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Environmental governance and climate change in Africa

Legal perspectives



Rose Mwebaza and Louis J Kotzé

Environmental governance and climate change in Africa – legal perspectives

Africa's major economic sectors are very vulnerable to the current climate sensitivity. This vulnerability is aggravated by existing developmental challenges such as endemic poverty, complex governance, limited access to capital and ecosystem degradation, as well as complex disasters and conflicts.

This monograph covers the general overview of climate change issues in some African countries; approaches to mitigate the harmful effects of climate change in certain African countries; and climate change adaptation.

Authors: Rose Mwebaza, Louis J Kotzé

Player and Referee – Conflicting interests and the 2010 FIFA World Cup™

Conflict between public and private interests is recognised as one of the most prevalent challenges at all levels of public life in South Africa. Mega events, like the FIFA 2010 World Cup™, provide fertile ground for this. The event is a catalyst for competition – not only among football stars, but also among the many contenders in the private and public sectors who seek to benefit from the state tenders that flow from such highly financed events.

Player and Referee presents six detailed case studies that explore the dynamics that give rise to conflicts of interest.

Authors: Eddie Botha, Stefaans Brümmer, Andrew Jennings, Gcina Ntsaluba, Rob Rose, Karen Schoonbee, Sam Sole, Collette Schulz Herzenberg.

Player and Referee

Conflicting interests and the
2010 FIFA World Cup™



Edited by Collette Schulz Herzenberg



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Dear Reader,

This year 17 African countries, including 15 Francophone states, as well as Nigeria and Somalia, are celebrating five decades of independence. There will be festivals, military parades and official ceremonies attended by visiting heads of state.

Above all, though, it is an occasion to look back at the historic events that led to independence, and conduct a critical examination of the post-colonial political and economic choices of African leaders and policy-makers.

The 1960s were indeed an era of great hope and idealism on a continent emerging from decades of degrading colonial rule. Across Africa, bitter colonial wars and uprisings like the Algerian War of Independence, the Mau-Mau in Kenya and the social movements in Nigeria were coming to an end with the promise of elections and self-rule.

In the former French colonies, independence was more or less handed to states on a plate, with the proviso of not really cutting the umbilical cord that linked each of these states to France. The key question here seems to be: what form did this independence take?

A lot is written about the deficit of governance and the economic decline that seem to mark these past five decades. But there is certainly merit in delving deeper into the character of post-colonial rule and asking how many regimes merely adopted the same repressive system as their colonial predecessors, making use of the military to stay in power? Equally, there is also a lot to be said about those who

led the attempts at African Unity – and how committed they really were.

One country with a particularly tumultuous history in the immediate post-independence era is the Democratic Republic of the Congo, which celebrates its independence on 30 June this year. What would the country be like today had Patrice Lumumba been allowed to rule for more than a couple of months? Would it be peaceful and prosperous, or would it have disintegrated without the strong centralist dictatorship of a Mobutu Sese Seko?

And what if the Thomas Sankara's and Modibo Keita's had not been overthrown in coups? It must be said, though, that some of the first political actions of the continent's most revered leaders of independence, like Leopold Sedar Senghor, were to put their political opponents in prison.

There are also difficult questions about the young new rulers who took over in 1960. The late Ahmedou Kourouma touched on something of this in his fictional work *Le Soleil des Indépendances*, which looks at traditional indigenous beliefs and cultures in a context of a bloody and authoritarian post-colonial rule.

What lessons are there to be learnt from the successes and the mistakes of five decades of 'Postcolony', as the Cameroonian scholar Achille Mbembe calls it? Striking, when one visits our African capitals, is how little attention is paid to the memories of the struggle for independence. Here and there are monuments or airports named after

the nations' founding fathers, but a lot remains unsaid.

Memory is elusive, as Ghania Mouffok writes in her article on the Algerian war of Independence. Perhaps instead of erecting hugely controversial monuments depicting anonymous figures pointing skywards, like in Dakar, Africa's independence should be celebrated, and its heroes remembered, in a more profound way.

Liesl Louw-Vaudran
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Gugu Dube is a junior researcher with the Arms Management Program (AMP) at the ISS. She highlights the dangers posed by the cluster munitions and the Convention, which aims to ban them with effect from 1 August 2010.



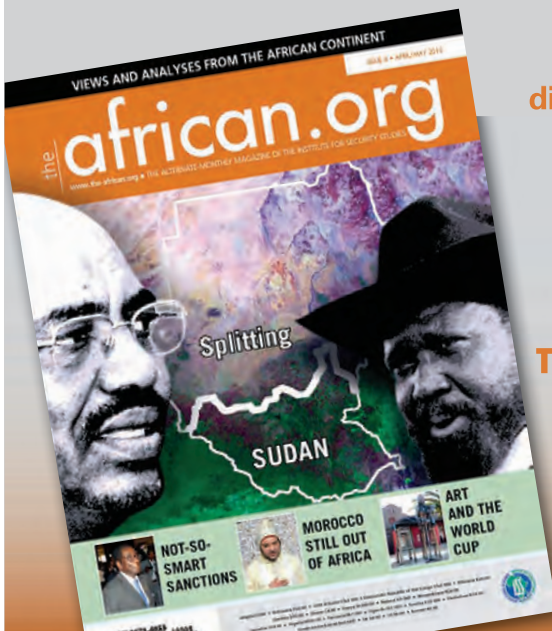
Issaka Souare looks back at 50 years of independence in Africa and attempts to answer the vexing question as to what is to blame for underdevelopment. Is it colonisation or decolonization gone wrong?



Prof. Adam Habib is deputy vice chancellor for Research, Innovation and Advancement at the University of Johannesburg. Against the backdrop of a new scramble for Africa's riches by the outside world, Prof. Habib cautions against becoming compliant to foreign agendas.



Dianna Games is director of Africa@work, a research and consulting company based in South Africa. She looks at President Robert Mugabe's controversial indigenisation of Zimbabwe's business sector. She notes that although the concept of empowerment is well accepted by most parties in Zimbabwe, there are concerns about how the indigenisation process will be handled



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Upcoming events

Burundi goes to the polls

The first round of Burundi's Presidential election will be held on 26 June, with a second round on 26 July, if necessary. The vote will take place when the first five-year term of the incumbent president, Pierre Nkurunziza, comes to an end. Unlike the 2005 poll, the current election of the President will be a direct one by all voters, not by parliament as in the past.

In early March, the run-up to the election was labelled 'explosive', due to the combination of demobilised former combatants and violence between youth activists in the ruling CNDD-FDD and opposition FRODEBU parties. The election of new MPs will be held on 23 July and of senators on 28 July. Among the issues affecting the process are the ceasefire signed with the last active militia group, the Palipehutu-FNL, and their political integration; the demobilisation, disarmament and reintegration of ex-combatants; the instability created by rising food prices; and the return of hundreds of thousands of refugees from Tanzania. But the challenges are also rooted in the post-independence history of elections in which the manipulation of 'ethnic' differences between Hutu and Tutsi for political purposes has created deep tensions and led to violence.

Guinean presidential election in June

Guinea is to hold the first round of its presidential election on 27 June 2010, with a possible run-up scheduled for 18 July should the first round fail to


produce a candidate with more than 50 percent of the vote. The purpose of the polls is to end a military rule, with the government promising to hold the first truly democratic elections since independence in 1958.

Moussa Dadis Camara imposed military rule on the West African nation within hours of the death of long-time ruler, General Lansana Conté, in December 2008. In September 2009, confrontations between the military junta and the opposition led to the killing of 156 opposition protesters. Some months later, the increasingly unpopular Camara himself was shot in an assassination attempt by his aide-de-camp, Aboubacar, and had to be flown to Morocco for medical treatment. He has since moved to Burkina Faso, where he signed a document agreeing to stay away from Guinea while General Sekouba Konaté acts as interim leader until elections could be held.

For his part, Konaté seems very committed to these arrangements

and uninterested in power. In January this year he appointed Jean-Marie Doré, a member of the opposition, as the new Prime Minister and head of government until the June elections.

Kenya prepares for constitutional referendum

Kenya is to hold a constitutional referendum to approve the new draft constitution on 4 August. The new constitution is widely expected to help avoid the violence that followed the 2007 presidential election. Parliament approved the proposed law in April without amendments, heralding the next stage of the review process. Thirty days later, the Attorney General published the document in readiness for the referendum, after which the Interim Independent Electoral Commission (IIEC) was given a 60-day deadline during which to conduct the referendum. The commission subsequently embarked on conducting fresh voter registration in time for the exercise. The IIEC chairman, Issak Hassan, said, 'Despite the logistical and transport challenges I think we are on course and we will be able to register as many Kenyans as possible. We have been given enough resources and we are able to finish this exercise satisfactorily.' 



Burundi's President Pierre Nkurunziza meets Pope Benedict XVI in November 2009

(AP Photo/Christophe Simon, Pool)

Newswatch

Nigeria at the crossroads

It is true that the death of President Umaru Yar'Adua of Nigeria in May might close a controversial chapter in Nigerian politics, that of a mild and sometimes discreet presidency after a chapter of allegedly fraudulent voting during the 2007 electoral process commonly considered the worst in the history of the country. But most importantly, it will take away what former President Olusegun Obasanjo thought were the leadership qualities that motivated his choice of Yar'Adua as his successor: personal integrity, moderate religious beliefs and intellectual capacity – all things needed to substantiate Nigeria's walk toward a viable and inclusive democracy and an economically prosperous country.

Yar'Adua will be remembered for his quiet but significant contribution to Nigerian economic and political reforms, including the revival of the largely discredited banking sector, the peace deal with the Niger Delta militants, and the move towards electoral system reforms. His death removes one of the major obstacles preventing the acting president, Goodluck Jonathan, from assuming full presidential functions, and gives him various options to transform Nigeria in a meaningful way.

Jonathan has insisted that his one-term tenure will be guided by the vision of transforming Nigeria and not just ensuring a transition. He has the opportunity to turn this vision into action, since he has no immediate personal political stake in the outcome of an election. He already demonstrated his boldness, in April, by sacking the chairman of the Independent National Electoral Commission (INEC), Professor Maurice Iwu, in a move hailed as an attempt to pave the way for a credible poll in 2011.

Although a dose of luck has been fuelling Jonathan's rise to power, his commitment to a one-year term could help maintain political stability. Though it is not constitutionally endorsed, any decision contrary to the north-south rotational arrangement would certainly ruin his political career and plunge Nigeria into uncertainty.

What next after the Sudan poll?

The elections in April this year that had been dubbed the most ambitious and complicated in Sudan's history saw incumbent, President Omar Al Bashir returned with a 69% of the vote, while his southern counterpart, Salva Kiir got 92.99% of the vote in the South.

Even Yasir Arman, who was Bashir's main challenger and was backed by the South Sudan People's Liberation Movement (SPLM), got 21% of the national vote. Interestingly, Arman had pulled out at the last minute citing security fears, the continued conflict in Darfur and irregularities in the management of the electoral process system. Although the SPLM had boycotted the presidential election, it had decided to stay in the race for parliamentary and local elections.

About 16 million registered Sudanese voted for the president of Sudan, National Assembly, president of the government of Southern Sudan, Southern Sudan Legislative Assembly, and governors and assemblies for the 25 states of Sudan. In the North, voters cast eight separate ballots. In South Sudan voters had to complete 12 separate ballots.

The purpose of the first post-Comprehensive Peace Agreement (CPA) elections in Sudan was to give the people a chance to experience life under representative and democratic government and give a chance to elected politicians to "make unity attractive" to the Southerners, who will vote in the self-determination referendum scheduled for January 2011. The outcome of the referendum will determine whether to remain in a united Sudan or whether the South will form an independent country.

(Source: African Conflict Prevention Program, African Peace Support Trainers Association, and Environmental Security Program – all of ISS)

Rajoelina, the talks and the army

In the wake of deadlocked regionally brokered talks in South Africa at the end of April, Madagascar's ruler, Andry Rajoelina, was to immediately engage military leaders in talks on his return to the island state. Although further regional talks were scheduled to resume in Pretoria weeks later, Rajoelina subsequently declared he would not participate, according to *L'Express* of Madagascar.

The military leaders had previously demanded that Rajoelina bring to an end the country's political crisis. Though Rajoelina's ascendancy to power initially had the military's backing, it now appears that the military is not unanimously behind him. In fact, none of the four political leaders can claim exclusive military support. Consequently, any division within the army could weaken Rajoelina's support and put him at risk of being overthrown in a counter-coup. It appears that the only way he can avoid a putsch is to be part of the Joaquim Chissano-brokered talks.

Obviously Rajoelina's French support has thus far made him impervious to the African Union's counsel. Although France might have seen in Rajoelina a golden opportunity to regain its influence in Madagascar, especially following the uneasy relations it had with Ravalomanana, it is in the interest of both France and Madagascar to craft and implement a consensual strategy in the best interests of the Malagasy people. There appear to be two major outstanding issues: the institution of the executive council comprising all the four parties' leaders including Ravalomanana, and the holding of an election. Under proposals formulated and signed in Maputo and Addis Ababa last year, all four parties would form a transitional arrangement, with ministries shared equally amongst them. The transitional administration, headed by Rajoelina, would be charged with organising early presidential elections. ☐

(Source: African Conflict Prevention Programme - ISS)



"Africa's agriculture is plagued by low productivity and food insecurity ... We need to do things differently." Jakaya Kikwete, President of Tanzania



"I agree that Africa has many opportunities. The challenge comes back to the leadership." Jacob Zuma President of South Africa



"Zimbabwe's transitory unity government is necessary to stop conflict and violence, but afterwards the country needs to return to representative democracy with a clear executive and a powerful opposition." Idriss Moussa (right), President of the Pan-African Parliament



"Africa is urbanising faster than any other continent, so much that by 2020, Africa will cease to be a rural continent. Despite this, few African leaders are taking the issue seriously." Anna Tibajuka, Undersecretary-General and Executive Director, UN-HABITAT, Kenya



"We need to put Africa in a position where it will never again be marginalised and ignored." Graca Machel, Founder and President, Foundation for Community Development



"The Kenyan example is not a model to be followed. It is a compromise that has been reached as a result of a crisis." Raila Odinga, Prime Minister of Kenya



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Ahmadou Babatoura Ahidjo, the first ever President of Cameroon, attends independence ceremonies in January 1960 in Yaounde. AFP PHOTO

Governance, not culture, to blame for underdevelopment

The way Africa has been portrayed in the five decades since independence has provoked endless debate and a rich literature on the subject. **Issaka K Souaré**, reflects on the various explanations of Africa's underdevelopment

Fifty years after most African countries regained independence, Africa is considered today to be the poorest continent in the world, contributing less than 3% to international trade. This is besides the numerous violent conflicts that have afflicted the continent over

the last few decades.

Opinions abound about this rather gloomy record of the continent and who is to blame for the dire economic situation in so many African countries. Is it the fault of colonisation or rather decolonisation gone wrong?

In a famous 1973 book *How Europe Underdeveloped Africa*, the Guyanese historian, Walter Rodney seems to attribute Africa's woes to colonialism. After analysing the social, political and cultural dynamics of pre-colonial Africa, Rodney lamented at the impact of

50 Years of Independence

Analysis

European colonialism on the continent. To him, "it was precisely in those years that in other parts of the world the rate of change was greater than ever before [...]. Certainly, in relative terms, Africa's position vis-à-vis its colonisers became more disadvantageous in the political, economic and military spheres."

Kenyan historian and political scientist Ali Mazrui supports a similar argument in the 1980 book *The African Condition: A Political Diagnosis*. In this book Mazrui attributes Africa's miserable condition partly to "the nature of the economic change which Western colonialism fostered in Africa." But Mazrui recognises that African leaders need to change their dependency mindset in order to overcome the situation.

In contrast to this the American historian David Landes claims the problem lies in culture. In his 1999 book titled *The Wealth and Poverty of Nations: Why Some Are So Rich and Some So Poor*, Landes claims that geography and culture have played an important role in determining which societies and nations have progressed and which have lagged behind. Landes purports that the cultural characteristics of a society's history are the key to explaining success, particularly economic success, in today's global world.

Likewise, at a lecture in Colorado in February 1999 Samuel Huntington tried to explain development gaps between various countries by some purported cultural characteristics and values of their people.

In that lecture Huntington quoted economic data on Ghana and South Korea from 1960. At that time, said Huntington, "these two countries had almost identical economic

profiles in terms of per capita GNP, relative importance of their primary, manufacturing, and service sectors, nature of their exports, and amounts of foreign aid." Huntington observed: "Thirty years later South Korea had become an industrial giant, with high per capita income, multinational corporations, a major exporter of cars and electronic equipment, while Ghana still remained Ghana."

In explaining this paradoxical change Huntington acknowledged that "many factors were responsible,"

"Whereas democratic systems were rare in Africa prior to 1990, a majority of countries today adhere to principles of good governance"

but "culture was a large part of the explanation." How? According to him "South Koreans valued thrift, savings, and investment, hard work, discipline, and education". Ghanaians "they had different values," concluded Huntington. But if a Korean culture was at play here, why is it that Seoul is more advanced than Pyongyang? Were they not the same Korea before the 1950s, or did North Koreans develop new genes after the separation? And what about West and East Germany?

Given this, it has to be admitted that the current state of affairs in Africa is due to a multitude of factors, both historical and current. There is no denying the fact that colonialism did have a profound impact on Africa. The same goes for neo-colonial activities that former colonial powers engaged in after independence. But fifty years of self-government should have greatly reduced, if not eliminated, the effects of these systems.

It would appear that governance, both political and economic, accounts for more.

Violent conflicts and poor economic performance, despite the abundance of material and human resources, are generally due to bad political and economic governance and African leaders shoulder a big responsibility in this regard.

In June 2007, the World Bank and the UN Office on Drugs and Crime (UNODC) published a report on *Stolen Assets* which estimated that 25 per cent

of the GDP of African states is lost to corruption every year, amounting to around US\$148 billion. By the same token, a 2004 report of the global corruption watchdog Transparency International considered Mobutu Sese Seko, who ruled the then Zaire from 1965 to 1997, and General

Sani Abacha, the kleptocratic ruler of Nigeria between 1993 and 1998, to be the top looters of public funds from Africa. The stolen funds of Mobutu Sese Seko were estimated at US\$5 billion, while Abacha is said to have pillaged between US\$2 billion and US\$5 billion. Neither colonialism nor neo-colonialism can be blamed for these scandalous actions.

But there is cause for hope, as governance is improving on the continent. Whereas democratic systems were rare in Africa prior to 1990, a majority of countries today adhere to principles of good governance. Violations of these principles here are done in a context of more societal resistance almost everywhere on the continent. Clearly, with better governance and strategies of self-reliance and inter-African collaboration, the continent is likely to overcome the bad image of "rich Africa, poor Africans". ■



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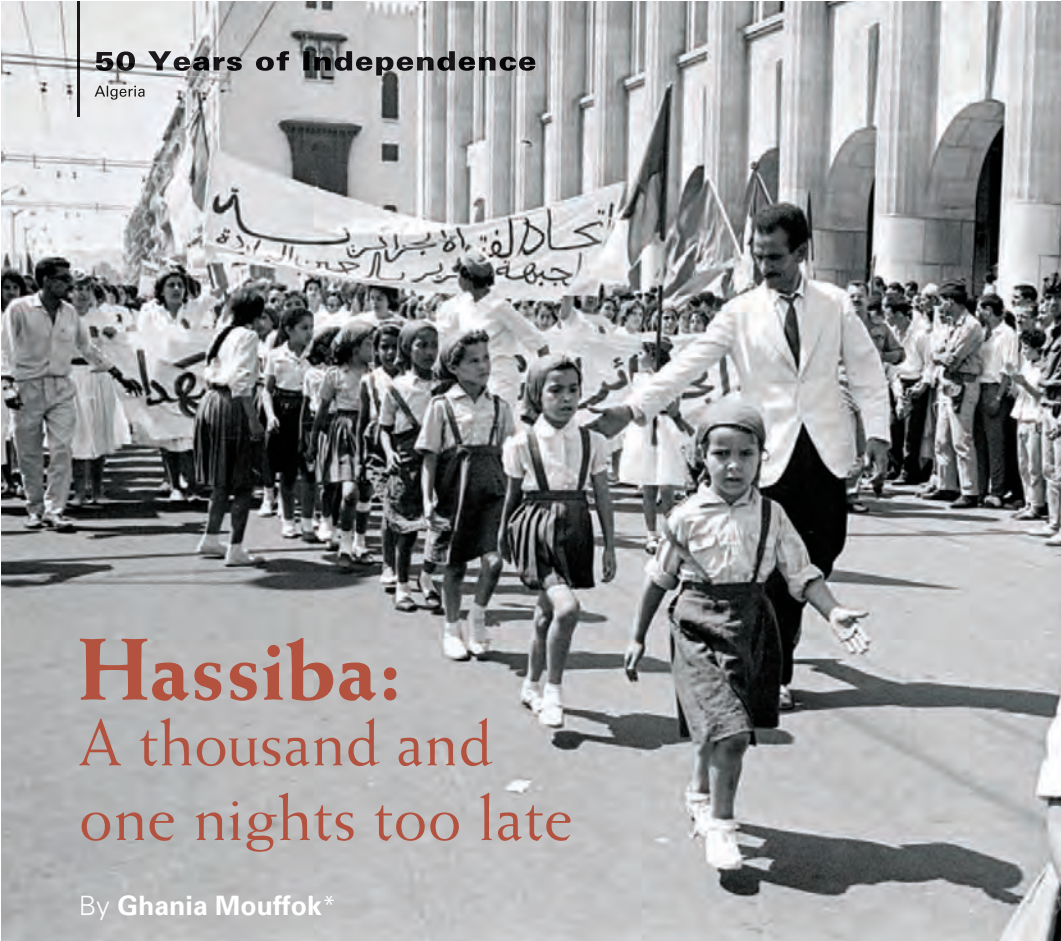
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Hassiba: A thousand and one nights too late

By Ghania Mouffok*

What is memory? I ask myself, while reading an article in *El Watan* about a monument that was recently inaugurated to honour Hassiba Ben Bouali in her hometown of Chlef, formerly known as El Asnam.

On the photograph next to the article one sees her, or rather, imagines her (as the quality of the printing is as usual extremely bad) as she is immortalised by an anonymous artist. I ask again: what is memory?

The statue mounted on a solid plinth shows Hassiba Ben Bouali with short hair

which, they say, she dyed with henna so that the paras wouldn't find her hiding in the Casbah. They also say she was superb, with blue eyes and short hair. Wearing a skirt just below the knees, she carries a bag over her shoulder, perhaps a cartridge belt, and at her feet, at least as far as I can see, is an enormous firearm.

So this is how she will from now on stand in her hometown: huge, with a gun at her feet. The sculptor obviously couldn't resist the revolutionary imagery. A moudjahid without a gun would be inconceivable.

I don't know whether Hassiba ever carried a gun, even at her feet. Her speciality was rather the transport of bombs across Algiers, a city that became her battleground when she and her family moved there, a city patrolled by all sorts of paras in red or green but all with dark hearts. To them, she was just a terrorist. To us, she was a heroine.

A planter of bombs. She is the favourite heroine in my *panthéon*. This is not because she planted bombs but because she went as far as planting bombs, this small romantic schoolgirl from a wealthy



Muslim children march in a parade during official independence celebrations in Algiers, Algeria, on July 5, 1962. The majority of Algerians voted for independence from French colonial rule in the nation-wide referendum held July 1.
(AP Photo)

What did she think about when she refused to surrender to the paras in the rue des Abderames even when they promised, in exchange, to spare her life?

family, romantic schoolgirl who simply dreamed of becoming a nurse, to heal rather than to kill. She ended up planting bombs, which is neither inevitable nor innocuous – to blow up civilians, even in wartime, even if they are enemies.

She pushed her commitment to the utmost limit to free us from slavery.

She became even closer to my heart when I read the account by Daniel Timsit, an Algerian, Jew, nationalist, who made the bombs that she carried. He says that next to these instruments of death, she also transported a copy of the *Thousand and One Nights*.

The Thousand and One Nights! How would she have reacted if she knew that one day, in her country, the minister of culture would refuse to stop in front of the stoneware illustrating the *Thousand and One Nights* that served as decoration in one of the new housing developments. The excuse was that it 'wasn't Algerian'. Would she have smiled in contempt? Would she have cried, with her beautiful blue eyes?

What did she think about when she refused to surrender to the paras in the rue des Abderames even when they promised, in exchange, to spare her life? Why did these three magnificent heroes: a man, a woman and a child, who had no blood connection, prefer to die together rather than to give themselves up?

What is memory? I recently read Anaëlle Lebovits stating that "it is neither pure positivity and not absolutely impossible to transmit. Memory is still a specific singular occurrence, which inevitably always fades away with those who own it.

"We can locate it somewhere in the space between the narration, the gossip and the silence. It is in trying to fill in the open spaces between the words that we create it. Time passes and it would be absurd to regret it".

Somewhere between the telling and the silence the Casbah falls apart and, so that everyone will know, the house



Hassiba Ben Bouali was a freedom fighter in the Algerian War of Independence against France that ended in 1962. She came from a privileged background and was so shocked by the suffering of ordinary Algerians that she joined the General Union of Algerian Muslim Students at the age of 16. She went to the Lycée Pasteur high school in Algiers and went on to become one of the Fedayeen, a volunteer in the war. She died, together with 'Ali la Pointe' and a 12 year-old boy, in the bloody Battle of Algiers in 1957. When they refused to surrender, French paramilitary forces bombed their hideout in the rue des Abderames in the Casbah, the labyrinth of lanes and dead-end alleys that form the old city of Algiers.

where Hassiba ben Bouali died can be seen on the Internet – hanging there between heaven and earth, the insides pouring out.


This historical house is proof that in a country that earns over \$76 billion a year from oil, the house where Hassiba ben Bouali saw the sun rise for the last time is worth nothing faced with the trade on the property market today and in the future. What is memory?

50 Years of Independence

Algeria

So when I read, in this same article, that “two individuals” had been “arrested by the security services” after “committing reprehensible acts on the statue of Hassiba” even before its inauguration, and that “according to the official version they were drug addicts” who “will appear before the courts this week”, I am not surprised, not even shocked. I only think it’s ridiculous to say that drugs explain such an act. Embarrassed, the journalist doesn’t tell us what was written on the body of the Lady with the Gun.

But it is clear that the justice system will have no problem in punishing severely and maliciously, in the name of preserving our heritage, two hobos, forgetting the real case against those who really smuggle with our memories.

If Hassiba Ben Bouali were alive today, she would have been exactly seventy years old – the same age as Chadli and Nezzar. Between the telling and the silence, keep your guns and leave us the *Thousand and One Nights*. 

*Ghania Mouffok is an independent Algerian journalist. This article was translated and reproduced here with the kind permission of TV5Monde.

Aminata Traore*

I believed in this Mali of 1960, with the innocence and hope of a 13-year-old. What have we done with it? The question is of course valid for all the other African countries that are preparing grand ceremonies to commemorate the 50 years that have gone by.

The post-colonial period we are living in can only be described as disastrous. I can say that because of how the whole social and economic fibre of our society has been destroyed through five decades of development directed outwardly; the degradation of the environment and the utter disarray of the immense majority of our society, including women and the youth. In the name of a consumer society for which our continent mostly plays a role in providing raw materials, we have waived our rights to the political achievements of the ‘60s, starting with political sovereignty, independent thinking and belief in ourselves.

The heroes of independence are present in the statues erected for them here and there. But they would probably turn in their graves to see how we’ve sold off our public goods, in the name of an efficiency and growth-rate that only benefit multinationals and a privileged and initiated minority.

Of the colonial era there remain a few avenues, a certain architecture, some ways of doing things, dress codes and other mannerisms, and a lack of confidence in ourselves – of which we should be cured if we want to succeed on our own.

*Aminata Traore is former minister of culture for Mali, and the author of several books on development, globalisation and Africa’s social and political emancipation. These remarks, translated from French, are reprinted with the kind permission of TV5 Monde.





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Nyerere and the road to African Unity



Tanganyika Prime Minister Julius Nyerere, left, and Kenyan leader Jomo Kenyatta after Nyerere had unveiled the Independence Monument in Dar-Es-Salaam. (AP)

As both a head of state and leading Pan-Africanist intellectual, former Tanzanian president Julius Nyerere found himself supporting contradictory ideas around contesting the imposition of colonial borders – and pan-African unity – while emphasising the centrality of states' sovereignty, writes

Professor Issa G Shivji*. He outlines the essential differences between the respective approaches of Nyerere and former Ghanaian president Kwame Nkrumah – two pillars of the Pan-Africanist movement

than post-modernist. The commonness of Africans lay in their common experience as Africans, rather than their common identity. As he put it, "Since we were humiliated as Africans, we had to

Julius Nyerere – or Mwalimu, as he is affectionately called – constantly referred to the African-ness of the African people in his writing and his speeches. Unlike other people, Mwalimu said, our identity is African, not Tanzanian, Ghanaian or Gabonese. Not only is our own perception of ourselves African, even outsiders recognise us as Africans.

This strong notion of African identity is one of the three pillars of Nyerere's argument for pan-African unity. The other is the non-viability of the colonial state and the issue of sovereignty.

In his speech at the 40th Celebration of Ghana's independence in 1997, he summed up this position in his usual simple but graphic fashion: "When I

travel outside Africa, the description of me as former President of Tanzania is a fleeting affair. It does not stick. Apart from the ignorant who sometimes asked me whether Tanzania was Johannesburg, what stuck in the minds of my hosts was the fact of my African-ness. So I had to answer questions about the atrocities of the Amins and the Bokassas of Africa. Mrs Gandhi did not have to answer questions about the atrocities of the Marcoses of Asia. Nor does Fidel Castro have to answer questions about the atrocities of the Samozas of Latin America."

Although I have used the post-modernist phrase 'identity', it is clear that Mwalimu's argument was political rather

be liberated as Africans.”

Undoubtedly, Mwalimu is talking about common interests, but his notion of ‘interest’ is individual, personal and embedded in political theories of enlightened individualism. Unlike that of Kwame Nkrumah, the other great pan-Africanist who fought for African unity “now-now”, opposing it to Mwalimu’s gradualist approach, Mwalimu’s characterisation of interest is not social or class, grounded in political economy. This is one of the interesting and significant differences in the philosophical formation and outlook of the two men, which informed their political prognosis.

If I were to use the language of Marxist classics, I would say that Mwalimu understood Leninist politics better than Marx’s political economy. Nkrumah’s politics was not particularly astute, but he had a better understanding of political economy.

Mwalimu’s was a consistent anti-colonialism; Nkrumah’s a militant anti-imperialism. Mwalimu sneered at imperialists; Nkrumah stung them. Mwalimu saw African unity as a goal, which could be achieved by small steps. Any number of African states uniting in any form – economically or politically, regionally or otherwise – was, for Mwalimu, a step forward. For Nkrumah, national liberation and African unity were two sides of the same coin, the coin being an anti-imperialist, Pan-Africanist struggle.

Mwalimu conceptualised the task of the first generation of African nationalists as twofold: national liberation (meaning independence), and unity.

To be fair, Mwalimu recognised the difficulty of his stagiest theory. He forcefully argued, for example, that the proposed East African Federation should precede the independence of individual countries, otherwise, unity would become difficult. He made this argument strongly and history has proved him

right. But the basis and logic of his argument for regional unity first, before independence, was similar to Nkrumah’s one for immediate continental federation. Nkrumah’s position was that regional unities would make continental unity even more difficult.

There is another underlying difference between the gradualist and radical approaches of Nyerere and Nkrumah, which has not been sufficiently analysed. I think for Nkrumah, unity itself, just as liberation, was an anti-imperialist struggle, not some formal process of dissolving sovereignties. Amílcar Cabral captured the national liberation struggle as an anti-imperialist struggle well when he said, “So long as imperialism is in existence, an independent African state must be a liberation movement in power, or it will not be independent.”

The notion of an independent African state being a national ‘liberation movement in power’, I suggest, gives us the core of the ideology and politics of Pan-Africanism as a vision of not only unity but liberation. ‘Territorial nationalism’ is not African nationalism. African nationalism can only be Pan-Africanism or else, as Mwalimu characterised it, it is “the equivalent of tribalism within the context of our separate nation states”. Pan-Africanism gave birth to nationalism, not the other way round. This is a powerful argument implied in Mwalimu’s ideas on African unity.

This brings me to the second element of his justification for African unity, the non-viability of African states.

Non-viability of the mini-state

Mwalimu spent a lot of time demonstrating the irrationality and non-viability of African states. He used the Kiswahili diminutive *vinchi* to describe them. Without intending to offend linguists, I would translate *vinchi* as ‘statelets’ (as in islets!). These statelets

had neither geographical nor ethnic rationality. There are 53 independent African states, all members of the United Nations. “If numbers were horses,” Mwalimu quipped, “Africa would be riding high!” Yet Africa is the weakest continent. World councils make decisions without regard to the interests of Africa. Let us not glorify nation-states inherited from colonialism, Mwalimu used to tell his fellow state leaders. Related to the argument on non-viability was the third element of sovereignty or self-determination.

Sovereignty

Mwalimu argued that the mini-states of Africa could not, on their own, exercise their sovereign right to make their own decisions in the global world dominated by the powerful. He emphasised, particularly in his early writings, that our erstwhile colonial masters would divide us based on our sovereignties, in order to continue ruling us. There is no doubt that in his political outlook, Mwalimu placed a great premium on the right of the people to make their own decisions. That was the fundamental meaning of independence – the right to make our own decisions ourselves.

But Mwalimu was a head of state, a political leader. Underlying his position on the right of the people to make their own decisions was the unstated assumption of state sovereignty. People make their decisions through their states. In fact, the dichotomy and the contradiction between people’s sovereignty and state sovereignty were pretty fudged in Mwalimu’s thought, and much more so in his political practice. This aspect is closely connected with the other strand in his thought, the question of agency.

Who will lead us to unity?

Having forcefully argued for African unity, the basic questions of history arise: Who will bring it about? Which

50 Years of Independence

Pan-Africanism

social agency will be the carrier of this great historical task? Neither Nyerere nor Nkrumah raised these questions in this form, at least not while they were in power. But implied in their position it was clear that the agency to bring about unity was the state. Partly this was an acknowledgement of the historical formation of the state in colonial Africa; partly it was realpolitik. The state in Africa was a colonial imposition. It did not develop organically through social struggles within the African formation. Thus when we raised the flag of independence, sang our national anthem and proclaimed sovereignty, it was the sovereignty of the state inherited from colonialism.

In that sense, it was not our state; we took over the colonial state. There was no internal social class to shoulder the task of nation-building and economic development. The only available organised force was the state. The colonial heritage thus left the first generation of African nationalists with no option. The task of transformation fell on the state, almost by default. This is where the real contradiction lay. For the state that was supposed to undertake the task of nation building was itself a colonial state, the very antithesis of a national state.

When it came to the task of building African unity, the contradiction was even more blatant. First, independence meant attaining state sovereignty. Independence before unity meant recognising and reinforcing colonial boundaries. Ironically, the man who condemned colonial boundaries most was the same man who moved the motion on the sanctity of colonial boundaries at the 1964 Organisation of African Unity (OAU) summit in Cairo. To compound the irony, it was the same man who recognised secessionist Biafra and marched into Uganda without regard to borders. That man was Mwalimu Nyerere. It may seem ironical

but Mwalimu was a head of state. The king and the philosopher combined in him, and they could not always sit together comfortably.

So, ironical or not, he could not escape making pragmatic political decisions. Mwalimu cites two examples that made him move the resolution on boundaries. Just after independence, Hastings Kamuzu Banda of Malawi paid a visit to Mwalimu with an old book of maps. He tried to persuade Mwalimu that part of Mozambique belonged to Malawi and another part belonged to Tanganyika. Mwalimu of course was disgusted at this proposal of swallowing up Mozambique, just like that!

Another example is that of Somalia publicly claiming the Ogaden province of Ethiopia, while Ethiopia whispered that the whole of Somalia belonged to Ethiopia. To prevent border wars among Africans, Mwalimu moved his resolution on the inviolability of colonial boundaries.

Second in the way of unity were the vested interests of the political class. Unity meant dissolving, even if partially, the sovereignty of the newly independent states. This meant depriving the new political class, which had been landed with state power, of their power, privileges and the accompanying possibilities of acquiring wealth. No wonder the new rulers of Africa were nervous and resistant to Nkrumah's call for African unity. Mwalimu alludes with some amusement to the situation at the 1965 Accra summit of the African heads of state: "After the failure to establish the union government ... I heard one head of state express with relief that he was happy to be returning home to his country still head of state. To this day, I cannot tell whether he was serious or joking. But he may well have been serious, because Kwame Nkrumah was very serious and the fear of a number of us to lose our precious status was quite palpable."

Forty years later, I believe, the state has become more than simply a site of accumulating power and privileges. It has become the site of accumulating wealth and capital. This class, which uses state positions to acquire wealth and accumulate property, is not a productive class. It does not accumulate and invest in production. It is an underdeveloped 'middle-class', as Frantz Fanon described it on the eve of independence. As he said, it is a "little greedy caste, avid and voracious, with the mind of a huckster, only too glad to accept dividends that the former colonial power hands out to it."

The insurrection of Pan-Africanist ideas

I believe Pan-Africanism is making a comeback. I believe African nationalism is at the crossroads. It can either degenerate into narrow chauvinistic nationalisms – ethnic, racial, cultural – or climb the continental heights of Pan-Africanism. We, as intellectuals, have to develop a new Pan-Africanist discourse. New Pan-Africanism must be anchored in democracy, says Thandika Mkandawire. Africa needs some kind of social democracy, argued the late Archie Mafeje. Africa needs a new democracy built around popular livelihoods, popular participation and popular power. But in this day and age of militarised hegemonies and despotic democracies we need to question the very concept of democracy. Where ideas are commodities, manufactured on order by ideas-traders, we need to return to the ideas of commitment and the commitment to the ideas of human emancipation. ■

* Issa G. Shivji is the Mwalimu Nyerere Professor of Pan-African Studies at the University of Dar es Salaam. This article first appeared in the maiden issue of CHEMCHAM.



The difficult art of sharing power in Zimbabwe

Jaco Marais

Since the signing of the Global Political Agreement (GPA) between the Zimbabwean political parties in 2008, the inclusive government has been fraught with fears of imminent collapse. In South Africa, **Keto Segwai** spoke to Morgan Tsvangirai, Prime Minister and leader of the Movement for Democratic Change (MDC), about the Zimbabwean reform cart that appears to be drawn by two horses pulling in opposite directions

What is your overview of the Zimbabwe situation since the GPA?

I would say we have worked very hard to make the best of a bad situation.

The GPA had two major tasks: to stabilise the economy and to institute democratic reforms. Gradually things are stabilising and beginning to work. Things are not moving at the speed we would like them to, but on the whole there is some progress in the economy. We have put in place most of the required political reforms, including the Electoral Commission, the Human Rights Commission and the Media Commission, and we are in the process of instituting the Anti-Corruption Commission.



Would you say that the appointment of all these commissions has been a credible one?

I cannot think of a more transparent process. Take, for instance, the process leading to the appointment of the Electoral Commission. There were more than 700 applications, 50 of which were shortlisted and subjected to public questioning. That figure was later narrowed to 12, nine of which were formally appointed by the parties to the GPA. That process was followed with all the other commission appointments. Admittedly, however, the implementation of the GPA has its challenges.

What exactly are the outstanding issues?

Presently these revolve around the sharing of power. It's mainly about key appointments. As the MDC, we wanted to have a say in the appointment of the governor of the Central Bank, the provincial governors, and other key appointments. On the other hand the Zanu-PF have objections to our appointment of MDC member, Roy Bennett, as deputy minister for agriculture.

How have the targeted economic sanctions imposed on your Zanu-PF colleagues impacted on your efforts to stabilise the economy?

Though these are targeted sanctions, they still affect the country's economic recovery program. The country badly needs open lines of credit if it is to make any headway. But on the other hand, one understands the Western countries' scepticism about the seriousness of the GPA. As a party, we have no control over the sanctions. Our colleagues always bring up issues that they know very well are beyond our control. We have signed an agreement that is not being fully observed. The burden therefore lies with us, the parties to the GPA, to show the world how serious we are through our actions.

How far along is the constitution-making process?

The first phase of this process has been completed, and now we are to begin the public consultation phase. As a two-month process, it starts at the beginning of May and should be completed by the end of June.

In the recent past, the Zanu-PF has hinted that it might as well forget about the constitution-making process and go straight to elections. What's your take on that eventuality?

I doubt very that they could take that route. I believe both sides would like to see a successful conclusion to the GPA process. Besides, the GPA says that both the President and the Prime Minister must jointly decide on the election date. So there is no way the constitution-making process can be circumvented. The GPA intended the constitution-making exercise to be part of the whole process.

It has been suggested that the next Zimbabwean elections should be run by international bodies such as the UN. Is this realistic?

No. I don't think that will be necessary. With the processes that we are putting in

place, the people of Zimbabwe should be able to run a credible poll by themselves. I am confident that the newly appointed Electoral Commission will be up to the task – with the assistance of the international community as observers, of course. There could be observer missions from SADC, the AU and others. The ongoing reforms are meant to level the political playing field.

Is there a possibility of having an election anytime soon? When exactly is the next election going to be held?

It should definitely be next year, in 2011, but the inclusive government will only decide on the date once the other processes have been completed.

Is there a possibility of the voters punishing you in the next elections for cooperating with Zanu-PF?

I don't think so. I was the winner of the last election. In fact, the latest opinion polls show that 85 percent of Zimbabweans support the inclusive government. So I don't see how I can be punished for doing the right things.

Should you win next year's election, what would be your key priority areas?

Given the deplorable state of our economy, vigorous promotion of national and international investment will be pursued. Such investment can be our only hope of bringing the economy back to life. The participation of foreign companies in the recent Zimbabwe International Trade Fair (ZITF) is an indication that the international community is beginning to show confidence in our economic efforts.

Will that include strengthening the nationalisation policy?

No. That policy has been revised. But nationalisation should not be confused with indigenisation. The latter is basically about citizen economic empowerment

and many of our neighbouring countries, including South Africa, are pursuing it. Citizen empowerment is a positive thing.

Alongside the revival of the economy, we will work for the restoration of people's rights. We would like to foster respect for the rule of law. We want to be a government of the law.

We would also like to push for better delivery in the social sector, including education, health, water and sanitation, among others. It is scandalous that Zimbabwe, which used to have one of the best education systems in Africa, now has no system to speak of. The other priority area will be to rehabilitate the country's infrastructure. The energy sector and our roads and railways are in a state of disrepair. We cannot continue harping on about our gallant liberation history and the achievements we have made since then. While it is important to acknowledge the past, it is equally important to envision the kind of future we want for Zimbabwe. This is very urgent.

Another equally important area is the restoration of Zimbabwe's international relations. We are aware that this could be a difficult task, especially after 10 years of being considered a pariah state. There is an urgent need to re-brand the country.

Will this re-branding include the observation of regional and international conventions that Zimbabwe is party to?

Yes. We must observe all conventions to which we are signatory, and that include the SADC Tribunal. However, I must point out that we are not going reverse the land-reform programme. As a matter of fact, no one has been against land reform, only the way it was done. So what we are going to do is to review the processes. Firstly we are going to carry out a thorough audit of the programme. For instance, some people have up to five farms while the majority have none. Beside the audit, we



“The latest opinion polls show that 85 percent of Zimbabweans support the inclusive government.”

will look at the utilisation of the land, to ascertain whether the land is being put to productive use.

What is your comment on the ANC Youth leader president Julius Malema's labelling of the MDC as a puppet party while he was on a visit to Zanu-PF?

We were surprised by such an unwarranted attack. Here was an ANC leader clearly siding with one of parties in the Zimbabwean crisis, the talks of which are being mediated by an ANC-led South African government. We took up the matter with the ANC and we were assured that is not the position of the party. We believe President Jacob Zuma supports the amicable resolution of this process. 📍



Is SA more democratic under Zuma?

On the eve of the 2010 FIFA World Cup in South Africa, negative predictions abound about the political future of President Jacob Zuma and the stability of South Africa's democracy. However, ***Piet Craucamp** believes the greater freedoms enjoyed by important civil society formations today could be a guarantee against the threat of authoritarianism.

South Africans are generally concerned about the durability of the democratic practices and rituals embedded in the country's constitution.

The latest political developments in South Africa, including the role of the seemingly 'uncontrollable' ANC Youth League leader Julius Malema, have given rise to a lot of speculation about what some believe to be a threat to democratic institutions.

Can the letter and spirit of the 1994 constitution, so hard fought for, be

maintained regardless of political infighting within the ruling ANC and even of what some would call a resurgence of racial tensions?

A look at the factors that guarantee the perennity of democracies gives an indication as to how South Africans may address this issue. In established democracies, the constitution is indeed the master-narrative, dictating state-societal relations, as well as the nature and dynamics of the connective tissue between societal interest groups.

In these consolidated democracies, the institutionalised competence of societies to change the government while retaining the state is the greatest impediment to opportunistic behaviour within the state, and the most efficient means by which societies call their governments to justice.

This 'corrective determinant' in the constitutional relationship between states and societies relies heavily on the yearning of policymakers to strengthen an institutional affection between

the government of the day and the electorate.

Legitimacy as the corrective determinant, under conditions of an encroaching state, relies on agreements and compromises that force the government or state to retreat to the constitutional dispensation or master-narrative.

The operational confines of the corrective determinant in new or unconsolidated democracies depend on a sense of institutional responsibility (by policy makers) and the capacity of societal interests to raise the costs of authoritarianism in a relatively civilised manner, thereby discouraging the government from advancing sectarian interests or promoting preferential access to the state resource base.

The constitutional resilience of new democracies rests heavily on the need for both state and society to balance any large number of complex variables, but the notion of a corrective determinant is critical for the survival of new, democratic regimes. The architecture of the corrective determinant is found in the legal system where decisions are re-evaluated, refined and corrected to ensure the optimisation of justice.

Like most consolidated democratic systems, South Africa's constitution demands a balance of forces, and an institutionalised legal procedure of oversight between the institutions of the state.

Oversight and the balancing of dispersed authority are at the heart of good governance, and the so-called trias politica is conceived in the principle of a corrective determinant.

In the weak, unconsolidated democracies in Africa, the encroachment of the executive on the jurisdiction of the legislature originates in the libertarian disposition of social forces "capturing the state".

This is in contrast to the notion of a political interest group occupying

the state within the limits of a constitutionally prescribed regime. Such encroachment removes or weakens the corrective determinant.

It is often suggested that the administration of former president Thabo Mbeki in SA disturbed the balance of forces between the executive and

"The Mbeki administration, without changing the constitution for those specific purposes, pursued policies that changed the 'spirit' of the South African constitution in both a normative as well as empirical sense"

legislative authorities by enlarging the executive office and deliberately weakening the legislature.

It could be argued that the Mbeki administration weakened the libertarian features of the constitution of South Africa by centralising authority in the presidency, deliberately inhibiting the oversight functions of parliamentary committees, undermining the constitutional authority of the relatively autonomous provinces by dictating provincial leadership or even employing policies which undermined the interests of civil society formations such as the Treatment Action Campaign and labour unions such as Cosatu.

In the process, not only was the corrective determinant generic to the constitutionally prescribed trias politica inhibited from fulfilling its function


of stabilising the balance of forces between the contending interests of the state (as well as between state and society), but the distributive regime (with regard to both authority and the scarce resources of the state) – which is typically the regime domain of the state – became operative beyond the jurisdiction of the state.

The Mbeki administration, thus, without changing the constitution for those specific purposes, pursued policies that changed the 'spirit' of the South African constitution in both a normative as well as empirical sense. The question now is to what extent has society or the legislative arm of state authority reclaimed its constitutional domain since the coming to power of president Jacob Zuma.


Recent events suggest that the corrective determinant has been operative to a significant extent. Parliamentary committees – such as Scopa – have indeed reclaimed its oversight functions to a measurable degree.

The appointment of premiers and local authority mayors are not the sole authoritative domain of the executive any more. Civil society interests such as labour unions and the Treatment Action Campaign have again become dominant roleplayers in policy formulation.

While South Africa is still an unconsolidated democracy, a corrective measure from being governed by a centralised, even authoritarian presidency to the recognition of the value of dispersed authority within the state – trias politica – has been applied.

As the libertarian features of social control and authority return to the political arena, the Zuma administration may well be more democratic than the Mbeki administration. 

*Dr. Craucamp is lecturer in the department of political science at the University of Johannesburg



Rightwing supporters with a poster reading: "Zuma, stop farm murders now!"

What chance a resurgence of the white right?

The 2 April 2010 murder of Eugene Terre'Blanche, leader of the Afrikaner Weerstandsbeweging (AWB) far-right political organisation, could not have happened at a worse time in the history of South Africa's young democracy. Since 1994 the AWB had become all but irrelevant, and Terre'Blanche's efforts to revive it were largely unsuccessful, writes **Henri Boshoff**

Eugene Terre'Blanche's death occurred in a political climate marked by increasing feelings of alienation among white Afrikaners, aggravated by ANC Youth League leader Julius Malema's singing of an apartheid-era song with the lyrics, "Kill the Boer, kill the farmer". Numerous attacks and

murders against farmers, as well as armed burglaries in urban areas and a growing fear of violent crime, have exacerbated an atmosphere of tension and distrust.

The government's reluctance to discipline Malema, as well as the growing perception that the problem

of crime, and farm murders in particular, is not being addressed, does not help to calm the current situation. Although the government, through President Jacob Zuma, was quick to urge politicians to show unity and responsibility after Terre'Blanche's gruesome murder, the

AWB immediately vowed to avenge him. Fears of growing racial tensions and polarisation grew even as the condolences streamed in. Fortunately Steyn van Ronge, the newly elected leader of the AWB, immediately denounced any suggestion of violence or revenge and stated that the AWB would discuss its future after Terre'Blanche's funeral.

During the first appearance of the murder suspects, it was clear that racial tensions would run high. As well as a resurgence of direct support for the AWB, there has also been a feeling in the broader Afrikaner community and possibly in South Africa as a whole that "something is about to happen". The large number of people attending the funeral came as a surprise, as did the open display of the AWB insignia and other symbols from the old South Africa, not seen on this scale since 1994.

To what extent will this murder serve to rally right-wing Afrikaners? One must begin by asking what "right wing" means in today's context. Is it an expression of fear rather than adherence to a particular political viewpoint? Farm violence, the threat of land invasions and the provocations of irresponsible political figures understandably create anxiety. But to label this as a "right-wing" reaction seems a dangerous over-simplification of the prevailing fear of crime and violence in the country today.

The right wing in South Africa can be defined as a segment within white, and in particular Afrikaner, society that adheres to a specific ideology founded on the dual pillars of the separation of the white and the black races and on Afrikaner nationalism. The ideology of the AWB aimed at establishing a Volkstaat adheres to this definition. The difference is that the new AWB post-2009 talks of establishing a Volkstaat within the law, and not by force as was the case before 1994. The

concern, however, is about the actions of lone riders who could seek revenge and trigger further racial tension and violence, in ways reminiscent of the murders by "Wit Wolf" Barend Strydom in 1988.

The AWB as an organisation is currently not very strong, with divisions within the leadership and different opinions about the way forward and about the use of violence.

The AWB as an organisation is currently not very strong, with divisions within the leadership and different opinions about the way forward and about the use of violence

It can hardly be regarded as a threat to national security.

President Zuma's personal intervention in the wake of the murder was a very positive step, as was the calm displayed by Steyn van Ronge. The government and all role players now urgently need to organise a conference to discuss the current climate of intolerance and how to address it. The meeting planned between the AWB and the Minister of Police is a start. It may be an indication of an effort to find a way forward, to calm emotions and start working on real solutions.

In the run-up to the FIFA World Cup, continued racial tension and possible incidents of racial violence are not good news. The international media are following developments extremely closely and are certain to focus the world's attention on every negative racial incident. The government and all South Africans must act decisively to show the world that this highly charged situation will be managed, not only because of the World Cup but also in the long-term interest of all South Africans. **a**



An AWB flag is flown outside Eugene Terre'Blanche's farm. Hundreds of AWB supporters came past to show their respect and support following his murder.

Very expensive milk and cookies

By **Lukas Muntingh**

In January this year, the South African newspaper *Rapport* related the story of a 23-year-old man, Morgan Matlala, who entered the premises of the Department of Agriculture in Silverton, Pretoria, in search of food. He was apprehended by security guards while enjoying milk and cookies belonging to the Department.

The value of the milk and cookies was estimated to be R50 (\$7). For this heinous crime, Matlala was arrested, charged and taken into custody. The court set bail at an amount that Matlala could not afford; consequently he spent four months in prison awaiting trial before pleading guilty to housebreaking and theft. He was sentenced to five years' imprisonment, suspended for five years. The four months he had already spent in prison, at a cost of R200 (\$26)

per day per prisoner, cost the taxpayer an estimated R24 000 (\$3 000). Other costs that should be added to this include court time, the time spent by the police to investigate the crime, the magistrate's time, legal representation and so forth. The true cost of the milk and cookies was thus substantially higher than R24 000 (\$3 000).

The case of Morgan Matlala is cause for deep concern. Not only does it point to how the poor are victimised by the criminal justice system, but also to how officials fail to use the mechanisms available in law to avoid unnecessary prosecution and detention. There is no doubt that Morgan Matlala must take responsibility for his actions, but he spent four months in prison without being convicted of anything, for the

simple reason that he was poor and could not afford the bail set by the court. The fact that bail was set in the first place indicated that he was not regarded as a threat to society or as a threat to witnesses or evidence. His detention, therefore, was unnecessary and without purpose.

Over the past 15 years there have been numerous reports in the media about prison overcrowding and the fact that a major contributing factor is unaffordable bail. There is probably not a South African who is not well aware that our prisons are overcrowded. Successive Inspecting Judges of Prisons have pleaded with magistrates and other officials to avoid the unnecessary imprisonment of suspects, and especially the setting of unaffordable bail. Bail over



Why are the courts so vindictive against the poor?

R1 000 (\$132) is often not within the means of arrested persons.

The law provides a range of options that could have prevented the four-month detention of Morgan Matlala, but these were apparently ignored by the court and other officials in question. In the first place the court should not have set bail at an amount that he could not afford. The court should have made proper enquiries as to what he could afford and, if he was destitute, released him on warning.

Secondly, if the first option failed, the Head of Prison could have made an application to the court under section 63A of the Criminal Procedure Act, requesting either that Matlala be released on a warning to appear in court or that the amount of bail be lowered as he could not

afford the amount set by the court.

Thirdly, given that this was not a violent or a high-value property offence, the case could have been conditionally withdrawn by the prosecution after his first appearance. Such a conditional withdrawal may have required a counter performance, such as community service, as happened recently with Springbok rugby player Ricky January in connection with a drunk-driving charge for which he now has to perform 20 hours of community service.

Fourthly, if the prosecution did want to divert the case, he could have been offered a plea-and-sentence agreement (plea bargain) at an early stage shortly after his arrest. It is unfortunately the case that plea-and-sentence agreements are rarely used.

The severity of the sentence imposed gives cause to wonder why the courts are so vindictive against the poor. It is not known whether this was Matlala's first offence, but if he is to repeat his crime (namely housebreaking and theft of milk and cookies to the value of R50 (\$7), he will face five years in prison. If released on parole after two and a half years, his stint in prison will have cost the taxpayer an estimated R182 600 (\$24 000). (If the Department of Agriculture, however, puts out milk and cookies to the value of R50 every night for Morgan Matlala for the next two and half years, the cost would be a mere R27 400 (\$3 000), saving the taxpayer R155 200 (\$20 500).

There are also big differences between how the rich and the poor are sentenced, and this can be quantified. Let us compare Matlala's sentence of five years if he is to repeat his crime with that of Schabir Shaik, former advisor to President Jacob Zuma. Convicted of fraud and corruption involving more than R500 000 (\$65 000), Shaik was sentenced to 15 years' imprisonment. In other words, Matlala would have to spend 37 days in prison for every R1 (\$0.31) stolen, whereas Mr Shaik

will spend 0.01095 days in prison for every R1 (\$0.31) involved. If Matlala were sentenced in the same manner as Shaik, his sentence would have been half a day in prison – and as the minimum term of imprisonment is four days, he would not have been sentenced to imprisonment at all. If Shaik, on the other hand, was sentenced in accordance with Matlala's five year sentence (37 days for every R1), his sentence would have been 50 000 years. Things are clearly not proportional.

The above evidently belongs in the domain of the absurd, but it does point to some serious problems. Poor people are considerably disadvantaged in the criminal justice system because officials do not utilise the means available to them to resolve cases speedily and in a manner that upholds and protects the dignity of all. Officials also have scant regard for the cost implications of their decisions.

It is unknown what happened to Matlala while he was awaiting trial in prison, but prisons are dangerous places where assaults, including sexual ones, are common, and one can only hope that he was spared such an ordeal. Furthermore, Matlala's is not an isolated case. According to the Inspecting Judge of Prisons 2008/9 Annual Report, there are nearly 8 500 people in prison because they cannot afford the bail set by the courts. Recent research in three metropolitan courts found that half of such cases are either withdrawn or struck from the roll. Their custody is without meaning or purpose, but they have to endure the pains of imprisonment and attempt to reconnect their lives once released. Magistrates, prosecutors and Heads of Prison have a duty to utilise the means available to them to prevent unnecessary detentions. ▣

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Convention to **erase cluster munitions'** footprint shapes up

With the Convention on Cluster Munitions expected to enter into force on 1 August 2010, African countries held a regional conference in Pretoria, South Africa at the end of March on its universalisation and implementation. **Gugu Dube** explains the nature of cluster munitions and the convention that aims to ban them

The move to bring about an international ban on cluster munitions was propelled by the devastating civilian casualties in Kosovo during 1999, Iraq in 2003 and Lebanon in 2006, as well as the fact that between 2000 and 2005 there were many cluster-bomb casualties in central Vietnam, approximately 62% of whom were children. In the Lebanon conflict, at least one million unexploded submunitions were estimated to have been left behind after the cessation of combat. It is their ability to create a hundred-metre-wide footprint that has caused concern around the world. Sylvie Bouko, Regional Technical Advisor for Mine Risk Education for Handicap International, aptly noted that cluster munitions leave one of the most "problematic and impacting legacies of warfare today due to their fatal 'footprint', owing to the 'wide area they are designed to cover, their high failure rates, and their sensitive nature as explosive remnants of war (ERWs)'".

What are cluster munitions?

Cluster munitions are air- or ground-launched canisters that each contain up to 650 individual submunitions or bomblets. They are designed to strike

a greater surface area than many other conventional weapons by dispersing smaller yet highly lethal explosive submunitions. Although designed to explode on impact, submunitions often fail to do so. Their deferred explosions often cause injuries and death long after armed conflict has ceased.

In many senses they become de-facto anti-personnel mines. However, in general, cluster munitions contain even more explosive power than anti-personnel mines, and their shape and small size increase the likelihood of their being picked up by children. Another problem associated with these weapons is that they prevent subsistence farmers from making effective use of their land, which in turn affects the livelihood of many. The exorbitant costs and risks associated with their removal are comparable to those of landmines.

Despite official reports that indicate a high-performance-success rate of cluster munitions under optimal test conditions, large numbers of them actually fail to explode upon impact. According to the Geneva International Centre for Humanitarian Demining (GICHD), cluster munitions fail to explode due to: flaws in design or assembly; length and condition of

storage (working parts deteriorate over time); drop height, angle, altitude and velocity; vegetation (heavy, dense or soft), ground conditions at the area of impact; and interactions (the effects of collisions, blasts and fragmentation from other bomblets).

Clearly, the damage caused by cluster munitions used in past conflicts further contributes to human insecurity and hinders development on the continent. As the Zambian minister of foreign affairs, Kabinga J Pande, told the Livingstone cluster munitions meeting that: "We do not have the technical and financial capacity to deal with cluster munitions when they are left in our backyards long after war. Rather than direct our resources to the acquisition of these weapons, we should be spending those resources on making our people's lives better. I urge you all to strengthen our position on making our stand clear that we do not want these weapons in our African neighbourhood." The Livingstone Declaration was later to be sold by Malawi to SADC and ultimately to the AU.

It is this realisation that has encouraged 40 African countries to sign the treaty by 21 May this year, despite the fact that African countries affected by cluster munitions (namely

Angola, Chad, the Democratic Republic of Congo (DRC), Eritrea, Ethiopia, Libya, Mauritania, Sierra Leone, Sudan, Uganda and the area known as Western Sahara) account for only a third of the countries affected.

However, it is not surprising that Africa has been part of the long journey to ban cluster munitions through the Convention that comes into force on 1 August 2010. The process started in the Norwegian capital, Oslo, in February 2007 continued in Lima, Vienna, and Wellington; with regional meetings in Costa Rica, Ecuador, Serbia, Zambia and Lebanon. Through the Oslo Process, like-minded states in cooperation with global civil society negotiated a new disarmament treaty outside the UN's normal structures and processes – not dissimilar to that used for the Ottawa Process on anti-personnel mines. Importantly, the conference moved away from previous global discussions about finding technical solutions to improve submunition reliability, towards striving for a total ban of cluster munitions that cause unacceptable harm to civilians.

What the convention entails

The new convention completely bans the production of cluster munitions, and it requires the destruction of stockpiles of cluster munitions that do not meet criteria designed to avoid explosive remnants of war and significantly reduce the possibility of indiscriminate effects. The convention contains provisions on victim assistance (including a detailed list of specific actions that states are required to take to support survivors), clearance, transparency and international cooperation. Stipulations on humanitarian assistance for victims and affected communities, as well as the obligation of affected countries and donors to clear contaminated land, go

How do cluster bombs work?

Cluster bombs are complex weapons. The following sequence explains its functioning and why bomblets cover a large area.

Step 1 The cluster bomb CBU-87 is dropped from a plane. It weighs about 430 kg and carries about 200 bomblets. This bomb can be dropped from a wide range of aircrafts from many different countries. The bomb can fly about 9 miles by itself before the bomblets are released.



Step 2 A short time before the bomblets are released the cluster bombs begin to spin. The canister opens at an altitude between 100m and 1000m. The height, velocity and rotation speed determine what area will be covered by the bomblets.



Step 3 Each bomblet is the size of a soft drink can. They deploy a little parachute that stabilizes them and makes sure that they descend with their nose down. Each of the bomblets holds hundreds of metal pieces, which can pierce armour.



Step 4 Depending on the altitude from which the bomblets were released and on the wind conditions, the bomblets can cover an area of up to 200m by 400 m. When the bomblets explode, they cause injury and damage across a wide area. The blast of one bomblet can cause deadly shrapnel injuries of in a radius of up to 25 metres.



beyond what was agreed in the Anti-Personnel Mine Ban Convention and builds on the Convention on the Rights of Persons with Disabilities that came into force on 3 May 2008.

The convention requires states parties to encourage others to join the convention, to notify non-state parties of their obligations under

the convention (especially if, and when, they are engaged in joint military operations), to promote the convention's norms, and to discourage non-state parties from using cluster munitions.

While countries such as the USA, Russia, China and Pakistan are known to oppose the ban, civil society and many

of the governments that were present in Oslo are hoping that, through active stigmatisation, cluster munitions will be rendered obsolete as weapons of war in the very near future.

Weak provisions

The convention does, nevertheless, have a number of weak or unclear provisions. These include the issue of 'interoperability', which involves joint military operations with countries that have not signed the treaty.

Countries such as the United States, Russia, China, India, Israel and Pakistan did not attend the Dublin talks, and are unlikely to become parties to the agreement. While the convention requires state parties to encourage others to join the convention, to notify non-state parties of their obligations under the convention, to promote the convention's norms, and to discourage non-state parties from using cluster munitions, it does not make clear that intentional assistance and indefinite foreign stockpiling are prohibited.

While some African countries have been vocal on the need to ban all types of cluster munitions, the delegate from Benin said: "We are happy about achieving a treaty despite almost no consensus on all the points. Africa will benefit and we are proud even though we are not affected. The only problem is that the treaty is weak when one looks at interoperability."

This was echoed by Uganda: "We are satisfied but believe that the treaty text could have been better. We are not pleased with interoperability but at least there are no transition periods and the treaty will help in curtailing armed group activities."

Article 4 of the convention addresses the matter of clearance and destruction. The provision of the 10-year deadline is modeled on the Anti-Personnel Mine Ban Convention. This raises the question of whether the deadline is a realistic one

Survivor

It was on a clear 5 June 1998 sky that Berihu Messele's dreams of one day becoming a world-class athlete put paid. His otherwise exemplary human act was suddenly turned into a permanent living nightmare.

On that fateful morning, fighter planes of the neighbouring Eritrea rained cluster bombs on a remote school in Mekelle, a northern Ethiopian town located about 350 km from the two countries' border conflict zone. Like any model citizen, Berihu rushed to the school to offer assistance to the dead and the injured.

However, about 30 minutes into his heroic deed, Berihu became a victim of the second round of bombardment. "That was a very dark day for me. I regained my consciousness in hospital two days later. And that's when I learnt I had lost both my legs from the cluster bomb strike. I had big dreams like other people ... and now all my dreams were lost."

"I'm saddened that cluster bombs destroy dreams of innocent people,



and very often those of children in every playing ground. They indiscriminately affect civilians and cause harm long after the conflict has ended."

But Berihu has since been part of the world-wide campaign to ban the production and use cluster bombs. As a ban-cluster bomb advocate, he has addressed conferences on the subject.

Keto Sagweil

"Despite official reports that indicate a high-performance-success rate of cluster munitions under optimal test conditions, large numbers of them actually fail to explode upon impact"

for developing states that are heavily affected by cluster munitions. Another concern involves the consolidation of funding for demining programmes. Will states take the treaty's clearance obligations seriously?

For many of the 107 nations that formally adopted the convention in Dublin on 30 May 2009, the official view of the CCM was summed up by the lead delegate for Austria, Alexander Marschik. It is, he said, like the attitude of parents towards their offspring: although it may not be perfect, it is something that "we are proud of." ■



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A herculean task for **El-Baradei**

As in most African countries, there are scores of aspirants but only few stand out from the crowd. The newcomer and by far the most talked-about potential candidate is Mohamed El-Baradei, none other than the immediate former Director General of the Vienna-based International Atomic Energy Agency (IAEA) and the 2005 Nobel Peace laureate.

A lawyer by training, El-Baradei's third four-year term as head of the IAEA expired in September 2009 and he returned to Egypt in February this year. He had been abroad for the past 30 years, serving as a high-ranking

diplomat in the UN structures and specifically the IAEA, which he joined in 1984.

El-Baradei has not announced his candidature for the presidential election. His condition for doing this is that the 'right conditions' for free and transparent elections be met. However, even before his return to the country, excitement about him was growing exponentially in what could be described as the 'El-Baradei phenomenon'. Scores of supporters tumultuously welcomed him at the Cairo airport in early February. On 21 February, he formed a movement called

Egyptians are expected to vote in presidential elections in 2011. They may re-elect President Hosni Mubarak, in power since 1981, or elect someone new, report **Issaka Souaré** and **Muna Abdalla**

the National Assembly for Change (NAC), whose aim is to assemble the various political forces around the famous man's ideas of change and fundamental political reform, as well as to create a space for greater engagement between him and ordinary Egyptians on the streets.

But it will be a herculean task for El-Baradei to achieve his objectives, noble as they may be. There are huge

obstacles to be found in all directions of his campaign, from ordinary people, from his colleagues in opposition and, most importantly, from the ruling National Democratic Party (NDP).

His long absence from Egypt seems to have had some serious impacts on him personally, some very positive and others problematic for an aspirant to the highest political office in his country. One of the more problematic factors is that many observers have found his spoken Arabic to be a bit 'rusty'. Eloquence in the language of the masses is a clear asset in a political campaign; the lack of it is a major obstacle. Barack Obama, whose message of change he seems to be emulating, is a case in point. While El-Baradei's reformist appeal might offset this problem, his critics, particularly those from the ruling party, are using it to claim that he is out of touch with the Egyptian realities on the ground.

The other challenge El-Baradei has to overcome is the unification of the main opposition forces around him. It is true that he is unlike other opposition leaders who have had affiliations or involvement in Egyptian politics, so the current environment has offered him the opportunity to present himself as a saviour. But he comes to a political scene already populated with political parties, movements and actors that have over the years been working hard to attain their own ambitions. While many welcomed his arrival and pledged to work with him, some now seem to be distancing themselves from him, if only to reaffirm their independent opposition stance to both him and the ruling party. This is, for example, the case of Ayman Nour, the leader of the Ghad ('Tomorrow') Party. (As with the El-Baradei phenomenon today, albeit to a lesser degree, the Ayman Nour phenomenon excited Egyptians and international observers around the 2005 elections.) And it is

perhaps unnecessary to highlight the political force that the banned Muslim Brotherhood represents in the country. The Brotherhood has welcomed the emergence of El-Baradei, although it falls short of endorsing him as a presidential candidate.

However, while all the opposition forces concur with El-Baradei that Egypt needs some fundamental reforms, there is a sea of difference between some of his views and policies and those of his colleagues. And far from being limited to the Brotherhood, which is based on religion, differences are bound to emerge between him and other opposition forces, such as Nasserites and the leftist Tagamu Party, over issues of the economy and relations with Israel and the West. It could also be argued that the welcome initially extended to him by the age-old Wafd Party and other traditional parties was informed by their desire to make him their candidate and use him for their own gains. But it now seems clear that El-Baradei does not want to associate himself too strongly with any of these parties that have been greatly discredited in the eyes of the Egyptian masses. In consequence, the leaders of these parties are also beginning to withdraw their initial enthusiastic support for El-Baradei.

But of all the obstacles on his way, the Killimanjaro that El-Baradei has to climb is really the ruling party, and particularly the constitution. First, as already noted, El-Baradei has conditioned his hypothetical candidature to the event of a transparent and credible electoral process. By doing so, he has implied that the current arrangements do not guarantee a credible election – an insinuation that the ruling party does not take kindly to. Secondly, not being a member of a recognised political party, El-Baradei cannot be a presidential candidate. Article 76 of

the constitution requires presidential aspirants to be nominated by a political party founded and recognised 'at least five consecutive years before the starting date of candidature, [which has] been operating uninterruptedly for this period and whose members have obtained at least 3% of the elected members of both the People's Assembly and the Shura Council or an equivalent total in one of the two assemblies.'

A 2007 amendment of Article 76 did away with the most stringent conditions set for independent candidates, which required such candidates to 'be supported by at least 250 elected members of the People's Assembly, the Shura Council and local popular councils on governorate level, provided that those shall include at least 65 members of the People's Assembly, 25 of the Shura Council and 10 of every local council in at least 14 governorates.'

It would seem that the amendment of this Article was informed by the good showing of 'independent' candidates of the Muslim Brotherhood in the 2005 legislative elections. But even if it was not, the Brotherhood itself would have found it difficult to shine this time around, for all the structures mentioned in the Article (introduced after the 2005 poll) are dominated by the ruling party. El-Baradei and the Brotherhood want the current reading of this provision revised. But here, they may count less on the support of traditional political parties.

In the final analysis, therefore, one could say that El-Baradei is in for a tough game whose referees are yet to arrive on the pitch. Will the excitement around him be sustainable until the 2011 elections, and will this force the regime to acquiesce to his demands? These are questions that cannot be answered with certainty at this point, but as things stand it seems safe to doubt an affirmative answer. ■

Don't let aggression undermine the International Criminal Court in Kampala

The International Criminal Court (ICC), in its fight for international justice, has been the subject of many heated debates. **Anton du Plessis** looks at crimes of aggression – an issue that is still dividing the signatories of the Rome Statute

As one would imagine, delegates at the upcoming Review Conference on the ICC in Kampala will have much to discuss. However, the opportunity to engage with broader issues may be undermined by another key agenda item: the push for members to forge agreement on the definition and jurisdictional triggers of the crime of aggression. This was something the Court's founding members could not agree on in 1998, so they postponed the problematic decision to the first Review Conference. It is not clear – 12 years on – that the problems have been resolved.

Reaching agreement on the crime of aggression (committed by individuals who instigate and engage in unjustified armed conflicts between states) will be no easy task. The definitional and jurisdictional controversies that blocked consensus in 1998 still linger. Two of

the most intractable are the contentious role of the UN Security Council in triggering the ICC's jurisdiction, and whether consent from the aggressor or victim state should be required before a prosecution may commence. Some states want to uphold the inherent power of the UN Security Council to decide whether an act of aggression should be prosecuted. For some of them, consent from the aggressor state remains a prerequisite. Others, most notably countries from the developing south, want a greater say for the UN General Assembly and International Court of Justice. These countries also see consent from the victim state as a prerequisite for the prosecution of aggression.

These debates, which relate to the uneven nature of international criminal justice, are understandably heated. For

many African countries, the skewed institutional power of the UN Security Council creates an environment in which it is more likely that action will be taken against suspects from weaker states than against those from powerful states or those protected by powerful states. The debates about consent and the role of the Security Council demonstrate that the same principles are at play in relation to the crime of aggression. And, notwithstanding several years of debate, there still exists substantial disagreement among states parties on key aspects of the proposed crime of aggression.

Narrowing this divide in the short term does not seem likely. Indeed, given the wide range of perspectives that currently exist on the aggression amendment, pushing it to a vote in Kampala risks undermining the cohesiveness of state parties that has been so essential to the Court's establishment and mission, and risks politicising and straining an already burdened ICC.

For the following practical and principled reasons, it may be too early to add aggression to the Court's docket. First, aggression – a crime based on acts of individuals committed against a state – raises inherently political considerations about a state's initial decision to resort to the use of force. The decisions by US President George W. Bush and UK Prime Minister Tony Blair to invade Iraq (illegally) in 2003 are stark examples of just how political and complex this issue can become. The ICC's other three crimes – war crimes, crimes against humanity and genocide – are violations against individuals for which legal remedies have long been available and clearly defined in international law, both under customary law and international treaties. For obvious reasons, the ICC strives to present itself as an effective judicial body that is independent of political

concerns. Amending the Rome Statute now to grant the Court jurisdiction over aggression will exacerbate the challenges the ICC already faces in fending off attacks about its perceived politicisation.

Second, asking the ICC to take on another category of crime at present risks overburdening the Court when it is still striving to prosecute and try those responsible for current very serious crimes. That is not in the interests of African victims, who are looking to the Court for justice in respect of crimes committed in some of the continent's most treacherous war zones – the DRC, CAR, Sudan and Uganda. The Court's most recent attention on Kenya heightens this burden.

Third, much work is needed to further improve the operation of the Rome Statute system in respect of cooperation, complementarity, the impact on victims and affected communities, and questions of peace and justice. Each of these issues requires dedicated attention at Kampala.

In light of this, it may be strategic for ICC states parties not to push ahead for an amendment on aggression at this time, especially considering that the Court has such urgent challenges to tackle. Although it is obviously important that an agreement on the crime of aggression is reached at some point, there are real concerns about doing so now when other existing priorities

Stocktaking in Kampala

The first review conference of the International Criminal Court takes place in Kampala, Uganda, from 31 May – 11 June 2010. The review conference comes at a critical time in the development of the ICC. The Court has made important progress since the Rome Statute entered into force in 2002 and is already providing a measure of justice for victims of genocide, war crimes and crimes against humanity. But the Court still faces important challenges to implementing its mandate successfully. These include challenges in conducting court operations – such as obtaining adequate support to engage in outreach to affected populations, but also external attacks on the institution – such as those advanced by some African leaders following the arrest warrant issued for Sudanese president Omar al-Bashir in March 2009.


The ICC review conference offers an important occasion for African governments, sub-regional organisations and civil society to help advance the fight against impunity by re-stating their commitment to justice for the victims of grave crimes and offering views on the development of international criminal justice and the ICC. In addition to addressing several proposed amendments to the statute – including on the crime of aggression – the conference will have a general debate followed by two days of “stocktaking” of the Rome Statute system. Stocktaking sessions will focus on addressing cooperation, complementarity, the impact of the Rome Statute system on victims and affected communities, and the peace versus justice debate. The stocktaking exercise offers a unique opportunity to provide input that can help to constructively shape accountability efforts domestically and internationally.

The review conference's location in Uganda only adds to its significance, as the event can help forge a stronger link between the ICC and Africa. The review conference will also be an important opportunity for victims and civil society to be heard on the ICC.



International Criminal Court Prosecutor Luis Moreno-Ocampo

require the Court's focus and effort.

The Kampala Review Conference is not the last opportunity to address the crime of aggression. Under Article 121 of the Rome Statute, an amendment can be considered at any time in the future by the Assembly of States Parties directly or by another Review Conference. Taking more time to strengthen the Court, to consider the complexities of aggression further, and to achieve broader agreement on the crime's outstanding issues, may benefit the ICC in the long-term. An aggressive push now for the crime's adoption may reap unintended consequences and do untold damage to a Court that is steadily, but delicately, finding its feet. 



Media crackdown in Zim continues

No media reforms without repealing bad media laws

At the advent of the Global Political Agreement, which appeared to hold some hope for the Zimbabwean crisis, sceptics cautioned that President Robert Mugabe and his ZANU-PF compatriots could not be trusted to assist in bringing the country back from the political abyss. **Keto Segwai** looks at the 'media reforms' that never were

From the start, two things are increasingly becoming certain about the Zimbabwean media situation. Either president Robert Mugabe is not in control of the Zimbabwean situation, or his government has perfected deception into an art form. The double-speak of the Zanu-PF-led administration has become legendary.

Hardly a week after President Mugabe and his minister of Media, Information and Publicity, Webster Shamu, had assured the media of their commitment to media freedom in March, their security agents intensified their harassment of the country's already embattled journalists.

Pointedly, the harassment appears

to be unprecedented since the signing of the Global Political Agreement (GPA) that ushered in a government of national unity. As the director of the Media Institute of Southern Africa (Misa-Zimbabwe) Nhlanhla Ngwenya noted, "We've already recorded seven cases between January and March, and this is in comparison with the nine that we

recorded in the whole of last year.

"At this rate, now with the impending political processes leading to the constitutional referendum and elections, there is likely to be a marked increase in the cases of media repression."

Despite Mugabe's pronouncements about fostering an environment of tolerance, ZANU-PF supporters still harass journalists "sometimes just for carrying a camera", as Ngwenya laments.

Recent cases include that of The Standard reporters Feluna Nleya and Jennifer Dube, who were interrogated by police for having written a news story on the questionable land deals involving the ruling party government minister and a businessman with close links to the president. Stanley Gama, a freelance journalist who writes for South African newspaper The Sunday Times, was also questioned over the similar story. What most observers found puzzling was that the City of Harare Council report on which the articles were based was widely published and even posted on the internet.

It is against the backdrop of this hostile environment that media activists have cautioned against the media reforms being banded about by the officials. Ngwenya ranks media reforms at the minimum of one on a scale of one to 10, and "that 'one' relates to the formal appointment of the Zimbabwe Media Commission (ZMC). Otherwise the rest of the repressive media laws are still in place."

Interestingly none of the Zimbabwean media sectors is faring any better within the reform process provided for in the GPA. Under the GPA's Article 19, parties specifically undertook to democratise the flow of information. But this is not surprising, as the Mugabe regime has consistently been contemptuous of the regional and international conventions to which it is party. It has continuously flouted the SADC protocol

on Culture, Information and Sport, the Declaration of Principles on Freedom of Expression in Africa, and even the Universal Declaration of Human Rights, even though it has ratified all these conventions.

Despite recent pronouncements to the effect that independent publishers will be allowed to register publications, there has been little movement in that direction. ZMC's argument is that there are no financial resources to carry out the exercise, which prompted Ngwenya to ask, "But do you really need millions of dollars to register the newspapers?"

However, the government has apparently finally found the money it needs for this exercise, as Prime Minister Morgan Tsvangirai told The African.org: "In April the Media Commission has been given some funding to execute its mandate. Hopefully, the registration of publications will begin soon."

The broadcasting sector is even worse off, as the notorious Broadcasting Services Act (BSA) gives complete monopoly to state broadcasting. The few private radio and television stations that came into being after 2000 were summarily shut down. The government's attitude became evident late last year, when the information minister unilaterally appointed the broadcasting board contrary to the GPA.

The Zanu-PF government, which enjoys monopoly in broadcasting, is again more preoccupied with the closure of foreign-based radio stations than with opening up the airwaves. The party has made external broadcasts one of the supposedly "outstanding issues" and reportedly wants these stations to return to Zimbabwe and register. But even if they wished to do so, the prohibitive BSA, which renders them almost inoperable, is still in place.

In addition to the BSA, other repressive media laws are still on the statutes, notably the Access to Information and Protection of Privacy

(AIPPA) and the Public Order and Security Act (POSA). Together these laws have led to wholesale closure of media organisations over the last decade, including the Daily News group, the Tribune and Radio Voice of the People (Radio VOP).

Media-freedom advocates in Zimbabwe hold little brief for the reforms presumably underway. They argue that

Despite Mugabe's pronouncements about fostering an environment of tolerance, ZANU-PF supporters still harass journalists "sometimes just for carrying a camera"

the starting point should be the repulsion of hostile media laws. Zimbabwean political analyst Takura Zhangazha talks of the need to repeal AIPPA and introduce another parliamentary Act that "is democratic and does not criminalise the profession of journalism and media issues in the country."

Ngwenya adds, "Media law reforms belong firmly to the whole political process. For us, once these reforms are in place, everything else will fall into place."

Whether the calls of Zhangazha, Ngwenya and others will be heeded remains another matter, particularly as the acerbic-tongued former information minister and the very architect of the repressive laws, Jonathan Moyo, has found his way back into Zanu-PF's inner political boiler-rooms. ■

Western hegemony, Asian ascendancy and the new **African scramble**



Chinese engineers assemble steel at a construction site in Sudan's capital Khartoum.

A new scramble for Africa is underway. After decades of neglect, the continent and its riches are once again being sought by the outside world.

Adam Habib asks whether the Asian presence is likely to change the pattern of Africa's relationship with the outside world. Will it be a repeat of the past exploitative and oppressive relations, or is it to herald a new dawn?

Interpreting the new African scramble

The new African scramble has provoked a plethora of voices on its significance and consequences, as well as on the appropriate response to it.

First, there are many who advocate in favour of South Africa throwing its lot in with the US and the West. Many businessmen and oppositional politicians in South Africa warn of the autocratic nature of the Chinese regime,

its relations with unsavoury leaders on the African continent, and the capacity for corruption to flower to the detriment of the continent's citizens. They argue that partnerships with the US are likely to have the most positive democratic and developmental effects.

Jeffrey Herbst and Greg Mills are some of the few who have ventured to advance a pro-Western agenda in this debate. However they advocate a pragmatic engagement with China

driven by US and structural-adjustment-inspired policies, rather than by simple involvement with the superpower.

It is worth stating that Herbst and Mills seriously misread the Chinese success story. After all, China's success emanates not simply from freeing the market, but also from manipulating the market for its own developmental ends.

If there is a lesson to be learnt by Africa, it is not only about creating favourable conditions for foreign direct

investment in Africa. It is also about the value of pragmatism and how to develop and use leverage to condition the behaviour of foreign governments and investors so that their behaviour and investments are compatible with development and poverty alleviation.

A second group of voices emanate from a set of scholars, located mainly on the ideological left-of-centre, who view China's engagement with Africa as no different from that of the US. Their description of European, US and Chinese diplomacy, investment and business practices in Africa concludes that they are all merely different expressions of Imperialism.

Despite a measure of truth in these analyses, care must be taken not to paint the Chinese and US involvement with the same brush. After all, there are significant differences. The US operates its aid and trade diplomacy on an explicit 'conditionalities' foundation, whereas the Chinese adopt a much more pragmatic approach. Such pragmatism may be informed by opportunism at times, but it has given much relief to a debt-laden and poverty-stricken developing world which has had structural-adjustment policies imposed on it for far too long by a bureaucratic economic elite in the international financial institutions, egged on by a series of neo-liberal political administrations in the US. China's engagement, then, has the potential of enabling the subversion of some of the imperial agendas that are at play on the African continent.

However, we should not be blinded to the problems of Chinese expansion. The Chinese approach is founded on two principles – bilateral engagements organised through political elites, and ignoring the domestic record of governments as being a matter for the internal affairs of states. This could have adverse consequences for democracy and development, if

only because so many of the regimes they engage are authoritarian and unresponsive to the concerns and interests of the African citizenry. Ultimately it would be prudent for advocates of African development to recognise that all foreign countries represented on the continent are here to advance their own national interests, and harbouring illusions to the contrary will only result in future disappointment.

While many progressive African advocates of development see through the propaganda of the US and EU in this regard, a number are too easily beguiled by the Chinese promise of an alternative path to development. The most dramatic example of this is Garth le Pere and Garth Shelton's China, Africa and South Africa, which provides one of the more sophisticated defences of Chinese engagement in Africa. Care must be taken not to replace paranoid analyses with romanticised ones, and there are echoes of the latter in Le Pere and Shelton's contributions.

How to avert proxy wars

It is important to note that the promise of development will only be realised if Africans do not become compliant to Chinese agendas but instead play off the various competitors for African resources, with a view to maximising the benefits for the continent. In the graphic description of Ian Taylor when he writes on China's foreign diplomacy towards Africa, Africans need to transform the 'mineral curse' into a vector for socio-economic development. This requires strategic engagement and a set of actions designed specifically to enhance the leverage of African countries in their relations with China.

Such a transformation in the distribution of power is also necessary for averting what is perhaps the greatest danger looming from this

new scramble for Africa's resources: the emergence of proxy wars and the establishment of client states.

How to avoid this scenario should be the overriding concern of Africa's political and economic elite, which has as much to lose from the spread of political instability as do Africa's poor and marginalised. But no one has more to lose than the political and economic elite in South Africa. The African continent is the one arena where South Africa has continuously generated a trade surplus. It also absorbs a significant proportion of South Africa's industrial output. This is in part why South Africa's political elite has spent so much energy and time trying to help resolve Africa's conflicts and stabilise the continent. The new scramble for Africa's resources, however, threatens this future. Given the fact that its own prosperity is tied to the continent's stability, South Africa has perhaps the greatest incentive to ensure that the scramble is managed to the benefit of Africa.

African elites should focus on development

It needs to be borne in mind that development is a product of both national initiative and a facilitative global environment. Both these features were present in the development of Western Europe and South East Asia. The primary feature in the national equation is the presence of elites who desire and are organised for and focused on comprehensive collective national development. A necessary feature in the global environment is the presence of at least one country conditioned to provide aid for development and organise the global economic environment, or at least a part of it, so that international trade can be structured in favour of the developing nation.

Appropriate development policies are not simply the product of good

political leaders or clever technocrats. Rather, they emerge within particular political circumstances distinguished by a dispersal of power. At the international level, competition between equally powerful states is good for development because it conditions international political elites to act in ways that favour developing nations. On a national level, the experience of West European nations, including Norway, and Asian countries like Malaysia, suggests that a robust civil society, including powerful trade unions, is important for conditioning local political elites to adopt policies and behave in ways that are facilitative of poverty alleviation and national development.

But, as was indicated earlier, the competitive international environment during the Cold War did not benefit Africa. How then can its elites avoid a repeat of this experience? How can they ensure that they are able, like the Asians and Europeans, to use the competitive international environment to facilitate their own development? Two preconditions would be required for this outcome.

Democratisation and continental unity

First, African political elites must develop the political will to pursue a comprehensive development agenda that will benefit their citizens. And, as the European and Malaysian experience indicates, such a political will can emerge when the political elite is kept in check by a plural political system and/or an independent robust national civil society.

Where this does not exist, as in Gabon, Ethiopia and Sudan, the political elites easily become proxies for foreign powers and interests. Substantive democratisation, then, facilitates the accountability of the elites to their citizens thereby enabling them to develop the political will to pursue a

comprehensive developmental agenda.

Second, African political elites would have to be much more cohesive at a continental level if they are to be able to use the competitive international environment to their collective advantage. Such cohesion could emerge from initiatives towards a continental unity. What form would this take? Some would argue for a pan-African solution in the form of a United States of Africa. While such a development would be positive, it is for all practical purposes unfeasible in the short-to-medium term.

But a Continental Charter of Rights governing investments and engagements on the continent need not be unfeasible. Such a charter, negotiated in the African Union, could supersede bilateral agreements and force all external (and maybe even continental) powers to accord to a specific set of business and diplomatic practices. Of course, the administrative weaknesses and the capacity constraints of the AU may hinder compliance. But if such a charter were agreed to by the AU, it could be subsequently ratified in the UN, thereby extending and strengthening its institutionalisation, and enhancing the reach of its compliance.

Is this possible? Elsewhere I have argued that democratisation, political stability and development would benefit significantly from one or two regional powers – South Africa and perhaps Nigeria – pursuing a hegemonic agenda. Such an agenda need not be a militaristic one. It need only involve advancing, managing and underwriting the costs of a political and socio-economic vision that prioritises substantive democracy, elite cohesiveness at a continental level, and African development.

Why should South Africa pursue and underwrite such an agenda? Simply because it stands to benefit most from it. As indicated earlier, Africa is the only

arena where South African corporates have a competitive edge, and it is the only region with which the country runs a trade surplus. Given this, should South Africa's foreign policy not be directed to focusing African minds in a realistic attempt to develop a collective African response to the developing continental threat emanating from the contemporary African scramble?

The only way neo-colonial relations, proxy wars and, ultimately, political instability and economic devastation are going to be avoided is if the African elites themselves take charge of their own destiny. This would require these elites, like the Asians of a quarter of a century ago, to be willing to play the foreign powers against each other to get the best terms for their own comprehensive development. Of course they must be conditioned to want such comprehensive development in the first place. And they would require the institutional capacity to manage the foreign relations to achieve this. Both of these preconditions would require a united political elite on the continent, only possible of course if one or other regional power – South Africa and/or Nigeria – were to lead this agenda. Only then could the continent begin to establish the foundation of that mythical dream, the African century, which has become the mantra of generation after generation of African leaders. ■

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Uganda's oil deposits are estimated at between two to six billion barrels, making it a major producer, although not at the same level as countries such as Libya, which has reserves estimated at 37 billion barrels. If all goes according to plan, by 2015 Uganda could become the 50th top oil producer in the world, producing 150 000 barrels of oil a day, the same production level as Chad. Even at this level, major oil players such as the US's ExxonMobil, Italy's Eni, France's Total and China's National Offshore Oil Company are ogling Uganda's oil wealth.

Uganda's oil, the largest onshore

discovery in sub-Saharan Africa in the past 20 years, is particularly appealing because it is high quality and relatively inexpensive to extract compared with offshore production, which costs at least \$60 per barrel. However, the low cost of extracting Uganda's onshore oil could be upset by insurgencies interfering with the exploration, production and transportation of the oil, turning the country into another poster child for the natural resource curse.

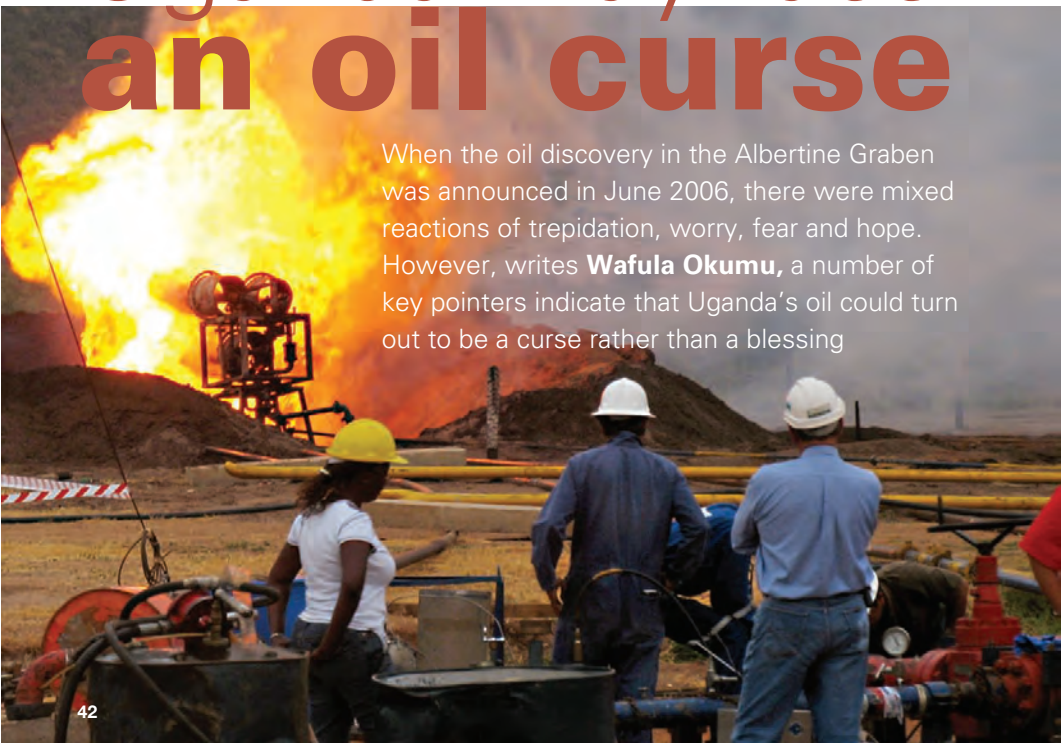
The fears that abundant natural resources are a curse are unscientifically drawn from Nigeria, Sierra Leone, the Democratic Republic of Congo (DRC),

Sudan and Liberia, all of which have experienced at one time or another, different levels of armed conflicts. Conversely, evidence indicates that it is not resource abundance that causes conflict but rather poor institutional and governance quality that allows national elites to become corrupt and give maximum advantage to foreign mining companies to reap huge profits. Lack of democracy could also exacerbate the curse if the national elite uses the revenues from natural resources to stifle development of a political culture that includes values of transparency, accountability, equality/equity, justice,

Ho New / Reuters

Uganda may face an oil curse

When the oil discovery in the Albertine Graben was announced in June 2006, there were mixed reactions of trepidation, worry, fear and hope. However, writes **Wafula Okumu**, a number of key pointers indicate that Uganda's oil could turn out to be a curse rather than a blessing



fairness and responsiveness of the government to the needs of the citizenry.

When Ugandan government officials were reminded that the oil discoveries could be a curse rather than a blessing, they pointed out they have learnt from other countries and adopted the Norwegian model of setting up a sovereign fund. Norway created a sovereign wealth fund in the 1970s that now stands at about \$350 billion.

The poster children for the resource curse include Nigeria, which was the largest African oil producer until 2008 when it was overtaken by Angola due to the Niger Delta insurgency that targeted the oil industry. Although it has exported more than 135 billion barrels since 1970, Nigeria has little to show for its earnings of more than \$400 billion other than ecological disaster, abject poverty, high levels of insecurity and unbridled corruption in the oil-producing region of Niger Delta.

Gabon, another major African oil producer, is witnessing government revenues, mainly from oil, decline precipitously as the reserves diminish. Conspicuous consumption of the late President Omar Bongo and the Gabonese elite provided a barometer of how the country's natural resources were being absurdly used, as exemplified by Gabon having the highest per capita consumption of champagne. Gabon now imports more than two-thirds of its food and spends more than half of its budget paying off debts incurred from the spendthrift lifestyle of the national elite.

Angola, which is currently swimming in petrodollars, still has one of the poorest populations in the world. In a report entitled *Transparency and Accountability in Angola: An Update*, Human Rights Watch documents how billions of Angolan oil revenues have been grossly mismanaged and stolen by the national elite. The government

has not only refused to account for billions of dollars earned from the oil but has also kept secret the oil deals it has entered into with the Chinese. Early this year, President Eduardo Dos Santos, who has been in power since 1979, restructured the Angolan political system through a constitutional revision to enable him to rule for life, and also established a patronage-clientele system very similar to that of Omar

interest of national security.

But thanks to the reports of audit firm Ernst & Young, the IMF and PLATFORM, a social and environmental justice NGO, we now know that the PSAs guarantee oil companies huge profits and places all risks and responsibilities on the government. The oil companies are also allowed to damage the environment by flaring without bearing the cost; to recover their investment costs by

It is far-fetched to wish that the values of governance, democracy and justice would be injected into the political system by the time oil production starts in a year's time.

Bongo, to blunt and muzzle critics.

Despite Ugandan President Yoweri Museveni's wish for the Norwegian model, there is a high probability that Uganda could follow Nigeria, Gabon and Angola. At the moment, Uganda is experiencing a high level of mismanagement of public funds and a potentially unstable political system. It is far-fetched to wish that the values of governance, democracy and justice would be injected into the political system by the time oil production starts in a year's time. Oil will not be an elixir for the bad governance, corruption and injustice that are now on the rise in the country.

There are a number of key pointers that suggest Uganda's oil could turn out to be a curse rather than a blessing. First, the government has kept the Profit Sharing Agreements (PSAs) with oil companies top secret. In February this year, a Kampala court dismissed an application of two journalists demanding that the government make public the PSAs. In denying the application, the court agreed with the government's argument that these agreements should be kept secret in the

charging the government for social responsibility programmes such as infrastructure construction for local communities; and will restrict the government, through a "stabilisation clause", from protecting the environment and improving human rights standards in the oil-producing areas.

Even legal disputes between Uganda and the oil companies will be resolved in London at the Energy Institute. In a nutshell, these PSAs are structured in a way that guarantees the oil companies' profits rather than Uganda's development.

The other indicators that the Norwegian model is a pipe dream are the lack of a Strategic Environment Assessment (SEA) before production starts; the flaring in the areas where oil is being explored; lack of accounting of a bonus payment of more than \$300 000 made to the government; and the formation of a special military unit, under the command of Museveni's son, Lt Col Muhoozi Kainerugaba, to protect oil-producing areas and installations.

Even before exporting a drop of oil, the government has betrayed its

priorities by going on a spending spree to purchase a luxurious new \$48 million Gulfstream V jet for the president and six Russian-made Su-30MK2s jet fighters for \$300 million, which is more than what the government and the donors spend annually on health.

Another bad omen is the arrival of the US military command Africom, in Uganda. With a record of sacrificing commitments to democracy and human rights for access to natural resources and markets in its foreign policy, the increased presence of the US in Uganda should be a major source of concern. Africom, in pursuit of its stated objectives, is expected to play key roles in clamping down dissent and rebel activities that threaten oil extraction in Uganda.

Taimour Lay avers that, “the ingredients for the so-called ‘resource curse’ are all in place: contract secrecy, government corruption, commercial disinformation campaigns, with environmental protection ignored, and simmering border dispute with the DRC frozen rather than resolved.”

In his rush to solve the country’s energy and employment problems, end over-reliance on Kenya for supply of petroleum products, and reduce overdependence on foreign assistance, President Museveni has signed,

according to a report from the Norwegian Agency for Development Cooperations (NORAD), a contract with oil companies that is not “in accordance with the interests” of Uganda.

Indeed, the oil curse could already be creeping into Uganda, as observed in the conspicuous consumption and President Museveni’s inference that, ‘I discovered the oil and must ensure that it benefits all before I leave power.’ Such a ploy of securing a life presidency could only be sustained through a very expensive patronage-clientele system. In order to keep his sycophants happy, Museveni will have to handsomely dish out expensive goodies or allow them to indulge in corrupt practices such as the siphoning of the CHOGM and GAVI funds. Oil wealth is also likely to be used to guarantee Museveni’s life presidency through purchases of opponents and construction of an awesome state security machinery to intimidate and harass key opposition leaders.

But if Uganda falls under a “curse”, it should not be blamed exclusively on the

oil. Well-known US commentator Mac Johnson argues that oil-rich countries that are regarded as cursed are like lottery winners whose lives are ruined after winning the jackpot: “It wasn’t the lottery. It’s the fact that such people are financially and socially dysfunctional. They are dysfunctional before they won, and equally dysfunctional after they won. But after they won they could afford a much more visible scale of dysfunction.” □

FACT BOX

- Africa had proven oil reserves: 117.481 billion barrels (2007)
- Middle East proven oil reserves: 745,998 billion barrels
- Africa’s proportion of world’s reserves: 9.49 %
- Africa’s barrels of crude oil per day produced: 10.3 million (2007)
- Africa’s share of world’s total BPD produced: 12.5%
- Nigeria, Libya, Algeria, Egypt and Angola account for 85% of the continent’s oil production
- Other African oil producing countries: Gabon, Chad, Congo, Cameroon, Tunisia, Equatorial Guinea, the Democratic Republic of the Congo, Sudan, Cote d’Ivoire, Namibia, South Africa and Madagascar
- Africa consumed (in 2007) an average of 3 million barrels a day
- Percent of African oil consumption to world total: 3.5%
- Biggest world oil consumer: United States (19,500,000 bpd)
- Biggest Africa oil consumer: Egypt (635,000 bpd)
- US Oil imports from Africa: 18%
- Chinese Oil imports from Africa: 25%

Source: 2008 BP Statistical Energy Survey, CICAfrica & other sources



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A \$500 million expansion plan by platinum producer Zimplats is one of many projects on the cards for Zimbabwe.



Zimbabwe doesn't need this

Zimbabwe's controversial indigenisation law, gazetted in February, has been put on hold after protest from the MDC. **Dianna Games** believes Zimbabwe can't afford short-term populist actions like these while trying to rebuild its economy

If there is one issue that highlights the twists and turns of Zimbabwe's unity government, it is the proposed indigenisation of the country's business sector.

The Indigenisation and Empowerment Act, passed in 2008, has been a thorn in the side of the new government as it has publicly highlighted differences between the parties in the priorities of economic recovery.

Hard-line Zanu-PF pronouncements about the law contrast with the cautionary tone taken by the other party in the country's unity government, the Movement for Democratic Change (MDC).

The act, which requires foreign and white-owned local companies worth more than \$500 000 to cede at least 51 per cent of holdings to black Zimbabweans within five years, has also

raised concerns about nationalisation.

The former government frequently threatened to seize businesses that did not dance to Zanu-PF's tune, and the indigenisation legislation was widely seen as a way for the government to do just that while staying on the right side of the law.

The MDC, which was given the finance portfolios in the carve-up of ministries, has spoken out against the onerous terms of the act, saying that a proper empowerment plan needs to be put in place rather than relying on a populist, short-term measure to increase the wealth of a few while also driving away investment.

The government is under pressure to raise an estimated US\$10 billion for economic recovery, and is already constrained by the fact that Mugabe remains president and has shown little

appetite for reform.

When the regulations that gave effect to the new law were gazetted in February, Prime Minister Morgan Tsvangirai complained that the MDC had not been consulted and called for the law to be withdrawn for further discussion.

Mugabe refused, telling the international media that there was no going back and that foreign and white-owned Zimbabwean companies should be grateful to keep as much as 49 per cent in firms operating in Zimbabwe.

The vocal Indigenisation and Empowerment Minister Saviour Kasukuwere – a Mugabe appointee – has also taken a hard line on the issue and painted critics as racists.

But MDC's insistence that the law be reviewed seems to have finally borne fruit and, despite much hot air from Kasukuwere, the law has gone back to

the drawing board.

Although the concept of empowerment is well accepted by most parties in Zimbabwe, including foreign multinationals, there are concerns about how the indigenisation process will be handled and who will benefit.

The 51 per cent figure is generally considered to be illogical and premature in a country that is still trying to recover from a decade of economic meltdown.

Tsvangirai told a May Day rally in Zimbabwe that the legislation had raised Zimbabwe's already high-risk profile: "The policy of indigenisation is a global phenomenon, but if the citizenship empowerment policy seeks to expropriate and nationalise then it should stop. We should talk about modalities and avoid the process degenerating into chaos. We should be aware that Zimbabwe is not the last investment destination."

Zimbabwe Stock Exchange CEO Emmanuel Munyukwi says that purchase orders from foreign investors have slowed down significantly since the regulations were published, in contrast to 2009 when the market was effectively being driven by foreigners. He says daily turnover, which averaged US\$2 million in 2009, fell to about US\$700 000 in early 2010.

Targets of the law are not taking any chances despite the see-sawing of the political parties and by May, more than 400 companies had submitted plans for how they planned to meet the 51 per cent target.

But the requirements have made foreign investors wary. Multinationals are reluctant to lose control of their brands and companies and, while welcoming local partners, do not necessarily want them to take over the firms they have built.

There are also questions about whether exceptions will be made for Zanu-PF's new friends from emerging markets such as Iran and China.

In 30 years of majority rule there has been significant organic empowerment, with many formerly white-owned companies ceding large stakes to black partners and foreign companies becoming increasingly Zimbabwean owned and managed. In that time, a considerable number of black-owned companies have been built, such as Econet – one of the biggest listed companies in Zimbabwe.

One constraint of empowerment over the years has been the difficulty local companies have encountered in raising sufficient equity to take advantage of stakes on offer. After a ten-year recession, this is not likely to have improved.

"The 51 per cent figure is generally considered to be illogical and premature in a country that is still trying to recover from a decade of economic meltdown."

Kasukuwere has insisted that companies will be properly compensated and said he will assist companies that do not have the money to buy shareholdings. Business is bracing itself for a hefty state levy to fund the process – but the fact that so many companies have already put plans forward does suggest that entrenched investors are not, at this stage, planning to pull out of Zimbabwe, even if the country is deterring new investment.

In the first nine months of 2009, Zimbabwe secured \$846.2 million in new investment, mostly in the mining sector, according to the Zimbabwe Investment Authority, although a good deal of it was

to recapitalise existing companies.

Some new investments are on the cards, such as the nearly \$500 million expansion plan by platinum producer Zimplats, but many of these are waiting for signs of how the indigenisation law will be applied.

Local business, concerned that the boom times have not yet returned, say empowerment and investment need not be mutually exclusive concepts. Many have called for empowerment to be part of broad economic recovery and capacity building rather than simply a redistribution of existing wealth. As one said, "There is no point indigenising an empty shell that will not attract capital or investors."

Finance Minister Tendai Biti says that political uncertainty coupled with the failure to attract investment and donor support may force Zimbabwe to cut its 2010 growth forecast of 7.7 per cent to 4.8 per cent.

The failure to meet reform targets agreed on in the Global Political Agreement that underpins the unity government, compounded by Mugabe's continuing leadership of the government, has meant donor funding of a mere \$3 million against an \$810 million budget deficit.

Zimbabwe has many economic priorities, such as increased power capacity, new foreign funding, the return of skills from the diaspora, recapitalisation of industry, and the recovery of the key agricultural sector.

It also requires proper political change through the removal of repressive legislation from the statute books, the return of law and order, an independent judiciary, electoral and constitutional reform, policy predictability and, importantly, a joint vision of the future by the parties in government.

Short-term political expedience is a luxury that Zimbabwe cannot afford right now, however good the politicians make it sound. **■**

Organised crime has found a lucrative niche in the large local Zambian consumer market for pirated DVDs and CDs, as **Alice Mafuleka*** found out



Getting fat on pirated DVDs

They come in many different languages, such as Chinese, Russian and German, but this does not deter the market for pirated DVDs on the streets of Lusaka in the heart of Zambia. The latest movies showing in the city's cinemas can all be found on one DVD, selling on the streets at a cost of just over two dollars. A selection of a favourite actor or actress' work can also be found on one disc, such as all of Angelina Jolie's biggest movies or a compilation starring Leonardo DiCaprio. However, the compression of a large number of movies onto one DVD compromises the movies' picture quality and sound.

While consumers can get more than

their money's worth, these DVDs are pirated material and the Intellectual Property (IP) law in the country criminalises piracy.

Young men walk with bulging backpacks peddling the films to passing motorists at busy intersections. They also provide colourful displays on pavements. In June 2009, an ISS-commissioned researcher in Lusaka interviewed a smart 20-year-old seller called David. David finished high school two years ago and started street hawking to raise cash for college. Every morning he leaves his township in Matero and travels to the high-class Longacres Mall, where he sells his goods on the pavement outside

a popular internet cafe. Since he and others in this trade have legitimate hawking licences, he does not consider himself to be breaking the law and has never seen any police raids on pirated DVD sellers in the streets.

One DVD costs K10 000 (US\$2) from the supplier and David retails it for K25 000 (US\$5). When business is bad, he can drop his price to as low as K12 000 (US\$2.10) but generally trade is good. He has built up a client base he calls when he gets new stock and who in turn call to ask about specific releases. Normally he makes a profit, especially on the latest list of movies.

David buys his stock from a middle-aged Zambian supplier, who is an

importer and wholesaler of a range of products from China and the United States. He reckons that there are about 15 such suppliers in Lusaka alone. The DVDs find their way to Zambia via Dar es Salaam in Tanzania and from there to Nakonde, on the border with Zambia, finally ending up in large cities such as Lusaka.

A few Zambians have acquired production equipment of their own and are now reproducing pirated movies within the country. In May 2009, a 41-year-old Zambian man, an electronics university graduate trained in Zambia and South Africa, was arrested for infringement of the copyright law as well as for production of pornographic material.

This man was found with four CD/DVD burners capable of writing 48 CDs a minute, and four printers. With the printers he makes CD/DVD labels at almost the same quality as the original. Where his design skills fail him, he simply scans and copies the original packaging labels.


The equipment, worth about US\$50 000 and bought in Dubai, was kept in an office in his house in the high-density township/slum of Lilanda,

adjacent to where David comes from. Sources claim that it costs almost nothing to reproduce a CD or DVD. The producer supplies the DVDs for K12 000 (US\$2.25), five and a half times lower than the price of a genuine one, which costs up to K69 000 (US\$14). The discs are then offloaded on to the sellers in the city centre, such as David. Since the sellers do not always have ready cash to order these products, the producer collects his cut after the sales have been made. Some sellers do not pay, but the producer cannot report this to the police because of the illegal nature of his business.

This particular producer also copies pornographic DVDs for a specific category of customers, usually affluent city dwellers.

Having planned ahead for possible legal contingencies, at the time of arrest he was in the process of crossing over into the legal side of the business and processing licences for the registration of a production company. Furthermore, his house, in the middle of the township, was secured by surveillance cameras allowing him to see the police as they approached. In anticipation of possible seizure of his equipment and legal implications of the

material on his computer, he secured his audio and visual works by encryption. Most police officers lack the skills to decode such software.

Organised crime flourishes against the background of developing and inadequate legislation. Part of the weakness with the Zambian IP legal framework is its uncoordinated and impractical nature. The legal owners of motion pictures would have to file a complaint to the police, which is impractical as there are numerous owners of the movies available on pirated DVDs. Furthermore, Zambia has an open and enforcement-free trading environment, with city councils that have a sympathetic attitude towards hawkers, many people that could not afford genuine DVDs and a large unemployed pool of youths whose only source of income is hawking. And, as usual, compromised law-enforcement officials sustain the crime. The producer was arrested once before and paid off the police. At the time of this interview he was out on bail. 

Alice Mafuleka* is a field researcher with the Effective Responses to Organised Crime (EROC) project.



The lie of the land

When conflict on land and the rights of access to it erupts, it's often misconstrued as ethnic-inspired. But **Richard Cornwell** points out that the seemingly chaotic land tenure system is advantageous to the well-informed, the rich and the powerful

A long-overdue development in the debates about human security in Africa has been the prominence recently given to land reform. Although headlines in the popular media about Africa's conflict zones tend to be dominated by more "dramatic" issues, in the background much careful thought needs to be applied to land as one of

the most important triggers of social and communal conflict. Whether one looks at the eastern Congo, Sudan's Abyei and Darfur regions, south-central Somalia, Kenya's Rift Valley (or, indeed, most of Africa's hotspots), land and the rights of access to it feature large among the causes of conflicts so often glibly categorised as "ethnic" and, by

extension, as reflecting the continent's "backwardness".

Earlier this year the *Christian Science Monitor* published an article by its West Africa correspondent, Jina Moore, entitled "Africa's continental divide: Land disputes". She argued that land is at the very heart of security and survival for most Africans, and the issue of



access to land, whether in rural or urban settings, requires urgent attention if further bloodshed and distress are to be mitigated. As she notes, the painstaking business of addressing structural problems to which no perfect solution is possible tends to be overlooked until they become seen as the underlying causes of violence, by which time a dynamic has developed that is far more difficult and expensive to "resolve". As is so often the case, "the devil is in the detail", and when it comes to land reform, no best practices, off-the shelf or managerial approaches will suffice to cope with the individual peculiarities of localities and communities.

As Moore also points out, outsiders and donors who see land largely in terms of its value as a capital asset or in terms of its potential simply as a

productive asset singularly miss the point. Not only do most of Africa's peoples derive their livelihoods from the land, they also base their communal and spiritual identities across the generations on their relationship with it. More than property rights are involved. Indeed, one might argue that "citizenship" and belonging in an existential sense are more to the point. For those of us nurtured in a more individualistic or nuclear family environment this may seem strange, though it certainly goes some way to explain the bitterness with which battles in Africa over land rights are fought.


Unfortunately, as Moore realises, the matter of a comprehensive approach to Africa's land tenure issues is no easy task. But a beginning must be made somewhere, and this must be informed by an understanding of the issue in terms that are familiar to the peoples living upon it and regarded by them as just. Any attempts to establish a sense of finality about land rights will, of course, also run the risk of inciting or exacerbating a violent reaction from those who see their exclusion becoming permanent. This is where the concepts of justice and equity have to be clearly examined and widely accepted.

At its 2009 summit, the African Union recognised the salience of this issue when it approved and adopted the framework and guidelines for land policy and land reform in Africa, an initiative started three years earlier in conjunction with the Economic Commission for Africa and the African Development Bank. Though the AU is careful not to prescribe to member states, its documentation on land policy is both thoughtful and as comprehensive as can be expected for a generalised approach.

Africa's peculiar colonial history has complicated the contemporary scene, for it bequeathed a set of laws and regulations derived from alien systems as an overlay to the myriad complexities

and flexibilities of local usage. In terms of the clarification of land rights, the result has not been at all helpful. Customary law, some of it invented, and written legal title, much of it of dubious moral or historical probity, may both be invoked by claimants to a piece of land. All too often the result is bloodshed or forcible eviction. As to the profligate alienation by African governments of land and forest to foreign enterprises for commercial exploitation, little needs to be said.

Not only do most of Africa's peoples derive their livelihoods from the land, they also base their communal and spiritual identities across the generations on their relationship with it

At present the advantage lies with those with the legal documents, and the knowledge to use them. These tend to be the well-informed, the rich and the powerful. Those who come short most often are the illiterate and the powerless, and those most often discriminated against, especially in customary law, are the women and the orphans. The African Union's initiative admits this. Whether such knowledge and good intentions will be transferred into the field of actual policy remains to be seen, especially since those who make such policy usually hail from the ranks of the rich and powerful, but it is a noble and necessary beginning. 

Back to Africa via the Victorian Age

During the months of June and July 2010, the eagerly anticipated football World Cup is set to ignite the African continent with the colour and spectacle of the Beautiful Game

writes **Poppie Mphuthing**

The second annual Africa Fashion Week kicks off in Johannesburg on June 30, showcasing the collections of thirty leading African fashion designers from both the continent and the Diaspora. The event is organised by African Fashion International, whose chairperson Dr Precious Moloi-Motsepe says that Africa Fashion Week is "perfectly positioned to promote African designers globally."

Debuting at Africa Fashion Week is New York-based label Boudoir D'huîtres. Launched in 2007 and featuring in New York Fashion Week last year, the label has made quite a splash in the fashion world. It has even caught the attention of Barbadian superstar Rihanna, who





Mimi Plange... bringing her fashion back home

has donned Boudoir D'huîtres designs.

Founder and designer Mimi Plange, who was born in Ghana, is excited to be showcasing her designs on home soil. "I always wanted to look back to Africa for inspiration. I always hoped to take my fashion back home one day."

Boudoir D'huîtres – the name means 'Bed of Oysters' – embodies sensual and feminine design principles. The label's signature style stems from a 17th century Victorian design aesthetic. Plange says she has always been attracted to this era, having been exposed to classical influences from an early age. "Since I was little I played the flute. As a young child, I was exposed to classical music, like Amadeus Mozart."

It was in her History of Fashion classes at San Francisco's Institute of

Design and Merchandising that Plange says she realised the Victorian era pioneered a timeless design aesthetic. "It introduced the corset and the importance of the hourglass silhouette. I was mesmerised."

Romance and sensuality epitomise Boudoir D'huîtres designs. These are characteristics Plange attributes to her mother – who, she says, was her first fashion inspiration. Plange says she still enjoys being regaled with tales of romance.

"I love hearing my mother's stories. She loves the old Hollywood films and understands that the beauty of clothes is meaningful."

Plange says her Africa Fashion Week show will be "a continuation of Victorian-inspired historical clothing." Plange doyennes can expect a mixed palette. "The show will include neutral tones

like sesames and tans. But also bold colours; blacks, reds and magenta tones too."

Plange uses organic materials including silk, organic cork leather and cashmere blends. "I try to keep my fabrics natural-based where I can. It's important for how they [the garments] lay and drape. Fabrication should complement design."

Currently Boudoir D'huîtres clothing is stocked in Europe, America and Asia. Plange is hopeful that African clients will also have the opportunity to wear her Victoriana garments, and she is keen to expand her footprint to distribution outlets on the continent.

"Africa is the future. There is so much room for growth and opportunity. That there is an international Africa Fashion

Week shows how global fashion is now."

The company website seeks a warm connection with potential and existing clients. With its gothic and sensual atmosphere, the message is that the label aims to make women "feel sexy and to know that the garment she is wearing is fashionable today and timeless." In line with the values and principles that underpin the label, Plange says she would love to dress Australian actress Cate Blanchett because "She is someone who embodies her own sense of personal self."

Plange says she prefers to focus on her own ideas of experimentation rather than look outwards to what is trendy in the fashion world. But she does look up to the late Yves Saint Laurent describing him as a "Master of Smart Fashion".

The respected French designer once said, "Fashion fades, style is eternal." Plange takes this value to heart, with Boudoir D'huîtres embodying similar principles.

"I loved his aesthetic. He was always forward-thinking but his clothes were wearable. I like elongating silhouettes, but add more of an element of comfort. Styling that is carefree but with sharp edges."

Plange is driven by the world around her to add variation to the Victorian aesthetic of her designs. Looking to the future, she says that her label is always evolving to incorporate new design and fabric innovations. "I like to spend time thinking and researching. For inspiration I travel, go to museums and read lots of books. I think of a detail and build around it, always with Future Victoriana in mind." 

Africa Fashion Week takes place from 30 June until 3 July. The Africa Fashion Awards will be held on 5 July at the Sandton Convention Centre, Johannesburg



Turning Addis around

Keto Segwai looks at economic forces driving the frenzy of construction activity in Ethiopia, particularly its capital, Addis Ababa

While preparing for my trip to Addis Ababa for the bi-annual African Union Summit earlier this year, I was told that it would be very difficult to find a hotel at that time. Having last been to Addis more than five years earlier, I contacted a friend who had, until recently, been based at the African Union. My request for an update on the quality of the Yordanos, a small hotel near the UNECA conference centre in central Addis, elicited a derisive laugh, and he told me it had long ago been demolished. This was rather confusing as I had already contacted the Yordanos and made a reservation, but he swore to its demise, going so

far as to bet his right arm that I would never find it.

Ironically, this is the very arm he deploys in punching the air, being a dedicated couch soccer fan. As things came to pass, had I been a heartless bargainer, the forthcoming World Cup would definitely have been a miserable one for him. I reconfirmed my booking with the strategically located hotel, which offers competitive rates in this city so dominated by diplomatic and other foreign missions that money talk should be in Forex terms. Surprisingly, most Addis businesses insist on using the local currency – the Birr.

My previous foray into Addis took

place on a soggy June day. This time, however, it wasn't raining. Arriving with Ethiopian Airlines (one of the top three African airlines) at the rebuilt Bolo International Airport was quite an experience. New, gleaming skyscrapers with tinted windows now line the road all the way from the airport into the city centre, merging areas that had previously been separated. In fact, in June 1995, some Egyptian compatriots nearly took out their president, Hosni Mubarak on the then-remote airport-city stretch. (To date the man has survived six assassination attempts.)

The two-storey Yordanos Hotel was not immediately identifiable, as it is



now overshadowed by an imposing six-storey building being constructed in the same yard. The new building is a measure of how much confidence the old hotel's owner has in the Ethiopian economy. The only problem is that its construction appears to be eroding the comfortable standard of the old hotel. One can only hope that the new building is finished soon.

There are a great many new skyscrapers in that area, both completed and still under construction, that now jostle for attention with small, traditional Ethiopian vendor shops. In fact much of Addis has been turned into a massive building site. Locals and visitors alike agree that in the next two to five years, the Addis skyline will change beyond recognition. Even the AU has woken up to Addis' rise and is putting up a massive conference centre not far from its headquarters.

Many in Addis Ababa ascribe its phenomenal growth to investments in the local economy by people in the Ethiopian Diaspora. In the recent past, the government offered considerable incentives for those in the Diaspora to invest in the country's economy, including offers of special legal status and tax breaks. The government also

"The new building is a measure of how much confidence the old hotel's owner has in the Ethiopian economy."

provided Diaspora communities with relevant information on setting up businesses back home. According to the Ethiopian Investment Agency, by the middle of last year more than 1,800 people in the Ethiopian Diaspora had investment licenses.

Diaspora investment has primarily been in real estate (about 59%), followed by manufacturing (18%). Other significant investment areas include hotels, restaurants, construction, health, education and agriculture. From 2002 to 2006, the Ethiopian government actively encouraged expatriates to engage in the country's economic development by offering economic incentives to return or invest in Ethiopia and allowing easier movement of capital, goods and persons into the country.

However, in 2006 most of these special privileges were suspended. Of the total investment drive of the past several years, the Diaspora accounts for a significant 11%.

Generally, however, all potential investors and entrepreneurs have enjoyed lowered import barriers and exemption of customs duties on capital goods, as well as significant income-tax breaks.

Nebio Negash, public diplomacy and relations attaché at the Ethiopian embassy in Pretoria, South Africa, says, "Our investment policies are some of the best in Africa. These policies have been under constant review in the past 10 years, primarily to accommodate both local and foreign investors."

The Ethiopian investment experiment seems to be working: the country's economic growth has averaged between 5.8% and 6.3% over the past few years. The runaway inflation that was the hallmark of the command economy era appears to have been tamed at a yearly average of less than 4% under the market economy. But the government still needs to also drive investment into its vast agricultural potential, living up to the dictum that "Anything can grow in Ethiopia". 

Explaining the transition from Apartheid to democracy

The rise and fall of apartheid

Author: *David Welsh* Reviewed by: Dr Chris Saunders*

David Welsh has written what is now the best available history of South Africa from 1948 to 1994. His book is always clearly-written and it conveys an excellent sense of change over time. In its discussion of the fall of apartheid in particular – and there is much more here on the fall than the rise – his book is more than an overview and synthesis of existing literature; it is a pioneering survey, drawing on his personal knowledge of what happened – he was Professor of Southern African Studies at the University of Cape Town before his retirement – and very wide reading. Some may call his empirical style of history-writing ‘old-fashioned’, but Welsh’s book will, I am sure, be used long after more faddish and polemic writing is forgotten.

Welsh is perhaps best-known to scholars for *The Roots of Segregation*, his monograph on racial policy in nineteenth-century Natal. In this new work, he does not enter into the origins of racial segregation, but begins with two chapters of background, on Afrikaner nationalism and the black experience, before offering a long overview chapter that sets out some of his major themes. He then proceeds to analyse the history of what he calls ‘the black opposition’ and the fissures that opened up in the Afrikaner ruling elite, before moving on the 1980s, where he goes into considerable detail on the build-up of resistance. Then, in some of the most interesting chapters, he explains how the mutual perception of stalemate or deadlock developed and how the country moved towards a negotiated settlement. He ends with a chapter on the founding election of 1994.

While Welsh draws upon some little-known sources, such as a police history, this reviewer noticed that his bibliography does not include the volumes on *The*

Road to Democracy in South Africa by the South African Democracy Education Trust or, say, Adrian Guelke’s *Rethinking the Rise and Fall of Apartheid* (2005), which tried to set out major debates relating to the rise and fall of apartheid.

Even a largely descriptive account presents an argument, if only by what it includes and what it leaves out. Welsh is a liberal who is dismissive of neo-Marxist arguments. Some will reject his emphasis on, say, the significance of the decline of Afrikaner nationalism in helping to explain the transition, and will think that he devotes too much space to the white leaders of the country and not enough to the black majority, and that he is too kind to PW Botha (whom he calls South Africa’s Gorbachev), to FW de Klerk, the writing of whose autobiography he assisted with, and to Mangosutho Buthelezi in particular. This reviewer noticed very few factual errors, though the important meeting between the Minister of Justice and Nelson Mandela was not in August 1985 but in November (pages 276 and 362) and, as Welsh himself shows elsewhere, the secrecy about what was contained in De Klerk’s breakthrough speech of 2 February 1990 was not ‘total’ (page 360).

Welsh covers a remarkable amount of ground, and weaves together a mass of material in admirable fashion, but he himself realises that he cannot be comprehensive. There is relatively little in this book on, for example, the ANC in exile, or on the global context, including the growth of international anti-apartheid activity (the British Anti-Apartheid Movement is not in the index, nor is its history by Roger Fieldhouse mentioned, and the rise of the iconic status of Mandela in the 1980s is only touched on very briefly). Welsh’s treatment of



the way in which Namibia’s move to independence influenced the South African transition is very sketchy. But his analysis of what happened within South Africa itself, especially from the 1980s on, is masterly. Welsh realises that there is much that is controversial in our recent past, and he draws our attention to debated issues. In puncturing myths and putting forward his own position, he is balanced and judicious. Anyone who now wishes to make a serious attempt at explaining the transition from apartheid to democracy will have to take this book into account. All South African politicians, and anyone who seeks to be an informed citizen, should read it. ■

Book details

The Rise and Fall of Apartheid
 Publisher: Jonathan Ball, 2009
 647pp
 ISBN: 9781868423521

*Dr Chris Saunders is professor in the department of Historical Studies, University of Cape Town

A model for World Heritage sites

Tsodilo Hills: Copper Bracelet of the Kalahari

Edited by Alec Campbell, Larry Robbins and Michael Taylor

Reviewed by Sandy Grant

This magnificent book presents the findings of the multi-disciplinary research carried out on the four Tsodilo Hills over the past 45 years. The Tsodilo Hills may be Botswana's only World Heritage Site, but those responsible for this remarkable publication have demonstrated how information about such sites should be organised and presented. They have set a standard and provided a model that should challenge others worldwide to match, and hopefully surpass.

In this part of the world, close attention needs to be paid to this book, not least by South Africa with its eight World Heritage sites, Zimbabwe with five, Madagascar with three and Namibia and Mozambique with one each. But if the book is of rare quality, it must be noted that such an achievement is only possible due to extraordinary persistence and dedication. Nor is it likely to have happened without a lead figure, in this instance Alec Campbell, who has visited the formerly very remote hills on 40 to 50 occasions since the early 1960s. In that time he has drawn in others, such as the Botswana National Museum, to back what has turned out to be his lifelong engagement with the hills by contributing their skills – recording, researching, surveying and understanding the hills – and helping with desperately needed funding.

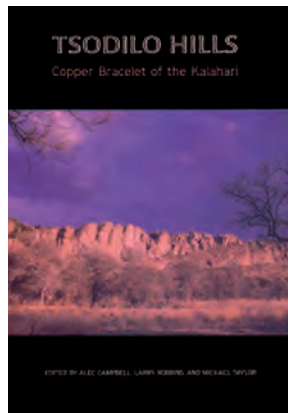
My initial reaction to Tsodilo Hills was to marvel at how coherently the information has been presented in a book of only modest size. Informative text, wonderful photographs, boxed comments and helpful illustrations, tables and an insert map are presented in wonderful balance, resulting in a


page-turning feast. But it is the inherent diffidence resonating throughout this book that sets it apart. The contributors are open about the extent of their knowledge.

Many World Heritage sites are dead monuments, marvels of the past whose meaning is as lost as the people who created them. In contrast, for the Juc'hoansi and the Hambukushu people, today's custodians, the hills are still integral to their material and spiritual way of life which tourism has enabled them to exploit. Over the years a succession of draft management ideas for the area have been discussed with the local community, so that the complex pressures and the varied and often conflicting interests could somehow be resolved. The final agreement is impressive but the next requirement, forcibly argued for in this book, is to widen the management band around those enigmatic hills.

It is sometimes claimed that nothing new in the world remains to be 'discovered', but astonishingly, while these hills have been occupied for at least 100 000 years and provided a canvas for more than 4 000 paintings, the outside world knew little of them until 1955, when Laurens van der Post realised that he had blundered into areas where he was not welcome and backed off leaving, perhaps fancifully, a message of apology in a bottle. But he was able to hear the resonance of the hills. Will tomorrow's visitors have his sense of what is appropriate? Or will they overwhelm its custodians and desecrate and destroy a monument of exceptional fragility?

The Tsodilo Hills are undoubtedly one of the world's great wonders.



But, as the authors clearly state, they are also an enigma with much about them still to be understood. Maybe they should be left that way so that tomorrow's visitors, when confronted by such an incredible time scale, can experience something similar to the astronauts who have looked at the world from space and seen something of great wonder at which to marvel and to give the very greatest respect. 

Book details

Tsodilo Hills: Copper Bracelet of the Kalahari
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 and The Botswana Society, 2010.

Illustrated, with a map, diagrams and drawings.

ISBN: 978-087013-858-4

Our Turn to Eat much more than an "economic story"

The bestselling novel *It's our Turn to Eat*, dealing with corruption in Kenya, has earned Michela Wrong widespread acclaim. **Isaac Otieno** spoke to the author about the central character in the book, the Kenyan anti-corruption activist and former government employee John Githongo, the reaction to her book and her views on corruption, Kenya and Africa

There was huge reaction in Kenya following the publication of *It's our Turn to Eat*. Did you expect this?

The reaction was a big surprise to me. I think maybe I was a bit naive, as I knew that there wasn't a huge amount of new information in the book and the details of the Anglo-Leasing scam have been in the public domain for a long time. I also realise now it's about connecting up the dots. It had a lot of impact because people knew this story but they didn't know the whole shape of the story; the beginning, the middle and the end. It is also about trying to talk about what had happened under (Jomo) Kenyatta and (Daniel) Arap Moi and saying this is a trend and not a new phenomenon. It is part of a syndrome; it is part of the whole way the country runs itself.

Did it perhaps have more impact because you are an outsider?

In Kenya, like in a lot of the African places I have lived in, if an outsider

says things it is often taken more seriously than if a local says it. So if a Kenyan had written that book, it might not have had as much impact. I used to find this in the Financial Times articles I wrote. I would be saying the same things that had been in the newspapers for weeks, but people would still go, "the Financial Times says". I wonder if there's a slight sense of: it only becomes real when an outsider says it.

Did you interview other people apart from Githongo? Who else contributed to the book or was it mostly he and the desk research?

I interviewed hundreds of people actually but in terms of the scandal I relied on him. My attitude was that the public accounts committee report existed and it seemed to me you have an anti-corruption tsar who has had huge number of sources, many of which are not going to be identified, as well as documents and tape recordings, and I had to make a decision writing



this book. But during a lot of other interviews I tried to analyse the whole Kikuyu phenomena, trying to get a sense of how Kenya was changing, modern Kenya. I was talking to diplomats and a lot of Kenyan analysts.

If you look back at the time before your book was published and before the 2008 post-election violence, do you think your views have changed?

They have changed quite radically. I never expected the elections to be as violent or as rigged as that. Such a destructive and frightening period, and

that had an effect on the way I looked at corruption. At the time I had seen the John story as being an economic story, a story about complacency by the donors and greed by this predatory elite.

But it was more than just an economic story?

John at the time would tell me that there was a lot going on at the grassroots, there were really big meetings, Raila (Odinga, Prime Minister and former opposition leader) was getting really huge audiences at these rallies. He was stating that there was a huge amount of dissatisfaction and discontentment, and people were really angry. I remember being a little sceptical about that because I was thinking: you know, maybe John wants to think that. He said they were getting angry about corruption and about the "it's our turn to eat" idea, and they were getting angry at the Mount Kenya Mafia perception. I think the elections proved that he was right. This perception of one group of the country benefitting and everyone else being left to hang can create massive instability and I hadn't really believed him when he said that. He said it was a security issue, it wasn't just financial, and would end up destroying the stability of the state. After that I was completely converted in my way of thinking. The corruption, the "it's our turn to eat" philosophy and the exasperation that the public felt at that and the hostility towards the Mount Kenya Mafia were the reasons for what happened in the elections. That's where I made the connection between instability, corruption and violence that I had not made before.

You had written previously, still on the theme of corruption. Why did you choose the title *It's our Turn to Eat*?

I had heard it so much during the years

I lived in Kenya. Actually not only in Kenya; you also hear it in Uganda. And when I was in Nigeria recently they told me in local dialect it would be, "it's our turn to chop". It just seemed to me to summarise the Kenyan problem. With most of my books I have a problem thinking up titles, but with this one I always knew what the title was going to be because that phrase says so much.

How did you feel when authorities wouldn't allow the book to be sold?

Well just to be quite accurate, it's not banned. Alfred Mutua (a government spokesman) was asked by CNN during a press conference, "have you banned the book?" and he said no. Of course they hate the book and they have gone around to bookshop owners asking them not to stock it but to be honest they did me a favour. The fact that it became so notorious because no one could get it meant that everyone wanted to own it, and I'm sure they sold my book for me, in a way. If they hadn't done that and had ignored it, it would have just passed without so many people noticing.

Coming back to the theme of corruption in Kenya and the countries in Africa you have been privileged to live in, are you optimistic?


I'm not that pessimistic about corruption in Africa, in that it seems to be something you always have to fight. A free press, a very active civil society and being aware of the problems are very important. Campaigns such as "publish what you pay" and all these extractive industry initiatives are very good and will have an impact. We are becoming cleverer about dealing with corruption. But in terms of the individual countries where I have lived and written about, I am very pessimistic about Kenya's prospects. It seems to me that everyone's obsessed

with the ICC (International Criminal Court) process in Kenya, but we have to make sure that Kenya has a good, sound, credible election in 2012.

What do you do when corruption fights back? There is a public outcry over one scandal and then we see another one?

Some believe in grassroots activism and accountability and some are looking at holding ministers, MPs or council leaders to account for service delivery. You need both. It needs to come from the bottom and from the top. There has to be a change in people's mindsets, they have to expect more of their leaders. This will come from the press, civil society, even churches and just ordinary citizens in their own lives: not just automatically paying the bribe or putting the cousin into that job. So there is still a need for the anti-corruption units to do their work.

If you were granted five minutes with Mwai Kibaki and Raila Odinga, what would you tell them in the light of everything that has happened?

Firstly I would say, stand down at the next elections. And secondly I would say that there are a lot of gestures that they could make to diminish ethnic tension in this country. When Kasuu was looted, afterwards I would have liked to see Kibaki and Raila holding hands in front of the cameras and agreeing to launch a \$20 million reconstruction fund for central Kasuu. The donors would have paid for it, it would have created jobs in the slums and it would have been a wonderful gesture of reconciliation. I think there are many of those kinds of gestures that could be made and they haven't been, due to a lack of goodwill. There is no inspired leadership and you need this. This leadership is incapable of making these gestures. 



Tim Murithi

Much Ado about Justice and the Pirates

The continent's diplomatic community in Addis Ababa is expressing a collective sigh of relief that the Sudanese elections took place without some of the dire events that had been predicted. The unwelcome elephant in the room, however, is the warrant of arrest issued by the International Criminal Court (ICC) for Omar Al Bashir, the recently re-elected President of Sudan who is wanted for war crimes and crimes against humanity allegedly committed in the Darfur region.

The AU, through its Peace and Security Council (PSC), requested the United Nations (UN) Security Council to exercise its powers to defer the arrest of Al Bashir and enable peace to prevail in Darfur. In July 2009, at the 13th Annual Summit of the Assembly of Heads of State and Government held in Sirte, Libya, the AU decided not to cooperate with the ICC in facilitating the arrest of Al Bashir. However, this position is not held by all AU member states. In fact, Botswana has publicly stated its disagreement with the decision. South Africa has also indicated that its legal obligations as a State Party to the Rome Statute, which provides the ICC with its legal mandate, do not permit it to subscribe to the AU's decision.

Thirty African countries are State Parties to the Rome Statute, and the ICC's growing role on the African continent has triggered some polarising debates in Addis Ababa. There are currently four countries under the investigative purview of the ICC, including the Democratic Republic of the Congo (DRC); Uganda; the Central

African Republic (CAR) and the Darfur region of Sudan.

The Assembly of State Parties to the Rome Statute establishing the ICC is convening in the Ugandan capital, Kampala, between 31 May and 11 June for a Review Conference. (See article page 34)

Meanwhile, pirates have literally been running circles around ships in both coasts of Somalia, as well as in the Gulf of Guinea. It is mind-boggling that a small group of armed militia in fishing boats can commandeer naval super-tankers and generally wreak havoc in previously relatively calm shipping routes. Recognising that it did not have a coherent strategy for dealing with this emerging crisis, the AU Commission held a workshop of Experts on Maritime Security and Safety at the AU Headquarters in Addis Ababa. The meeting brought together about 220 participants from AU member states, the AU Commission, regional economic communities, the UN, EU and other international partners and stakeholders. After a lot of choice words, hand waving and debate the meeting agreed that the problem of piracy is really about the lack of peace, development and adequate ways to make a living on land. In essence, the problem of maritime security will not be solved in the seas but by addressing governance and development issues in the countries where the pirates are coming from.

An AU meeting would not be considered a meeting without some kind of a proposal for a grand scheme. True

to form, this meeting did not disappoint when it proposed the development of an Integrated Maritime Strategy for Africa. Not surprisingly, this will require another series of "expert" meetings to take place.

Let I give the wrong impression it has not all been cerebral angst and highfaluting concerns about justice and pirates in Addis Ababa. On a lighter note I was pleasantly surprised to receive an invitation from the South African Embassy in Addis Ababa, to partake in the Freedom Day celebrations on 27th April 2010. After one or two choice samplings of the finest Cape Shiraz, with some boerewors to anchor the libation, one eventually got into the swing of things. The event was marked by an impassioned speech from the Ambassador Major-General Lungile Pepani, who re-lived his recent participation in observing the elections in Sudan, but he also did not miss the opportunity to showcase the much anticipated FIFA World Cup which will kick-off in June, in South Africa. The highlight of the day – undoubtedly heightened by the effects of the Shiraz – was the scintillating performance, by children of Embassy officials of the South African, of the theme dance and tune for the World Cup, the Diski. The fact that the ambassador also joined the youthful fray in replicating football kicks clearly contributed towards encouraging guests to let their diplomatic guard down. All in all it turned out to be one of the swankiest events of the year, which if truth be told, is not a difficult goal to achieve in Addis Ababa.

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African images

Your pictures



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1. Near Marsabit, Kenya.
Picture: Anja Lubbe
2. Taking a break in Sudan.
Picture: Lodie de Jager
3. Marrakech central square.
Picture: Liesl Louw-Vaudran



1



3



CIDE: question 9

Africa quiz

1. Name six African teams participating in the 2010 FIFA World Cup in South Africa?
2. Where were the 2010 AfCon Cup games held?
3. Which is the oldest independent country in Africa?
4. Who was Ghana's first president?
5. What is the forerunner of the African Union?
6. Who is the current chair of the African Union?
7. What did former Northern Rhodesia become after independence?
8. Mobutu Sese Seko is associated with the plunder of which country?
9. Which country is Africa's top oil producer?
10. Which institution has interdicted Sudanese president, Omar al- Bashir?

Africa quiz answers

1. Algeria, Cameroon, Cote d'Ivoire, Nigeria, Nigeria and South Africa. 2. Angola. 3. Ethiopia. 4. Kwame Nkrumah. 5. Organisation of African Unity. 6. Binu wa Mutharika. 7. Zambia. 8. Formerly Zaïre, now Democratic Republic of Congo. 9. Nigeria. 10. International Criminal Court.



A people's quest for a superhero

Andrews Atta-Asamoah traces the roots and exploits of the Kenyan internet viral sensation, Makmende who appears to be setting that country's socio-political agenda

Lately, Kenyan bloggers, Facebookers and tweeters seem to have developed a taste for a new word: 'Makmende'. Rumour has it that this word emerged in the early- to mid-'90s, from a mispronunciation of Clint Eastwood's phrase '...go ahead, make my day' (Mek ma nday) in his 1983 movie 'Sudden Impact'. It started being used in local slang to describe the feeling of being a superhero, after watching action and karate movies.

Although use of the word subsided at the turn of the century, it is now back on the lips of many people on the streets of Nairobi and beyond, thanks to the music group Just a Band, who tagged one of their music videos 'Makmende Amerudi' (meaning, in Swahili, 'Makmende is back'). The video tells the story of a local superhero who overcomes a bully and rescues a girl from the hands of kidnappers, eliciting her (and our) great admiration.

Since the video's release in March this year, Makmende really is back, not only in the Kenyan blogosphere but also on the streets of Nairobi. This time, the word is not being used as an adjective but as the name of a fictional superhero with limitless exploits existing only in the imagination and vocabulary of young Kenyans. This fictional superhero's popularity has shot Just a Band to international fame, as evidenced by a Facebook fan page, CNN news coverage, a page on Wikipedia

and thousands of YouTube hits. And the word itself dominates the word cloud of the Kenyan blogging community, with many competing to compose the most simple but impressive phrase capturing the exploits of this fictional Kenyan superhero. Some examples:


- *'Makmende for President and Prime Minister!'*
- *'Makmende makes hay even when it's raining!'*
- *'Makmende is the only one who can fix Breaking News!'*
- *'The Kenyan U-17 soccer team needs you, Makmende!'*
- *'Makmende went on holiday with the map so the railway wouldn't go beyond Nanyuki.'*
- *'Makmende belongs to the Kenyan tribe. He is so fair.'*

Superficial and hyped as this Kenyan internet viral sensation may seem, its overwhelming popularity carries some important lessons for us all.

First, it demonstrates that the internet has succeeded in breaking down traditional state boundaries and made real the notion of a global village, in which a normal person in Nairobi has similar avenues to fame and influence as his or her counterparts in the Western world. As such, connecting young people in Africa is a way of enhancing their voice and influence in the world. In the internet age, the voice of Africa's young people can be as loud and as influential as their connectivity permits.

Second, the sudden popularity of this fictional superhero among a people who are seriously engaged in topical political discussions around constitutionalism, an ailing coalition government, International Criminal Court investigation of the tragic post-election violence, and preparations for the 2012 elections, is more allegorical than accidental. It is a tacit expression of the people's desperate need to break the monotony of Kibaki-Raila or PNU-ODM political antics. It also provides a glimpse into the desire of young Kenyans to have a strong, charismatic leader with extraordinary qualities.

As with the exploits assigned to this fictional hero, it is clear that the masses have high expectations of the person they would accept as their superhero: someone with a Midas touch who will transcend ethnicity, turn the country's fortunes around, eradicate corruption, stem the tides of gangsterism and bridge the chasm between the haves and have-nots. The people have etched their requirements on the wall of expectation and it seems to read: 'Let he who wants to lead us possess the qualities of a superhero.'

The standard set by Kenyans in their fictional superhero continues to pose a challenge not only to Kenyan leaders but to Africa as a whole. This is because his exploits continue to spiral in so many imaginations across the continent and across the world. 

Environmental governance and climate change in Africa

Legal perspectives



Rose Mwebaza and Louis J Kotzé

Environmental governance and climate change in Africa – legal perspectives

Africa's major economic sectors are very vulnerable to the current climate sensitivity. This vulnerability is aggravated by existing developmental challenges such as endemic poverty, complex governance, limited access to capital and ecosystem degradation, as well as complex disasters and conflicts.

This monograph covers the general overview of climate change issues in some African countries; approaches to mitigate the harmful effects of climate change in certain African countries; and climate change adaptation.

Authors: Rose Mwebaza, Louis J Kotzé

Player and Referee – Conflicting interests and the 2010 FIFA World Cup™

Conflict between public and private interests is recognised as one of the most prevalent challenges at all levels of public life in South Africa. Mega events, like the FIFA 2010 World Cup™, provide fertile ground for this. The event is a catalyst for competition – not only among football stars, but also among the many contenders in the private and public sectors who seek to benefit from the state tenders that flow from such highly financed events.

Player and Referee presents six detailed case studies that explore the dynamics that give rise to conflicts of interest.

Authors: Eddie Botha, Stefaans Brümmer, Andrew Jennings, Gcina Ntsaluba, Rob Rose, Karen Schoonbee, Sam Sole, Collette Schulz Herzenberg.

Player and Referee

Conflicting interests and the 2010 FIFA World Cup™



Edited by Collette Schulz Herzenberg



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The Open Society Initiative for Southern Africa (OSISA) and the *Mail & Guardian* newspaper are the lead partners of the Multiplying Faces, Amplifying Voices programme. The **Multiplying Faces, Amplifying Voices** programme is an initiative of the African Women's Foresight Network; a network of prominent African women led by Graça Machel.

Nominations will be called for throughout the African continent for women excelling in the fields of Business, Agriculture, Media, Science and Technology.

Profiles of the women will appear in the *Mail & Guardian*. The special Awards evening will be held in March 2011 to celebrate International Women's day.

For more information or to send your nominations please contact:

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