental impacts of climate change. The South African government uses the BASIC alliance as an additional platform to uphold and promote the interests of the African continent and to influence the process from within.

This has long been part of South Africa's strategic approach to foreign policy. South Africa makes use of international institutions (the UN, the WTO, IBSA and BRICS) to increase its voice and visibility on the global stage, since they provide op-

portunities for grandstanding as well as for devising positions based on shared interests, values and capabilities. It also balances its interests, partners and alliances as a means of softening any perception that it may be working against its key foreign policy partners, building legitimacy for South Africa within the rest of Africa.

The country's role in burgeoning 'club diplomacy' groups raises important questions about how South Africa is perceived by its region and whether its diplomatic and political communities are really promoting the idea of an 'African COP' that is fair and equitable for the continent

and, more broadly, for the developing world at large. Critics have questioned the country's real priorities – especially given its already overburdened agenda and lack of resources to deliver on all its promises. Clearly there is a need for South Africa to use its limited resources judiciously and strategically, to prioritise carefully, consult widely, build trust, be open to suggestions, respond flexibly and be firm in decision-making.

The South African government will present its COP17 strategy to the cabinet in October. This document will be an essential tool to communicate how 'Team South Africa' intends to uphold its national interests while delivering on an ambitious global agenda.

This document will also help manage the expectations of the international community and provide an assessment of what can realistically be achieved at COP17.

South Africa seems aware of the necessity of further including civil society and businesses in its national processes as well as in its COP strategy. In 2009, 50 000 people protested on the streets of Copenhagen, criticising the Danish conference for not being inclusive. In Cancún, civil society continued to mobilise but was less visible. In response, the South African government has initiated public climate change outreach and mobilisation programmes that include youth development as well as extensive media training.

South Africa has also included local business in its 'greening framework', planning to use local initiatives to offset carbon emissions and create a sustainable legacy in Durban.

Aware of past COP failures in Cancún and Copenhagen, South Africa will have to highlight transparency, multilateral action and inclusiveness in its approach. It must also think carefully about how it is going to position itself and what diplomatic tactics and strategies it should employ to prepare for the event and move the debate forward, especially with regards to untangling some of the current international geopolitical divisions threatening to upset the process. ■

# Propaganda remains propaganda

How to transform a state propaganda tool into an independent media? This is one of the many problems now facing the media in Tunisia and Egypt, reports **Liesl Louw-Vaudran**.

**T**he fact that people had stopped believing the state-funded newspapers and found alternative ways of getting information long before the Arab spring is evident from the way that satellite television, Facebook and Twitter influenced the dramatic events that started in Tunisia earlier this year.

But what does it mean for the national media and journalists who have spent their careers defending an authoritarian state?

Many prominent journalists and news-readers have lost their jobs, and some have even been detained for helping prop up the old regimes. Media commentators say that an inherent danger of the current situation is that all professionalism and ethics risk being thrown overboard.

Those who once blindly defended the previous regimes are now just as vigorously trying to defend the revolution – sometimes with dire consequences for the quality of the media.

## A DRAMATIC ABOUT-TURN IN TUNISIA

Tunisia was by far one of the most repressive regimes when it came to media freedom and was in the 'top ten' of African countries with the most restrictions, according to the NGO Reporters without Borders.

Hassouna Mosbahi, an independent journalist from Tunisia, says the media in his country has made a dramatic about-turn since the ousting of former president Zine Al Abidine Ben Ali. 'The press in Tunisia was extremely controlled. Every



**TECHNOLOGY** has given millions of people in the Arab world access to cable television

## TELEVISION FOR THE MASSES

**T**he way the Egyptian public media continued to deny the Egyptian revolution and defend former president Hosni Mubarak almost to the end caused irreparable damage to its credibility.

Even those who were not already watching Al Jazeera, Al Arabia, the BBC Arabic service or even the American channel Al Hurra, set up in Iraq, will never go back to watching local television, says Hussein Amin, a professor at the American University in Cairo and one of the founders of NileSat, a satellite broadcasting and communications company launched in 1996.

Technology has made it cheaper and easier for everyone to access satellite channels. The pirating of existing satellite connections, a practice that started with the 2006 Fifa World Cup, makes it possible for people to get access to satellite channels for as little as \$1 per month.

'It made satellite access jump from a world average of 15% to 75%,' says Amin. 'Satellite television is by far the most powerful medium in countries like Egypt with a high rate of illiteracy.' And thanks to digitalisation, he adds, this is just the beginning of a 'new age' with an incredible number of stations and no way of regulating them.

This gives rise to new problems, such as the unrestricted dissemination of radical ideologies. 'We have about 70 new religious channels. When we started NileSat I thought it would bring liberalisation, but when I see what is happening, it is clear that it will enable more people to become radicals, not the other way around.'

day you had to have a picture of Ben Ali on the cover. These last few years you had to have one of his wife as well.'

Speaking at a debate at the Asilah Forum in Morocco, Mosbahi said the problem now is that the media tends to defend the revolution and its leaders blindly. 'It's total chaos,' he said. 'The same newspapers and journalists who praised Ben Ali are now violently against him. It's almost ludicrous. They're trying so hard to show that they are against him that they go completely overboard.'

'There's now a new *langue de bois*, a propaganda, for the revolution. Political parties are also exploiting this new freedom of the media.'

Though Tunisia has some very good journalists, Mosbahi said it would take time for them to be properly organised.

The many new radio stations and newspapers that have sprung up since the revolution reflect a much wider spectrum of the population. 'We used to hear only what was happening in the capital. Now

the other regions, like those in the desert far from the coast, are also having their voices heard. At least now we can hear what the issues are for them.'

## A BUOYANT EGYPTIAN MEDIA

Dr Hanan Yousef, professor of media studies at Ain Shams University in Cairo, says everyone agrees that the state media was to a large extent to blame for the longevity of the dictatorial regime in Egypt.

'We got stuck with one political system due to a corrupt media,' she says.

The media environment in Egypt is now very buoyant and constantly changing. The huge state-funded newspapers have been left in limbo and are faced with the challenge of restructuring into proper businesses if they are to survive.

All restrictions on starting up new titles have been lifted, and new papers are being launched at regular intervals. There has also been an 'explosion' of new satellite television channels.

According to Professor Hussein Amin, chair of the Department of Journalism and Mass Communication at the American University in Cairo, the new media organisations face numerous challenges. Many of their new employees have little experience and no professional training, he says. What's more, 'There is certainly a tension between social responsibility and freedom.'

The spate of new television networks 'that give themselves the right to speak on behalf of the Egyptian revolution' is open to abuse. 'there is a lot of naming and blaming going on, which happens after every revolution,' he explains.

'A lot of ethics are being violated. For example, since these networks aren't obliged to register, they also have no obligation to keep recordings. If I'm defamed, I can't take them to court.'

As for the state media, many taboos have been lifted but it does not enjoy the same degree of freedom as the independent media. The military council has already shown that it is not completely immune to criticism and has twice called journalists for questioning on remarks they had made. 'They were let go, but the message is clear,' says Amin. **E**



REUTERS/FAROUK BATICHE

# Fear as Boko Haram strikes again

**B**oko Haram's suicide attacks on the United Nations headquarters in Abuja, Nigeria, on Friday 26 August killed 19 people (nine of them UN staff) and injured scores of others, representing the beginning of a new phase for the terror group that has become increasingly deadly in recent months.

The history of Boko Haram is as illusive as the group itself and studies on the group remain inconclusive about its origins. According to some sources, it evolved from the efforts of various extremist elements that sought to radicalise segments of northern Nigeria from the 1940s to the end of the 1990s.

It is widely believed that the group in its current format evolved from the so-called Nigerian Taliban, which was founded in 2003 with foreign operatives from neighbouring countries including Benin, Cameroon, Chad and Niger. The group went underground following a massive security crackdown by the government of then-President Olusegun Obasanjo.

Boko Haram, which means, figuratively, 'Western or non-Islamic education is a sin', is formally known as *Jama'atu Ahlis-Sun-nah Lidda'awati Wal Jihad*. It emerged in 2006 with the aim of establishing Sharia law throughout Nigeria. It opposes secular governments and the Western system of education, which it believes is not founded on moral religious teachings.

The current mayhem in Nigeria began with the killing of Boko Haram's founding leader, Mohammed Yusuf, and hundreds of his followers by security forces in 2009, which Boko Haram vowed to avenge. The worst of the group's atrocities have occurred

The previously domestic terror group is now evolving into a global network, says **Martin Ewi**

this year, reaching their peak just after the April-May elections that brought President Goodluck Jonathan to reside at the Nigerian Aso Rock Presidential Villa. Since then, Boko Haram has perpetrated almost daily deadly attacks, threatening stability and the fledgling democracy in Africa's most populous nation.

Most attacks have taken place in northern Nigeria, particularly near Boko Haram's headquarters in Maiduguri, which for the past few months has been a ghost town with businesses and schools shut down.

Since the New Year's Eve bombings, Boko Haram has carried out no fewer than 70 major attacks (four of them in Abuja) or an average of one attack every three days. In total, more than 600 people have been killed.

Although Boko Haram's activities have been confined to the northern part of the

in Abuja at the inauguration of President Goodluck Jonathan on 29 May, and on 16 June it carried out a suicide attack at the Federal Police headquarters in the same city. Nearly 30 people died in both attacks and several others were injured.

The timing of the 26 August suicide attacks on the UN and the selection of the target were never coincidental and nor were they due to simple opportunism. Rather, the attacks show careful planning, a thorough understanding of the target, and a deliberate strategic choice aimed at demonstrating that the group means busi-

**These attacks have demonstrated sophistication, resilience and the ability of Boko Haram to strike whenever and wherever it deems fit**

country, the group has used Abuja to stage its most high-profile attacks, aimed at attracting international attention, such as the New Year's Eve bombing at a busy fish market in Abuja. These attacks have demonstrated sophistication, resilience and the ability of Boko Haram to strike whenever and wherever it deems fit. For example, it attacked a crowded beer garden



**THE ATTACK** on the US embassy in Abuja has put the Nigerian terror group Boko Haram in the international spotlight

ness. It wants Nigeria, the United States and the rest of the world to take notice and to signal that the group is now under the supreme command of Ayman Zawahiri, the new al-Qaeda leader who replaced Osama bin Laden.

Boko Haram's public declaration of its allegiance and loyalty to al-Qaeda is part of its 'public awareness' strategy. It also claims that some of its operatives have been trained with Al Shabaab in Somalia. Furthermore, on 18 August the online version of the *Nigeria Standard* newspaper carried a message purportedly from Imam Abubakar Shekau (the mystic Boko Haram leader who replaced its charismatic founder, Mohammed Yusuf), offering solidarity with al-Qaeda and sending a chilling threat to the US.

Apart from its rhetoric and pronouncements, intelligence gathered on Boko Haram is yet to reveal compelling evidence of its link to al-Qaeda, despite the group's increasing use of al-Qaeda-style sophistication and tactics. The kidnapping of two foreigners in May (a Briton and an Italian) is perhaps the most indicative of this growing axis. The group had never before attacked or kidnapped

foreigners, and it is believed that the two foreigners were handed to al-Qaeda in the land of Islamic Maghreb (AQIM), the Algeria-based group that has been touting lawlessness in the Sahel region. Better understanding of this link, and of Boko Haram's ultimate goal of morphing into a global terrorist organisation, might have prevented the attacks on the UN building.

The UN seems to have become a regular target in the transformation of local or domestic terrorist groups into a global network. In fact, the desire to internationalise its own targets and agenda seems to be a key al-Qaeda requirement for the initiation of local groups. The internationalisation of a domestic terrorist group or its initiation into al-Qaeda may follow different models. For example, when Somalia's Al Shabaab failed to attack a UN building, it instead

attacked a popular Ethiopian restaurant frequented by foreigners in Kampala on 11 July 2010, during the finals of the FIFA World Cup.

The attack on the UN headquarters completes Boko Haram's metamorphosis into an international terrorist group and represents a turning point for the future of terrorism in Nigeria. In reality, it means that moving forward the goal of Islamisation or the spreading of Sharia law shall not be confined to Nigeria, and other countries in the region are also potential targets. Although it has always been embedded in the name 'Boko Haram,' the *fatwa* recently issued by Shekau promises to attack and kill any Muslim who stands against the establishment of Sharia law.

Given its new international profile, Boko Haram will become even more complex, sophisticated and difficult to intercept and neutralise. Although it looks set to lose substantial support in Nigeria, as many Nigerians are now growing weary of the group's heinous acts, it now has a wider milieu for recruitment and training, as well as other resources for sustaining itself. It can be anticipated that future attacks will include foreign targets.

A far more dangerous consequence of Boko Haram's activities will be if the group expands its activities further south and destroys the imaginary line that divides Muslims and Christians in Nigeria. It should also be expected that suicide terrorism will become an increasingly dominant feature of Boko Haram tactics. Neither scenario bodes well for a region already plagued by multiple security and development challenges.

With the attacks in Abuja, the UN will have no choice but to put Boko Haram and its leaders on its blacklist of terrorist groups, pursuant to the UN Security Council's resolutions 1267 (1999) and 1989 (2011), placing an obligation on UN member states to hunt down Boko Haram operatives. This should also improve intelligence gathering and cooperation on Boko Haram. **E**

#### WHAT IS BOKO HARAM?

- Its name means 'Western or non-Islamic education is a sin'
- It emerged in 2006 with the aims of establishing Sharia law throughout Nigeria
- Its mystic leader is Imam Abubakar Shekau



SUNDAY ALAMBIA

# Scaling the constitutional hurdles

On 4 August 2010, Kenyans voted en masse for a new constitution.

**Andrews Atta-Asamoah** and **Nyambura Githaiga** ask whether the country is any closer to implementing its high ideals.

**T**he Kenyan people overwhelmingly supported the promulgation of a new constitution last year, demonstrating their common desire for an entirely new legal framework and a new dispensation characterised by peace, respect for human rights, good governance and accountability.


Coming after the worst post-election violence in the history of the country, as well as unsuccessful previous attempts to realise a new constitutional dispensation, the desire was real.

In a style similar to the support for the Kenyan athletics team – which we saw again recently at the World Athletics Championships in South Korea – there also seems to be a remarkable increase in support for the new constitution since the implementation process began. Many who voted against it have started reconsidering their stance. This is important because public support remains a necessary driver for the process and its leadership.

## STRIDES TOWARDS THE KENYAN DREAM

However, converting national zeal into real change requires neutral leadership that is void of party politics. Oversight structures are clearly indispensable to reform processes since they serve the purposes of monitoring and accountability, which are crucial to changing the status quo.

In Kenya, the establishment of the Constitution Implementation Commission (CIC) and the Constitution Implementation Oversight Committee (CIOC) of parliament is therefore commendable, as these bodies effectively institutionalise the national quest and provide robust oversight for its implementation. Since their establishment, the CIC and the CIOC have been at the forefront of monitoring progress, coordinating processes, reporting, building the involvement

A photograph of President Mwai Kibaki at the promulgation ceremony of Kenya's new constitution. He is wearing a dark pinstripe suit, a blue patterned tie, and a thick gold chain. He is holding a red scroll. To his left, a man in a red ceremonial uniform with a black hat and gold braiding is partially visible.

**THE POMP** and ceremony of the promulgation of Kenya's new constitution, presided over by President Mwai Kibaki, has given way to serious questions over implementation

of the people and applying the requisite pressure on various government agencies.

Furthermore, a year of the constitution implementation process has led to a great many reform initiatives in the Kenyan judiciary. These are aimed at providing the basis for rule of law and stable governing institutions, which are the hallmarks of the new dispensation. There has also been the introduction of a new vetting process for the judiciary, the appointment of a new chief justice, and the swearing-in of five Supreme Court judges, all of which have helped increase public trust and respect for the institution.

Given that the judiciary is both a barometer of the legal sensibilities and the main guarantor of the constitution, progress in judicial reform is key to providing a solid framework for governance and rule of law.

## EXISTING HURDLES ON THE LAST LAP

The process has also seen the enactment of key laws and acts of parliament supporting the provisions of the new constitution. Since the substance of a constitutional dispensation is in the enactment of reform-oriented laws, this is an important achievement. However, there are questions about the quality of these instruments, as they were not thoroughly scrutinised by parliament before being passed. Time constraints saw a dramatic race by parliamentarians to approve 12 new laws in just seven days, which left many doubting the process.

Achieving all this has not been easy, not least because political attention is currently focused on the 2012 general elections. The battle for individual and party political interests is drowning out any coherence and unity of purpose among the leadership for implementing the new constitution. It is also shifting focus away from reforms. The irony, however, is that implementing the constitution is crucial to the next election.

There are also delays in establishing certain critical institutions to implement aspects of the process. One of these is the Independent Electoral and Boundaries Commission (IEBC), which is required to

## STEPS TAKEN SO FAR

- The Constitution Implementation Commission
- The Constitution Implementation Oversight Committee of parliament
- A new vetting process for the judiciary
- The appointment of a new chief justice
- The swearing-in of five Supreme Court judges
- The enactment of key laws

delineate the new boundaries indicated in the new constitution.

Also delayed is reform of the security sector, which will be crucial if the Kenyan security sector is to provide security over the election period. Allegations that the security sector did not adequately perform its function during the post-election violence of the last general elections indicate the need for urgent reform in this sector.

Another challenge relates to certain technicalities in the implementation process. The new constitution is a product of extensive tradeoffs between different Kenyan sectors, political fronts and stakeholders. It is thus a negotiated document borne of political compromises. At this stage of implementation, many of those unmet interests now appear to be coming back to haunt it.

## The new constitution is a product of extensive tradeoffs between different sectors, political fronts and stakeholders

There is also confusion over some of the provisions of the constitution. Despite the political leadership's preoccupation with the 2012 elections, the actual date on which they are to be held remains unclear, with fierce debate around the proposed August date and the conclusion of the five-year term of the current parliament.

## KEY CHALLENGES

- Fixing the date of the 2012 elections
- Establishing the Independent Electoral and Boundaries Commission
- Security sector reform
- Gender parity in government institutions

There are also issues about the realisation of gender parity. The constitution provides that women should form one-third of the new governance structures. It is, however, not clear how this will be achieved. There are proposals for laws to regulate it by either incentivising or sanctioning political parties so as to push them towards achieving a one-third representation of women.

Another major challenge to the implementation process can be summed up as a conflict of cultures. Some Kenyans argue that despite the promulgation of a new constitution, the country's political landscape and leadership do not appear to have nurtured a culture of constitutionalism. This raises fears that the constitution implementation process may not achieve its full objective as it may not be implemented according to the principles by which it came into being.

Other dimensions of the conflict of cultures are, for example, political ethnocentric tendencies and widespread conservative political views. While the spirit of the new constitution points to the idea of change, these values may conflict with its realisation.

The ongoing implementation process in Kenya seems akin to attempting to shoot a moving target, such as the complexity of the process amidst rapid reforms.

So far, however, it is clear that although the dream may be in sight, it is still some tortuous distance from becoming a reality. ■

# Who is to blame for the famine?

**A GIRL** covers her eyes as she stands with her mother at the Hagadera refugee settlement in Kenya's Dadaab Refugee Camp

The famine in Somalia, Kenya and other parts of the Horn of Africa is still being blamed on drought, climate change and other socioeconomic factors.

But, believes **Irene Ndung'u**, the real cause is bad governance.

It is a tragic indictment of the international community when, in the 21st century, images of starving babies continue to dominate the headlines. But for the past few months, pictures of dying and hunger-ravaged men, women and children in the Horn of Africa have been all over the international and local media.

Tens of thousands of people have reportedly died of starvation, and the World Food Programme reports that over eight million people in the region require immediate food assistance. When people are dying of hunger, it is a clear violation of their basic human rights. This begs the following question: since drought is an acknowledged possibility in the Horn of Africa, why do international responses seem to focus only on the alert and emergency stages of the drought cycles?

Why, with all the policies and early-warning systems on food insecurity in place in Africa, do governments affected by severe droughts appear to turn a blind eye

until all the media hype forces them to take action?

Furthermore, why, after decades of aid, does drought still maintain such a tragically strong foothold in the region? What has happened to all the aid money? Previous responses have clearly failed if droughts and famines persist and recur in spite of the policies currently in place.

## FAILED RESPONSES

The Garbatulla region of northern Kenya, for instance, provides a good case study. With its permanent rivers the region has the potential to be agriculturally productive, yet it has been aid-dependant for the past 40 years.

Instead of implementing policies that ensure socioeconomic development, such as constructing roads, providing credit to buy seeds or devising irrigation schemes and other policies to strengthen the people's ability to provide for themselves through livestock trade, crop farming,

small businesses or other livelihoods, truckloads of aid agency relief food are a common sight in the region.

A culture of relief-aid dependency has been fostered, whether intentionally or unintentionally, and people here contend that relief food has deprived them of their dignity, encouraged laziness and killed off the diverse talents of the community.

Food relief is undeniably necessary in the short term, but it only provides band-aid solutions to the underlying causes of famine. It may even, as Africa expert Alex de Waal argues, 'assist governments in inflicting the damage that created the famine in the first place.' Hence, governments must take responsibility and be held accountable if their actions nullify human security and economic freedoms and result in starvation.

## GOVERNMENTS TO BLAME

Economics Nobel Laureate Amartya Sen describes famine as a 'virulent form of starvation causing widespread death' but, he says, 'famines are so easy to prevent that it is amazing that they are allowed to occur at all.' It is Sen's belief that national governments may choose whether or not to allow their populations to starve.

In his work entitled *Famine Crimes in International Law*, David Marcus argues that when mass deaths occur as a result of hunger, it is governments, not nature or God, that 'deserve scrutiny for their relationship to the catastrophe.'

It is certainly outrageous to have farmers making bumper harvests and leaving their produce to rot while, in other parts of the same country, people are dying of hunger – yet this has long been the case in Kenya and Ethiopia.

In Kenya, northern areas including Marsabit, Mandera and parts of Turkana are experiencing severe drought and men, women and children are dying of hunger. Other parts are faced with flooding and the destruction of hundreds of acres of agricultural produce, as happened in western Kenya earlier this month as a result of poor water harvesting and flood mitigation systems.

Meanwhile, farmers in Nakuru in the

Rift Valley region are producing bumper harvests of potatoes, cabbages, peas and carrots – but all this food is rotting because the roads are impassable and farmers cannot deliver their produce to the markets.

Clearly then, the mass starvation in the northern parts of Kenya cannot be attributed to poor harvests and drought alone. Instead, it is the general lack of sensitivity to the right to food for all citizens and the poor implementation of policies designed to ensure proper water management or the construction of passable roads that would allow farmers to pass on their produce that should be blamed in this instance.

Even though the Malthusian attribution of population growth, as well as other archetypal theories on poor land use, climatic change or global systemic shocks that affect food prices, are legitimate factors in the famine debate in the Horn of Africa, they do not adequately explain why these factors seem to have different effects on regions experiencing the same conditions.

**The desert nations of the Middle East or countries such as Botswana (which experiences chronic droughts) are subject to geographical and environmental risks similar to those of the Horn of Africa, yet they do not suffer from mass starvations**

The desert nations of the Middle East or countries such as Botswana (which experiences chronic droughts) are subject to geographical and environmental risks similar to those of the Horn of Africa, yet they do not suffer from mass starvations.

Droughts and natural disasters do not cause famine; famine is a result of human action or inaction. However, most government officials have been able to avoid responsibility for the suffering and starvation by shielding themselves behind the lack of an internationally agreed definition of the term and the implied importance of international famine response

and accountability. It is also, therefore, not unusual for countries and relief organisations not to admit to the embarrassment of an impending famine. Instead, their responses inevitably become caught up in last-minute rushes to action, as has been the case in famine-ravaged communities in Kenya, Djibouti, Somalia, Ethiopia and parts of South Sudan.


While the inability of many governments to respond effectively to food crises created by droughts or price shocks has been attributed to incompetence and corruption, the alert and emergency responses to drought and famine, even though necessary in the short term, are certainly inadequate in the long run.

Responses should focus not just on the alert and emergency phases of the drought cycles but also on the normal and recovery periods in order to mitigate against future recurrences.

## A HUMAN RIGHTS ISSUE

Clearly, if the goal set at the 1996 World Food Summit of eliminating malnutrition by 2015 is to be achieved and the chronic food insecurity challenges in the Horn of Africa region to be overcome, rigorous and long-term strategies informed by human rights approaches are needed.

Governments should demonstrate clear economic and political will by ensuring policies aimed at combating food insecurities are implemented and officials responsible for their implementation are held accountable, especially if their actions or inactions lead to human rights violations (in this case, denial of the right to food).

Also, civil society can play a significant role in ensuring accountability by actively exercising their political rights to information, free association and representation. These are key to fighting drought- and famine-related challenges and pressurising governments to act and remain accountable, long before calls for relief donations are put out. 

Access to safe water and sanitation is a fundamental component of human development. In the first of a series of policy briefs on African Futures, **Mark Eshbaugh, Eric Firnhaber, Patrick McLennan, Jonathan D Moyer** and **Erin Torkelson** look at what would happen if more people in Africa got this access.

# More taps and more toilets

*The following is an extract from the policy brief (a joint project of the ISS and the Pardee Center for International Futures) available on [www.issafrica.org](http://www.issafrica.org)*

In Africa, more than 350 million people lack access to safe drinking water and over 530 million do not have access to safe sanitation.

It appears increasingly likely that the continent will fall short of relevant Millennium Development Goals (MDGs).

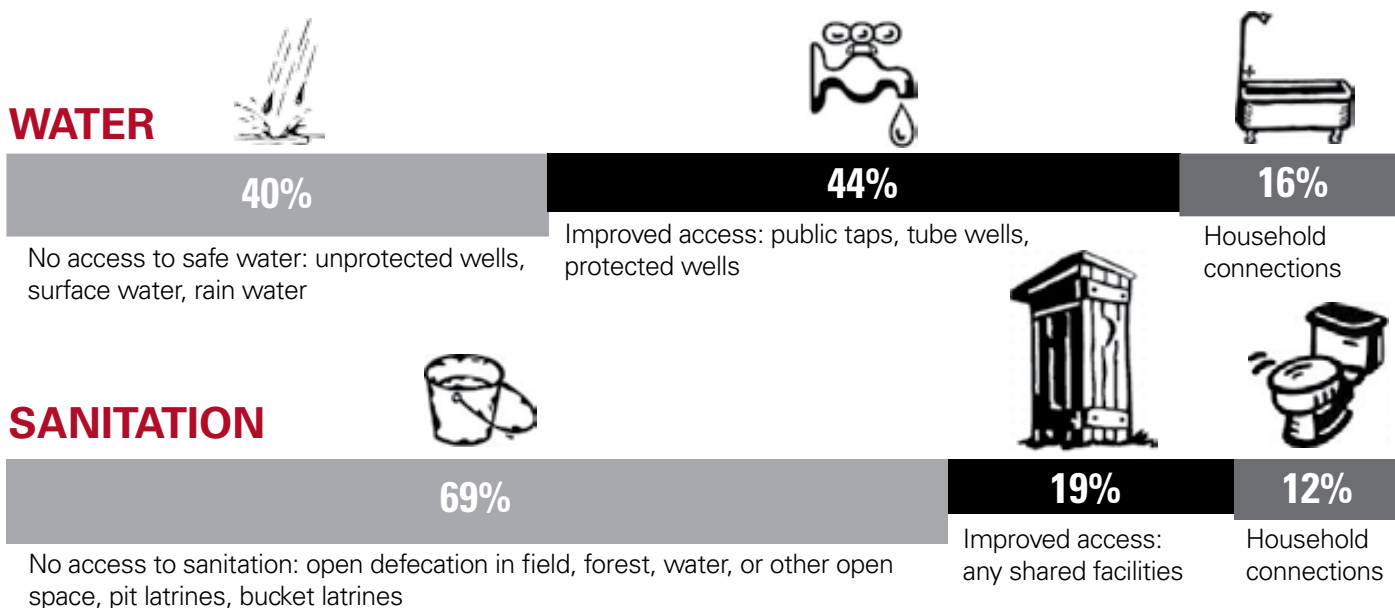
Effective policy decisions supported by the international community can, however, improve these conditions. Malawi, Burkina Faso and Ghana reduced the number of people with no access to

safe water by an average of 1,9 percentage points per year from 1990-2008.

For sanitation, Angola, Madagascar and Ethiopia reduced the number of people with no access by a similar rate. What if the rest of the continent followed these examples?

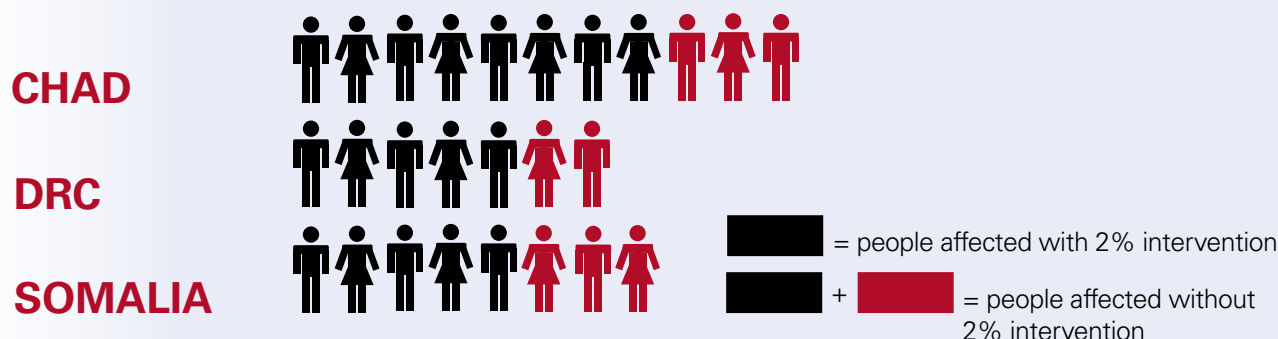
The graphics below indicate how improvements in the most basic levels of access to water and sanitation can have sizeable impacts on several key areas of human development.

## IN 2010 ACCESS TO WATER AND SANITATION IN SUB-SAHARAN AFRICA



If the number of Africans with access to water and sanitation increased by 2% per year

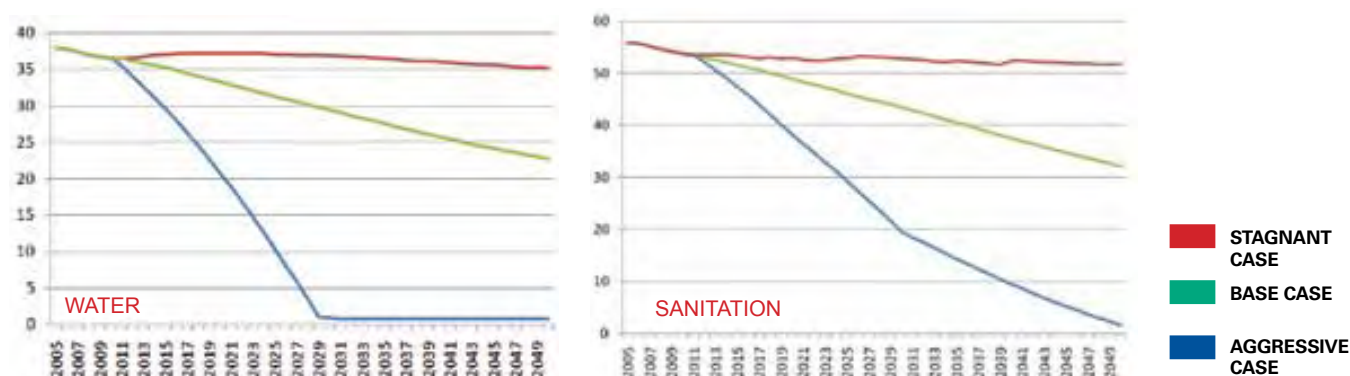
## BY 2030 INFANT MORTALITY PER 100 LIVE BIRTHS



## BY 2040 NUMBER OF UNDERNOURISHED CHILDREN IN 100



## AFRICAN SCENARIOS FOR SAFE WATER AND SANITATION



The International Futures **base case** assumes basic continuity of global policy and trends, although it is not an extrapolation. The **aggressively improved scenario** reduces the number of people with no access to water and sanitation by 1.9% annually across the continent, which is the average rate of the best performing countries. The **stagnant scenario** stagnates improvement in access to water and sanitation at 2010 levels. Read more at: <http://www.ifs.du.edu/documents/reports.aspx>

# Doubts over Ethiopian peacekeepers in Sudan



**FESTUS ABOAGYE**

It would appear that the deployment of the UN Interim Security Force for Abyei (UNISFA) in June this year is both unprecedented and historic: for the first time an entire UN peacekeeping force, its field headquarters and its operational command and control, are vested in a single troop-contributing country, namely Ethiopia.

Taking the 22 past UN operations and missions in Africa, records show that none of these was composed of a single contributing state.

Why then is this the case now, and why in the case of the same two Sudans where the just-concluded mission, the UN Mission in Sudan (UNMIS), was composed of 58 troop-contributing countries? Or may UN peacekeeping be trending towards more ad hocism, more single-state protection mandates? And what are the implications for the future of peacekeeping?

**The AU should learn to fight the fire of conflict raging in the continent with the tools it has**

In the specific context of the 'bad neighbourhood' of the Horn of Africa, does it augur well for durable peace or will it lead to more instability, to deploy a not-so-benign regional hegemon (Ethiopia) in a conflict involving a state (Sudan) that has demonstrated a culture of war since its independence in 1956?

While these questions may be answered in future, the dependence of UNISFA on a single troop contributor detracts from the principle of collective

security and seriously undermines the peacekeeping fundamental of international legitimacy.

## **DEADLY CLASHES IN ABYEI**

The background to the deployment of UNISFA was the invasion of the disputed region of Abyei by the army of North Sudan on 21 May. This sent the strongest signal yet to the UN and the AU that the then impending independence of South Sudan on 9 July was going to be fraught with serious security challenges in the disputed border areas. This provided a context for the 'deadly clashes that drove more than 100 000 people from their homes' in the wake of the invasion by the North.

The invasion was a wake-up call to the UN, the AU and the wider international community from their deep slumber of inaction since the Comprehensive Peace Agreement (2005) on the Southern referendum and independence. It was only then that the UN Security Council (Resolution 1990) saw it fit and urgent to mandate the deployment of UNISFA for an initial period of six months. Acting under Chapter VII of the UN Charter, the Security Council authorised UNISFA to demilitarise 'the Abyei area from any forces other than UNISFA and the Abyei Police Service'.

Broadly speaking, UNISFA's deployment is contingent upon the conviction that there is 'a peace to keep' in the disputed Abyei area, simply because Resolution 1990 was based on the North-South agreement on a border monitoring support mission (Addis Ababa, Ethiopia, 30 July) in which the two parties signified their consent to the deployment of the mission.

The 'peace to keep' requirement for the border monitoring mission is itself

based on two earlier agreements, namely the agreement relating to the establishment of a Joint Political and Security Mechanism (JPSM) to supervise security at the common North-South border (29 June), and the agreement on the temporary Arrangements for the Administration and Security of the Abyei Area (Addis Ababa, Ethiopia, 20 June).

These notwithstanding, peace implementation in Abyei may still face serious challenges. The first such challenge lies precisely in the implementation of UNISFA's mandate, which, among others, is 'to take the necessary actions to protect UN personnel' and, without prejudice to the responsibilities of the relevant authorities, 'to protect civilians in the Abyei area under imminent threat of physical violence', as well as to use 'force to protect the area "from incursions by unauthorized elements"'.

To be able to accomplish this mission, UNISFA needs cooperation from the conflicting parties to make such military action unnecessary. Any violations, however, especially by the North, may imply UNISFA's 'going to war' to expel such forces from the area. But as has become usual with UN Security Council protection mandates, UNISFA's action should be calculated to be within its capabilities and in its area of deployment.

### A TEST FOR THE UN

The implementation of the protection mandate, with its caveats, will be a test of the credibility of the mission and its mandate. It raises questions about how much more UNISFA can and should do that UNMIS could not and did not do in the wake of the Northern invasion.

Following the new realities in South Sudan and the failures in the disputed regions, UNMIS has been reconfigured and re-designated the UN Mission in the Republic of South Sudan (UNMISS), to reflect its focus in the South. This may be a name change only as the 7 000-strong multidimensional UNMISS, also authorised under Chapter VII of the UN Charter, is to support the consolidation of peace generally, the conflict prevention

efforts of the South Sudan government and capacity building in the areas of security, rule of law and justice.

For all intents and purposes, the protection mandate potentially will also test the resolve of the UN Security Council on further coercive measures against the parties, in the event of any violations.

The failure or inability of UNISFA, like UNMISS, to take resolute military action in instances of violations may not come as a surprise. Indeed, it will reinforce the perception that the so-called 'Chapter VII robust mandates' are an insufficient tool to keep fragile peace within Africa.


That reality will pose the second challenge demanding the deployment of yet more robust, parallel or sequential forces, with a Security Council mandate to provide requisite backstopping capabilities to a beleaguered UNISFA.

Any violations by the North will be a tough bargain even for an EU, NATO or single-power force, reminiscent of the French role in Côte d'Ivoire under Resolution 1975 (2011), or the NATO coalition role in Libya under Resolution 1973 (2011). It is perhaps welcome news to the AU that UNISFA was deployed as an alternative to strong military action by other external powers.

The fact remains that no matter what its military capabilities are UNISFA, which is to be composed of 4 200 troops (and 50 individual police officers), cannot go to war with either the North or the South.

The deployment of UNISFA, which has not been accorded much comparative attention in the media, potentially exposes the UN and the AU to other political challenges and potential pitfalls.

UNISFA is thus an exception.

The one lesson left for the UN, the AU and the international community is that the time may have come, if not passed, for the pre-emptive deployment of the African Standby Force (ASF). The AU should learn to fight the fire of conflict raging in the continent with the tools it has. It cannot afford to wait for the operationalisation of the ASF, which will have been delayed by more than five years when it is launched in 2015, as is now anticipated. 

**The deployment of UNISFA, which has not been accorded much comparative attention in the media, potentially exposes the UN and the AU to other political challenges and potential pitfalls**

# How to bring lasting peace to Côte d'Ivoire



DAVID ZOUNMENO

Quattara promised that his first priority would be to restore order and restart the economy

The political conflict raging in Côte d'Ivoire since December last year can be traced back to the country's 2002-2004 civil war and, specifically, to the creation of the Forces Nouvelles rebel organisation in the north.

The result is a bloated army, a huge amount of uncontrolled militias and a proliferation of arms across the country. Reforming the army is therefore one of the major challenges facing the country's president, Alassane Ouattara.

## GET THE ARMY OUT OF ABIDJAN

The overwhelming presence of soldiers throughout Abidjan brings to the fore the necessity of demilitarisation, demobilisation and reintegration (DDR) of unauthorised armed forces. An effective and timely DDR is essential to ensure peace and security across the country.

Though many citizens have acknowledged the gradual return of peace, they also fear for their lives with so many uncontrolled armed individuals around them.

Abidjan is divided into seven 'security zones' controlled by 'zone commanders' (also known as 'com'zone'), a controversial title acquired through the security strategy created by the Forces Nouvelles to effectively occupy the north of the country.

The zones include Abobo (headed by Koné Gaoussou, also known as Jah Gao), Adjame (controlled by Koné Zakaria), Cocody (Morou Ouattara), Le Plateau (Chérif Ousmane), Yopougon (Ousmane Coulibaly) and two other strategic zones, Treichville and its surroundings, under the control of Issiaka Ouattara and Hervé Touré.

A key concern is the identification of

soldiers, given the fact that the former rebels have now been renamed as republican forces, while the former national and security forces were recently heavily involved with militia groups. The UN has also reported that close to 4 500 mercenaries from neighbouring countries took part in the conflict and would have to be identified and neutralised.

## GOVERNMENT COMMITMENT

A government seminar in July attempted to resolve some of the most pressing questions around security sector reform (SSR). It was an opportunity for the new authorities to craft a new national configuration for the armed forces. Three issues were addressed at that seminar.

The government has decided to reduce the army to 24 000 troops, consisting of 13 000 former members of the national security and defence forces, 8 700 former rebels from Forces Nouvelles, and 2 300 volunteers drawn from various militias.

This means that close to 20 000 combatants are to be disarmed and reintegrated into society. The government anticipates that the process will cost almost €232 million, part of which is to be contributed by development partners.

The DDR/SSR process has featured in most Ivorian peace agreements, including the Linas-Marcoussis Peace Agreement (2003), the Pretoria Agreement (2005) and the Ouagadougou Peace Agreement (OPA, 2007).

The Linas-Marcoussis agreement recognised the need to disarm and demobilise armed groups under the supervision of the Economic Community of West African States (ECOWAS) and the Force Licorne (France), as well as to create a government of national unity.

## NATIONAL RECONCILIATION

The Linas-Marcoussis agreement also said that it was the job of the Ivorian national reconciliation government to reintegrate military personnel through repatriation, resettlement and reintegration programmes, and to restructure the armed forces. The 2007 OPA reiterated this by insisting that 'security stabilisation' depended on the DDR/SSR of both the old armed forces and the Forces Nouvelles.

In fact, because of its domestic character, the OPA was a fresh attempt to disarm, demobilise and reintegrate ex-combatants, as well as disarming and dismantling militia groups active mainly in the western parts of Côte d'Ivoire. Since the outbreak of post-electoral violence, both the DDR and the SSR have been on hold.

Even the meagre progress realised with the integrated command centres (Centres de Commandement Intégrés), created to facilitate the integration of former combatants and elements of the defence forces, was threatened when combatants who had been disarmed and reintegrated returned to fighting in the post-election debacle. Indeed, many armed individuals remain sceptical about the future.

The appointment of former Forces Nouvelles leader General Soumaila Bakayoko as the new head of the army received a mixed reaction. On the one hand, it was seen as an important step in restructuring what has been a key source of instability in Côte d'Ivoire since 1999, as it was widely expected to have significant bearing on Ouattara's attempts to unify and consolidate a new Ivorian army and stabilise the country after the recent civil war. Ouattara promised that his first priority would be to restore order and restart the economy, which had all but ground to a halt with the closure of banks, an international ban on cocoa exports and widespread looting of private property and shops.

On the other hand, Bakayoko's appointment raises concerns about the credibility of the leadership and the stigma attached to the new army chief of

staff. Even though Bakayoko was in the national defence force before joining the rebels, many believe that his role in the rebellion might undermine both his authority and the symbol of national unity that the armed forces are meant to project.


The national planning committee for the DDR process is currently working on the identification of soldiers as an important step towards reintegration. Issues of ranking and socioeconomic opportunities could also become obstacles.

Another question is whether the arm of justice will reach the Forces Nouvelles members indicted in the reports of various human rights groups for the crimes they have committed.

Bakayoko has the unenviable task of unifying the disparate forces and groups that participated in the conflicts that have raged in Côte d'Ivoire since 2002. In addition he will have to find a way to either co-opt or neutralise the many groups that were used as a means to repress under Gbagbo, including the Young Patriots, led by Charles Blé Goudé.

Some former combatants might be integrated into the new security structures (police, gendarmerie and army), but close attention should be paid to those who will be discharged of their duties, as they could quickly become domestic security threats to the new administration.

The successful demobilisation of former combatants could markedly advance the post-conflict peace-building process, so clear foundations have to be laid for the process. However, this cannot be done without a complete reform of the justice system and other law-enforcement agencies.

Making substantial progress in the DDR/SSR ahead of the legislative elections towards the end of the year could have a positive impact on the consolidation of peace in Côte d'Ivoire. 

Abidjan is divided into seven 'security zones' controlled by 'zone commanders' (also known as 'com'zone'), a controversial title acquired through the security strategy created by the Forces Nouvelles to effectively occupy the north of the country

Trade-based tax evasion costs the developing world an estimated US\$160 billion a year. **Charles Goredema** asks how can this be stopped.

# TAX EVASION

## Daylight robbery

**SAB MILLER** is entangled in a dispute emanating from questionable transfers of part of its income from operations in Ghana



Contemporary international trade involves the movement of huge volumes of exports and imports, supported by high-value financial transactions that generally attract significant taxation. Conversely, the volumes and value involved can also create opportunities for tax evasion by traders. There has been a growing body of literature, particularly in the past five years, outlining the multiple methods used to evade trade-based tax. It has become conventional to divide these methods into two broad categories, depending on whether the transactions involve related or unrelated parties.

Between related parties in commercial transactions, the most common method used to evade trade-based tax is the intra-group abuse of transfer pricing. It typically

takes the form of one of the related companies in a multinational enterprise (MNE) 'selling' commodities to the other at a lower price than it would have done to an unrelated party, or even at a loss. Intra-group transactions are often not subjected to neutral and independent market valuation.

Assuming that the purchasing company is the selling company's only client, the result is to erode the taxable income of the selling company. Such income could also be eroded without resorting to artificial pricing, but by cost shifting. This is a mechanism by which the production and freight costs of the subsidiary of an MNE can be raised to cut its profits substantially.

Intra-group transfers involve more than just goods and tangible commodities. Related companies may also enter into transactions where one provides

services, such as management services or finance (in the form of a loan). It is also not uncommon for the brand of a commodity to be owned by an affiliate of the manufacturing company.

For instance, the branding rights to most of the products marketed by SAB Miller, an MNE with strong South African roots, vest in an affiliate that is registered (and technically resident) in the Netherlands. By manipulating intra-group transactions, multinational corporations can evade taxes in certain countries while shifting their proceeds to countries with lower tax rates.

Research conducted in the United States a few years ago found that corporate transfer pricing abuses cost the US Treasury about US\$53 billion a year in tax revenue. Trade price manipulation also

facilitates the concealment of illegal commissions and the transfer of capital. Christian Aid estimates that abusive transfer pricing costs the developing world US\$160 billion a year. This equates to more than one and a half times the combined aid budgets of developed countries – US\$103.7 billion in 2007.

A recent study by Global Financial Integrity (GFI) entitled *Illicit Financial Flows from Africa: Hidden Resource for Development* contends that while much fo-

inexplicable increase in production costs at the copper mine, Glencore minimised the mine's profits and thereby lowered its tax bill. The audit, commissioned by the Zambia Revenue Authority and conducted by Grant Thornton, concluded that Glencore owed more than US\$200 million over a three-year period. At the time of writing, the debt is still being disputed.

SAB Miller is also entangled in a dispute emanating from questionable transfers of part of its income from operations

ments mandated to regulate resource exploitation (for example, mining ministries), customs departments and the emerging financial intelligence units (FIUs) are all part of the infrastructure with potential oversight responsibility. The data necessary to determine risky international business sectors or risky transactions is often scanty, clouded in a mixed mass of information and scattered across disparate locations.

Customs departments have an important role in detecting fraudulent transactions because of their presence at points of entry and exit of commodities. The advent of FIUs in various countries might feed the belief that money-laundering control is within their exclusive domain, with other institutions only playing a supportive role. Unfortunately, FIUs frequently question whether they should pay any attention to fraudulent trade price manipulation, whose scale has yet to be demonstrated. Detecting abusive transfer pricing transactions requires both sector-specific risk profiling and individual 'spotlighting' in order to access information on webs of ownership and intra-group trading transactions.

As so few countries in sub-Saharan Africa have criminalised abusive transfer pricing, FIUs still lack the basis for devoting resources to it. In southern Africa, only Botswana, Namibia and South Africa have done so to date. Perhaps, as the Task Force on Illicit Financial Flows pointed out in 2008, 'Further work, methodologically and statistically, is needed. Statistics and analysis are needed – not to determine that illicit financial flows are of major proportions, but in order to inform policy development and target responses. A compiling of existing estimates, including for instance from countries' own figures on tax evasion, should be considered...'

In view of the continuous clamour for effective, transparent and accountable tax systems, and the regional integration initiatives that are gathering pace, such work is long overdue. It will require the collaboration of researchers and repositories of information in both the public and private sectors, in the region and beyond. ■



ONE RED EYE/PHILIP MEECH

cus is placed on the leakage of resources from Africa through corruption, smuggling and drug trafficking, the contribution of corporate criminality to the drainage is far greater: 'The proceeds of commercial tax evasion, mainly through trade mispricing, are by far the largest component, at some 60 to 65% of the global total.'

GFI also found that, between 2000 and 2008, abusive transfer pricing accounted for an average of 54.7% of cumulative illicit flows from developing countries and was 'the major channel for the transfer of illicit capital from China.'

Some MNEs active in Africa have recently been implicated in shifting profits through abusive transfer pricing. An audit of the Mopani copper mine in Zambia, one of the subsidiaries of Swiss-based resources company Glencore, found that through an

in Ghana. Diamond extraction from the Marange area in eastern Zimbabwe has attracted more than a few entrepreneurs, among them an MNE that is based in South Africa, mining through a company registered in Zimbabwe, but conducting its banking through a subsidiary resident in Mauritius. The Mauritius company exists only on paper.

Abusive transfer pricing transactions inevitably involve low-tax jurisdictions, in which the MNE conducts much of its banking and intermediation activities, and to which income earned from resource extraction activities is channelled. Tax havens are popular destinations for such income.

Despite their suspected prevalence, abusive transfer pricing transactions are not yet attracting the attention of relevant authorities in African countries. Depart-

Calls for the nationalisation of mines and banks in South Africa are gaining ground. **Dianna Games** believes they are based on false premises of what nationalisation can bring to the country.

## SHORTCUT

# En route to poverty

**W**hen the debate about nationalising South Africa's mines was first mooted last year, businesses seemed to believe it was a flash in the pan that would disappear once the politicians saw the folly of this economic policy.

But not only does the issue continue to linger in the corridors of power, it is gaining traction. This is despite the evidence that, far from increasing wealth, such a move would destroy value and undermine the economy.

Julius Malema, head of the ANC Youth League, was the driving force behind the call for nationalising the country's mines. He claimed that state control would enable the government to increase employment, improve miners' salaries, raise investment and thus alleviate poverty in areas around mines, and keep a greater share of the revenues inside South Africa for investment in social services.

Some have responded that Malema's aim was not to help poor people – there is little evidence that he uses his high-profile political role to do so – but that he was acting in the interests of the rich elite, notably the black economic empowerment beneficiaries of mining interests. The value of many mining operations has been eroded by the recession in overseas markets and some observers have suggested that new mine owners were looking for a bailout by the taxpayer under the guise of nationalisation.

Businesses said a state takeover of mines was an outrageous suggestion that, if effected, would bankrupt the economy, given the billions that would be required to pay compensation for assets. There was also no proof that the government, already the owner of poorly performing state-owned enterprises in other sectors, would be able to run the mines at a profit as claimed by the Youth League.

The mining industry, one of the cornerstones of the South African economy, has already been underperforming in recent years as a result of challenges presented by rising labour costs, strikes, currency volatility and power shortages, coupled with an uncertain policy framework. Gold, in particular, has suffered, with grades and reserves declining. Once the world's biggest gold producer, the country now ranks fourth behind China, Australia and the US.

Although South Africa has massive reserves of sought-after metals such as platinum, the nationalisation debate has raised concern among investors. The lack of finality on the issue is starting to drive new investment to more stable mining nations. Nationalising assets of foreign companies protected by bilateral investment agreements would have an even more detrimental effect on perceptions of South Africa as an investment destination.

The ANC government has largely dismissed calls for nationalisation by the Youth League, with which it has an uneasy

relationship. President Jacob Zuma and Minister of Mining Susan Shabangu have both insisted it is not government policy.

Nevertheless, the ANC has established a task team of economists to travel to 12 countries that have implemented nationalisation in order to study the situation. The countries selected include Norway, Finland, Sweden, Zambia, Brazil, Chile and Venezuela. The ANC has said the findings will only be discussed at an ANC policy conference in 2012.

Powerful trade union federation Cosatu has now thrown its weight behind the call for nationalisation, saying that the





**ACCORDING TO THE WRITER** the calls for nationalisation undermine the broader debate on structural problems in the economy

VISMEDIA

undermining the broader debate on the impact nationalisation is likely to have on the economy.

Followers of Malema's populist rhetoric seem to be unconcerned about his millionaire lifestyle and how it is funded. There is also little debate about what the Youth League itself is doing about the unemployed and marginalised youth on whose behalf it claims to speak.

In general, the debate lacks a realistic examination of the structural problems in the South African economy that perpetuate high unemployment and poverty, such as poor education and health systems, service delivery problems, a lack of skills training, low productivity, increasing corruption, inefficient bureaucracy, policy indecisiveness and state intervention in the economy.

Problems also include the rising costs of doing business as a result of inefficient state-owned enterprises. The port of Durban, a gateway for goods in and out of the whole region, not just South Africa, has become congested and expensive to use. Transport utility Transnet is a shadow of its former self, while power utility Eskom is constrained by limited capacity because of poor planning. But most importantly, the ANC government is focused on the distribution rather than the creation of wealth. This is reflected in low growth rates of less than 3% on a continent with an average growth rate of more than 5%.

Highlighting the takeover of the mines as a solution to these complex problems is misleading and simplistic. It also ignores the experiences of other African countries.

During a mining conference in Zambia in 2011, government ministers were adamant they would not nationalise the mines again, saying it had been an unmitigated disaster for the economy.

The mining industry in Zambia is often criticised for not contributing adequately from its significant profits to the national fiscus. However, the tax relief many mining companies enjoy is the result of generous

investment incentives that were negotiated when the government was trying to get the industry out of the post-nationalisation doldrums. These incentives are an argument against nationalisation, not for it.

The ANC Youth League also wants banks nationalised in order to make 'cheap' money available to poor people. The call shows a lack of understanding of how banks work. The banks are largely funded by international loans. The cost of these loans, calculated on high political risk in a nationalisation scenario, would either become prohibitive or non-existent if lenders perceived the risk of repayment to be too high.

There is also the issue of compensation, given that the total market capitalisation of South Africa's five biggest banks – about \$7bn – is more than half of the government's total spending. Funding for the acquisition would, most likely, come out of pension funds, thereby increasing poverty.

Many banks were nationalised in the post-independence era, but most of these failed because of poor lending practices,

**The ANC government is focused on the distribution rather than the creation of wealth. This is reflected in low growth rates of less than 3% on a continent with an average growth rate of more than 5%**

high levels of non-performing loans and bad debts from unsecured lending to politically connected individuals and companies.

The ANC Youth League, Cosatu and others who are banging the nationalisation drum are looking for a silver bullet to solve problems that they, as part of the ruling elite, have failed to address properly over the past 17 years. Certainly more could be done to spread wealth more equitably, but it should not be done in a way that compromises the future success of the economy as a whole. **E**

policy itself was a given and the only uncertainty was the manner in which it was to be implemented. Cosatu further stated that it would not accept any finding by the ANC task team that said the policy was not feasible. Meanwhile some business-people appear to have backtracked slightly, saying that the root causes of the call for nationalisation – widespread poverty and unemployment – should be carefully examined before the notion is dismissed.

Because Malema has linked his call for nationalisation to the alleviation of poverty, the policy's detractors now appear to be against improving the lot of the poor,

# A subversive voice from franco-phone Africa

Alain Mabanckou has a string of awards to his name. Yet he also enjoys bending the rules, writes **Hadrien Diez**.

**H**is exuberant and refractory prose makes Congo-Brazzaville-born Alain Mabanckou something of a phenomenon in France. With nine novels, several volumes of poetry and a bundle of literary prizes to his name, he still comes across as a gifted young talent whose derisive humour has kept the freshness of the underdog. Mabanckou is a subversive, in terms of both the themes he picks and the style he cultivates. The author was invited to attend the new Open Book Cape Town literary festival in September; it was the perfect occasion to listen to one of Africa's most original voices.

## A MATTER OF STYLE

The buzz quickly spread in Paris when Mabanckou's last novel *Demain, j'aurai 20 ans* ("Tomorrow I'll be 20", soon to be translated into English) was first published in August 2010.

The book appeared on the shelves with the distinctive cream cover of Gallimard's La Blanche collection – a trademark of French literary excellence shared



with the likes of Marcel Proust, Albert Camus and JMG Le Clézio. The honour was actually more a sign of the French literary establishment's slow embrace of francophone diversity than Mabanckou's renouncement of his caustic principles. Being the first francophone African writer to be admitted to La Blanche's exclusive club, the author is delighted about breaching the rules of French.

Mabanckou has always experimented with the language he first learnt at school at the age of six. Maliciously comparing it to a 'river to be diverted', he sometimes tortures its syntax by avoiding full stops, or renews

## Being the first francophone African writer to be admitted to La Blanche's exclusive club, the author is delighted about breaching the rules of French

Africa: a place where people live, love and laugh like everywhere else, a place where some also drink too much bad liquor or elaborate hilarious plots to eliminate the people they want to see dead.

But Mabanckou's frequent use of ancestral fables has no exotic purpose. He

on contemporary societies. 'Can we avoid our responsibilities by simply discharging ourselves on the custom?' he asks. Proudly bearing his African identity, the author aims to examine the pleas suffered by his continent

with lucidity and no fear of controversy.

He refuses above all the temptation to polarise between cultures. Quoting the great anti-colonialist thinker Frantz Fanon, he reminds us: 'The danger for the black writer is to stay locked in his "darkness". We have to avoid the trap of basic



the vocabulary corpus when mixing classical elegance with ready-made phrases inspired by the titles of books he loves and the worst Congolese slang. The result has its own beat; it's a freewheeling, punch-in-the-face style that can leave his readers breathless and dazzled.

### ICONOCLASM AS LEITMOTIV


Mabanckou's themes are often daring, sometimes impertinent and always very funny. Miles away from clichéd Afro-pessimist moaning, his novels and poetry evoke a vibrant – and at times bizarre –

always tries to question contemporary Africa when evoking its oral tradition.

In *Memoirs of a Porcupine*, for which the author was awarded the prestigious Prix Renaudot in 2006, there is the story of the illiterate sinner-man Kibandi who uses his legendary double, a porcupine, to kill those he is jealous of. When made to face the consequences of his acts, Kibandi pretends that he cannot be liable for the murders committed by the animal.

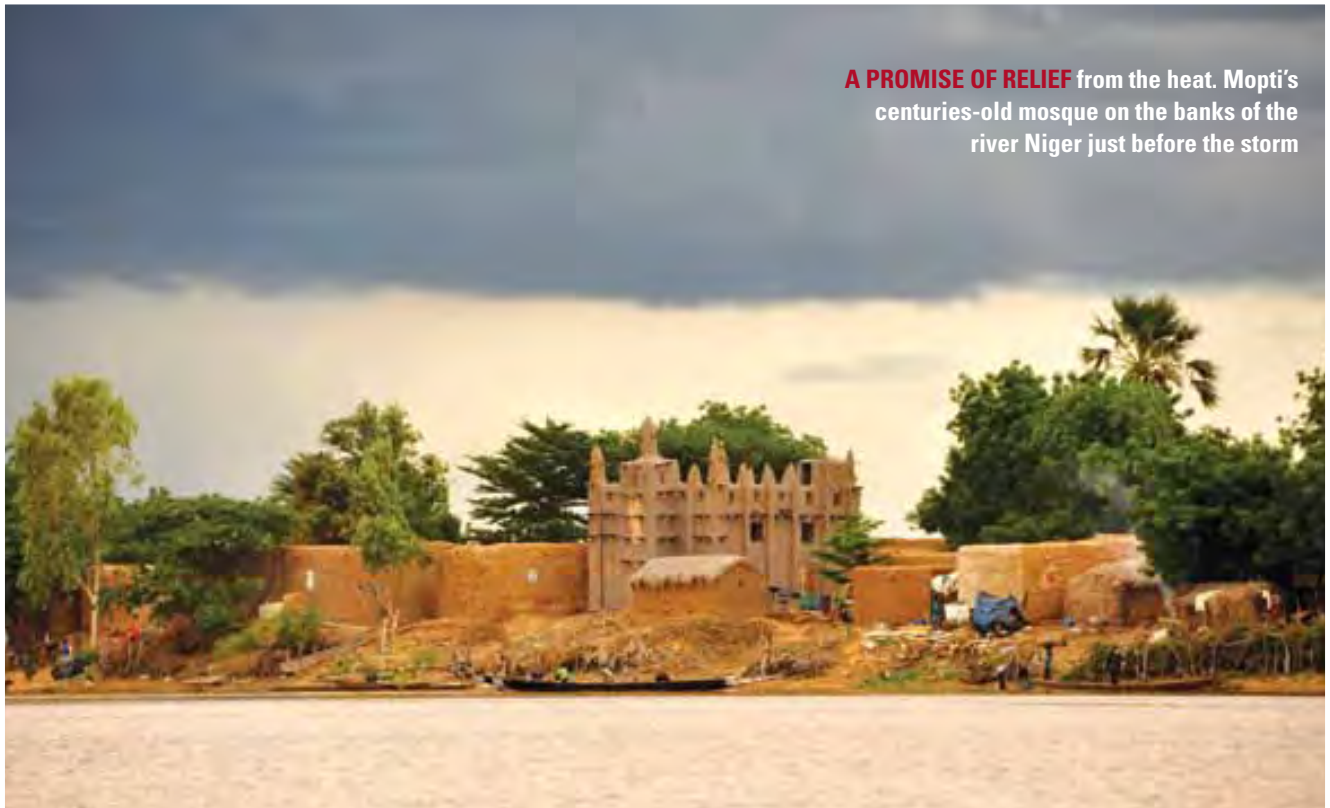
Aware that the African psyche is shaped by its myths, Mabanckou wished to explore the deep effects traditional beliefs can have

confrontation between black and white civilizations. Self-critique is essential if we want to have a fair look at the world.'

By offering a lucid, lively image of Africa and by giving French its full global potential, Alain Mabanckou's work luminously illustrates this statement. 

This article was first published on the 'Into French' website: <http://www.intofrench.org>.





**A PROMISE OF RELIEF** from the heat. Mopti's centuries-old mosque on the banks of the river Niger just before the storm

A group of South Africans are travelling overland from North Africa to their home country – with many sightseeing detours along the way. **Coen van Wyk** sent these pictures from the first leg of their journey between Morocco and Mali.



**A GIANT IN THE DESERT.** Ben Amera, the world's third largest monolith, is located in Mauritania, close to the border with Western Sahara



**MOPTI BOATMAN** A boat trip through Mopti on a rainy day reveals why the town is called the 'Venice of Mali'

**WASSU STONES** History and time are palpable at the Wassu stone circles in Gambia, a Unesco World Heritage Site. The stones were erected around the eighth century on top of earlier graves



Read more about their journey on <http://todreamofafrica.blogspot.com>

# Getting closer to a South African mercenary

**James Brabazon, *My Friend the Mercenary***

**(Canongate, 2010)**

**Reviewed by Sabelo Gumedze**

James Brabazon is an accomplished reporter and award-winning documentary filmmaker who specialises in an area where many fear to tread: war zones. His latest offering is a book entitled *My Friend the Mercenary*, which narrates the intriguing story of how he became acquainted with the underworld of mercenarism.

Beginning in a luxury hotel in Johannesburg, South Africa, in 2002, Brabazon is introduced by a mutual acquaintance to Nick du Toit, a South African mercenary who became famous for all the wrong reasons. Having survived several African wars and being on the run from a ruthless African dictator, Du Toit is now reported to be in Yemen.

It will be recalled that Du Toit was involved in the so-called 'wonga coup' aimed at toppling President Teodoro Obiang Nguema of Equatorial Guinea. This is the same bittersweet plot involving old Etonian Simon Mann, who together with Du Toit was eventually freed from a Malabo prison following an intervention by the UK and South African governments. Also involved in the wonga plot was Sir Mark Thatcher, who eventually received a fine of US\$450,000 from a South African court.

Brabazon introduces Du Toit languishing at the notorious Black Beach prison, where he was expected to serve a good 34 years. Most strikingly and, indeed, disturbingly, Brabazon recalls that if had all gone

according to plan, he would have been lying next to du Toit, as he was supposed to film the wonga coup.

Brabazon tells of meeting Du Toit for the first time in Johannesburg and clinching a deal to have the latter as his escort as he traverses some of Africa's most deadly conflicts. Accompanied by Du Toit, the ambitious young war reporter undertakes two journeys in Liberia, where he captures the ill-fated rebellion of the 'opaque to the extreme' Liberians United for Reconciliation and Democracy (LURD) against Charles Taylor.

With Du Toit acting as Brabazon's personal security guard and spending considerable time together in the Liberian bush, ducking and diving to avoid rebel gunfire and witnessing gruesome scenes of violence, a bond of friendship develops between the two men.

Brabazon's new friend was, of course, a very dangerous man who spent a good 21 years in the South African special forces, participating in the fight against those who opposed apartheid, as well as fighting in some of the most deadly African wars in Angola and Mozambique.

After his career with the South African special forces, Du Toit could not have been better placed than he was with the now-defunct mercenary army, Executive Outcomes, and he became grounds chief in the outfit's operations in Sierra Leone and Angola.

Executive Outcomes made a fortune through fees and concessions of dia-

monds and oil, and through some of the most gruesome mercenary activities that saw rebel forces crumbling. Owing to his 'impeccable' mercenary career at Executive Outcomes, involvement in the coup in Equatorial Guinea seemed an opportunity that Du Toit could not afford to miss.

Asking Brabazon to film the coup was the obvious next step. After all, they had become so close that even when funds from the TV station for Brabazon's protection ran dry, Du Toit never seemed to care. His interest went beyond just protecting the young war reporter.

Years later, Brabazon had a greater role to play in Equatorial

Guinea. Clearly, Du Toit's proposition for Brabazon to film the coup sounded so convincing that normal journalistic ethical standards did not prevail. In fact, this job was likely to win him an award for being the best journalist so close to the wonga coup, and would possibly make him extremely rich after the mission was accomplished.

In the event, Brabazon's plan to film the coup was interrupted by the death of his grandfather, while Du Toit's own plans to participate in the coup were crippled by a comedy of errors. It was a case of too many cooks spoiling the broth.

The plot disintegrated, leading to the failed coup, which would become the most widely publicised story of the dogs of war. **E**



# The unspoken bargain of Tunisia's oppressive regime

**Béatrice Hibou, *The Force of Obedience: The Political Economy of Repression in Tunisia***

**(Polity Press, Cambridge, 2011)**

**Reviewed by Richard Cornwell**

This book is in large part a translation of Hibou's *La force de l'obéissance*, which was published in 2006. Since it provides a detailed account of the regime of President Ben Ali, who fled Tunisia on 14 January this year, it might be imagined that this work is principally of historical interest and obsolete in terms of understanding the present and future of Tunisia. This would be a grave error.

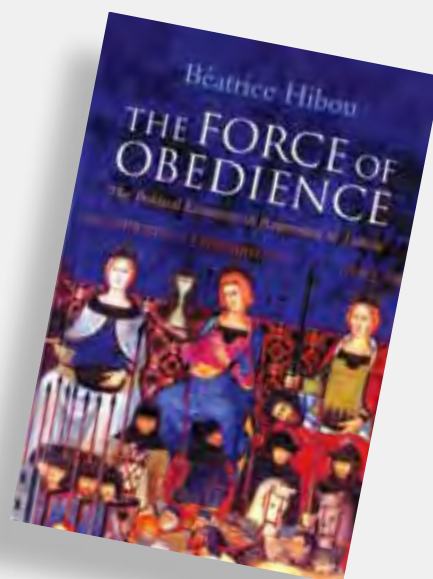
As the book's new preface demonstrates, the regime and its methods of governance by no means evaporated with Ben Ali's flight. Indeed, as Hibou argues, although the media pounced upon the dramatic month from December 2010 to January 2011, eventually describing it as a harbinger of the "Arab Spring", what happened in Tunis (and perhaps in Cairo) might better be seen as a palace coup designed to pre-empt the revolutionary threat of social upheaval.

Hibou argues convincingly that it is far too early to anticipate what sort of regime

will emerge in Tunisia, although it is unlikely to shed more than the skin of authoritarianism. Although an unusual degree of freedom of expression is now tolerated, the old regime depended on habits of obedience that were inculcated among the populace for decades. It will take a massive effort to break these habits, not least because of the measure of complicity that involved an oppressive regime in an unequal though unspoken contract with ordinary Tunisians that subtly made everyday life more tolerable, if not necessarily pleasant.

Many of the media accounts of the Tunisian experience have missed the insights provided by Hibou's thick descriptions. For them, authoritarianism and democracy are perceived in fairly stark terms, and the movements between these polar opposites are seen as trends. As this book shows, a police state does not have to be characterised by continuous and violent state terror. Anybody familiar with detailed local studies of the Hitler and Stalin regimes is aware of the essential banality of those systems.

Hibou asserts that 'domination is not a controlled exercise of power, strategies, or certain decisions; it is a process that is at once uncertain, unfinished and partial.' Similarly, the revolt that began in December last year was 'a perfect example of the "singular randomness of events"; the



crack in the wall that all these untimely gestures and actions opened up was less the result of a decision properly speaking – police repression – than of the unexpected and non-programmed action of

**What happened in Tunis (and perhaps in Cairo) might better be seen as a palace coup designed to pre-empt the revolutionary threat of social upheaval**

human beings, of the life of conflicts and the reversal of relations of force, of the unforeseen, of the indefinite nature of things, of the "insolence" of daily life, and of the ambiguity of words and deeds.'

It is impossible in a review to do justice to the richness of Hibou's work or the acuity of her perceptions, gleaned over years of fieldwork. This is a book for more than scholars of Tunisia; it speaks profoundly to the nature of political authority and provides an important lesson to those who focus too narrowly on processes of democratisation. **E**

**The regime and its methods of governance by no means evaporated with Ben Ali's flight**

# To tweet or not to tweet, that is the question

by Tanya Pampalone

A few months ago one of the online editors at the weekly newspaper where I work asked me to live blog – or at least live tweet – from an event I was planning to attend. I scrunched up my nose in distaste.

How could I possibly tell a story without digesting what was being said? Just raw, unfiltered thoughts, with no time for fact checking and no second sources? It seemed to be the antithesis of journalism. But I knew what my young colleague was thinking: ‘What a Luddite.’

So I have to admit, when I read a *New Yorker* profile in July on Jaron Lanier, the technology guru who was a pioneer of virtual reality, I felt vindicated. The piece refers to a lecture by Lanier at the South by Southwest Interactive conference in Austin, Texas, in March 2010, during which he asked the audience not to tweet or blog.

‘The most important reason to stop multitasking so much isn’t to make me feel respected, but to make you exist. If you listen first and write later, then whatever you write will have had time to filter through your brain, and you’ll be in what you say. This is what makes you exist. If you are only a reflector of information, are you really there?’

To have a guy like Lanier backing me up on what sometimes feels like my own technophobic rationalisations made me feel a bit better.

You see, I am an ambivalent tweeter. I follow mainly news feeds and a handful of journalist colleagues. I don’t say much, but when I do send out a message it’s usually a link to a piece about the state of journalism or on a nice piece of writing, or to an article about my latest obsession, the ever-eroding state of the global economy.

I’m more of a voyeur than anything else – and I’m borderline addicted. I need the constant stream of instant information that keeps me in the 24-hour news cycle. I try to stay out of the conversation with the local Twitterclique, which can feel a bit like being in a big auditorium with a lot of people screaming over the din just to

be heard. Truth is, it all seems a bit too Big Brother for me. After all, somebody is listening to all this chatter.

That the US Embassy in Pretoria runs one of the most popular Twitter accounts in South Africa – 10 222 followers and counting, as of mid-September – and was named in *Foreign Policy* magazine in July as one of the top ‘foreign policy Twitterati’ on the continent, says quite a lot, mostly about how good the Americans are at controlling their message, no matter the medium, and how the rest of us lap it up.

A colleague of mine who went from print to digital a couple of years ago has become a compulsive tweeter. He loves the instant feedback, the constant interaction with his 5 600 followers. He’s made for the medium – he serves up great 140-character rapport – and he’s quick on the draw. It’s almost like the technology was created for him.

Me? I find it all too rushed, too messy and too chaotic. Twitter offers too much margin for error, allowing false rumours to spread in seconds. It’s easy to text quickly; it’s much harder to think about what’s being said at that speed.

But it’s not just the possibility of misinformation that freaks me out. Bill Keller, the former executive editor of the *New York Times*, put it best in a May column that was blasted by new media, where he ruminated on a tweet he had put up: ‘#TwitterMakesYouStupid. Discuss.’

‘Twitter is not just an ambient presence. It demands attention and response. It is the enemy of contemplation. Every time my TweetDeck shoots a new tweet to my desktop, I experience a little dopamine spritz that takes me away from ... from .... Wait, what was I saying?’

Exactly. What was I saying? I’ve just realised that I haven’t checked my feed for a couple of hours. What have I missed?

I know, I know, it’s a brave new world out there. I’ve got to keep up. But for now, I’ll keep watching and keep most of my tweets to myself. **E**

*Tanya Pampalone is the features editor of the Mail & Guardian*

