

VIEWS AND ANALYSES FROM THE AFRICAN CONTINENT

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Dear readers

When people mention Sudan one thinks of vast sandy plains where women and children flee to refugee camps, where soldiers are locked in interminable wars and of endless political, ethnic and religious strife.

While it is also a place of great beauty, with ancient pyramids and green deltas, Sudan – Africa's largest country – seems to surge from one headline-grabbing event to another.

There was Hassan Al Tourabi and the American bombings of Khartoum in the 1990s, the devastation of the North-South conflict that lasted for two decades and with it so many successive humanitarian aid campaigns.

Who will forget the reports of the Northern Sudanese bombing from the sky hungry people in hot, dusty villages? "Southern Sudan went back to the Iron Age," writes Richard Dowden in his recent book *Africa, altered states, ordinary miracles*.

There was that unforgettable funeral of the South Sudanese leader John Garang who died just before getting the chance to perhaps lead his people to the proverbial Promised Land.

Then from early on in this decade, the conflict in Darfur has come to haunt us.

All of Africa has been touched and ashamed by this terrible tragedy

playing itself out in front of our eyes.

But it also drove the commentators into disarray and divided opinion.

On the one side the American protesters with their banners marching in Washington, the George Clooneys and Mia Farrowes with slogans of genocide, while others say this is a complex conflict like so many others in Africa with its load of propaganda, aid agency press releases and lies on both sides.

Then the International Criminal Court (ICC) arrest warrant against President Omar al Bashir seemed for some an example that the ICC is targeting Africa, while others saw it as a triumph for international law.

Caught in the middle of course are the innocent in their refugee tents.

Is it possible that this country – with its terrible divide, its rivers of oil pumped out to China and its ethnic diversity – can finally reach some kind of peaceful arrangement?

As our analysts explain, Sudan now faces two huge challenges: firstly general elections this year – the first in 25 years – and then a referendum in early 2011 on independence for the South.

According to them and many other experts, there seems little doubt Sudan will enter the next decade as two

separate countries: one administered from Khartoum and one from Juba. How this will work in practice, no one seems to know for sure.

One thing is clear though, it questions profoundly notions Africa has been holding onto for a long time since independence, notions about the irreversibility of frontiers on the one hand, and the strive for bigger entities and regional blocs on the other.

How can we allow a new, smaller country to be created in 2011 while we are impressing on others to give up more and more of their national sovereignty to join regional blocs – necessary in a world with huge competing economic regions?

As the ground shifts beneath our feet... (see article on page 42) we are more and more aware of the urgency to reflect on Africa's role in a changing global environment.

Or is the move to consolidate smaller ethnic and tribal entities perhaps the only way to resist a world *sans frontiers* and minimise these monumental conflicts between people who apparently don't desire co-existence? Of course it is easier to break into a smaller entity if you have oil or other resources.

Still, Sudan seems to be going counter-current to the dominant move towards greater integration. And it remains to be seen what comes out of this referendum. But perhaps it might even lead the way with a provisional arrangement that would work for Sudan while at the same time integrating into a larger East Africa region. Only time will tell.

Enjoy reading this edition of The African.org and please send any comments to me or participate in our blog on www.the-african.org

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In this issue



- 5** News round up
Upcoming events
- 6** Newswatch
Nigeria, Cote d'Ivoire, Togo
- 7** Out and about
The 14th African Union Summit
- 8** Sudan
Politics
- 12** Sudan
Elections
- 16** Sudan
Economy
- 20** Sudan
ICC
- 22** Zimbabwe
Sanctions
- 25** Kenya
Environmental crimes



28 Kenya
Constitution-making process

31 South Africa
Apartheid reparations

34 South Africa
Governance

36 Economy
Maritime policy

38 Analysis
Peacekeeping

42 Analysis
Global governance

44 Interview
Cote d'Ivoire

48 Opinion
Morocco and AU

51 Business
Morocco investment

52 Business
African commodities

54 Culture
2010 World Cup and culture

56 Book Review
The failure of Zimbabwe's post-colonial project

58 Letter from Addis
The AU Summit

59 Sport
African teams at the World Cup

62 African Images
Your pictures

64 Last Word
Zuma and Polygamy



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Poppie Mphuthing works for television news station eNews Africa. As South Africa prepares to host one of the world's most spectacular sporting events, Mphuthing points out that the event is much more than just sport as it is likely to showcase South Africa and indeed Africa's rich art and culture.



Paula Roque is a senior researcher with the Africa Conflict Prevention Programme of the ISS. Against the backdrop of impending first national elections in 24 years, Roque reflects on possible scenarios in post-2011 Sudan that are likely to culminate in two new entities.



Dr John Gai Yoh, who lectures in the Department of Political Sciences at the University of South Africa (UNISA), highlights raging debates on the dynamics underlying the forthcoming Sudanese elections and the referendum.



Dr Festus Aboagye is a senior research fellow with the ISS' Peace Missions Programme. Aboagye looks at the shortcomings of the current narrow conceptual framework definition of humanitarian intervention. He calls for the urgent review of this approach in order to mainstream humanitarian military intervention into peacekeeping.



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Upcoming events

Ethiopia goes to the poll

As Africa's oldest independent country Ethiopia prepares for the parliamentary and local government elections this May, tensions have reached fever pitch, marked by incarcerations of the ruling party's political opponents. The May 2010 poll comes into the now extremely diminished political space in comparison to the run-up that of 2005.

The run-up to that poll has been hailed as the golden age of Ethiopian politics, characterised by freedom to campaign for all parties including the opposition, free press and other basic liberties associated with democratic campaigns. The 2005 poll reportedly had a record 90 per cent turnout.

However, in 2005 the ensuing poll protests were followed by the brutal slaying of nearly 200 protesters by security forces as well as mass arrests and detentions of opposition leaders. They were subsequently convicted of treason and either sentenced to life or death. Most were to be "pardoned" two years later.

Both government and opposition leaders are expressing concern about the potential for further election-related violence. Already, several government opponents have been jailed. Among them is Birtukan Mideksa, a charismatic young former judge who was among those sentenced to life and then pardoned after the 2005 election.

Birtukan had been touted as a potent force in the 2010 vote. But she was re-arrested and ordered to serve out

her sentence after saying she had not asked for the pardon. Another prominent member of Birtukan's party, Melaku Teferra was among 40 people accused in April 2009 of involvement in a coup plot directed by Berhanu Nega, who was elected mayor of Addis Ababa in 2005. Berhanu and Melaku were also among those jailed for life after the last election. Melaku stayed in Ethiopia after being freed. Berhanu fled to the United States.

Pre-electoral climate in the CAR

The Independent Electoral Commission (IEC) in the Central African Republic (CAR) has set the date of the electoral campaign for the 12th to the 23rd of April 2010, a decision that was validated by a presidential decree at the beginning of March. A bloc of opposition parties has disapproved of this and requested that the elections be postponed, citing the premature election date as reason for their dissatisfaction.

Members of the opposition are concerned that several issues need to be attended to before elections are held, such as the completion of the disarmament, demobilisation and reintegration (DDR) process, the status of internally displaced persons (IDPs) and refugees as well as problems with the population census and electoral lists. The reasons for a lack of progress on resolving these issues are manifold. The DDR process has been delayed as a result of the alleged misuse of funds that were intended for use as a trade-off



Is President Francois Bozize of CAR a reluctant contestant? At some point he nearly torpedoed the elections on account of lack of funds and now wants to rush the process through despite outstanding thorny issues.

for rebels to hand in their arms.

The tensions between government officials administering the DDR process and Bedaya N'djadder who heads one of the main rebel movements in the North, L Armee Populaire pour la restauration de la republique et de la democratie (APRD), have further exacerbated the situation.

Moreover, armed movements must be disarmed or else the elections will be meaningless. For the rebel group is likely to destabilise the country should the results not be in their favour. Given that eight out of the 18 "prefectures" of CAR remain active zones of conflict within which the APRD and smaller movements or bandits operate, there is not enough time left for the authorities to complete the disarmament process prior to the election date. ■

Newswatch

Jury out on Nigeria's chronic religious/ethnic clashes

A re-emergence of "inter-communal" clashes is being witnessed in the Plateau State of central Nigeria. At the beginning of March there were clashes in Jos, the capital of the Plateau State between various communities identified as Christians and Muslims. To be precise, Muslims who were allegedly retaliating for similar attacks orchestrated by Christians in January attacked a number of Christians in a reportedly coordinated manner.

The different clashes that have taken place in different parts of Nigeria in recent years are considered by many to have been triggered by religious or ethnic antagonism. However, it would be simplistic to only consider the religious or ethnic aspects of these confrontations and disregard the socio-economic ones. Looking at these two elements – important as they are – as the sole or even the main trigger factors is not only a mistake made in the case of Nigeria but also in the case of many other confrontations across Africa.

The fact of the matter is that religion and ethnicity are often politicised to serve the interests of certain actors who mobilise people around such sensitive issues. As such, people who would complain about their neighbours occupying a land or complain about inequalities of wealth would be led to believe that people who belong to the other ethnic or religious groups endanger their livelihoods. Some argue that the easiest targets of these manipulators are the unemployed and frustrated young people who have nothing to lose. Others argue that the ethnic super-diversity of Nigeria compared to other countries makes it easier for such actors to ignite religious or ethnic conflicts.

It is therefore clear that a proper and more holistic approach is needed in understanding the complexity that is Nigeria's religious and ethnic strife. What the observers are in agreement on however is that the politicised clashes need to be lessened or resolved.

Cote d'Ivoire return from the brink

The President Laurent Gbagbo is back at the drawing board after dissolving the government as well as the electoral commission. The newly appointed electoral commission is not different from the previous one; in spite of its new leader Youssouf Bakayoko, the opposition still dominates the commission. The strength of the opposition will become more apparent depending on how Bakayoko manages the electoral process.

Once again, it seems Gbagbo's manoeuvres have bought him time without really putting him in an advantageous position. For most of the decisions made by Gbagbo have created divisions in the country, even amongst his own supporters. Nevertheless relative calm has returned to Cote d'Ivoire and opposition parties have decided to join the government in order to prevent political squabbles from further delaying the elections. The hot potato will remain the contested presence of 429 000 registered voters who have not been clearly identified. If issues of identification or identity are not dealt with in Cote d'Ivoire, they will become problematic at the elections and even beyond the elections.


At the height of the crisis, the Economic Community of West African States (ECOWAS) had issued a declaration calling upon the Ivoirian leaders to preserve peace and save the country from yet another cycle of active conflict.

Togo security forces raid opposition headquarters

Security forces in Togo raided the opposition IT headquarters in the aftermath of the March 4 poll and confiscated important material and documents including computers and minutes of the elections which according to the Union of Forces for Change gave an outstanding victory to its leader Jean-Pierre Fabre. The raid came as the opposition movement defied the government ban on protest and called its supporters to riot to claim "their victory back".

Almost all the observer missions in Togo praised the electoral process that went on smoothly without any major incidents. However, a number of irregularities were pointed out including the sudden increase of 10 per cent of the voter rolls that seems to have given the ruling party an additional 320 000 votes. In addition, the transmission of the results from the local electoral commission to the national electoral commission failed to make use of the technology available (VSAT) and was not transparent.

Nonetheless, the Africa Union has already recognised the victory of Faure Gnassingbe and the Rally of Togolese People. While the AU's reaction is based on the preliminary report from its observers, it could have been prudent to wait for the filing of and investigation into the allegations of fraud by competent electoral institutions put in place to deal with post-election contention.

The EU has not yet made any final pronouncement on the matter. The arrest and detention of some opposition leaders and the ban on opposition protest form part of the government strategy to contain dissidence in the aftermath of the elections. 



Uganda's president Yoweri Museveni in jovial mood at the summit.



As usual Libya's Muammar Gaddafi makes a grand entrance, even though his bid for a second term as chairperson was unsuccessful.



The new AU chair Malawi's president Bingu wa Mutharika has a tough task ahead.



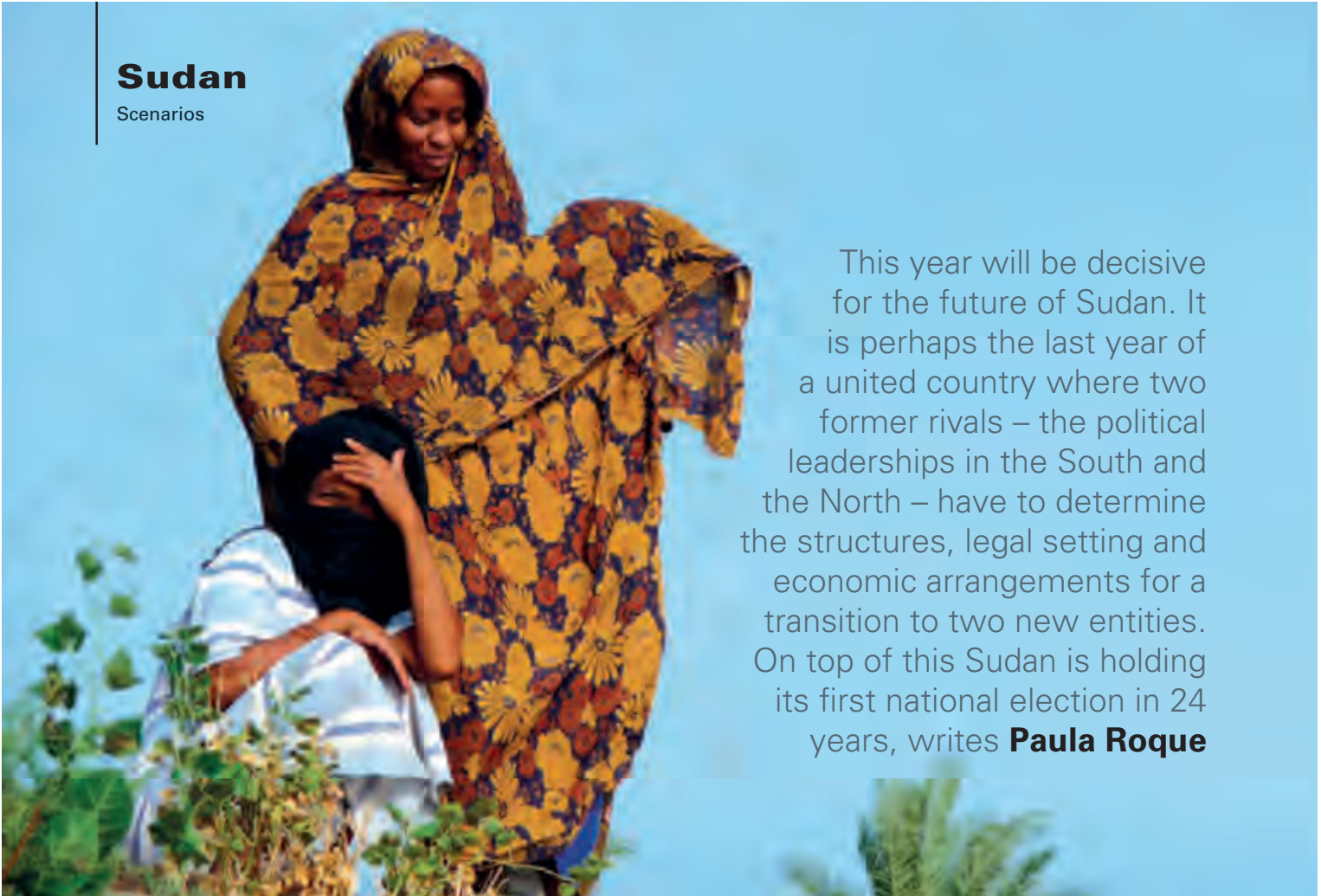
Somalia's president Sheikh Sharif Sheikh Ahmed listening intently in the conference hall during the opening ceremony.



At home: Ethiopia's prime minister Meles Zenawi.



A lot was expected from South Africa's president Jacob Zuma as the leader of the continent's richest country.



This year will be decisive for the future of Sudan. It is perhaps the last year of a united country where two former rivals – the political leaderships in the South and the North – have to determine the structures, legal setting and economic arrangements for a transition to two new entities. On top of this Sudan is holding its first national election in 24 years, writes **Paula Roque**

A year of hope and uncertainty

Of the many scenarios for the future of Sudan in the run-up to elections and a referendum, some are predicting shades of catastrophe and others a miracle escape from another future civil war.

After so many years of conflict and dialogue the two rival parties will inevitably have to craft their own terms of engagement and try to escape the return to violent confrontation that many are expecting.

To add to the complexities facing the Sudan People's Liberation Movement/Army (SPLM/A) and the

National Congress Party (NCP), leading up to early next year's crucial referendum on self-determination in the South, is the national election. With it comes the dangerous debate that emerges with democratic processes, threatening the hegemonic rule of the two partners in the South and North respectively.

Amidst internal divisions and external threats the two partners in government are facing the difficult responsibility of navigating the country towards the peaceful end of its 6-year transition.

A troubled partnership

The Comprehensive Peace Agreement (CPA) signed in 2005 between the ruling NCP and the SPLM ended a 22-year civil war that resulted in the deaths of 2 million and the displacement of 4 million people. Regarded as one of the most carefully crafted peace agreements on the continent, it provided a six-year road map for political transformation, for addressing economic marginalisation and mismanaged diversity through power-sharing and wealth-sharing provisions. Apart from the

restructuring of the centre of power in Khartoum through the creation of a Government of National Unity, by giving the SPLM proportional representation in state institutions, security arrangements provided for the integration of the Sudanese Armed Forces (SAF) and SPLA into joint units aimed at preparing the basis for a national army. However, the country has essentially functioned as two separate entities with an autonomous government for South Sudan, distinct legal and cultural frameworks, different land policies, separate banking systems, the retention of two armies, and the stipulation of a self-determination referendum for the South in 2011.

When the CPA was conceived it was initially regarded as a fundamental driver of change for Sudan that proposed a thoughtful and complex state reformation. Yet it has subsequently been instrumentalised to match the NCP and the SPLM's default positions, which were the main objectives during the negotiations: regime survival and self-determination. Although both parties made difficult concessions and have committed to implementing the peace agreement, they have also prepared the means for their own preservation by the manner in which the post-war period was moulded.

Perceived as an end in itself, the CPA has ceased to be a tool for the political and constitutional transformation of a one-party system into a democratic one. It is within this context that elections will occur, that the rules of engagement to navigate the political space after the CPA ends will need to be established, and that a potentially contested and disruptive self-determination referendum be organised.

Entering this phase and facing these challenges in a weak position will make

it an arduous and potentially explosive situation for the SPLM, NCP and all the other Sudanese stakeholders.

Elections: exposing vulnerabilities

Over several days in April the Sudanese will be electing Sudan's President, the President of the Government of South Sudan (GOSS), members of national Assembly, members of the legislative assembly of South Sudan, state governors and state assemblies. The first elections in 24 years and the first post-war polls will witness 18 million voters having to cast the tremendously high number of 12 ballots. The CPA was meant to address the structural deficiencies of the political system in Sudan and determined that mid-term elections were to be held to allow for the bi-lateral agreement to attain a popular mandate and for the inclusion of other political parties in the transition. However, due to constant delays the elections will be held at the end of the transition in the midst of frenetic negotiations, the consolidation of positions, the exposure of vulnerabilities at the heart of the two political centers Khartoum and Juba and may ultimately fail as a democratic experiment.

Despite the difficult birth of a relatively favorable environment for national elections, several steps were taken (even if insufficient) to allow for the democratic process. While the National Electoral Commission (NEC) was established, and several laws in support of the process, many still fall short of providing for a conducive liberal and transparent setting.

The possibility of mismanaging the process is very much a reality. There is an array of obstacles that remain. In particular: reaching a consensus on the disputed national census of

2008 so that electoral geographic constituencies may be established; rebutting unconstitutional powers of the Security apparatus and eliminating restrictions of the press; stabilising Darfur so that the population may participate in the electoral process initiating a nation-wide campaign on civic education to explain a complex poll and training staff and observers.

The greatest challenge however will be the managing of security in a volatile political environment and guaranteeing the legitimacy of the electoral process so that it is deemed free, fair and transparent by all parties.

The complexities and logistical enormity of the task will add to the difficulties of guaranteeing full and unhindered participation, effective observation and monitoring of the process. In addition, holding elections – that are from the onset a dangerous political experience due to the zero-sum mentality inherent in the process and the highlighting of divergent and unconciliatory positions in a highly militarised environment – will reduce the prospect of allowing for genuine political accommodation.

Reports are also emerging that both the SPLM and NCP face internal divisions and that moving towards elections without presenting a united front could weaken their ability to maintain their important place in the national power equation.

Addressing the surge of inter-communal violence in the South that led to over 2 000 deaths in 2009 (a number the UN claims is higher than the death toll in Darfur for that same period) will become more problematic if ethnic and tribal considerations factor more into the calculations of the candidates than the pursuit of a national agenda.

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Towards self-determination or implosion?

Presuming that the electoral process goes uncontested and is widely accepted as free and fair by the different parties, the SPLM and NCP will then need to begin their post-referendum negotiations. Learning from the Eritrea/Ethiopia and the East Timor cases in the early 1990s, leaving certain matters undefined or failing to install preventive measures against spoilers will lead to bloodshed. There is too much to lose at this stage for both the NCP and SPLM and given that unity was not made attractive, then it is vital that secession be made attractive.

The parties will, in a space of eight months, need to decide on several issues, in particular:

- Firstly, nationality and citizenship: in a country that has mismanaged diversity and has embarked on social engineering projects that have ostracised segments of the population, this issue is particularly important. What needs to be decided is how the right to citizenship will be established in the North and South and will there be a possibility of dual nationality. Related to this will be issues around employment, property ownership as well as cultural, religious and linguistic rights, in the case of unity or secession.
- Secondly, border demarcation and management: with the experience of the disputed delineation of the oil-rich area of Abyei that required external legal arbitration, the demarcation of a 2 100 km-long border will be difficult. Who will police the border and how other militarised groups can be appeased will be fundamental but will be difficult to negotiate.
- Thirdly, transboundary populations: directly connected to land use, grazing rights, and boundary demarcations, the issue of how to manage populations that cross the border in search of water and pastures for cattle can cause several problems and has a potential to increase inter-communal violence. The civilian populations in border regions are heavily armed and the presence of militias add fuel to feelings of mistrust.
- Fourthly, the status of the three transitional areas: a strategy will need to be devised on how to manage the political status of Abyei (that will hold a referendum deciding on whether to join the North or the South) and the popular consultations of the Blue Nile and Southern Kordofan and then implement the decisions.
- Then the issue of resources (oil and water): in the case of secession very clear provisions will need to exist regarding oil revenues, the management of the petroleum sector, infrastructure (pipeline) and contracts. Will there be continued wealth sharing and will this relate to the oil in the North and the South? How will the Nile water quota previously allocated by the Nile Basin Initiative be divided between the North and South? And how will irrigation and other projects be co-ordinated?
- And finally the Joint Integrated Units (JIUs), National armies Intelligence Services (NISS): the manner in which the security forces will be managed, reformed and integrated will lie at the heart of the possibility of having the North and South engage peacefully. In either secession or unity the fate of the JIUs (stipulated by the CPA to form the basis of a new national army) and how to deal with the Sudanese Armed Forces (SAF) in the South and the SPLA

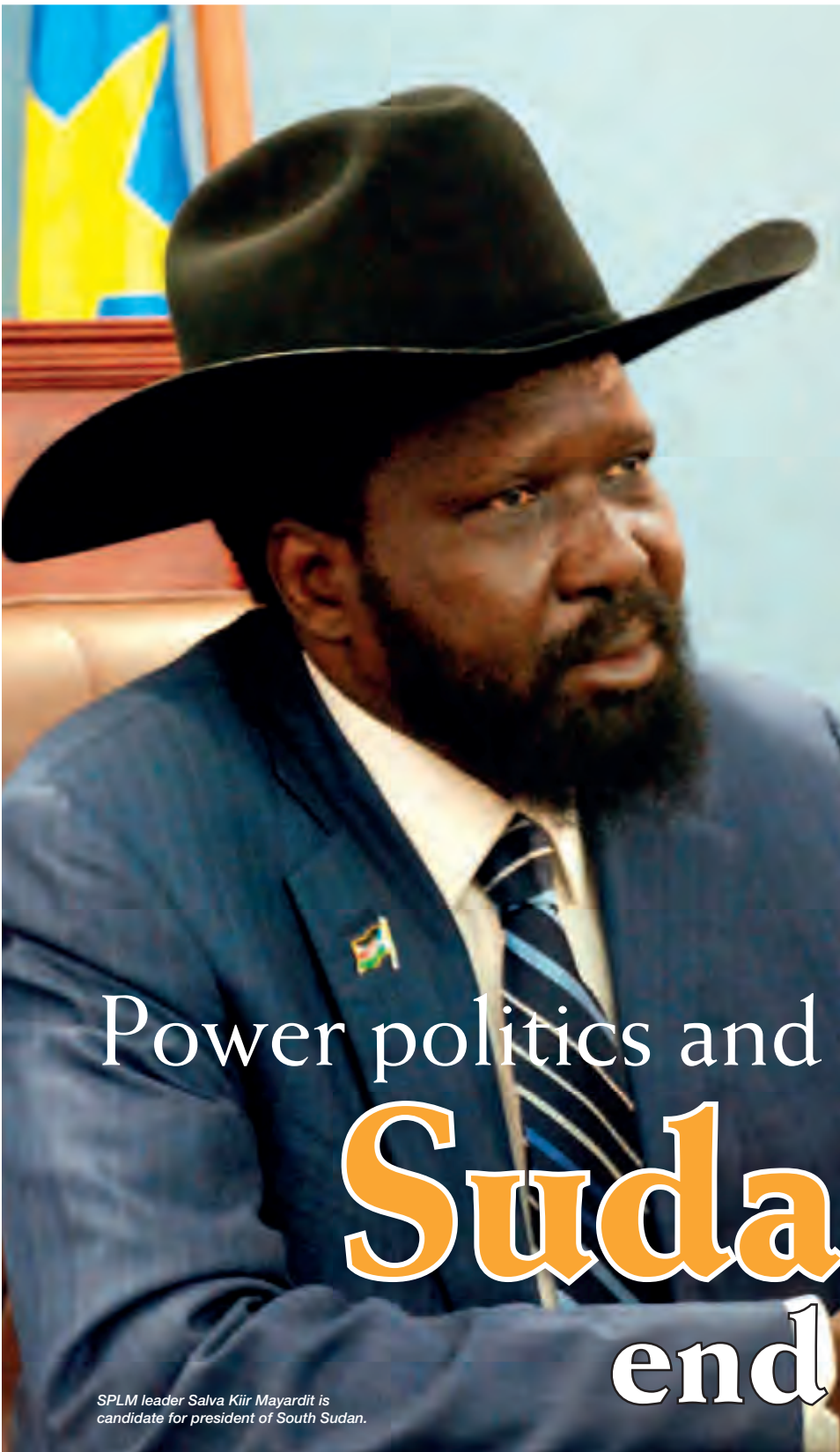
in the North, in addition to the creation of greater representation of the NISS in the South will have to be determined in a consensual manner involving representatives of different interest groups (and not just at the party level).

With many obstacles to overcome and many concessions to be made and explained to constituencies and party cadres, both the North and South have the necessary leadership to take this process forward.

Failing to reach a mutually accepted, consensual and respected agreement, with much-needed breathing space allowing the parties to concentrate on consolidating their own governed territories and partnership with other potentially disruptive opposition movements (SPLM with other parties and factions within its movement, the NCP with Darfur and other opposition parties) will weaken Juba and Khartoum. Fighting or negotiating on several fronts will allow for mistakes, badly thought-out concessions and calculations of narrow survival.

Furthermore, if there is no framework to establish control and rules of engagement for local and provincial issues then contentious issues that needed to be addressed at the central (NCP/SPLM) levels will play out at the grassroots level (issues of land, oil, water, security etc).

Peace and stability in Sudan will need to be negotiated at all levels and with many partners: the leadership, the internal rivals, the economic interest groups, opposition parties, the population, the security forces, and the regional neighbors. Africa's largest country that lies at the heart of the continent will have to untangle a complex web of uncertainties while having the conviction to move forward even if the future is unclear. ■



The upcoming elections and the referendum in Sudan have opened wide the debate among Sudanese and non-Sudanese alike about what the future holds. **John Yoh*** raises questions underlying this debate as Sudanese enter a complex and uncertain period for the country

Elections are won or lost before they are conducted because through strategic planning, proper preparations and mobilisation it is easier for a party to determine its chances of winning. In fact elections are not necessarily influenced by revolutionary legacies beyond four to six years.

People forget easily, especially if their expectations are not met on time. To win elections a party needs a high level of organisation, solid funding and viable and sophisticated media (TV and radio) that can reach every citizen, especially the organised youth.

Power politics and Sudan's end game

SPLM leader Salva Kiir Mayardit is candidate for president of South Sudan.

In the case of Sudan it must be emphasised that in the process of implementing the Comprehensive Peace Agreement (CPA) during the past five years, the Sudanese parties to the agreement were not able to demilitarise politics and the elites continued with "scape-goatism" by always blaming the other side for poor performance and partnership.

As the end of the interim period draws to a close, it has become clear that some of the outstanding security concerns such as the border demarcation between the South and the North and the Abyei border will become contentious issues. Further, the disagreement over the results of the census should be looked into from the premise that it impacts on more than just the number of the constituencies the SPLM and the South will have in elections. The census outcome could not only have the unintended effect of affording the Northern MPs an opportunity to change the constitution after the elections but also impact on the dynamics of wealth-sharing in post-referendum arrangements.

There is no doubt that the results of the census and the level of readiness of the Sudan People's Liberation Movement (SPLM) and Southern/Northern Sudanese opposition parties to participate in elections will affect positively or negatively on the readiness of the whole country in conducting the referendum in January 2011. The formation of the Referendum Commission, selection of its members, formulation of its laws and other procedures are important activities that should not be compromised. Incidences, such as the unilateral handpicking of the National Electoral Commission chairman by the ruling National Congress Party (NCP) should be avoided. It is very important that the membership

of the Referendum Commission is thoroughly studied and the background and commitment of each individual would-be member to the spirit of the CPA must be ascertained before his/her name is adopted.

The SPLM grassroot institutions need to be organised and prepared. The situation in the SPLM Northern sector is worrying given that so far the membership that has registered has not been cross-checked or screened to determine how many have infiltrated the movement from other parties.

Dynamics and implications of elections

The parties to the Sudanese peace agreement have diverse views on the importance of elections. For the NCP, elections entail legitimacy of their power especially now that they seem certain that the South is likely to vote for a divorce. Moreover, the NCP is

or fragment the traditional Islamic parties, the NCP feels confident that should the SPLM turn a blind eye to possible low key rigging of elections in the North, the NCP will surely win and take over the reign of power in the North.

While theoretically this may sound like a good strategy, practically it is difficult to implement due to the following reasons: firstly, the SPLM has already forwarded a candidate, Yasser Said Arman, to compete with NCP leader Al Bashir in the presidential elections. That means that the envisaged partnership between the SPLM and NCP is no longer a possibility, hence the SPLM would not necessarily go along with any attempt to rig elections in any part of the country; secondly, the decision by the SPLM to field a presidential candidate has prompted other Northern political parties such as the

Inheriting of the North...implies the latent power struggle between the riverine elites and their African counterparts as represented by the marginalised regions

aware that their leader President Omar Al-Bashir's only safe haven is inside the Republican Palace due to the hovering International Criminal Court (ICC) warrant of arrest. Legitimising their leader through elections is therefore one of the key strategies that the NCP is keen to implement. Legitimacy to the NCP entails inheriting the Northern part of the country at both executive and legislative levels. Having managed for over 20 years to either neutralise

Sudan Communist Party, the Umma National Party and the National Popular Party to do the same. The aim of these political parties is to scatter votes and hence deny the NCP presidential candidate a landslide majority in the first round; thirdly, Darfurian political and civil society organisations inside the country may not align themselves with the NCP and they seem to prefer to align themselves with either the SPLM or

Science has to become part of South Africa's everyday dialogue

There is no doubt that both the number and competence of people qualified in mathematics and science in South Africa need to be increased significantly in order to drive its development and economy. Although South Africa has made great strides in positioning itself as a player in science, engineering and technology in Africa and internationally, the country needs larger numbers of qualified professionals in these fields.

But in reality our learners who will become the scientists and engineers of the future are ranking very low in recent studies on mathematics and science competency*. Of even greater concern is that the number of higher grade Senior Certificate passes in mathematics and physical science has been decreasing steadily since 1999.**

The South African Agency for Science and Technology Advancement (SAASTA), a business unit of the National Research Foundation (NRF) is tasked with creating better awareness and public engagement of science, engineering and technology in South Africa. This goes hand in hand with improving the numbers and competencies of our learners in science and mathematics. "For SAASTA, this is much more than a mandate – it is a social responsibility," says Ms Beverley Damonse, Executive Director of SAASTA. "It is also closely tied to the priorities of our government, in particular the national departments of Science and Technology and Education, in its drive to increase professionals in mathematics, science, engineering and technology."

Impacting on policy, social conditions

Science, through research, has a significant role to play in the growth of South Africa's economy. But apart from this, when scientific research findings are made accessible, innovations and entrepreneurial opportunities often follow. Research findings can also have an impact on policy and social conditions in the country. This can be achieved only when science becomes part of our daily dialogue and discourse.

"SAASTA is responding to these challenges by identifying and implementing interventions together with partners in the public and private sectors, which will contribute to an improvement in the uptake and pass rates of mathematics and science in schools and to people becoming enthusiastic about the possibilities of science so that it forms part of our everyday conversation," says Damonse.

SAASTA conducts its business in three strategic areas:

- **Education:** We build the supply of tomorrow's scientists and innovators;
- **Communication:** We celebrate South Africa's achievements in science, engineering and technology, and expand the public's appreciation of the benefits and risks of science;
- **Awareness:** We grow awareness of science through exploration, exhibitions and actual experience.

* Trends in International Mathematics and Science Study, 2003

** Centre for Development and Enterprise Report, 2004

the opposition parties. Therefore the expected objectives of the elections, both executive and legislative, will be aimed at winning at all costs so that whoever wins inherits the power in the North.

The issue of who will inherit the North is very important as it will impact on establishing systems in the post-referendum North. The past 20 years have witnessed the NCP's total control of all political and socio-economic affairs in Sudan, especially in the North. This led to decimation of those political formations that were active before June 1989 who were either silenced by force, their members jailed and tamed, encouraged to defect to NCP or fragmented to the point that today there are five Umma Party factions and about four Democratic Unionist Party factions. It is hard to predict whether indeed these traditional parties are formidable forces any longer, until the final outcome of the elections.

The other side of the story is that the NCP, Umma National Party, the Communist Party and National Popular party elites are conscious of the cultural and racial implications of power relations in the country. These political formations are by and large dominated culturally by riverine elites who espouse the Islamic and Arabic cultural hegemony of the centre vis-à-vis the rest of the country or the peripheries, whose elites are either African or the culturally Islamised or Arabised. So the inheriting of the North cannot be just by any political party, rather it implies the latent power struggle between the riverine elites and their African counterparts as represented by the marginalised regions (Nubians in the far north, Bija in the east, Darfurians in the west, Nuba in the centre, Funj in South East).

Related to the issue of who will inherit the North is the possibility of a military take-over in the centre should the South go. There could be political deadlock between the partners to the Naivasha process over the outcome of the elections or as a result of new dynamics on the ICC indictment of President Al Bashir the NCP and its security organs may decide to trigger an open-armed conflict with the SPLA on the border areas between the South and the North, hence creating a new security situation in the country.

On the other hand, Al Bashir may opt to urge some of the NCP officers to carry out a palace coup where a new leadership led by a senior army officer affiliated to the NCP may usurp power. Such a situation may provoke the SPLA/SPLM to take drastic measures, unilaterally or in collaboration with its allies from Western and Eastern Sudan. This may lead to a large-scale conflict in the country, the consequences of which might have a substantial impact on national, regional and international security.

Post-referendum arrangements

The negotiations over post-referendum arrangements will undoubtedly impact greatly not only on future South-North relations, but most importantly between various political forces in post-2011 Northern Sudan. Some of the key issues that will be discussed have short and long term repercussions for the welfare of both parts of the Sudan. It is therefore imperative that whoever wins the elections in April 2010 has a greater role to play during the post-referendum arrangements negotiations.

The post-referendum arrangements, complex as they are, are critical in

terms of determining how peaceful or violent is the period leading up to the referendum itself. There are three critical points that must be taken into consideration. These include: the choice of a mediator; technical teams to work in parallel with political players and mediators and maintaining a lean and manageable field for mediation and negotiations.

As part of the discussion on the post-referendum arrangement negotiations, all Sudanese (from South and North) would be keen to know what the future holds for millions of Southern Sudanese who are employed in the national public service, those who are members of Sudan Armed Forces, in the police, prisons, employees in the private sector and the displaced persons in camps on the outskirts of Khartoum. The same applies to Northern Sudanese who are scattered all over the South, particularly those who are in the business sector. Unless issues pertaining to the citizenship and nationality status of these millions of people are settled in advance, the scenario of Ethiopia and Eritrea's mass exodus across the borders may repeat itself in Sudan.

If such future complications are to be avoided in the event of southern session, other issues that require discussions prior to the referendum include currency, national security agencies, external debt (both bilateral and multilateral), as well as international conventions, treaties, protocols, agreements as well as distribution of assets such federal properties, pipe lines, refineries, factories, parastatals, military and police hardware, ships and others. ■

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Oil has dominated the economic and political landscape of Sudan during the interim period of the Comprehensive Peace Agreement (CPA) and remains at the centre of festering political tensions between the North and the South. **Luke Patey** argues that preparation for post-2011 oil wealth-sharing arrangements must now take priority in Sudan



Activists bang oil drums during a protest by human rights advocates Amnesty International, to call attention to the allegedly worsening situation in Sudan, in Berlin January 7, 2010.

Oil and politics a dangerous mix

Southern oil production accounts for over 80 percent of total crude output in Sudan. However, the South remains attached to over 1 600 km of oil pipeline heading north to Port Sudan and export terminals on the Red Sea. Should the South secede, Khartoum would lose considerable revenue, while Juba would have few immediate options available to sell its oil in large amounts. Without the settlement of oil arrangements, both sides will find themselves standing on shaky ground.

Oil masks a weak economy

Oil has been central to Sudan's economy since crude was first exported from Port Sudan on the Red Sea in August 1999. Over the past decade it has driven an average rate of economic growth of nearly 7 percent. Nonetheless, the oil boom in Sudan has been narrowly concentrated in industrial and service sectors, offering little to the majority of Sudanese. If there was still a window of opportunity to make the prospect of unity attractive thanks to oil, it has abruptly been closed.

Agriculture still employs two-thirds of the workforce, but oil has represented over 90 percent of Sudan's total exports since the CPA was signed in January 2005. A trio of Asian national oil companies – China National Petroleum Corporation (CNPC), Petronas of Malaysia and India's ONGC Videsh (OVL) – has underpinned oil development in Sudan with billions of dollars in investment since the CNPC first entered the country in 1995. Sudan's economic ties with Asia and the Middle East have

thwarted longstanding US sanctions and widespread divestment campaigns that have limited Western investment. Despite the growth of oil exports however (at US\$11.8 billion in 2008) the oil boom camouflages a critically weak economy.

For years Sudan has been burdened with twin deficits, running an average current account deficit of over US\$4 billion in the past five years. The importation of capital goods and foreign services has fed a burgeoning government debt. Oil was projected to comprise close to 60 percent of total Government of National Unity (GNU) revenue in 2008, averaging over US\$4.79 billion earned annually from exports and sales to local refineries since 2005.

Nonetheless, average total revenues of US\$7.94 billion have been outpaced by expenditures of some US\$8.26 billion. Sudan's total national debt stood at a staggering US\$33.7 billion in 2008. The Government of Southern Sudan (GoSS) is utterly dependent on oil transfers from Khartoum which amounted to US\$6.4 billion from 2005 to June 2009 (roughly 99 percent of total Southern revenues).

Sudan experienced its first oil shock when the major downswing in international oil prices began to take effect in early 2009. It has failed to manage the Oil Revenue Stabilisation Account, designed to shelter government revenues from volatile international oil commodity price swings, and investment in other sectors of the economy has been largely neglected despite record-level oil earnings. Thanks to decreases in spending and new tax measures applied by the GNU, as well as a rise in oil prices back to US\$60-70 per barrel by mid-2009, Sudan was able to avoid a complete financial meltdown.

The situation however was bleaker in the South. In the first half of 2009 the GoSS had only received US\$313 million from oil transfers from the central government compared to over US\$1.2 billion in the same period in 2008. A struggling Bank of Southern Sudan had to rescue the Nile Commercial Bank as it ran out of cash in April 2009. Many southern civil servants went without salaries for months on end as crime, banditry and tribal clashes rose in the region. The resurgence in oil prices will help the GoSS avert disaster.

Inflated expectations

The oil boom in Sudan was exceptional in nature. Following the signing of the CPA, the rise in oil production coincided almost perfectly with skyrocketing international oil prices. As international crude prices rose over 40 percent in value total crude output shot up from 305 000 barrels per day (bpd) in 2005 to 480 000 bpd in 2008. Today however, a combination of exaggerated forecasting, a lack of investment from cautious oil companies, and poor infrastructure has already limited Sudan's oil production. Unless major discoveries are made in the future, flattening oil production, unproven reserves, poor crude qualities, and questionable oversight threaten to undermine peace and stability during the last months of the CPA. The weakness of the oil sector however has gone largely unacknowledged and the inflated expectations regarding production threaten to spark a return to civil war.

Sudan is set to continue to produce increasing levels of oil heading towards 2011. It is also likely to remain sub-Saharan Africa's third largest producer behind Nigeria and Angola in the medium term. There are nonetheless serious question

marks hanging over the longevity of production with some estimates placing its peak at under 600 000 bpd on the basis of current production and reserve levels. This is a far cry from the 1 million bpd envisioned by officials at the Ministry of Energy and Mining in Khartoum. Even optimistic forecasts see a unified Sudan or separate Southern Sudan only enjoying another 20 years of strong revenues from oil exports.

Oil and future stability

Mistrust between the National Congress Party (NCP) and Sudan People's Liberation Movement (SPLM) has been fuelled by the incomplete and dysfunctional implementation of many of the CPA wealth-sharing provisions. An effective and a functioning National Petroleum Commission is still missing with southerners playing an inadequate role in the oil sector.

Some notable signs of compromise on oil may nevertheless help to promote avenues of economic mutual interest. The resolution of the Total-White Nile dispute, the Abyei roadmap agreement, and reactions after the ruling of the Permanent Court of Arbitration in The Hague placed key oil fields outside the boundaries of the disputed Abyei region indicate the priority attached among the NCP and SPLM to maintaining steady oil revenues and avoiding a return to civil war. The challenge of determining the conditions of oil resource sharing, whether in a unified Sudan or secession scenario, will nonetheless be tremendous.

The reluctance in Khartoum to give up oil revenues is met by an utter distrust and lack of sympathy from the southern elite. The GoSS faces high levels of uncertainty concerning its oil-dependent budget, which is compounded by a lack of transparency

- The City of Matlosana will be hosting SMME Business Conference and Expo from 11 June till 10 July 2010.
- As one of the principle activities the city will be having a Soccer Viewing Area where local business and communities can reap the benefit of watching all FIFA World Cup Soccer, from the opening ceremony to the final.
- We have decided to run an SMME Expo and Conference side-by-side so that our local SMME's can benefit in some small way from this mammoth event that is coming to our country.
- The city is looking for partners, sponsors and exhibitions to add value to the event.

- The 4-week event will be hosted at the PC Peller Airport, one of the city's Priority Investment Opportunities.
- The city will be launching the findings of the DBSA feasibility report at the conference as well as various investment opportunities that have arisen from the feasibility study which is currently in circulation.
(A copy of the study is available on the council website www.matlosana.org under Investment Opportunities)
- The airport offers a unique and rustic opportunity to host a successful 2010 SMME Expo with side-by-side events.

- To involve and include our local businesses and community in 2010 World Cup Soccer and create a legacy for our local community through 2010.
- To create a marketing and networking platform for local business and invite corporate SA to the city to create a legacy for our business community.
- To expose and promote our city to potential investors during 2010.
- To sell our Airport Business Plan to investors and at the same time promote our local business to potential expansion or investment.
- To create a happy and festive atmosphere at the airport in support of 2010.

- Matlosana Legacy Record Music Festival.
- SMME Expo and Conference.
- The Biggest Air show Ever (Attracts up to 10 000 people).
- Daily Soccer Activities Corporate 5-a-side and School Tournaments. These will also include life skill workshops daily for coaches and sport administrators with evangelist outreach programmes.
- Mini Olympics involving all sporting codes. This also include peoples with disability sporting code.
- Miss Matlosana 2010.
- BOLT AND ENGINEERING DISTRIBUTORS - Mining Expo.
- Drag racing.
- Speed and Sound Expo.
- Matlosana Heritage Tours - daily.
- Carnival Activities for school children daily.

- | | |
|-------------------|---|
| 11 June – 14 June | Music Festival, SOCCER and SMME Expo. OPENING GAME. |
| 16 June | Youth Day Gospel Concert and Outreach Program. |
| 18 June – 21 June | Speed, Sound and Drag Racing & SOCCER. |
| 25 June – 28 June | Bolt and Engineering Distributors - Mining Expo, Air show & SOCCER. |
| 3 July – 5 July | Miss Matlosana 2010, Sport, Leisure & SOCCER. |
| 9 July – 11 July | Legacy Records - 2010 Talent Search Expose. WORLD CUP FINAL. |
| 11 June – 11 July | SOCCER Viewing Area & SMME Exhibitions - daily. |

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regarding oil revenue transfers. Southern Sudan has generally received its 50 percent allocation of oil revenues from Khartoum. Nonetheless, reservations remain regarding the actual production and price figures on which GoSS transfers are determined.

An agreement struck after the SPLM suddenly withdrew from the GNU in October 2007 to bring GoSS appointees into the various oil consortia has still not been fully implemented. Khartoum now also sends oil transfers to the Bank of Southern Sudan in Sudanese pounds, hampering the ability of GoSS to maintain strong foreign currency reserves. Altogether, the GoSS and SPLM have been provided with few reasons to wish to remain locked in a political agreement with the NCP after 2011.

In the absence of a transparent arrangement on oil revenue sharing after 2011 and improved conditions for communities living in oil-bearing regions, armed conflict will continue to remain a threat. The poor transparency record of Khartoum on oil revenue transfers indicates that it may be unwilling to separate from its

oil revenues without a political fight or indeed a return to war.


Conversely, the SPLM has been given little assurance during the interim period of the CPA that it is dealing with a fair and open partner. It is keen to defend oil territory it sees as rightfully belonging to the South. The Southern elite regards their future survival and prosperity as an independent state as inextricably bound up with stable revenues from oil.

Regardless of the results of the scheduled 2011 referendum, many fear that a protracted Niger Delta-esque scenario is evolving in Southern Sudan.

It is doubtful how long the shaky political situation in the North and South can maintain some form of stability without steady oil revenues after 2011. Norway has engaged the NCP and SPLM in discussions on establishing post-2011 oil revenue sharing agreements, but it is unclear how far these efforts have progressed; more concerted support from the international community may help negotiations.

Any new deal on oil should also not repeat the lack of transparency and accountability that exist in

current arrangements. Attention must be paid to other aspects in order to avoid the emergence of a vacuum in oil sharing management: border demarcation between the North and South, international standards on environmental and social management, possible renegotiation of commercial contracts with foreign companies in the South and the usage of pipelines and related oil infrastructure will need to be established and regulated.

Key Sudanese and international stakeholders involved in the oil sector should support initiatives aimed at developing a comprehensive framework for negotiations between the NCP and SPLM on post-CPA oil wealth-sharing arrangements. Specifically, it should engage China, India and Malaysia to be more active partners in supporting such post-2011 arrangements and other aspects of industry management. 

"Luke Patey is a PhD candidate with the Research Unit on Politics and Governance of the Danish Institute for International Studies. This is the edited version of an article that first appeared in the report of the European Union's Institute for Security Studies titled Post 2011 Scenarios in Sudan (November 2009).





Sudan's president Omar Al Bashir at the recent African Union summit in Addis Ababa.

The decisions of the 14th African Union (AU) summit held in Addis Ababa from 25 January to 2 February 2010 on the International Criminal Court (ICC) are encouraging, believes **Jemima N Kariri** and **Nompumelelo Sibalukhulu**. This is considering the AU's overt resistance to the ICC in 2009, following the indictment of Sudan's president Omar Al Bashir

Africa reconciles with the INTERNATIONAL Criminal Court

Member states of the African Union (AU) last year resolved not to cooperate with the ICC in the arrest of President Omar Al Bashir of Sudan for war crimes and crimes against humanity allegedly committed in Darfur. This decision – made at the July 2009 AU-summit and widely regarded as proof of Africa's resistance to the ICC – is not referred to in the recent 14th summit decisions. Instead, the recent decision calls for African states parties to the ICC's Rome Statute to become more active

in relevant ICC forums. As such, the 14th summit decision suggests that the negative undertones previously expressed in reference to the Court and its work in Africa have been replaced by a more constructive approach. This is an encouraging development, particularly in light of the ICC's first Review Conference that will be hosted in Africa (Kampala) from 31 May to 11 June 2010.

The 14th summit took cognisance of the Report of the AU Ministerial Meeting on the Rome Statute of

the ICC held in Addis Ababa on 6 November 2009 to prepare for the 8th ICC Assembly of State Parties (ASP) later that month. The ASP would confirm the agenda for the Review Conference and to this end the AU Ministerial Meeting put forward to the ASP the following recommendations for inclusion on the agenda of the Review Conference:

- Proposal for amendment to Article 16 of the Rome Statute (which gives the UN Security Council the power

to defer ICC cases for one year);

- Proposal for the retention of Article 13 as is (which gives the UN Security Council the power to refer situations to the ICC for investigation);
- Procedural issues: guidelines for the exercise of prosecutorial discretion by the ICC Prosecutor;
- Immunities of officials whose states are not parties to the Rome Statute: the relationship between articles 27 and 98, and
- Proposals regarding the crime of aggression.

While some of these proposals were discussed at the ASP, none was accepted as an agenda item for the Review Conference. Resolution ICC-ASP/8/Res.6 on the Review Conference did nevertheless establish a working group of the ASP to consider, as from its 9th session later this year, amendments to the Rome Statute including the AU's proposed article 16 amendment.

Despite the above outcome, the 14th summit decision reflects a well-thought-out effort by the AU member states to identify pragmatic, constructive recourse. This is significant in the face of the ASP's decision to establish a working group to consider the proposed article 16 amendment, among others. It is in light of this that the AU has reiterated its request to the UN Security Council to defer the case against Al Bashir in order to not obstruct ongoing peace processes in Sudan, including the implementation of the recommendations by the High Level Panel on Darfur chaired by the former South African president, Thabo Mbeki. The Panel had the mandate to examine the Darfur situation and make

recommendations on how best the issues of accountability and combating impunity, and those of reconciliation and healing on the other hand could be effectively addressed.

The AU's 14th summit decision also requests African states parties to raise the issue of the immunity of officials whose states are not party to the Statute (articles 27 and 98) under the topic of "cooperation" during the stocktaking part of the Review Conference and also with the New York working group of the ASP.

Importantly, the AU emphasised the need for African states parties to "speak with one voice to ensure that the interests of Africa are safeguarded" and urged African states parties to follow up [presumably at the 9th ICC ASP] on the concerns raised by AU member states. This indicates that African states acknowledge the importance of engaging with the processes of the Court in order to further their cause, as well as the need to comply with ICC guidelines and to engage with relevant developments. In this regard, the AU correctly places responsibility for action on African states parties, with its request to the African Group in New York and the African members of the Bureau of the ASP to the Rome Statute, to follow up on the implementation of the AU decision taken at the 14th summit.

Considering the important role that African states parties must play in improving and enabling the work of the ICC on the continent, it may become necessary to establish a working group on international criminal justice and the ICC for relevant ambassadors in Addis Ababa. This working group could engage with these matters from Africa, and interact periodically with counterparts in The Hague and with the African Group in New York. Developments

at the 8th ASP indicate that better coordination and information-sharing among African states parties' delegates at future ASPs is essential: when South Africa (on behalf of the AU) introduced the proposal that an amendment to Article 16 be included on the Review Conference agenda, only two African states supported it. This may suggest either that the other African states do not back the AU's article 16 proposal, or more likely that African delegates were not properly briefed and prepared with regard to the AU proposals for the Review Conference.

The 14th AU summit represents positive developments for international criminal justice on the continent. The decision represents a willingness to work with, rather than sideline the ICC. It also suggests that the AU wants the ICC to be seen to work for the African continent. This is significant since all situations currently before the Court are from Africa, with the possibility of further ICC work on the continent in Kenya and Guinea.

Following this welcome step in the right direction, it is now incumbent on African states parties and civil society organisations to prepare themselves for effective engagement on these issues not only at the Review Conference but also at upcoming ASP sessions. State parties could initiate active consultations at regional and sub-regional levels in order to build consensus and cultivate durable solutions relating to the work of the ICC. Civil society has an important role to play in this process by raising awareness around the ICC, lobbying their governments to participate constructively and offering support in the form of training and technical assistance to enable the investigation and prosecution of international crimes in their own countries. ■

The US and the UK have both made it clear that they would only consider lifting sanctions against Zimbabwe once there is visible evidence of reform on the ground, despite the political compromise reached between Zanu PF and the opposition MDC. **Judy Smith-Höhn** analyses the merits of ongoing sanctions in the present political climate in Zimbabwe



Are targeted sanctions smart enough?

It was evident from the onset that international sanctions against Zimbabwe would be one of the most contentious issues following the formation of the Interim Government and a major sticking point in fully implementing the Global Political Agreement (GPA).

ZANU-PF has on occasion blamed the MDC for not doing enough to lobby for the removal of sanctions. The MDC on the other hand insists that the responsibility lies solely with ZANU-PF, that merely needs to change its behaviour in order for the restrictive measures to be lifted.

For the moment, most targeted

sanctions remain in place.

But before dismissing calls for the lifting of sanctions as biased or premature, or simply refusing to consider lifting any restrictive measures, one should first of all ask whether those measures have achieved the goal they initially set out to attain and secondly whether the targeted sanctions that are in place are still relevant given the changed political environment.

Arms embargoes

Restrictions on arms and military-related trade were the first in a series of steps taken by the UK, the US as well as the European Union (EU) as

a result of the dissatisfaction with developments in Zimbabwe. One of the objectives of the arms embargo was to weaken the capacity of an allegedly increasingly repressive regime to oppress its own population.

As early as 1997, the UK began isolating its former colony by refusing to deliver vehicles to the Zimbabwean police in response to a "hit list" that was released by the Mugabe regime identifying 1 500 farmers of British descent who were to be dispossessed of their land. In addition Mugabe had called on the UK to pay compensations as stipulated in the Lancaster House

agreement signed at the country's independence in 1979. In 1998 Tony Blair responded by stating such payments were conditional on the guarantee of the rule of law, transparency, sustainability and fairness of the redistribution process – conditions which were not fulfilled. The relationship soured further and a few years later in 2000 Blair's administration imposed a full arms embargo on the government of Zimbabwe in addition to other measures that will be elaborated further below.

Similarly the US imposed restrictive measures, including a ban on the transfer of defence items and services in 2002 and 2003.

In the run-up to the 2002 presidential elections, the EU also responded to the regime's refusal to allow the head of the EU observer mission entry into the country by imposing a comprehensive embargo on military goods to the country.

Australia, New Zealand and Switzerland have all had an arms embargo in place since 2002.

Travel bans and financial sanctions

In addition to an arms embargo, selected political elite from the Mugabe regime were issued with travel bans to the UK and the country also froze the assets of a number of members of the then ruling ZANU-PF.

With the "Zimbabwe Democracy and Economic Recovery Act" of 2001, the US set the basis for similar measures and in the following year in 2002 targeted sanctions were imposed on more than 200 individuals and businesses. They comprised an asset freeze as well as a travel ban to the US for listed individuals and businesses. However, these measures were

only implemented in 2003. This had the undesired effect that those targeted had enough time to move their assets to other accounts (and countries) that weren't affected by the sanctions.

In March 2009 US President Obama extended these targeted sanctions for one year, citing a lack of progress in resolving the political crisis in the country as reason for the US decision.

In the case of Zimbabwe, it appears that the effectiveness of smart sanctions has been limited by inconsistencies in their implementation as well as the selective nature of the sanctions

The EU also placed targeted sanctions on 20 individuals, mostly government representatives and members of the military and that number was gradually increased to 129 persons. Their assets were frozen and they were issued with travel bans to the EU.

Other restrictive measures

In 2002 it was agreed that Zimbabwe's membership of the Commonwealth be put on hold for one year. When the reinstatement of its membership was tabled a year later in 2003, Mugabe "retaliated" by

revoking his country's membership.

Also in 2000 the UK reduced its bilateral aid by as much as one third of its previous sum. The areas of agriculture and land resettlement were worst affected.

In 2002, in addition to the arms embargo, travel ban and assets freeze, the EU restricted development assistance to Zimbabwe to emergency humanitarian aid and social projects.

Still friendly

As for other international bodies and regional organisations such as the International Monetary Fund (IMF), in the case where restrictions were placed on the former Mugabe regime or diplomatic or financial ties severed, these were resumed in the wake of the inauguration of the IG. Moreover, these measures are not to be confused with sanctions, as they were imposed as a result of the actions of the Mugabe regime. The IMF for instance had severed ties with Zimbabwe for over a decade because of its failure to pay its debt arrears which currently stand at US\$144 million.

Similarly the World Bank (WB), which had provided a total of US\$1.6 billion in assistance between 1980 and 2000 suspended its lending to Zimbabwe in 2000 when the country went into arrears. However, this does not mean that the Bank disengaged from Zimbabwe entirely.

Despite intensive lobbying by the UK government, the United Nations Security Council has not considered imposing any targeted sanctions on Zimbabwe. Meanwhile SADC has called for the lifting of sanctions on a number of occasions, most recently recorded in the Communiqué of Summit of the Troika of the Organ on Politics, Defence and Security Cooperation held in Maputo, Mozambique in early November 2009.

Tallying successes and challenges

In the case of Zimbabwe it appears that the effectiveness of smart sanctions has been limited by inconsistencies in their implementation as well as the selective nature of the sanctions. While one may consider a travel ban to have had an initial impact in the sense that it restricted the free movement of a targeted individual, it is uncertain whether the ban had any impact on the behaviour of such persons. Underscoring this dilemma is the fact that the travel restrictions only apply to certain countries and allow travel exemptions for participation in meetings coordinated by international organisations, for example.

There is also a lack of clarity on the exact limitations of the EU travel ban, which in the past has also been ignored. Moreover the loopholes in the policy that have enabled individuals to circumvent the ban have had a severe negative impact on its effectiveness.

The good relations that the Mugabe regime enjoyed with China would have also buffered its potential impact.

Sanctions used as a scapegoat

Mugabe's manipulative use of terminology by describing smart sanctions as illegal has meant that instead of pressuring Mugabe and his allies, these measures have been taken hostage and are often used as a scapegoat, with the Mugabe government publicly blaming it for the economic decline.

Conversations with ordinary Zimbabweans will reveal that many are still under the impression Zimbabwe has suffered under comprehensive economic sanctions, attesting to the effectiveness of the

state-owned media apparatus.

Those targeted appear to have been inconvenienced somewhat, no longer able to enjoy certain privileges.

Yet the imposition of smart sanctions on a small circle of political elite and affiliated businesses can hardly have had the detrimental effect on the economy that the leader and some members of ZANU-PF claim it to have had. Even after it had imposed targeted sanctions, the EU for example was second in importance only to neighbouring South Africa as a trade partner to Zimbabwe.

Moreover, despite the spiralling economic situation prior to the signing of the GPA, the Mugabe regime has always been able to reward its supporters, thus securing their continued loyalty. The patronage system allowed the regime to award political posts to cronies and access to power and resources was easy given the corruption that was so entrenched in the system.

It is also difficult to gauge the positive impact of targeted sanctions on the plight of the opposition party and civil society movements. Their political goals remained the same and the Mugabe regime continued to enact a number of restrictive laws. Still, importantly the imposition of sanctions by members of the international community also had symbolic significance. For those opposed to the status quo, it meant that their cause was given international recognition.


The case for finding a middle ground

Prior to the signing of the GPA and the subsequent inauguration of an Interim Government, it was unlikely that the West would consider lifting any of the restrictive measures it had imposed. Understandably so,

given that there appeared to be little improvement on any of the conditions identified as crucial for the lifting thereof. However, now that the opposition-MDC has joined government, sanctions are subsequently no longer an effective measure to show support for the opposition, for example. It is therefore prudent to consider whether this remains a valid objective. The recent renewal of targeted measures by the EU, which included the removal of selected individuals and companies, is a positive step in this direction. The fact that other conditions for the lifting of sanctions have not been met, e.g. halting the fast-track land reform process or providing parliamentary oversight of the security apparatus, means that calls for the total lifting of all sanctions can surely not be met.

The last 17 months has certainly witnessed visible improvements on the ground: shortly after signing the GPA in September 2008, spiralling inflation was halted, food is now on the shelves and many countries have pledged funds to support Zimbabwe's recovery through its Multi-Donor Trust Fund, for example.

The key recommendation thus would be to reconsider one's position on targeted sanctions and seriously question whether they have achieved the goal they intended to, or whether they will have the desired effect in the future. Perhaps it would be prudent to consider showing a sign of good faith by removing certain restrictions to acknowledge that there have been improvements in the economy and a decrease in incidents of violent crackdown on opposition supporters.

In addition, a joint strategy by all the international role-players on the issue of sanctions would be the best way to achieve the desired outcome in Zimbabwe. 

Fighting for the environment in Kenya



Kenya Wildlife Service director Julius Kipng'etich lifts an elephant tusk from a case last September at the Nairobi National Park.

The fight against environmental crime is not easy. Often it is done across borders and involves well-organised groups that are sometimes better armed than those protecting the natural resources. The problem is further compounded by the integration of economies, syndicates that use corruption and take advantage of weak states such as neighbouring Somalia. There is also a lack of political will to fight environmental crimes. In addition, the unemployed youth is easily exploited to commit these crimes.

Nevertheless, with increasing awareness of the adverse impacts of environmental degradation on resources and people's wellbeing, the issue of environmental crimes is slowly gaining currency in the country.

Illegal trade in sandalwood (*Santalum album*)

This is currently the most popular commercial illegal trade in flora. A five-year presidential ban on harvesting sandalwood was imposed in February 2007.

Sandalwood contains essential oils with a fragrant scent and is used in the manufacture of cosmetics. The essential oils are more concentrated in the roots than in the stem, and as a result the whole tree is uprooted. The species has male and female plants, with the latter being favoured for its fragrance.

Currently, there is a rush for sandalwood because it fetches very good prices on the international market: 1kg of essential oils sells for about US\$1 500. These prices are not reflected locally where farmers sell sandalwood to middlemen for between Ksh80 and 200 (US\$1 to US\$2.50) per kilo.

Kenyan sandalwood is exported mainly to India and China and is ordinarily sent abroad as wood. The key dealers are politicians and

traders of Asian origin. However, since the ban and subsequent awareness of it, sandalwood now is exported through Tanzania. There is a chain to facilitate passage from the village where middlemen buy it, to its transportation by road to Namanga and the larger Kajiado district, from where it is smuggled into Tanzania.

With transportation becoming increasingly difficult traders are now semi-processing sandalwood into chips and sawdust. It is then transported, and even exported in these forms packaged in packets the size of cigarette packs. Some are sent as "free samples" and are thus exempt from duty.

Although the tree would assist communities to generate revenue and improve their lives, the present method of uprooting the whole tree

is not sustainable as the tree is slow growing. Additionally, the plant is parasitic and it requires a host to support its growth.

Illegal logging

This is rampant in most forests, especially as a result of the presidential ban on logging in government forests.

Small-scale illegal logging is done using bandsaws and power saws in some areas, and is done mainly at night. Large-scale illegal logging is done using power saws and is undertaken by timber merchants in collusion with government authorities responsible for the resources.

Some illegally-logged timber is exported to Singapore, China, India and the Middle East which favour mainly the indigenous species of cedar, podo and camphor. Although exotic, cypress is also popular, mainly in the local market.

Kenyan Forestry Services (KFS) and Kenyan Wildlife Services (KWS) staff patrol and make arrests and seizures of some of the illegally harvested timber and the vehicles carrying it. However, the areas are large and the staff few. Corruption is also rampant, especially amongst the timber merchants.

Key areas are the Mau and Mt Elgon. The problem has declined in the Aberdares due to the fencing project and because various groups are active in this area.

Illegal trade in other flora

This involves mainly endemic species such as the African orchid flower, which looks like leopard skin, in Tiwi and Kwale, and the African violet in the Taita Hills.

There is also the African aloe which is listed under CITES and is now exported as resin and *Prunus Africana*.

Additionally, there is bio prospecting and bio piracy of undetermined extent. Some cases however are well known and followed up. These include the bacteria from Lake Bogoria, sourced from Kenya, and used in an enzyme for the production of faded jeans.

There is also theft of indigenous knowledge, especially of the use and values of certain herbs and medicinal herbs. Benefit-sharing as enshrined in the Convention on Biological Diversity (CBD) has not been actualised, although Kenya is a signatory to this convention.

Forest excisions

Forests have in the past been excised illegally, even without the necessary degazettement. Key areas have included water catchments such as the Mau complex. The excisions have been done mainly with a view to settling indigenous communities such as the Ogiek who have lived in the Mau all their lives. However, the bulk of the land is hijacked by politicians and administrators. The "illegal" beneficiaries sub-divide their large parcels of land and then sell tracts to unsuspecting members of local communities.

In the Mau complex alone, 35 000ha have been excised in eastern Mau, 22 000ha in south western Mau and 1 000ha in Molo. About 15 000ha have been settled on in the Maasai Mau. There are about 20 000 persons now settled in the Mau, but only 1 962 have title deeds.

Excisions especially in the water catchment have resulted in loss of ecosystem goods and services, leading to flash floods during and just after the rainy seasons and lower base flows during other times. With increasing human populations in the upper catchments, communities downstream

experience water shortages, which leads to conflict. In the Mau complex alone, 12 rivers are threatened. Excisions have also resulted in loss of biodiversity.

The new Forest Act of 2005 has adequately addressed the issue of forest excisions. It provides that no forest excisions will be done without an EIA and the approval of parliament. If these provisions are enforced, the Act will enhance the preservation of gazetted forests.

In areas such as the Mau, a land audit is being undertaken by a taskforce appointed by the prime minister in 2008. After the audit the taskforce – which includes both public and private sector actors – will give recommendations on measures to preserve the Mau.

Forest encroachment

Encroachment takes different forms with the key forms being illegal cultivation of food crops, cutting of fodder, beekeeping and firewood collection (the most common). Collection of firewood and fodder is allowed in some forests for a token fee. These issues are addressed in the Forest Act.

Most encroachment results from the ending of the Shamba system through which communities were allowed to farm on condition that they plant and tend young seedlings.

Illegal grazing

This is a crime in both forests and wildlife conservation areas and is closely tied to encroachment. It is a major problem especially in the Tsavos, the Mau complex and Mt Kenya regions. Countrywide about 500 000 animals are poached annually with the Tsavos accounting for about 80% of them. The KWS alone arrests in the region of 1 000

persons a year. Others are arrested by KFS and the police for trespassing on private property.

The problem is difficult to manage as the boundary between the protected areas and forests has no barriers. The local communities, mostly pastoralists with high regard for their animals, also feel they have a "right" to graze their animals anywhere. Illegal grazing also occurs in Laikipia where pastoral communities invade private, agricultural and ranching farms.

Illegal grazing, in addition to destroying the forests and protected areas' ecosystems, causes conflicts between pastoralists and farmers, and pastoralists and the government (KFS and KWS) and also leads to animals contracting diseases such as east coast fever from the close interaction with wildlife.

Illegal forest fires

Fire lighting is forbidden in government forests but this rule is routinely ignored and fires started for land preparation, honey hunting and charcoal burning. Other fires are started maliciously or through carelessness in throwing away matches or cigarette butts.

Illegal charcoal making

This crime is akin to illegal logging as trees in government forests and trust land are felled and converted into charcoal. It is very common in the arid and semi-arid lands (ASALs) where it is a fallback economic activity when it is too dry to farm or raise livestock. It is also common in areas under civic authorities as they are more easily accessible and rarely manned.

In dealing with the problem, any charcoal kilns found are usually destroyed and all bags of charcoal are seized.

Illegal trade in wildlife and their products

It is illegal in Kenya to handle wildlife or wildlife products without a licence. Illegal trade involves mainly African grey parrots and lovebirds, most of which originate from The Democratic Republic of Congo and Uganda. Most are sourced from trailer drivers at about Ksh40 000 a pair. Most buyers are Asians.

Other illegal trade involves snakes such as puff adders, cobras, black mambas, mountain vipers and pythons, which are all traded as pets. Others include crocodile and tortoise (the leopard tortoise is found in

Ukambani, Baringo, Koibatek and Kajiado districts and the pancake tortoise commonly found in Mwingi district).

There is also illegal trade in bush meat from zebra, buffalo, giraffe and other animals. This is sold mostly in Nairobi and other major towns. The main outlets are hotels and restaurants, where the meat is cut into small pieces and cooked, rather than places such as butcheries where meat is displayed. The trade in bush meat is receding, but it has been a tough battle for KWS.

There have also been a few cases of ivory trading, mainly involving Chinese nationals.

Poaching

Poaching is either commercial or subsistence. Commercial poaching involves bush meat, elephants (for ivory), rhino (for their horn) and cats, namely leopard and lion (for their skin, claws and teeth). Commercial poaching is rife on the northern frontier where there are many illegal firearms. Key areas are Tana River, Lamu, Isiolo, Samburu, Marsabit and Garissa districts. ☐

¹ *Ibid*, Forest Act, sections 52 (1–d).





Is the Matatu's disorderliness a reflection of the prevalence of that trait in the broader Kenyan political leadership?

Kenya is finally on the way to having a new constitution this year, most probably by August if the current pace and commitments are maintained. As many Kenyans and the international community wait with bated breath for finalisation on the process – it has taken almost 20 years to write a new constitution reflective of the country's current realities – there are some sceptics who feel a new constitution would not be respected, protected and defended once it has been adopted. **Wafula Okumu** cautions that implementing a new constitution could be as herculean a task as drafting and adopting it

Our *Matatu* mentality and a new constitution

There is huge scepticism surrounding Kenya's new draft constitution – the first in 20 years – mainly because of three critical factors: firstly, a lack of serious reflection on issues like national identity; secondly Kenya lacks an enabling environment – concerning both ordinary

citizens and politicians – and finally the costs for implementing it are enormous.

Firstly, one could actually say that a *faux pas* was made in the process when a national debate on national interests was scuttled. Kenyans never went through a process of defining

who they are as a people and agreeing on the characters that define them and the values to which they subscribe.

The new constitution is supposed to extol Kenyan characteristics and values. It is a depository of the values that Kenyans hold dear, binds them as

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a people and distinguishes them from others. These are values that Kenyans would swear to uphold, protect, defend and die for. Before such values are enshrined in a constitution, people should reflect on their history, identities and present realities to create a common character that generally suits and fits all.

A constitution containing such values is one that makes a citizen proud to proclaim it as a source of his or her identity. The depth of constitutionalism in a country can be gleaned from statements such as "We are a people who love peace," "We are a law-abiding people," and "We cannot allow anyone to mess with our freedom."

The revised harmonised draft contains a chapter on national values, principles and goals of "national unity," "diversity," good governance, equal justice and equality. Unfortunately these were never subjected to intense and national scrutiny before being enshrined in the constitution. Furthermore, these values fall far short of what defines a modern nation in the 21st century.

Among critical missing values are definitions of national interests in terms of national welfare, the humanitarian spirit, (*harambee*), work ethics and Pan-Africanism and a proclamation of a culture of respect for the rule of law, and of a just, peaceful and democratic society. Ascription to these values, the superglue that binds the nation together, would deal a fatal blow to the ills that have bedevilled Kenya since independence such as tribalism, corruption, plutocracy, autocracy, injustice, impunity, and inequitable distribution of the national wealth.

The second point of scepticism is the lack of an environment that would enable the new constitution to live, work and serve the best interests of Kenyans. A question in the mind of anyone who

has lived in Kenya is: do Kenyans have the will to respect the new constitution?

Kenyans don't like waiting – they always want to be served instantly or to be the first in the queue. This partly explains why the irritating traffic jams in Nairobi are mainly caused by drivers who blatantly violate all road rules to be ahead on the road. Driving in a Nairobi street is a harrowing experience to anyone who values order and respect for the law. It is almost

engaging in hooliganism by throwing stones at the police, while others have escaped warrants of arrest and failed to answer court summons. Most MPs learn to dodge the law the moment they are elected by refusing to be served with petitions challenging their elections. As a result legitimate election petitions are dismissed because MPs refuse to be personally served with summons as required by law.

Despite this legal loophole that is a

Before such values are enshrined in a constitution, people should reflect on their history, identities and present realities to create a common character that generally suits and fits all.

impossible to drive on a Kenyan road without a *matatu* mentality.

Matatus are public transport vehicles operated by crews whose intention seems to be to break all traffic laws, particularly in front of police officers. The police seem to encourage this anarchical behaviour, as it allows them to extract bribes.

Driving on a Kenyan road leaves one wondering how Kenyans will respect a new constitution that is a supreme law of the land, if they cannot respect such a basic law as a traffic rule.

Another source of threat to constitutionalism is the Kenyan politicians. Kenyan parliamentarians seem not to understand that their penchant for disrespecting the laws they make has engendered a culture of impunity that has seriously emasculated the emergence of a peaceful, democratic and just Kenya.

As chronic violators of the law, some MPs have been caught on camera

source of a great injustice, MPs have never considered sealing it, as that would be tantamount to sealing their own fate. Consequently, many remain in parliament for five years due to a severely-flawed technical clause. How can ordinary Kenyans respect the law when they see the lawmakers themselves breaking it with gleeful impunity?

It seems Kenyan MPs make laws with an understanding that those laws do not apply to them. The narcissistic tendency of MPs was observed in Naivasha when the Parliamentary Select Committee on the Constitution deleted clauses in the draft that sought to curtail their rapacious urges to enrich themselves. For instance, they deleted a clause that would give constituents the power to recall non-performing representatives. MPs should learn to live by the old adage that "charity begins at home," and that they should be models for upholding the laws of the land.

The penchant for disrespecting the rule can be traced to the colonial, Kenyatta and Moi eras during which the country was ruled with iron fists and antipathy against the state was fostered. Laws were broken with impunity as a form of protest against dictatorial rule. This disobedience against the totalitarian state seems to have remained a norm in post-Moi Kenya.

Another explanation is the reluctance of the middle class to espouse the rule of law. It is a common practice for a member of the middle class to commit minor infringements of the law and bribe him or her self out of trouble. The middle class's infatuation with Western lifestyles could partly account for its failure to respect the rule in some instances.

Since the failure of the 2005 referendum to bequeath a new constitution, Kenya's middle class has become apathetic and cynical in matters touching on the constitution-making process. It is common to come across members of this class gloating over their political apathy by claiming that they "do not follow local news."

The disengagement of this middle class from the political processes is perilous to the nurturing of democracy, respect for the rule of law and a political culture of constitutionalism. Whatever constitution will be adopted after this arduous process will depend heavily on a highly conscientious class of Kenyans with a deep understanding of its value to peace and development of the country. The future of the new constitution will depend strongly on this class to educate other Kenyans on its meaning and importance and to guard it against abuse.

The third point of scepticism is the cost for implementing all the clauses in the new constitution, particularly of maintaining additional structures and

a welfare state. The implementation of the new constitution would cost taxpayers at least \$1.5 billion. The major cost will be implementation of programmes on social security, universal health care and housing. It would cost at least \$500 million to cushion Kenyans from the effects of unemployment, illness, old age, being orphaned, etc. To provide health access to all Kenyans would cost \$1 billion per year. Other beneficiaries from the welfare state to be created are indigent crime suspects, who will be defended by 25 lawyers at a cost of \$1 million per year.

Additional costs would be incurred from establishment of the Senate at a cost of \$32 million. Also, Kenyans will have to cough up \$63 million to pay the salaries and perks of 349 members of parliament. Some have cynically suggested that one way of reducing the cost of implementing the new constitution would be to cut out some fat from the government, starting with the size of salaries and perks for MPs. After all, it sounds unfair for 20 million poor Kenyans to receive \$50 of welfare per year while MPs laugh all the way to the bank with \$180 000. In other words, an MP will earn an equivalent of what 3 600 poor Kenyans will earn from government assistance.

Although Kenya has been stuck at 147th position in the UNDP HD index for the past 4 years and is ranked 92nd on the human poverty index, 52% of its population live below the poverty line of \$2 income per day. Although 74% of Kenyans are literate, 43% do not have access to clean water and 20% of the children are malnourished. In 2007 Kenyans living outside the country remitted \$1.6 billion, which is an equivalent of \$42 per capita or 5.4% of the GDP. This huge contribution

to the economy by Diaspora Kenyans, compared to that of politicians has been one of the grounds they have used to demand seats in the new parliament. These Kenyans also point out that it is unfair for them to remit these huge amounts of money to pay salaries and perks for MPs who work less than 10 hours a week and get paid \$500 an hour.

Kenya cannot have a new constitution without also having constitutionalism. It is only through constitutionalism that checks can be put on the tendency of individuals and groups to impose their will on others, a government can be limited by proscribing power and prescribing procedures and politics of blatant arbitrariness will be purged. The biggest challenge facing the new constitution in Kenya is its acceptance as an embodiment of the nation's common aspirations, goals and interests.

In order to establish a lasting democracy Kenyans will be required to undergo a civic education that will imbue in them an understanding of both their rights and the obligations of citizenship. Kenyans will have to be educated about their constitutional rights and how to protect them. It will be pointless to have a well-written constitution that few people understand. To become an effective regulating force a constitution must have the ownership and support of the citizens.

Contrary to the expectations of the Committee of Experts on Constitutional Review that a new constitution *per se* is the "key to effectively addressing all...long term causes of conflict" such as land reform and inequality, it is how it is enforced and respected that will make it a solution to some of Kenya's problems. ■

Apartheid, reparations,

and the United States courts

Former South African minister Kader Asmal has received flack over his stance on apartheid reparation debate.

Should multi-national companies who operated in South Africa under apartheid be forced to pay for their sins? **Max du Plessis*** outlines the current case before the US Court of Appeals

South Africa

Apartheid reparations

South African Professors John Dugard and Kader Asmal have been in the news for their opinions for and against the Khulumani litigation currently before the US Court of Appeals in New York. Dugard is a well-known human rights law expert and Asmal is a former South African minister of education and ANC-stalwart.

The litigation involves claims on behalf of apartheid victims for reparations from corporate defendants, the argument being that the defendants as companies traded with the apartheid regime and thereby facilitated the crime of apartheid against humanity.

The litigation has been brought under the Alien Tort Statute (ATS) – a one-line American statute dating from 1789. It allows an alien to sue in American federal courts for a "tort only in violation of the law of nations or a treaty of the United States". In the late 1700s only three violations of the law of nations existed: piracy, infringements of safe conduct and violations of the rights of ambassadors.

The ATS was not used for 170 years. It was used briefly in the middle of the 20th century, fell out of favour, and was revived in the 1980s so that state agents could be sued for torture. Recently attempts have been made to use it to sue corporations for violations of international law. Due to its wording, parties which have no link to the U.S. have sought to sue parties for violations of customary international law which also have no link to the U.S. The apartheid victims are thus suing various corporations under the ATS for having aided and abetted the apartheid government.

In the course of the litigation the

United States Court of Appeals in New York of its own accord on 4 December 2009 invited assistance on the following narrow question: "As international law determines the scope of liability under the ATS, what do sources of international law evince with respect to whether customary international law recognises corporate criminal liability?"

apartheid in violation of customary international law under the ATS.

The answer given by Dugard and others is that jurisdictions around the world now accept the principle of corporate criminal liability in one form or another. They say that the classic civil law doctrine that only individuals may be criminally responsible is now

No international court or tribunal has ever found a corporation liable criminally or civilly for a breach of international law. And they argue that even if such a rule were by now developed, it could not be applied retrospectively.

Various professors from around the world have attempted to assist the Court by positing an answer.

Media attention in South Africa has focused on the fact that Professor John Dugard has appended his name to an opinion in support of holding corporations liable while Professor Kader Asmal's name appears on an opinion that argues that corporations cannot currently be held liable under customary international law.

Professor Asmal has drawn strident public criticism for his apparent "siding" with corporations and he has responded in his personal capacity. It should be stressed that the question asked by the Court is a narrow one: whether corporations can be held liable in American courts for the criminal act of supporting

outmoded and, moreover, many international treaties envisage corporate liability. The argument continues that numerous experts in the field insist that corporations should not be permitted to flout human rights laws with impunity. Their conclusion is that "the general principles of law recognised by civilised nations", international instruments (including various Security Council Resolutions) and customary international law all recognise corporate responsibility in principle".

Asmal and his colleagues contend on the opposite side that customary international law is comprised of rules that "states universally abide by, or accede to, ... out of a sense of legal obligation and mutual concern", and that no

"specific, universal and obligatory" rule can be discerned in relation to liability of corporations for criminal acts. Drawing on various sources, including an opinion by Professor James Crawford of Cambridge University, they come to the conclusion that no international court or tribunal has ever found a corporation liable criminally or civilly for a breach of international law. And they argue that even if such a rule were by now developed, it could not be applied retrospectively. That is because during apartheid, no rule of customary international law existed which would have incurred criminal or civil responsibility for corporations that aided and abetted the South African government.

Because the case has been brought in the U.S relying on the ATS, the plaintiffs have to convince U.S. appellate judges – perhaps eventually even the US Supreme Court – that corporations can be held liable in terms of customary international law. That narrow question has become central to the litigation, hence the New York Court's request for assistance

CASE FOR:

Opinion filed by: Prof. John Dugard and Adv. Anton Katz

Argument: US companies who traded with the illegal apartheid government in South Africa should be held accountable for being complicit in apartheid crimes.

The argument is made that "a norm of international law allows for the imposition of criminal liability upon corporations." While neither the Nuremberg tribunal nor the Rome Statute of the International Criminal Court provide for criminal liability of non-state actors, they do not imply that it should be excluded.

"To render states, and in some cases individuals, liable to international law while according a very powerful actor on the international stage – the modern multi-national corporation – the benefit of criminal immunity would be anomalous," argue Dugard and Katz in their opinion submitted to the court.

CASE AGAINST:


Opinion filed by: former minister Kader Asmal and other academics

Argument: Corporations cannot be held accountable for dealing with the apartheid government because **customary** international law doesn't extend to corporations and certainly did not at the time of apartheid.

Instruments of international law such as the Rome Statute deliberately exclude corporations from liability. This is in part because not all countries agree with the American view that corporations are "moral" and can be held accountable. In addition, liability – even if it did exist – cannot be applied retroactively.

"For every claimant alleging injury by the apartheid regime in South Africa, the critical date must be before the 1990s (and in some cases long before that)."

from international scholars such as Dugard and Asmal – and understandably why Asmal's opinion has drawn such fire from Khulumani and its supporters. What remains of course is for the judges to decide the issue dispassionately and

objectively after considering all the views for and against. 

"Max du Plessis is an Associate Professor, Faculty of Law, University of KwaZulu-Natal, Durban. The writer was one of the group of professors who joined Professor Asmal in providing an opinion to the US Court of Appeals."



The business interests of government officials and political appointees in South Africa have hit the headlines in the past months, leading to accusations of corruption and nepotism. **Collette Schulz-Herzenberg** says that the rapid movement of people between government and private sector jobs also threatens the integrity of government

Controversial ANC Youth League leader Julius Malema has been accused of using his political position to secure lucrative government tenders.

The revolving door spinning **out of control**

Current debates on ethics in public life often overlook an important area of activity that provides numerous opportunities for unethical conduct by elected and unelected public officials. This concerns the "revolving door", understood as the rapid movement of people between government and the business sector. It involves the appointment of corporate executive and business lobbyists to key posts within government, or alternatively the recruitment of senior public officials into more lucrative private sector positions. It also includes former lawmakers and executive members who become lobbyists, working to advance the special interests of the corporate clients that pay them.

In the two latter scenarios former

public officials, who had business pending before them when they served in government and that they were in charge of regulating take up profitable jobs within the same corporate industry. And in all cases, rather than money exercising its undue influence, these individuals use their knowledge of the workings of government and the public-sector and their contacts to exact benefits for business.

Public officials may be influenced by the promise of a future job with a private company that desires a government contract or wants to shape public policy. Private sector interests are cognisant of the fact that an effective way of shaping policy and the regulatory environment is to employ former

government officials most familiar with its decision-making processes.

Moreover, former public officials recently recruited into the private sector as lobbyists or senior executives have extra-ordinary access to lawmakers and can use their government connections to benefit themselves or the business interests they have come to represent after they leave office. This access provides certain government contractors with an unfair advantage over their competitors since they can use insider knowledge to the benefit of their new employer.

The revolving door threatens the integrity of government. Serving the public interest is fundamental to public office. Public officials should always make decisions and



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give advice that benefits the public good, without thinking about their personal gain. Moreover, public duties should be conducted in a fair and impartial manner. When undue influence is leveraged on behalf of a particular set of corporate interests the decisions that ensue do not necessarily represent the public's best interest or may even be potentially detrimental to it.

Perhaps most importantly, at a time when citizens' trust in public officials, and politicians in particular, is in global decline the mere appearance of undue influence on decisions that affect the public interest is likely to damage the reputation of government further. Citizens expect public officials to manage public resources and serve the public interest with integrity and fairness. If citizens believe that public officials do not act for the public good, or that they misuse their office to benefit themselves or others close to them, then public trust, vital to the well being of democratic institutions, is eroded. And when public trust in democratic institutions declines citizens tend to withdraw from participative democracy, such as elections, placing the legitimacy of the entire democratic system at stake.

South African Law has inadequate measures to deal with the post-employment activities of government officials. This is despite the numerous examples of Cabinet members who shift from their executive posts into senior positions within the private sectors often with companies that reside in the sector within which they previously operated. Yet calls for post-employment restrictions date back to 2001 when the Joint Investigative Team (JIT) report into allegations of corruption relating to the Strategic Defence Procurement Package (aka Arms


Deal) recommended that "Parliament take urgent steps to ensure that high ranking officials and office bearers, such as Ministers and Deputy Ministers, are not allowed to be involved, whether personally or as part of private enterprise, for a reasonable time after they leave office in contracts that are concluded with the state." And more recently, the 2006 Public Service Commission Report on Managing Conflicts of Interest in the Public Service, recognised the increasing movement between the public and private sector, and subsequently highlighted the need for a cooling off period and for the regulation of post-employment activities generally in South Africa.

So why does this phenomenon remain unregulated? Perhaps one reason relates to the uncertainty about what constitutes a conflict of interest in the first instance. The problem concerns ambiguity over a definition and that suggests that South Africa's body politic remains uncertain about the nature and causes of conflicts of interest in public life. The ensuing confusion holds up regulatory efforts and ultimately the fight against corruption in the public sector. Until broad consensus is reached about what should constitute minimum standards of ethical conduct for public officials, a number of activities that are ethically dubious will remain legal.

A second cause for the lack of a post-employment regulatory framework may be found in contextual considerations particular to South Africa. "Cooling off periods" restrict government officials from being employed in the same private sector industry usually for one year after leaving office. However, these restrictions need to be balanced with the individual's legitimate and Constitutional rights to economic

freedom and activity. The historically perverse nature of the relationship between business and government in South Africa was such that many who currently hold public positions were previously denied job opportunities in the private sector. Past discriminatory practice now makes the balancing effort between restrictions and rights morally more complex and difficult to regulate. Consequently, a reluctance to control the post-employment movements of government officials has ensued.

Yet, the fact remains that each year millions of Rand are spent paying people to lobby on behalf of corporate interests whom the electorate had originally entrusted to regulate the same industries in the public interest.

Future restrictions will need to be pragmatic, carefully balancing preventative measures against the individual's right to a livelihood. A flexible regulatory approach may want to consider restrictions on the type of activities that former public officials can pay their new private sector employee for, such as lobbying the department from which they came. Alternately, regulations can place limitations on companies employing former public servants from entering into contracts with departments who employed the former official for a period of one year. These restrictions are more binding on the private sector entity rather than the individual and do not directly impede their ability to gain employment in the private sector. Most importantly however, these restrictions still ensure that potential conflicts of interest and undue influence are checked for a time period at least. They also act as an unmistakable reminder to all parties that the "revolving door" constantly requires ethical consideration. 

Despite the massive economic potential the maritime area holds for Africa, the continent has failed to seize this opportunity. **Johan Potgieter** identifies the continent's fragmented approach and lack of capacity to manage maritime affairs as the major sources for the lost opportunity



Maritime policy

Maritime affairs cross most sectors of the African economies, including transport, trade and industry, tourism and nature conservation, fishing, mineral resources and even art and culture.

Limited benefits are however derived from the sea and countries lose substantial potential revenue due to exploitation by others because countries cannot control their exclusive economic zones (EEZs).

The poor management of maritime affairs in Africa further contributes to the avoidable loss of potential income. There are many role-players in the generic management of maritime aspects and resources, as can be deduced from the following examples. The complex interdependence thereof stresses the importance for the alignment of efforts. All these

activities impact on peace, security, stability and safety for all Africans and those that participate in our activities.

Transport departments are responsible for the safe passage of all shipping through territorial waters, as well as approaches to harbours and ports. They are responsible for charting their EEZs and providing safe navigation for a great variety of vessels, from super oil tankers, fishing vessels, luxury cruisers and many others, in accordance with international obligations.

The departments of trade and industry, as well as other related departments have to ensure compliance with regulations on imports/exports, being required to remove obstacles and encourage trade, but at the same time have

to ensure that no exploitation of resources takes place to the detriment of the country. The maritime industries also contribute hugely to employment and economic development because almost 91% of African trade volume took place by sea in 2007.

Mineral affairs ensure control over the exploitation of mineral resources on the coast and in the sea, like the extraction of fossil fuel energy (oil and gas) and sea and dune mining for diamonds and other minerals. In Nigeria for example oil accounts for 95% of exports, most of it from the Niger Delta and offshore fields. But it is estimated that Nigeria loses some 10% of its annual oil production through theft, with oil drained from pipelines into bunker barges

for transfer at sea. That is US\$1.5 billion, or 1.4% of the gross domestic product (GDP). There are many other examples.

Mineral extraction through the mining of dunes might make sense, but might again negatively influence tourism and/or nature conservation. Irresponsible bunkering will also result in oil pollution of the sea and coastline. This will have a huge impact on the people dependant on those areas for food and income that can be generated through nature conservation and tourism. These activities are very much interdependent and the decisions and actions in one area will have an impact in various other areas and need to be carefully managed for optimal effect.

Uncontrolled and illegal fishing cost Sub-Saharan Africa an estimated US\$1 billion in 2005 and has seriously depleted fish stocks all around the continent. In Senegal the fishing industry contributes 7% to the GDP, makes up 33% of exports and contributes to 75% of the people's animal protein intake. Tighter control over illegal maritime activities in other parts of the world and Africa's inability to protect the African waters has encouraged opportunists of other non-African nations to exploit African resources.

The departments of art and culture, usually responsible for the protection of underwater cultural heritage sites, are dependant on the collaboration of the other users of the sea and its environment for preservation of shipwrecks and sites worth preserving for future generations.

The problems of security on African seaboard are a recurring phenomenon. The African navies and coastal guards lack the capacity to protect shipping routes, particularly from piracy and other acts of violence

Many potential benefits are lost due to the fragmented approach exercised by African states

on the high seas. For instance there are only five frigates, (four of them South African), seven medium-range patrol aircraft (six of them South African), 60 vessels able to conduct limited offshore patrols, 18 coastal patrol aircraft and 80 inshore patrol craft in Sub-Saharan Africa which has 21 000 km of coastline and an EEZ 7.8km² million. That is insufficient, especially as many of those ships and aircraft are not operational. Helmut Rohmer-Heitman, a defence specialist from *Jane's Defence Weekly*, says that "You cannot protect what you do not control, and you cannot control what you do not patrol." Africa lacks the means to patrol its waters.


The police, environmental and nature conservation officials, and all other officials monitoring the uses and abuses of the maritime domain, need to complement the activities of the security services. They need to pool their resources to combat criminality that includes smuggling of drugs, people, mineral resources and others.

Many bi-lateral and multilateral agreements covering various maritime domains exist, but the way in which Africa manages its maritime resources needs to change. Many potential benefits are lost due to the fragmented approach exercised by African states.

African governments should align or integrate their activities if they

are to derive optimal benefit from the maritime sector. Many African countries have developed processes and procedures to align and integrate common objectives, but in many cases the management of maritime aspects and resources still remains fragmented. Many countries also do not have the expertise and/or capacity to embark on integrated maritime management and will require collaborations with neighbours, regions or others to comply with the legal maritime obligations.

Is it not time that African governments assume responsibility for the management of all maritime-related issues in an integrated and collaborative manner? Africa can only resist the exploiters if member states, regions and the continent stand firm and acquire the capabilities to protect and preserve their domain.

The member states of the AU have a collective responsibility to take action – brave decisions are required to turn the situation around. Departments within national governments, regional bodies, the AU, industry, civil society and agencies need to work together to formulate a single protocol for the management of African maritime matters. They should define strategies and develop actions plans for the achievement of specific objectives, within realistic timeframes. 

Figures

- 38 of the 54 countries in Africa are either coastal or island states.
- About 74% of Africa's billion people are in coastal or island states.
- Over 66% of the world's population live within 160 km of the sea.
- 150 of the 190 members of the UN are coastal states.



How the UN and the AU can create a 'peace to keep'

In Somalia, Darfur and the Democratic Republic of the Congo (DRC) the mobilisation of peace operations – mandated by the UN Security Council (UNSC) and those by the AU with its endorsement – have come under increasing scrutiny.

Amongst the questions being asked about UN and AU peacekeeping operations are: what has been their real impact, how effective have they been in relieving the massive population displacement and the gross violations of human rights by state- and non-state actors, how well are they adapted to addressing the root causes of

conflict and how can they mitigate the aggravating, triggering and prolonging factors of violent armed conflict, especially within Africa?

It is clear that given the enormous humanitarian catastrophe in the wake of such violent conflicts as in Somalia and Darfur, the narrow conceptual framework definition of humanitarian intervention designed to mitigate the impact of war (in its classical sense), should be revised to make room for a new normative framework definition of humanitarian security intervention. This should be more responsive to the realities on the ground in peace

Since the end of the Cold War Africa has been faced with an increasing number of complex emergencies – intra-state conflicts with a huge humanitarian impact on civilians. However, UN military intervention has been characterised by weak mandates, ambivalent international support and disappointing outcomes.

Festus Aboagye argues that the doctrine of “humanitarian military intervention” should be radically overhauled in order for a doctrine of “humanitarian security intervention” to be successful

operations and designed to focus its efforts first on the restoration of security and then on supporting humanitarian assistance.

The merits of humanitarian intervention focusing principally on emergency relief – sheltering bodies, feeding mouths, seeking welfare – are immediately obvious. They are media friendly; they highlight the focus of society on the plight of the needy victims of conflict; they assuage the moral failings of society by highlighting its compassionate side; and therefore they instil in the collective conscience of society a sense of achievement.

The demerits are not so obvious, even though many of them have long been the subject of intense debate in academic and policy circles, generally in the context of the failings of UN and AU interventions.

Doctrinal adaptation and transformation: a dilemma

Since the end of the Cold War the changing dynamics in global power relations have arguably served to alter the degree of unanimity with which the key members of the UNSC and other emerging (regional) political, economic and military powers such as Brazil, India and South Africa, agree on the approach to the resolution of disputes and conflicts that threaten international security. The leverage of some of the powerful states, notably the triple alliance of the United States (US), the United Kingdom (UK) and sometimes France, in shaping international opinion has been tainted by perceptions of the regime change agenda and the war on terror. This has made the achievement of broad consensus within the UNSC more difficult.

It is fair to say that the report of the Brahimi Panel (2000) was a reasonable attempt to deepen thinking within the UN system and the international community on the need to mainstream humanitarian military intervention for one into peacekeeping.

In this regard, the panel's report contextualises the need for UN peace operations not to be inhibited in using force to silence a source of deadly fire directed at UN troops, the people they are mandated to protect, or to cede the initiative to their attackers. It emphasises the need for commensurately larger well-resourced forces with clear, credible and achievable mandates and with explicit authority to use force as a deterrent, while accepting the risk of

Old and new lessons from Somalia and Darfur

The case of interventions in Somalia in the 1990s

The UN Operation in Somalia (UNOSOM) I has gone down in history as a classic case of the UN's minimalist approach to intervention.

Three cardinal reasons for this were: the central attention of the operation on humanitarian emergency, the limited scope of its mandate focusing on Mogadishu, and the ridiculously small uniformed strength of the force. In a low- to high-intensity theatre such as Mogadishu in the early 1990s, the mission was bound to fail, owing to the lack of vision and cosmetic commitment of the UNSC to an effective resolution of the conflict.

One wonders therefore why the US-led United Task Force UNITAF (1992-93), which successfully redeemed the UN's image, was withdrawn in the face of limited casualties, (compared to for example US losses in Iraq and Afghanistan) arising from contradictions in its mandate with a humanitarian focus in an environment of worsening security. UNITAF's withdrawal after barely five months of rather effective security and humanitarian assistance operations nailed any hopes of a timely, effective resolution of the conflict.

In a culture that is symptomatic of not learning lessons, the 8 000- to 9 000-strong multidimensional AU mission in Somalia (AMISOM) – a military force of (nine infantry battalions), police and civilian components, supported by maritime and air element – has been mandated in the same ineffectual fashion: to “provide support to the Transitional Federal Institutions” (TFIs).

The case of the AU Mission in Sudan-Darfur

Similarly the AU Mission in Darfur (AMIS) was given an overly ambitious objective for the “restoration of a secure situation throughout Darfur”. The achievement of this objective was made impossible by the small size of the force (maximum of 7 700) in relation to the expanse of its area of operational responsibility (about the size of France), poor communications within the area and insufficient force enablers (particularly armed helicopters). The success of the mission was equally undermined by the poor conditions of peace, and the lack of a respectable ceasefire on the part of the protagonists who outgunned it. On the one hand, given its initial soft tasks (liaison, monitoring, verification and investigation), AMIS was certainly not pre-disposed to ensure compliance with the Humanitarian Ceasefire Agreement (HCFA) of 2004. Though commensurate with its limited means, the softness of these tasks implied that the mission was less capable of influencing the reality on the ground. AMIS thus lost the goodwill of the international community, which was also unrealistic in its expectations of a quick-fix outcome in Darfur.

Tragically, even after the enhancement of the mandate (October 2004) – with the more arduous task of protecting all categories of AU personnel, equipment and installations, as well as civilians and aid workers – the mission's capabilities were not commensurately enhanced. As a result of the insufficient generation of forces throughout its existence, AMIS lacked the means even to protect itself against incessant, flagrant violations of the HCFA or the non-comprehensive Darfur Peace Agreement (DPA) signed on 5 May, 2006 that failed to make any material improvements in the realities on the ground.

operational casualties. It is obvious that, while not being exact in its words, the panel underscores the need for a new doctrinal posture, informed by a “credible deterrent threat”, for neutralising if not destroying armed threats to mission mandates.

Even though the panel underscored that this posture should be in contrast with the “symbolic, non-threatening peacekeeping posture”, UN peace

operations have obviously continued in the same vein of “peacekeeping”, largely owing to the UN's tendency towards adaptation rather than a new bold and holistic doctrine of humanitarian security intervention. That in turn leads to the tendency of the Security Council and member states to craft and support ambiguous, inconsistent and under-funded mandates in non-permissive

conflict zones. However, this dilemma stems from the entrenched aversion of the permanent members of the UNSC, as well as the other member states of the UN system, to "warlike" interventions, in spite of the reality and effect of such operations, in eastern DRC for instance.

In addition, decision-making within the UNSC and the international community has been complicated by the debate around achieving all the ethical, legal and procedural requirements for legitimate intervention – Immanuel Kant's "just war".

In practice though the collective will of the UN will as always appear to continue to hinge on the complex self-interest politics of the UN Security Council which, in many instances, derail the speed with which norms are built generally, as well as compromising the specific elements of early, decisive action.

In this way for instance the prospects for a rapid international intervention in Darfur on an international scale were not only hampered by the absence of a rapid deployment capability. They were also virtually smothered by two factors, namely the prolonged conflictual debate over whether the situation there constituted genocide, and the intransigence and opposition of the government to the issue of "foreign forces". The circumstances surrounding the AU (and subsequently AU/UN) interventions in Darfur underscore the difficulties involved in that determination. On the ground, the impact of these missions was and continues to be hampered by the lack of an effective humanitarian security intervention doctrine, revolving around the question of mandate, a slow process of learning the right lessons, and the tendency towards the regionalisation of intervention.

Weak mandates

The deployment of the UN Operation in Somalia (UNOSOM) and the United States-led United Task Force (UNITAF) (also called "Operation Restore Hope") in Somalia in the early 1990s was a watershed. It possibly marked the beginning of the UNSC's perennial confrontation with the dilemmas over the degree of force permissible to ensure security for the delivery of humanitarian aid and agencies, the protection of civilians and force protection. Then, the mistaken aversion of the UNSC to establish missions with the requisite mandates appears to have led to the establishment of missions with "robust" Chapter VI, or "Chapter 6½" mandates in the early 2000s. The challenges to some of these missions, such as UNAMSIL and UNMIL, convinced the Security Council of the inappropriateness and ineffectiveness of that normative mandate. As a result, subsequent missions from 2003 have been established under Chapter VII provisions, specifying their security and protection of civilian responsibilities, but with inhibiting caveats.

Appearing to be in denial that the exigencies of specific complex emergencies, such as those in Somalia and Darfur, require higher threshold Chapter VII mandates with a higher threshold for the use of force, the Security Council continues to establish missions with "robust" Chapter VII mandates, denominated by conditionalities. Coupled with the perennial mandates-means lacunae, such denominated mandates only serve to detract from the higher intent in the timely and effective achievement of the mandates.

The Security Council formulation of conditional mandates therefore falls short of the imperatives of the security and protection of civilians in such low- to high-intensity conflicts

into which peace operations are deployed. It is equally unproductive to expect states and governments that are weak or complicit in violations of fundamental rights to afford protection to citizens. In view of the prevalence of serious violations of human rights in complex emergencies, the fundamental question relates to why the Security Council persistently seeks to limit the use of force and the range of action of peace operations in dealing with human insecurity in conflict and post-conflict environments?

Africa can't go it alone

Since the Somalia debacle, Western and other developed countries have withdrawn from direct participation in peace operations in Africa. Such countries appear to base their abdication on the absence of a peace to keep and commitments to other threats to international security (terrorism). They now choose to extend funding, logistical strategic airlift and other support to regional-mandated missions, within the framework of external initiatives (hybrid and parallel operations). In addition, they have chosen to establish an "overblown" capacity-building industry in Africa in particular.

Granted that there are synergies from Western support to regional missions, there are also demerits in such "peacekeeping apartheid". One significant implication of this paradigm is the increasing burden of the AU and other (sub-)regional organisations to assume responsibility for insufficiently resourced and "spineless" humanitarian interventions. Another implication is that AU member states lack sufficient political will to contribute adequate human resources, while the AU lacks the institutional expertise and means to undertake these operations successfully and effectively.

Restoring security as the primary objective

Empirical evidence suggests that complex emergencies will continue to be a feature of the political landscape of Africa, stemming from historical and other root and proximate causes relating to contradictions in the nature of African states. Even if one accepts the principle of the inviolability of the borders inherited at independence, the predatory nature of modern African states, as well as the fragility of their democracies, is equally reprehensible. The political objective of humanitarian military intervention should therefore not be to save the state characterised by non-accountable undemocratic rule. To the contrary, the decision on intervention must rather be informed by three determinants: the causal explanations and nature of the conflict, including the motivations of the protagonists, the intensity of the conflict and its concomitant degree of insecurity and the nature and scope of the humanitarian emergency.

Consequently, and on the assumption that the contemporary world is opposed to non-indifference and non-intervention, the Security Council, in close conjunction with the AU System and the international community, should devote considerable resources towards dealing with their root causes of conflict, and preventing them as barbaric, anti-social human activities arising not only from a clash of interests. They must also deal with the incidence of wars and conflict with a view to uprooting the deep inequalities within society, bad governance and lack of respect for human rights by those mandated to protect them.

The infrastructure of multi-dimensional peace operations should not be merely adapted to the new reality or equated with humanitarian military intervention.

That misconception in approach has failed to deliver durable post-conflict security. This is because its associated doctrine of humanitarian military intervention is fatally unsuitable and ineffective, and has resulted in weak and/or ambiguous mandates, lack of appropriate means – especially military capabilities – and unwillingness to use force to achieve mandates, among others.

There is therefore need for a new doctrine of humanitarian security intervention. Within specified timeframes, the strategic objective of such interventions should be to focus the primary effort of the interventions on the restoration of security, in order to create conditions for economy of effort in delivering on other humanitarian and socio-political imperatives.

External assistance towards African capacity building

The existing infrastructure for capacity building within Africa is out of alignment with the imperatives of intervention and should be given a complete overhaul. Capacity-building training, and logistical and other support from external partners, in assistance to the African Standby Force (ASF) infrastructure, should focus on the application of military and police capabilities in restoring security, since insecurity has ramifications for the safety of populations.

The rush of the AU to intervene in finding African solutions to African problems has been neither effective nor cost-effective. On the one hand, regional AU deployments will continue to be fraught with debilitating challenges. On the other hand, however, the primary efforts of the AU system should be to complement the efforts of the UN system by building institutional capacity in the integration of core

structures of the African Peace and Security Architecture, especially in the management and employment of the African Standby Force (ASF), and the institutional capacity and expertise in the planning and management of complex missions. When transitioning from AU missions, the role of the ASF should be redesigned as part of UN multidimensional peace operations.

The proposed doctrine should not preclude the application of other intervention tools by the UN, such as sanctions and referrals to the International Criminal Court (ICC). The increasing leverage of the ICC as a force for good, especially within Africa, needs to be recognised.

That war is a horrible thing is a reality well-known to human societies, including those of Africa, which have suffered centuries of injustice. But borrowing from the idea of Karl von Clausewitz, the nineteenth-century Prussian military thinker, because war is horrible this should not be the predominant rationale for hastening willy-nilly towards humanitarian interventions as a modern conflict resolution tool.

There is no doubt that the use of force, even when sanctioned by the UN Security Council, is controversial at best, and at worst is conspiratorial. However, the exorbitant cost of contemporary civil wars should underscore the merit in using force to end the slow tsunami of human suffering as a result of such civil wars. While it may be a bit early to judge the efficacy of "robust" Chapter VII mandates, the empirical evidence suggests strongly that it is still failing to deliver timely, cost-effective solutions to devastatingly complex emergencies. ■

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The balance of global power appears to be shifting from West to East and back to states. **Jakkie Cilliers** discusses the far-reaching implications of this shift



The shifting ground beneath our feet

As the global balance of power is gradually shifting from West to East, the question in many minds is to what extent this shift will lead to the reconfiguration of global governance and global institutions.

For some the concept of global governance is the beginning of a “new deal” founded on a vision of greater multilateralism and equality between countries. In this manner, they argue, new global partnerships will emerge that will balance national interests with shared global responsibility where state and non-state actors share a common commitment to “global public goods”. At its heart is an appeal to more-evenly dispersed global power and eventually more equitable standards of development.

But the nation-state is not dead. Rather than demonstrating a new era that somehow transcends traditional state-based politics, the global responses to the excesses of Western capitalism since 2008 demonstrate the reverse. The state still trumps the market and governments can regulate banks – even if they have to buy them to do so.

The central challenge for most countries in their engagement with new forms of global governance is not how to replace the state in international politics, but rather how states regain their regulatory role.

Whereas poor and weak countries, many of them in Africa, have long placed their hopes in the UN and the move towards a multilateral global order as a harbinger of greater international justice between countries, this is not the dominant trend. The powerful now recognise that unregulated globalisation is a threat to state sovereignty and that state sovereignty is a prerequisite for global governance in the absence of effective multilateral institutions.

It has been a long road to where we are today. Addressing the UN General Assembly in New York on 23 September 2003, UN Secretary General Kofi Annan was blunt: “Excellencies, we have come to a fork in the road. This may be a moment no less decisive than 1945 itself, when the United Nations was founded.” Annan concluded that address with the appointment of a High Level Panel

whose report in 2004 made a swathe of far-reaching recommendations to prepare the UN for a changing world. The result was an impasse and the Gordian knot – reform of the UN Security Council – has not been cut.

Annan had resorted to uncharacteristically blunt language, noting that “the composition of the [Security] Council [has been] on the agenda of this Assembly for over a decade. Virtually all Member States agree that the Council should be enlarged but there is no agreement on the details. I respectfully suggest to you, Excellencies, that in the eyes of your peoples the difficulty of reaching agreement does not excuse your failure to do so. If you want the Council’s decisions to command greater respect, particularly in the developing world, you need to address the issue of its composition with greater urgency.”

Power shifting to the East

An organisation set up by the victors of World War II to maintain global peace and security, the United Nations is increasingly irrelevant. It is also fearsomely complicated and

organisationally ineffective. Tragically these events occurred at a time when the United States, the one country then able to provide leadership, experienced its brief unipolar delusion – a vision that floundered on US response to the acts of international terrorism of September 2009.

The subsequent reliance by former US president George Bush on unilateral hard power has sucked the air out of US soft power – the power of attraction and persuasion rather than of coercion and the use of the big stick. Since then the shift of power, wealth and influence from West to East has accelerated as a result of the global recession and the current resilience of the Asian, not the Western economic model. The election of US president Barack Obama and his efforts to restore US moral leadership may slow but not reverse this trend.

At the same time a word of caution is important, for the US will remain globally dominant for many years to come while their internal contradictions make the rise of neither China nor India pre-ordained. Yet power is shifting, and perceptively so. One of the major beneficiaries is the G20.

Whereas the G7 members for 40 years until 2004 were consistently responsible for around two thirds of global GDP, this dropped to around 50% by 2010 and will eventually translate into the demise of the most important previous example of so-called "club governance". Despite the many imperfections in its regional representation, the G20 reflects roughly 88% of global GDP. No wonder that one of the key recommendations to be forwarded to the World Economic Forum meeting in Davos as part of its global redesign initiative earlier this year was an increased role for the G20 in matters other than financial.

Yet although power has shifted

away from the UN to clubs such as the G20, none have the legitimacy of the UN. This is not to argue that club governance is some new system of global governance that replaces established structures such as the UN – far from it. But it is in these influential clubs of the rich and regionally powerful that consensus will be hammered out for legitimating elsewhere.

And the G20 club will have to change if it is to survive. The G7 was a clubby old boys affair, hosting its meetings and deliberations in secret and off the record. This cannot be the case with the G20 where membership is more diverse and many come from different cultures and traditions, changes that require much more transparency and consultation than was the case with the G7 and G8.

An increasingly complex world

One of the reasons for the irrelevance of the UN and the challenges for any effort at coordinated global regulation is simply the speed and increased complexity of today's world.

Eventually not everything is a global problem for everyone and institutions require a limited agenda if they are to be effective and have impact, no matter how sophisticated the associated systems and processes. Someone has to decide and even the most powerful government cannot deal with more than half a dozen or so priorities at the same time.

Further, not all governments see the same issues as equally important and government itself, under threat from non-state actors, business, civil society and organised crime, needs to respond to a bewildering multitude of matters. Today the choice for many global actors is often not whether you should engage but rather in which of the numerous initiatives and endeavors governments (and civil society) should


participate given limited resources.

So is there enough trust to move forward on global governance issues when issues such as basic legitimacy and purpose are so diffuse and unsettled? And what are those global and interconnected challenges that really demand a global response?

We need to ask what is the purpose of global governance? Is it (a) to govern in the normal accepted sense of the word, (b) to allow people to live in peace, or (c) simply to provide for a minimum regulatory framework for economic development? In other words what are the real and perceived limits to global governance?

To some (generally in regions such as Africa) global governance is a panacea – the solution for development, peace and equality – and there is often a rush to structure (or restructure) things. The definitions and associated terminology around global governance issues differ vastly between countries and amongst academics, never mind ordinary people. To whom would global governance institutions be accountable?

States are (at least in theory) accountable to their people and the more distant governance structures are from ordinary voters, with less enthusiasm and legitimacy. Western models of development and democracy try to hold that more rarefied levels of governance require a compendium of local good governance. But this does not provide even the EU with sufficient levels of public support, as evidenced by the low levels of voter turnout in the associated parliamentary elections.

Before we gain clarity on the purpose of global governance the discussions about the modalities of the associated structures (such as reform of the UN Security Council), can hardly progress. 

Cote d'Ivoire elections

"still on track"

The African.org: **The decision made on 12 February this year to dismiss the head of the Independent Electoral Commission (IEC) shocked many people who have been following the situation in Cote d'Ivoire, thinking that all is well and that elections will happen early this year as planned. What happened?**

Zogoe: People shouldn't be shocked or fearful about what's going on. Cote d'Ivoire isn't on fire. The Ouagadougou agreements and all the other agreements signed are in place and these we are using to move forward to have elections.

Now, there was a crisis within the Independent Electoral Commission, to such an extent that an important decision was taken [to dismiss the head of the IEC].

What was the problem within the IEC?

It was discovered that at the highest level within the IEC, there were serious problems in that 429 000 votes were fraudulently added to the electoral list without first appearing before the commissions that were set up to decide on cases that were still to be determined.

It was part of the agreement, that a provisional list would be created. On this list there were just over 1 million individuals listed, but we could find no proof that they existed.

The commissions were set up so that people can either come forward, if their names were not on the list, to prove that they are Ivorian and should be able

to vote, or those on the provisional list to defend themselves.

Now it was found that 429 000 people had been taken and listed on the permanent list without ever appearing before any commission.

So these 429 000 are people who don't exist?

No, they exist because their names are on the provisional list.

It was said these were all people from the North that the ruling party didn't want on the list?

Not at all. It was discovered that the provisional list of 1 million was suddenly half a million and this happened fraudulently. The president of the IEC admitted there was a dysfunctional system. Did people go through that list of 429 000 people to establish that they were all from the North? That's not possible.

What we strongly condemn is that the president of the IEC took CD's with the names of these people to the local commissions and told them to include them onto the permanent list.

Then the head of the IEC was fired?

The mere existence of the IEC is based on trust. It is independent and it is this institution that will lead us through the elections and the end of the transitional period. We can't afford any mistrust in the way the system functions.


So we couldn't keep the head of the IEC. Parts of

the opposition protested and said the president of the IEC didn't do anything and is innocent.

The president then asked that the IEC head to resign. Not only him, but the prime minister, the representative of the UN secretary general and the mediator president Blaise Compaore, all asked that he resign. He refused, because he knew that the law was on his side. He's independent and he used his status as "untouchable" to impose himself.

He could have stayed on and everything would be blocked. The IEC wouldn't be functional; there would be social upheaval. So what should we have done? That is why the president used article 48 [which gives

The decision by Cote d'Ivoire's president Laurent Gbagbo earlier this year to dissolve the government and the Independent Electoral Commission came as a surprise to many of those who had hoped for speedy elections in the first half of this year. Gbagbo has been in power now since 2000 and elections have been postponed several times, some say because the ruling party wants to hold onto power. **Liesl Louw-Vaudran** spoke to Cote d'Ivoire's newly appointed ambassador in South Africa Dr. Abie Zogoe about the situation in his country



Cote d'Ivoire's ambassador in South Africa Dr Abie Zogoe.



him special powers to override the constitution] to dissolve the IEC and the government.

Why did he have to dissolve the government as well?

He dissolved the government because certain representatives of parties that were signatories of the Linas-Marcoussis accord preferred to work for their own political parties, rather than in the interest of the country and to make sure the electoral process goes ahead.

Coming back to the electoral list, it seems that it is taking years to draw up this list.

Actually, initially the president proposed that we use the list of the 2000 elections. It is with this list, it's true, that the president won the presidential elections. But it is also with this list that Mr Henri Konan Bédié's party, the PDCI, won the parliamentary elections and Mr Alassane Ouattara's RDR won municipal elections. However, they refused and said we should draw up a new list and start from zero.

Some still say that the government is dragging the process out so that the conditions can be created for the president to win.

This is false. The president is the one who wants this election to go ahead as soon as possible. In fact we believe that those who are stalling the process and don't want to have elections are those who have an interest in maintaining the status quo.

The president is in a hurry to have elections and to be free to appoint [the] ministers that he wants to. These would be ministers who work at implementing his policies. He will never be content to have a government in which we impose ministers. It is those ministers who got their jobs without being elected, and who feel that they're above the law, who don't want to have elections.

beginning of March, but there is now a new head of the IEC [former foreign minister Youssouf Bakayoko]. He's taking over the issues at hand and we need to give him some time. Then he will propose to the president a new date for elections.

You are here in South Africa and we all remember president Thabo Mbeki's attempt to mediate in the crisis in Cote d'Ivoire that some say was a huge failure.

The mediation wasn't a failure, as far as we are concerned it helped us. President Mbeki was mandated at a certain point to mediate in the Ivorian crisis. We feel he did this well. The fact that it was completed at some stage, doesn't negatively affect the relations between South Africa and Cote d'Ivoire. Our relations with South Africa are very good.

The president is in a hurry to have elections and to be free to appoint the ministers that he wants to appoint

He wants to be legitimate?

No, it is not about legitimacy because the president is legitimate, he is elected, it is about putting in place a government that he chooses and implementing his policies.

And if he loses the elections?

Well...whoever wins will appoint a government. But then at least Cote d'Ivoire will be peaceful again and the Ivorians will back whoever wins.

Have you any idea when these elections will take place?

Well, initially elections were supposed to be held at the end of February or the

At some time, for reasons we don't know, this mediation bothered some people. They were the ones saying Mbeki doesn't understand the way things are done in West Africa and that he isn't the right person to do this. But the results are there.

It does seem as if the Pretoria Accord, negotiated by Mbeki, wasn't completely annulled by the subsequent accords.

Yes, we had other agreements following this, because of the complexity of the Ivorian crisis wherein we sign agreements and the interpretations vary about what

we agreed to. Then we have to sign other agreements so that everyone understands one another and agrees on the same thing.

But it was the Pretoria Accord, signed in 2005, which permitted the president to use Article 48 so that all the signatories of the Linas-Marcoussis-agreement can be candidates in this election. That is why some eminent political leaders present in Abidjan can participate in the election today, even if certain parts of the constitution don't permit this.

Yet last year there were rumours that the whole issue of national identity and Ivoirité has again emerged and that these leaders might once again be excluded.

This is the problem we have with some media that is very far from CI and give wrong information. This is not always done in good faith, which makes it difficult to understand the Ivorian crisis. This is not true at all. As we speak, the list of candidates has been finalised and validated by the Constitutional Council. These candidates you talk about are on this list. They can be candidates thanks to this article 48. There is no question of revising this and bringing up the issue of Ivoirité.

And your relations generally with South Africa?

We are very keen for people to come and see Cote d'Ivoire and invest. A lot of people are in fact already travelling from here to Cote d'Ivoire. We sign visas every week, every day, we hope it will continue. People really shouldn't think the country is on fire. Ivorians love Cote d'Ivoire. It is a country with a lot of resources and possibilities to invest.

People can see that we have the capacity to handle whatever crisis we face and we will get out of this situation. The fact is we very soon got ourselves out of a war situation, even




though the crisis is now dragging on for a long time.

We all know that trying to find quick-fix solutions to problems is always disastrous, so we are taking the long route of dialogue but we're heading near the end of the crisis and with the elections it will be over once and for all.

Elections always create a lot of emotion and upheaval, especially in Africa, but these are the things we have to deal with.

There seem to be a lot of crises in West Africa at the moment, like in Niger, Guinea and elsewhere.

It is clear that we don't want crises. Not in Cote d'Ivoire, not in West Africa and not in Africa in general. The crisis in Guinea, our neighbours, affects us directly. The moment you have upheaval, people flee and seek shelter there where it is peaceful. We want to avoid this, in Cote d'Ivoire and elsewhere. 



Morocco's king Mohammed VI.

Morocco

yearning to get back into the AU?

Morocco has been the black sheep of the African family for almost three decades since it left the African Union in 1984 in protest against the AU recognising the Polisario Front as a member of the organisation. **Liesl Louw-Vaudran** gives her impressions after visiting the country last month

Getting on the plane in Johannesburg, destination Casablanca – via Paris of course – one is conscious of the fact that this is a controversial visit.

Morocco has been a taboo subject in some African countries, particularly South African political circles and in the media, for a long time. In 2004 when Morocco withdrew its ambassador after official recognition by Pretoria of the Sahrawi Arab Democratic Republic (RASD), the relationship broke down completely.

If Morocco is to be judged by its food, its tourist sights and modern highways, it is well worth it.

Morocco's infrastructure has improved greatly in the last decade with a range of new projects launched by King Mohammed VI. Great strides have also been made to attract investors and to make Morocco a more attractive place to set up a business (see article on page 51).

An unwelcome guest at table

But despite the charm, the modern highways and housing projects, the

sticky issue of Morocco's place in Africa and in the world is like an invisible guest at every dinner table and in every conversation.

Though no-one seem willing to offend his host the words "Moroccan Sahara", "Western Sahara" or even worse "The RASD" is a silent part of the discussion. (Strange that the issue never really comes up in European conversation. People might rather talk of human rights, the King, Tazmamart...)

At a conference we attended in Marrakech on African Security, organised by the African Federation for Strategic Studies, the issue is briefly mentioned – only to support the Moroccan cause – but again lurking in the corridors.

"It's time Morocco stops being difficult and accepts becoming a member of the African Union (AU), with or without the Polisario Front being there," laments a former West African minister.

"If we strive for integration in Africa everyone will have to give up

something of their history," says a South Africa-based analyst sitting at our coffee table.

But for Morocco the AU is not neutral on this issue having recognised the Polisario Front as representatives of an independent Western Sahara in 1984. It also insists that Algeria be a part of any talks on the issue because it sees its powerful neighbour as the real force behind the Polisario Front.

South Africa is by far Morocco's biggest opponent within the AU and the United Nations, where the South African ambassador repeatedly criticised the wording of the UN documents during the Manhasset negotiations in 2007 and 2008.

It's true that "welcomes" (the UN statement on Morocco's autonomy-plan) and "take note" (on the Polisario Front position) are not the same. In this decades-long bitter war of words over a stretch of the Sahara every gesture of the international community and every statement by the UN is weighed, evaluated,

scrutinised. This "taking note" was seen to be too lightweight.

In fact Morocco-supporters saw the scales tipping in their favour.

Why be part of Africa?

The absence of Morocco from the AU does create endless problems for those dealing with Africa as a continent.

While you have the European Union talking to the world as one entity, those speaking to Africa have to make up their minds first: do you want the AU or do you want the AU and Morocco?

The Chinese had no choice but to include Africa's fifth largest economy in its Forum on China-Africa Cooperation (FOCAC) and so have the Europeans, even though the EU-Africa summit has run into other problems that have little to do with Morocco.

Later this year, the New Asia Africa Strategic Partnership (NAASP) will be held in Cape Town – a potential bombshell given that South Africa officially recognises the RASD.

A pre-summit ministerial meeting in Durban ended in disaster and the organisers are apparently mindful not to let that happen again. The Polisario Front might be asked to take a back seat on this one.

Regionalism is certainly the direction in which the continent is moving and Morocco will also have to accept that apart from its preferential trade agreements, open skies and proximity, it is not and never will be part of Europe.

Another issue why Morocco might want Africa and Africa want Morocco is to cooperate on the latest menace lurking in the Sahara: religious extremists – organised, armed and bent on kidnapping innocent tourists photographing the dunes.

Experts and Morocco-watchers seem to differ on whether the Western

Sahara is actually a potential hiding place for the *Al Qaeda* in the Islamic *Maghreb*, which mainly operates in and around Algeria. Yet instability and an unhappy local population in a stretch of the Sahara is probably not a good thing given the worries around terrorism in this rather uncontrolled part of the world.

Human Rights

The violation of human rights against the Sahrawi population and activists campaigning for the independence of the Western Sahara has been a concern of organisations like Human Rights Watch and Amnesty International for years.

The latest incident, where Sahrawi activist Aminatou Haidar went on a hunger strike to be able to enter Morocco after refusing to state her nationality as "Moroccan", created a huge uproar.

Haidar got her passport back, but her actions managed to put the almost forgotten issue of the Western Sahara on the front pages again.

Reporters Without Borders and others have also highlighted the curbing of press freedom by the Moroccan authorities.

Yet Morocco says that despite these allegations it is taking steps against abuses, starting with those perpetrated under King Hassan II. The instigator of the infamous Green March to populate the Western Sahara in the seventies was notorious for jailing opponents in secret locations, especially in the early years of his reign.

To turn the page and compensate those who suffered in this era, Morocco set up a Truth and Reconciliation Commission and claims there are no political prisoners in Morocco today. According to Mr Ahmed Herzenni, a former prisoner who headed the

Commission, up to 160 million Euro was paid to 25 000 victims and the families of around 800 missing people at least now know what happened to their relatives.

Herzenni is now in charge of the Human Rights Commission, a government body. Referring to the arrest of scores of people after the Casablanca bombings in 2003, he admits mistakes were made. "This was our first experience of terrorism" he says "and there was panic".

The worst job


In his grand office in Rabat minister of foreign affairs Tayeb Fassi Fihri seems exhausted by the many years of negotiations and strife over the Western Sahara. He is vexed by South Africa's militant support of the Polisario Front. "We are disappointed and bitter," he states. "South Africa can play a role in these negotiations if it stays neutral."

He claims former president Thabo Mbeki's foreign minister Nkosazana Dlamini-Zuma took such a strong stand on the issue that she held a "binational commission" with the Polisario Front government in exile at the refugee camps in Tindouf.

But does Morocco really want or need to be part of Africa and the African Union?

"Like our past, our present is in Africa," he says. "The King has travelled 18 times to sub-Saharan Africa and signed hundreds of documents of cooperation with other African countries."

Negotiations on the Western Sahara are ongoing with Christopher Ross, the new UN envoy appointed last year as mediator. He succeeds a long list of his colleagues, including former US secretary of state James Baker.

Being a mediator in the protracted Western Sahara conflict must certainly be one of the worst jobs in the UN. 

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North African countries like Morocco are increasingly investing in the rest of Africa.

Business before politics?

Sub-Saharan Africa provides an attractive market to investors, not only from China and Europe, but also those from North and South Africa. **Liesl Louw-Vaudran** asks whether looking south is a viable proposition for companies in North Africa

For many business people the gulf between sub-Saharan Africa and North Africa is a longstanding reality and a frustration, influenced by history, geography and overall prejudices on both sides.

In fact, it is only in the indexes of Africa's total economic performance that these two parts of the continent are lumped together.

Yet three of Africa's top five economies are from North Africa. While South Africa inevitably comes out on top, with Nigeria usually second, Egypt, Algeria and Morocco all vie for places in this sought-after club.

Other indexes, like those of Africa's most powerful banks, oil companies, construction and other sectors also reflect these as the continent's giants. But what does this mean for those lower down in the rankings, struggling to make ends meet?

Are North African countries really investing with the same zeal and on the same scale as South Africa has done on the continent in the past 15 years?

It is indeed only when travelling in predominantly Muslim and

Francophone West- and Central Africa that the presence of investment from places like Morocco and Libya are felt in a variety of sectors like IT, hotels, banks, utilities and mining.

Morocco's Maroc Telecom has for example invested in Mauritania, Burkina Faso, Mali and Gabon with a majority in most of the traditionally state-run enterprises. It is also involved in infrastructure in Guinea and providing water in Senegal and Mali.

Though some companies investing in sub-Saharan have burnt their fingers.

The fall-out between Royal Air Maroc (RAM) and Air Senegal in 2007, which led to RAM withdrawing from the joint venture, is one such example.

Still, Morocco for one is keen to develop joint ventures with South African companies in these regions where, after all, they speak the same language and have many historical ties.

In Senegal for example ties with Morocco are not only political, but also historic and religious due to links between some of the local Muslim brotherhoods and those in Morocco.

For decades West Africans have been


shopping, studying and getting medical treatment in Morocco, Algeria and Libya. How many African heads of state have spent time in Moroccan hospitals and some, like Mobutu Sese Seko, the former Congolese dictator, died there?

Morocco insists it would like to develop greater ties with South Africa – despite the political strife between the two countries. South African companies can on their part come and take advantage of the Euro 8 billion (spent in 2009) on infrastructure development to upgrade ports, roads and housing, insists Morocco's minister of Industry, Trade and New Technologies Ahmed Reda Chami.

But is this not only a drop in the ocean compared to the trade, tourism and other links with Europe – much closer and so much richer?

France's dream of creating a great Mediterranean region of free trade and co-operation is evidently so much more attractive.

Yet sceptics say that despite some Free Trade Agreements signed, this will never become a reality. Immigration from North Africa to Europe for one will stop this in its tracks.

In the end the reality speaks for itself: Africa is the fastest growing region in the world. And it is no wonder China and India are turning to the continent to grab the opportunities. North Africans are apparently eager to do the same. 

Save for the future

The global economic crisis only hit Africa when commodity prices plunged and African governments could no longer make fun of Western counterparts whose economies crashed. **Dianna Games** warns that Africa should do more to manage their resources for future generations



Spend now and pay heavily later: is the new Ghanaian president Atta Mills squandering the country's future on short-term consumption spending?

When Ghana discovered oil, people inside and outside the country were confident it would learn from the mistakes of other oil producers on the continent and do things differently. It would not squander its oil wealth and would certainly not degenerate into

the economic mess of its powerful Anglophone neighbour Nigeria.

So it is disappointing to hear that Ghana has already borrowed against two-thirds of the value of its oil money, according to renowned academic Prof Paul Collier. Oil is

Ghana's future and the country needs to save its windfall for this future rather than squandering it on short-term consumption spending, which most other commodity-rich states in Africa are doing.

Even Angola, with its staggering

growth rates that nearly hit 20% in 2006, cried poverty when this growth was reversed because of major price dives in its key commodities – oil and diamonds.

The oil giant is hocking its future by negotiating away its major resource in oil-backed loans to China in deals that are less than transparent.

Collier, speaking at a recent forum about Africa's future, said the management of Africa's resources is a key part not only of Africa's future, but of the whole globe's.

The continent has barely touched the vast reserves of oil, gas, gold, diamonds, coal and other riches and in time it may be the last repository of the commodities driving development in the rest of the world.

This gives African governments a particular responsibility to manage their resources sustainably for future generations. A fundamental part of this responsibility is to take a long-term view on how to best use the revenues they generate for future generations, not just to line the pockets of those in power or to use them for populist spending to ensure votes, as seems to be happening at present.

The emotional debate about resources and investment centres on the need for Africans to own Africa's resources. Yet despite the rhetoric "the people" are hardly benefiting from these riches in most countries on the continent.

Governments in almost all commodity rich states make it mandatory that the state has a stake in mining enterprises and oil exploration and production through joint ventures with operators. In some cases, a majority stake for the state is mandatory.

These deals rake in billions of dollars every year and yet most of these countries languish at the bottom of development indicators.

So what happens to all that money? The benefits are hardly trickling down to "the people". The money is more typically being raked off into offshore bank accounts, funding incumbent political parties, plugging funding gaps, paying for official pet projects, and being used for crisis management – as has happened during the global financial crisis.

The sudden and severe contraction of western economies exposed the structural weaknesses of African economies generally, but particularly those of commodity rich states because of their greater exposure to the international economy.

Much was made of the fact that the global crisis was not of Africa's making and it was convenient for a while for Africans to poke fun at the developed Western markets, which had spent so much time lecturing Africans on how to get their economies right.

But the speed at which commodity prices plummeted and Western money fled from the continent was a reality check.

The fact that billions of dollars of inflows that commodity rich countries had enjoyed during a sustained price boom had been largely squandered should be a wake up call that governments need to do more to save for Africa's future.

A lack of transparency characterises most resource deals on the continent. Agreements are struck in secret with politicians who receive hefty backhanders for their time – and their signatures.

It is essential that the negotiation of resource deals, whether they be in oil or timber, are done in a way that has benefits for the countries concerned, not just for the governments that are negotiating them.

Africans are quick to accuse foreign companies of exploiting the continent

and while this may be true, it is the governments with whom they negotiate that are equally at fault.

It is not only greed that compromises such deals; it is also naiveté or a lack of experience. Zambia, negotiating investment into its moribund mining industry in the early part of the decade, did not accommodate price swings and was compromised years later when it had to break investment agreements to capture windfalls from an unexpected copper boom.

Contingency planning and realistic tax agreements must be put in place on entry. Governments also need to ensure better information is available to investors.

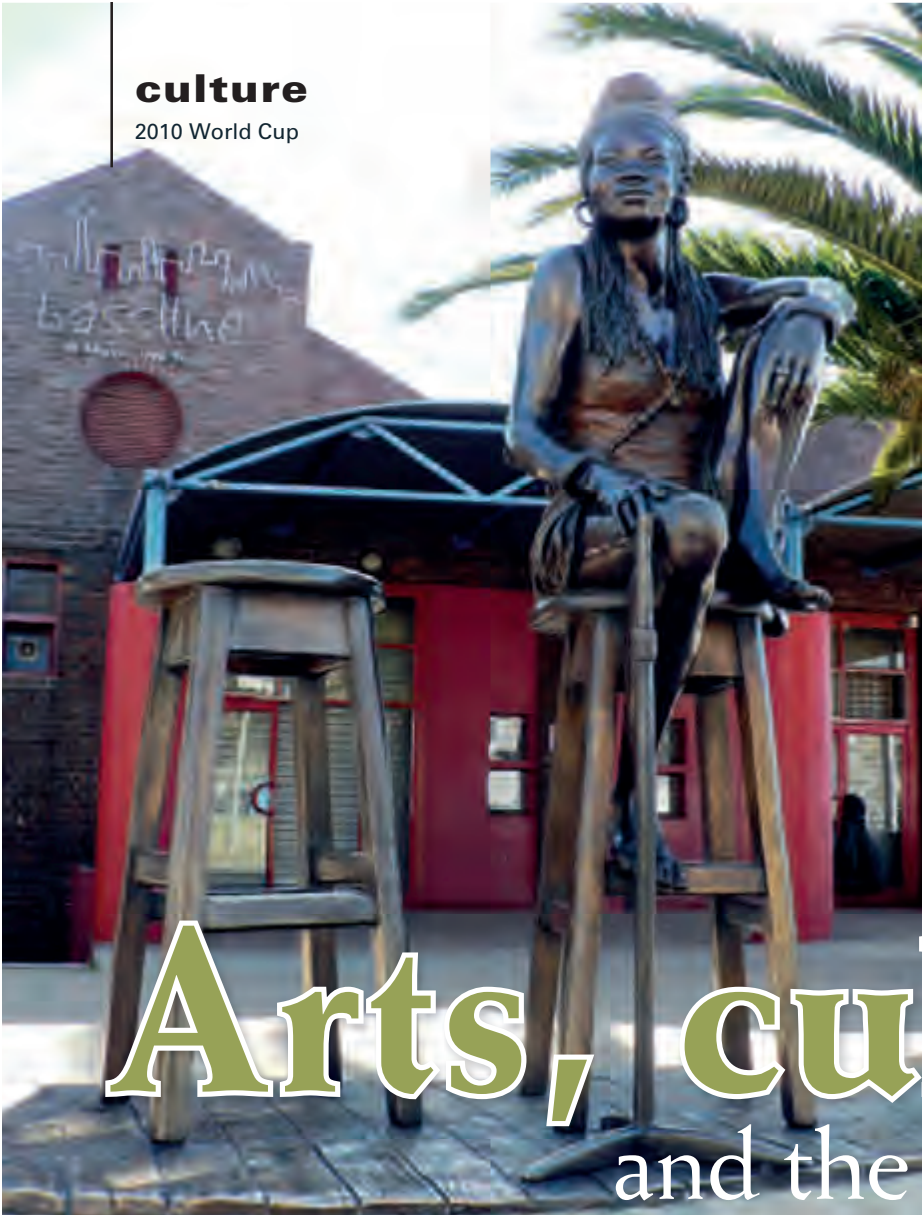
Companies will not be deterred by good financial governance and will be prepared to negotiate less attractive benefits if the operating environment is more ordered and less risky.

If states are not thinking beyond the next election, they will not negotiate strategically and transparently; they will look rather for the quick wins.

Revenues need to be ploughed into building alternative resources in other sectors and into making countries more competitive and attractive to foreign investors. The disaggregation of global manufacturing is a future opportunity for Africa but countries will not benefit if they are uncompetitive, no matter how great their commodity revenues may be.

Citing high growth rates for African countries masks the skewed nature of many of these economies. High growth is not enough to secure this continent's future.

Reform is happening across the continent and there are many good news stories. But the long-term vision that ensures a prosperous future for the continent based on its enormous wealth is still elusive. ■



In just a few short months Africa will be a hub of heightened activity and excitement as South Africa hosts one of the world's largest and most eagerly anticipated sporting events, the 2010 Fifa World Cup. **Poppie Mphuthing** however argues that the event is about much more than just sport

Arts, culture and the World Cup

Come and see. Visitors to South Africa during the World Cup will be treated to an array of cultural events to showcase African talent. Singer Brenda Fassie – certainly one of Africa's most popular music icons, who died in 2004 – is immortalised in a bronze statue erected in the cultural centre of Newton, Johannesburg.

For an entire month the spotlight will shine on the continent and the theatre of the Beautiful Game will come to life.

For the global community of football fans the World Cup tournament is a burst of energy as the best teams in the world go head to head to show their mettle. But the World Cup is not merely a sporting event. It represents a great deal more.

For Africa the 2010 edition of the 80-year old tradition is an historic moment. In the year that many African countries celebrate 50 years of freedom and liberation from colonialism, so too will the continent

celebrate hosting the World Cup for the first time ever.

To date the roaming tournament has been hosted by nations in many corners of the globe. The World Cup offers host nations a platform to showcase their culture, heritage and traditions. And so too has the 2010 edition of the tournament provided such a platform for South Africa.

The World Cup has given impetus to a number of projects that reveal the pride of a continent and showcase the talents of a people. The tournament willingly shares the spotlight with the creative space. From the design

glory of the tournament centrepiece Soccer City stadium to the platforms on which the myriad expressions of art and music in the region and beyond will be showcased.

South Africa's department of Arts and Culture has said it hopes the event "leaves a lasting legacy for our continent and beautiful memories for our visitors."

Former President of South Africa Thabo Mbeki expressed a desire that the football spectacle "create social and economic opportunities throughout Africa." These desires have come to life as the artistic and

cultural projects in commemoration of the World Cup have come to life.

The 2010 Fine Art Project is an official 2010 Fifa World Cup project that will showcase the work of contemporary artists from across the world and the continent.

Both the 2010 African Fine Art Collection and the 2010 Pan African Fine Art Exhibition seek to give a voice and show-ground to the creativity of African artists. Pieces will be exhibited across the country. A key attraction of the African Fine Art Collection is a 3.5-metre bronze statue named Penalty, which is a representation of a football player about to shoot a penalty. The statue will occupy a public exhibition space in Johannesburg's Nelson Mandela Square – linking sport, art and heritage in one breath.

The project will reach across the globe with the launch of the 2010 International Fine Art collection in April. From Johannesburg to London and Tokyo to Buenos Aires, artists from each of the 32 qualifying countries will participate.

The In Context project is another series that uses the game of football as a muse to produce a range of artistic pieces – from film to sculpture to textile prints. The aim of the initiative is to “engage with an array of pressing questions about space, context and geographies that are at once intensely local and broadly global”.

Exhibitions, screenings and public debates will be hosted by prominent South African exhibition spaces during the World Cup season in June/July. These include Johannesburg's Goodman Gallery, the Goethe Institute, Johannesburg Art Gallery and Cape Town's Iziko South African National Art Gallery.

In the realm of music the final draw hosted towards the end of last year in Cape Town drew an audience of

high-profile celebrities including South African born stars, Oscar-winner Charlize Theron and footballer Lucas Radebe. The fanfare of the event showcased African greats, including Pops Mohammed, Lira, Angelique Kidjo and the internationally acclaimed Umoja dancers.

The World Cup Season will be officially marked by a concert that will be held at the newly-renovated Orlando stadium and broadcast to 192 countries globally.

The traditions of the arts, the elements of culture and the pride of heritage across Africa have been given a boost by the 2010 World Cup that affirms the right of Africans to take their place in the global spotlight of cultural relevance


The pride of culture and heritage is a core value that has been boosted by South Africa's hosting of the World Cup. The most visible embodiment of this is the spectacle of the Soccer City stadium. The stadium that is in South Africa's city of gold – Johannesburg – will host both the opening and final matches, and is the largest stadium in Africa. Soccer City's design principles proudly represent an African aesthetic. The 89 000-seater stadium is shaped like a calabash. The modernity of a world-class stadium with the tradition of a cultural artefact.

In a stroke of marketing ingenuity

the common sight and sound of the *vuvuzela* at African football games has been transformed with the creation of the *kuduzela*, a *vuvuzela* in the shape of a kudu horn. One of the key spectacles of football games in South Africa is the *vuvuzela*, which was traditionally carved out of the horn of the kudu to call villagers to meetings.

Once again a traditional artifact has been re-invented and promoted as central to a uniquely African Beautiful Game. Once again the World Cup has been used to promote tradition and heritage as the symbol of the *kuduzela* dovetails with the tournament. More central to the game and in the tradition of the tournament was the introduction to the global audience of the World Cup Mascot and the official ball, both of which are a celebration of African heritage and language. Earlier this year the ball *Jabulani* was introduced. The word *Jabulani* means “happiness” in IsiZulu, describing the sentiment of many Africans in their love for the game of football and excitement that the continent will be hosting the world's premier football tournament.

The World Cup mascot *Zakumi* personifying the energy and pride of Africa's first World Cup translates across the continent. The green-haired leopard knits together at least 10 African languages with South Africa. His name combines “ZA” standing for South Africa and “Kumi” that means 10. *Zakumi* is symbolic of South Africa 2010. And according to football icon Lucas Radebe *Zakumi* is “A proud South African and wants to ensure that the world will come together in South Africa”.

The traditions of the arts, the elements of culture and the pride of heritage across Africa have been given a boost by the 2010 World Cup that affirms the right of Africans to take their place in the global spotlight of cultural relevance. 

The failure of Zimbabwe's post-colonial project

Becoming Zimbabwe: a history from the pre-colonial period to 2008

Edited by *Brian Raftopoulos* and *Alois Mlambo*

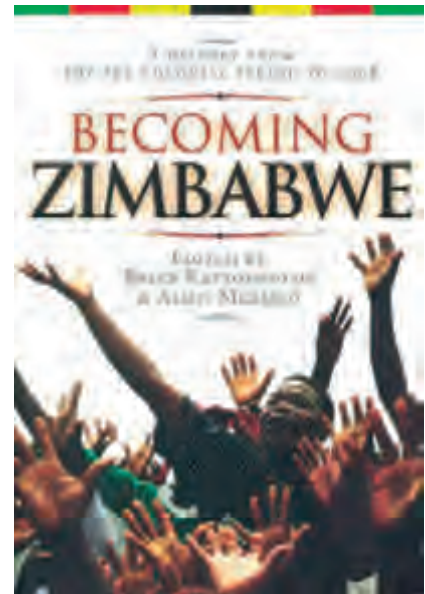
Reviewed by Takawira Musavengana

Over the past decade, Zimbabwe has dominated the news in Africa and beyond, for all the wrong reasons. Images of state-sanctioned brutality against media workers, civil society and opposition activists; violence, displacement, death and destruction in towns and on commercial farms; women with children on their backs fleeing to neighbouring countries in search of a better life; imprisoned persons on the verge of starvation and people dying of cholera captured the imagination of regional and global news. Images of violence, the discourse of violence against opposition figures and civic movement leaders "indicating ... the repressive nature of the Mugabe regime as well as a sense of impunity demonstrated by the state" are in stark contrast to the jubilation and messages of reconciliation of April 1980 when Zimbabwe became an independent state under a majority government after many decades of brutal, white supremacist minority rule. In 2010, the pre-eminent question in the minds of many is: what happened to the 1980 agenda of "nation-building ...and democratising the inherited authoritarian colonial state and its institutions?"

Unlike anything before it, *Becoming Zimbabwe: A history from the pre-colonial period to 2008* is a comprehensive encyclopaedia of Zimbabwe from circa 850 to 2008 and everything in-between; it seeks to answer this question. It provides a systematic chronology of significant and historical events, people and places that shaped the nature of the present-day Zimbabwean state and society.

Its "panoramic survey of pre-colonial Zimbabwe its people, places and ideas" from pre-colonial Zimbabwe, the rise of the nationalist movement, through to the war of liberation against the white minority Rhodesian regime, with the treacherous support of apartheid South Africa, provides an analytical and historical perspective of whence the country has come. The book insulates students and scholars of Zimbabwe's history against new politically-correct definitions of "nationhood and citizenship in the post colonial state" and the privatisation of history by latter-day heroes and heroines of the struggle for independence.

The aptly-titled seminal publication, *Becoming Zimbabwe: A history from the pre-colonial period to 2008*, is as much a historiography of Zimbabwe as it is a fitting tribute to the unsung heroes and heroines of pre-colonial, post-colonial and contemporary Zimbabwe. Evidence abounds of heroic struggles of the African peoples against colonialism, dictatorship, and apartheid that have been re-written, mostly in the images of the rulers of the time. Leaders and liberators, events and places have been obliterated from nations' memories, and new ones created, polished and hallowed. In the case of Zimbabwe, through its hegemonic control of the mass media, the ruling elite has re-written the relative contributions of the main liberation movements, the Zimbabwe African National Union Patriotic Front (ZANU PF) and the Zimbabwe African People's Union (ZAPU) and their respective armies and leaders, mostly to the disadvantage of the latter. The book



reminds the reader of the true character, real *dramatis personae* and *raison d'être* of the nationalist struggle for liberation.

Usefully, *Becoming Zimbabwe: A history from the pre-colonial period to 2008* reminds the reader that state-sanctioned violence in independent Zimbabwe did not begin with the emergence of the Movement for Democratic Change (MDC) in 1999. In the early years of independence, the victorious ZANU PF sought to "crush its only viable opponent, ZAPU...in an operation called Gukurahundi (the rain that sweeps away the chaff), to solve a political problem that could have been

Book details

Becoming Zimbabwe: A history from the pre-colonial period to 2008

Publisher: Jacana Media (Pty) Ltd

2009

ISBN: 978-1-77009-763-6

resolved through political means...”

In this regard, the book provides new perspectives on the condition of the current Zimbabwean state. The Zimbabwean state as we know it today was superimposed on the ruins of the minority white supremacist Rhodesian state. The construction of the state, including much of the anti-democratic legislative fiat, either remained largely untouched or was re-introduced in the face of new opposition threats to the governing party's hegemony.

Quite rightly, the publication acknowledges that in the first decade of independence, the new government scored major successes in expanding infrastructure, access to education, food security, health and sanitation for the majority of the population who had hitherto been marooned in poverty, and social and economic exclusion. Most importantly, the book provides a cogent

analysis of the nexus between the land, the economy and racial politics, adds to the growing literature on a subject that has often been manipulated by politicians, misunderstood, brought about polarisation and, in the main, generated more heat than light.

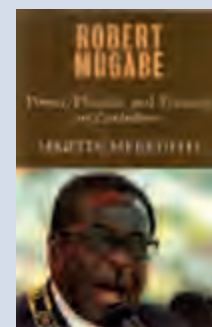
Coming as it does at a time when political space and debate has been appropriated and personalised by political elites in ZANU PF and the two factions of the Movement for Democratic Change (MDC), *Becoming Zimbabwe: A history from the pre-colonial period to 2008* is highly instructive in reminding the reader about the historic role of civil society, including women and students, the labour movement and the church in setting the agenda and shaping the democratisation discourse and constitutional debate in independent Zimbabwe.

The political and economic malaise currently bedevilling the country can

be understood through at least three lenses: an anti-democratic liberation movement allergic to pluralism, perpetual conflation of the State and the ruling party, and an un-reformed state and security sector whose orientation is less about providing security to the people but more about ensuring regime security – at any cost. Against this background, the book argues that “the post-colonial project of building a just, equitable and non-racial society was not achieved in the first decades of independence, and the foundation of a truly democratic order was not laid”.

Could it be that the book responds directly to Kofi Annan's caution: “Africans must guard against a pernicious self-destructive form of racism that united them to rise up and expel tyrannical leaders who are white, but ... to excuse tyrannical leaders who are black”.

Other books on Zimbabwe



Amongst the many recent books on the political situation in Zimbabwe are:

- *DINNER WITH MUGABE* by Heidi Holland. Published by Penguin Books. 2008
- *FACE OF COURAGE: MORGAN TSVANGIRAI* by Sarah Huddleston. Published by Double Story. 2005
- *WHAT HAPPENS AFTER MUGABE? CAN ZIMBABWE RISE FROM THE ASHES?* By Geoff Hill. Published by Zebra Press. 2005

- *THE BATTLE FOR ZIMBABWE: THE FINAL COUNTDOWN* by Geoff Hill. Published by Zebra Press. 2003
- *ROBERT MUGABE. POWER PLUNDER AND TYRANNY IN ZIMBABWE* by Martin Meredith. Jonathan Ball Publishers. 2002

Autobiographical

- *THE LAST RESORT. A MEMOIR OF ZIMBABWE* by Douglas Rogers. Published by Jonathan Ball. 2009

- *AGAINST THE GRAIN. MEMOIRS OF A ZIMBABWEAN NEWSMAN* by Geoffrey Nyarota. Published by Zebra Press. 2006
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AU leaders snub Gaddafi



Tim Murithi

The recently concluded Summit of Heads of State and Government marked a milestone for the African Union (AU). In addition to the banal focus on a theme that is not a high priority for the Union, there was the added piquancy of a raft of shenanigans that are often absent in typical AU Summits.

The most prominent was the issue of the potential extension of the term of the the Libyan leader, Muammar Gaddafi, as the chairperson of the AU Assembly of Heads of State. Having served for one year from January 2009, the Libyan leader had expressed an interest in "governing" for another term. This would have been unprecedented in the brief eight-year existence of the AU.

Common practice, informed by common sense, dictates that the chairmanship should always rotate among the five regions of Africa, unless there are exceptional circumstances that require otherwise. The Southern Africa Development Community (SADC) came to the Summit on the premise of upholding the tradition of the regional rotation of the chairperson of the AU Assembly. SADC had done its homework and had, prior to the Summit, designated its preferred candidate as the Malawian President Bingu wa Mutharika. If Gaddafi's desire to retain the position for another year had prevailed, this could potentially have severely dented the credibility of the Union.

In addition the AU elected 15 members to its Peace and Security Council (PSC). Five countries were elected to serve for a period of three years, as of April 2010, including: Central Africa – Equatorial Guinea, East Africa – Kenya, North Africa – Libya,

Southern Africa – Zimbabwe and West Africa – Nigeria. Another 10 countries were elected for a two-year period including: Central African region – Burundi and Chad; East Africa region – Djibouti and Rwanda; North Africa region – Mauritania; Southern Africa region – Namibia and South Africa and West Africa region – Benin, Cote d'Ivoire and Mali. While some of the choices to this crucial body may raise some eyebrows, the principle of regional rotation also indicated the choice of countries to be elected onto the PSC.

The election of a number of key countries with extensive peacemaking and peacekeeping experience such as Nigeria, South Africa, Kenya and Namibia has the potential to revolutionise the way that the AU PSC conducts its business. Clearly, there are also a number of countries elected to the Council with dubious democratic or peaceful credentials. Zimbabwe, Libya and Equatorial Guinea have not experienced a change in leadership for over 20 years, raising concerns about their proclivity to democratic transition, the rule of law and human rights.

The 14th Summit was also notable for its sombre decisions, particularly the declaration of 2010 as the Year of Peace and Security. One of the events during the Summit included the handing over of a symbolic flame of peace to Mutharika that will be transported to all AU member states to ignite and focus African minds on the challenges of promoting order and stability on the continent. A range of activities has been outlined that include engaging with African civil society and academic institutions.

The period between 2008 and 2009 witnessed the unconstitutional

capture of power in Mauritania and Madagascar and the assassination of the Guinea-Bissau president. The 14th Summit therefore considered this phenomenon and expressed its commitment to adopt a more robust and decisive stance against such activities. The 18th February overthrow of Niger's president Tandja presented the AU with its first litmus test of its resolve. The AU was in no mood to prevaricate on this situation and swiftly issued sanctions against the coup leaders and urged a precipitous return to constitutional order in the country. In a sense the AU lived up to its principles in this instance.

The AU Summit also discussed the forthcoming Review Conference of the Rome Treaty on the International Criminal Court (ICC), which will take place from 31 May to 11 June in Kampala, Uganda. The issue of the pending indictment of President Omar Al Bashir of Sudan for war crimes committed in Darfur has raised the profile of international justice on the continent and focused the minds of Africa's leaders on the growing profile of the ICC on the continent.

As always after the dust has settled, and officials have pocketed their per diems and returned to their homes, the unappealing task of implementing these decisions still looms large. The lack of implementation of its often well-intentioned decisions means that the AU still has a mountain to climb before the majority of citizens across the continent recognise it as a vehicle for transporting them towards ever closer unity and towards peace, security and development. ■

World cup

There are no foregone conclusions about the performance of teams from the African continent at the World Cup, and anything could happen, says **Keto Segwai**

Afri-teams

If the AfCoN games in Luanda, Angola were meant to give us a peep into the inner strength of the African teams, then that dress rehearsal was a disaster of biblical proportions. Given the lacklustre performance of the big African teams at the AfCoN 2010, hordes of African soccer lovers go into the June tournament with less confidence. The fact that the host South Africa could not qualify for the AfCoN similarly does not inspire that confidence.

The irony of the forthcoming world cup is that Africa's leading team, the Pharoahs of Egypt, won't be featuring anywhere. Instead the very teams they knocked out of the January 2010 CAF championships are in – Algeria that they butchered 4-0 in the semi finals and Ghana that went down 1-0 in the finals. But with the game of football being as capricious as it is, anything is possible. The converted Cup could end up not leaving the continent after all.

Group A



Teko Modise of South Africa.

The host Bafana Bafana of South Africa is pitted against Mexico, Uruguay and France in this group. But their first match will be against Mexico on 11 June at Johannesburg Soccer City. These are some of the big names in soccer. Perhaps SA rugby player John Smit was right at the final draw night last December when he said in jest that SA was fortunate to have been given tough and good teams to use as dummies at groups stages as it prepares for the big finals.

Gallo Images/AFP

Group B



John Obi Mikel of Nigeria.

Hopefully by the time the Cup takes place the Nigerian Super Eagles would have upped their performance, which left much to be desired at the AfCoN games. The seriousness of their underperformance was underscored by the summary dismissal of their coach Shaibu Amodu immediately after the Angola outing. In Group B, the Eagles are in the company of Argentina, Greece and South Korea. Their first encounter is against Argentina on June 12 in Johannesburg (JEP).

Group C



Mourad Meghni of Algeria.

Algeria's Les Fennecs (Desert Foxes) did not exhibit the tenacity and finesse of their namesake creatures at the recently ended AfCoN games. Their 4-0 drabbing by Pharaohs will remain a constant reminder of their vulnerability during the June games. They are pitted against England, US and Slovenia and are scheduled to square up against Slovenia in their first encounter on 13 June at Polokwane.

Group D



Michael Essien of Ghana.

Whether the injury-prone Black Stars of Ghana will have mended by June still remains a contentious matter. Injuries, notwithstanding, the Stars were one of the few teams that impressed at the Angolan do. But come June they are up against big foot-balling giants in the group stages: Germany, Australia and Serbia. And they'll be taking on Serbia on 13 June at Tshwane (Pretoria).

Group E




Samuel Eto'o of Cameroon.

The Indomitable Lions of Cameroon are one of those few African teams that have previously tasted the upper crust of the World Cup. The Lions take on Japan in their first encounter on 14 June in Bloemfontein, the home of South Africa's most emotional soccer fans. Their support could do The Lions some good. Other teams in this group are The Netherlands and Denmark.

Group G



Didier Drogba of Cote d'Ivoire.

The Elephants of Cote d'Ivoire, touted as Africa's best hope in this year's cup competition, are however in the group crudely described as the 'group of death' featuring heavyweights such as Brazil, Portugal and Korea DPR. But none of the three teams is a whale, nor could it be heavier than an elephant. The star-studded Ivorian side's first match will be against Brazil on 15 June at Nelson Mandela Bay/Port Elizabeth. 



1. Shoes available for sale on the streets of Wadi Halfa in Northern Sudan. Picture: Anja Lubbe
2. Bahir Dar in Ethiopia is a unique place where the Blue Nile flows into the magnificent Lake Tana. Picture: Anja Lubbe
3. A farmer in Northern Sudan, just south of Atbara. Picture: Lodie de Jager
4. Few people know of Sudan's magnificent pyramids – a hidden treasure in the desert. Picture: Anja Lubbe
5. An Orthodox priest in Lalibela, Ethiopia, one of the world's most extraordinary sacred sites. Picture: Lauren Hutton
6. The Church of St George, one of Lalibela's famous rock-hewn churches. Picture: Laurent Hutton

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Annie Chikwanha

Zuma: philanderer, polygamist or just a loving man?

Philanderer or lover with a big heart – **Annie Barbara Chikwanha** looks at the controversy surrounding President Jacob Zuma's multiple marriages

One thing is clear: philanderers and polygamists have something in common – risky behavior. And that is precisely what the public should be focusing on in the on-going Jacob Zuma marriages. The risk in this case does not just pertain to his physical harm from anything and everything, but to the onerous responsibilities he shoulders as a head of a state.

When we love we gamble, and serial gamblers with such responsibilities end up developing an addiction that makes us shudder when we place our national wealth and future in their hands. As with all successful men, especially politicians and businessmen, Zuma feels he is entitled to enjoy the fruits of his presidential labour by taking advantage of the women who are captivated by his charm and his power. The wives thus make it possible for him to compensate for the rough period he went through during the Mbeki humiliations and the liaisons with Shabir Shaik. As with all "persecuted" famous people, his struggles within the struggle have turned him into a hero and a valuable trophy desired by many women. The women therefore become his substitute for coveted goods that were out of reach when he was down on his luck and was kicked from all angles.

We have all been quick to condemn the President's actions but perhaps the President is spreading wealth around differently? This would be in line with his populist strategy. Think

of his behaviour mathematically and you will notice that there is a multiplier effect: five wives means five women's lives will change forever. This will filter down to their families who will not only benefit from the lobola payments but also from the connection with the *numero uno* man in South Africa. The rest of the wife's family or clan will equally benefit just from mentioning the President's name. Who knows, this poverty alleviation strategy might work! For the women will not lack for anything and neither will their offspring.

This doesn't mean that we should take philandering lightly. For it is evidence of a sexual addiction just like Tiger Wood's classical case. The worry then is that addictions are usually accompanied by typified neurotic behaviour, ignominy or indignity and feelings of triviality. And no nation wants the man in charge exhibiting such characteristics.

However, it is fair to attempt psychoanalysis of the loving or polygamous tendencies of the President. For he really does love "people" and will stop at nothing to endear himself to them. To him, plural marriages are just his tradition – just as others would use religion to justify their actions. The problem in this case is that tradition provides the opportunity to live out one's sexual fancies of having more than one woman succumb to one willingly anytime for sex. This is an ego booster for men who can have a bevy of adoring beauties look up to them as

sex gods. It is easy to imagine the surge of power, of strength, of rejuvenation provided by a younger woman, the ecstasy of legitimate immoral liaisons, and how polygamy raises them from simple, previously hard-up guys to sex lords presiding over a group of adoring, docile bejeweled women.

Polygamy is male oriented activity yet a significant proportion of the biggest sympathisers and supporters of the practice are the women themselves. For instance, Malian women complain of lazy husbands who don't take time to marry a second wife as they feel burdened by the domestic chores. A more disturbing argument from the Mormon wives is that plural marriages provide a "skilled husband" who by virtue of his many wives has "several hundred years of marital experience". When it comes to Zuma, he is still accumulating the experience of a multi-tasking husband and more so at a time when he is the national overseer.

So what does his moral compass say? And what does the national moral compass say? Morality cannot be codified and legislated. Likewise an individual's definition of marriage cannot be pinned down hence all talk of a national dialogue on moral regeneration will not solve the problem.

And in a free society, co-existence is a must if we are all to enjoy our freedoms as well. This means that when it comes to polygamy among consenting adults, there's nothing the constitution or anyone can do to stop it. ■

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