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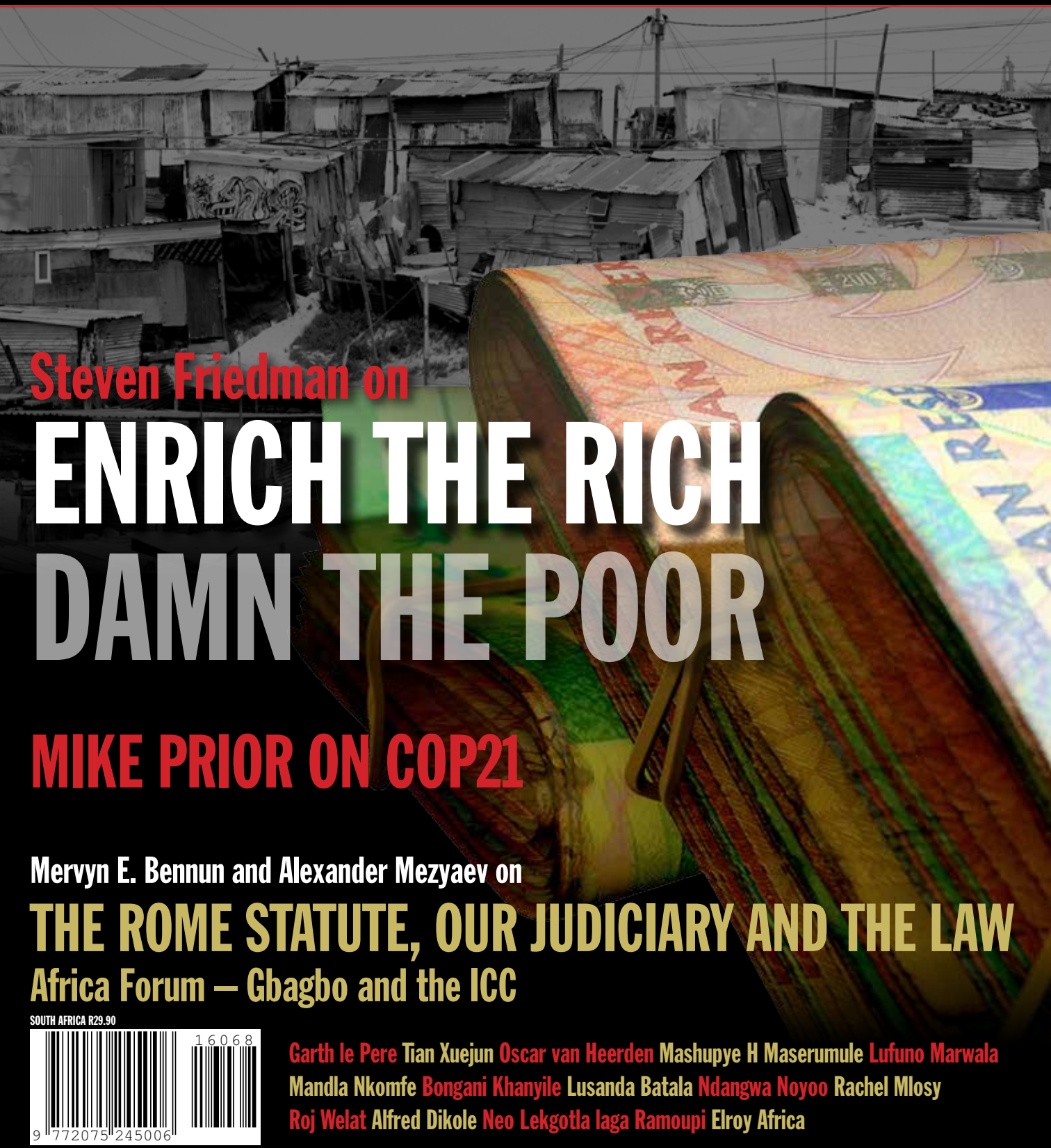
The Thinker

A PAN-AFRICAN QUARTERLY FOR THOUGHT LEADERS



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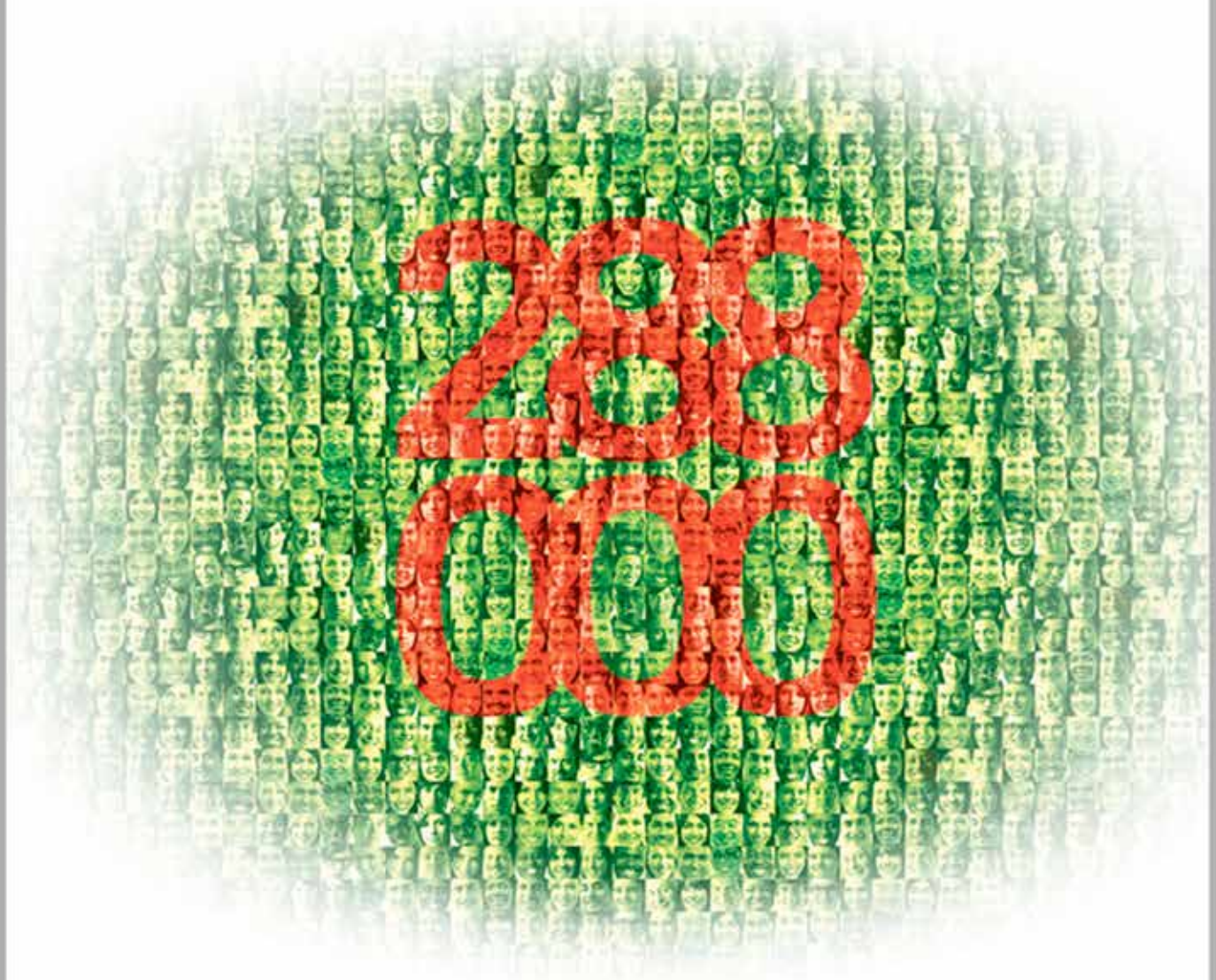

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MARKET DEMAND STRATEGY

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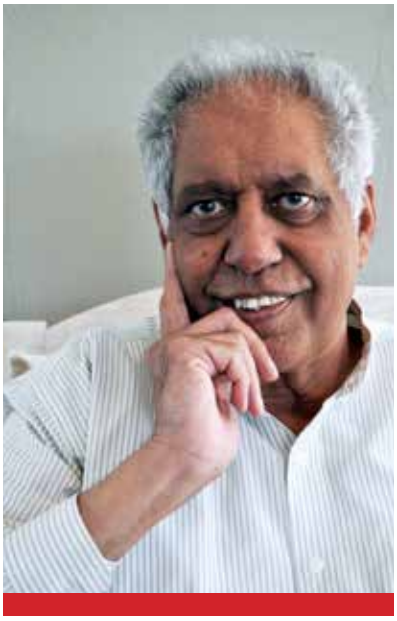


We should never forget that the United Nations declared Apartheid a Crime against Humanity.

The odious system and ideology of apartheid has its roots in colonial and imperialist occupation, slavery and the super exploitation of black labour power. What must remain etched in our collective memory, as well as that of future generations is that Africans were denigrated and their humanity, dignity and self-respect thoroughly undermined. There was a monstrous onslaught on the colour of their skin, the shape of their noses, the texture of their hair and their languages, culture and traditions.

In the chilling words of the architect of apartheid, Hendrick Verwoed, Africans had no right to be above the status of "hewers of wood and drawers of water."

The ANC, South African Indian Congress, South African Coloured Peoples Organisation (later Coloured People's Congress), South African Congress of Trade Unions, Congress of Democrats, South African Communist Party, Pan-Africanist Congress, Black Consciousness Movement, Black Sash and many other civil society structures conducted a long, bitter and bloody struggle against the apartheid regime.

The first democratic elections in 1994 offered our people and the country the opportunity to be at the forefront in the world wide struggle against all forms and manifestations of racism.

Apartheid South Africa was the fountain-head of world racism and a beacon for bigots and racists in every corner of the globe. The new democratic South Africa must become the fountain-head of anti-racists internationally and a beacon of hope, inspiration and mobilisation for anti-racist forces in the world.

Individual and personalised acts of racism in the social media space, at the workplace, in sports and culture and in our educational institutions must be exposed and defeated in a resolute and decisive manner. However, as important as this is, we must concentrate our efforts on confronting and fighting, with no holds barred, institutional and structural racism.

In this issue we carry an article by Oscar van Heerden calling for a sustained campaign against structural and institutional racism. Oscar draws our attention to an article by Pierce de Vos, a constitutional law expert on structural racism. Oscar say De Vos is "talking about the assumptions with regards to white superiority and whiteness as the assumed norm of goodness and competence that is diffused and infused in all aspects of society, including our history, culture, politics, economics and our entire social fabric.

"Because of the way in which structural racism normalises white dominance and superiority, it entrenches and perpetuates inequalities in power, access, opportunities and treatment." Van Heerden also points out, "Institutional racism is not always manifested knowingly and intentionally: the power of it lies exactly in its ability to make itself invisible. This allows its beneficiaries to deny its existence (and genuinely believe in its absence) while benefiting from it." We also publish an article by Mashupye Masermule on the discourse of decoloniality and the transformation of Universities.

Institutional racism is deeply embedded in the private sector of our country. Big business including multinationals are dominated and controlled by a minority of white males. Blacks do not occupy key decision-making positions in those institutions. As Steven Friedman pointed out in *Business Day* (27 .01.2016):

> *What they cannot show is that the racial make-up of those who take economic decisions has shifted: only a few black people are in powerful positions in the economy. A sign of the stubbornness of the past is that, in all areas of national life, 'reasonable, rational' people who insist that they harbour no racial prejudices simply assume that whites are superior. Race remains our central problem not because some are evil and others good, but because patterns built up over centuries do not disappear simply because the Constitution says everyone is equal. It takes painstaking effort to create a society that is fair to all regardless of race.*

In Western Europe and the USA we note with apprehension the growing political influence of racist organisations and leaders in Hungary, Poland, Croatia, the UK, Switzerland, Sweden, Denmark, the Netherlands, Slovenia, Macedonia, Norway, France, Bulgaria and Germany. In the latter country Alternative for Germany (AFD), a racist anti-immigration party, made huge gains in the elections in March 2016 in key states such as Saxony Anhalt, Baden Wuerrtenberg and Rhineland-Palatinate. As Christine Buchhlozas, an

MP from the left-wing Die Linke in the German Parliament wrote: " We must expose what this new party is. It is not just a harmless, right-wing populist organisation, but a melting pot where different right-wing currents meet and where there's an active intervention of fascists. But we also have to build alliances on the ground and mobilise against the racist tide." (*The New Age*, 08.01.2016)

What is to be done?

In an address to a conference on Racism held under the auspices of the South African Human Rights Commission on 15 March 2016, former President Thabo Mbeki said:

It would seem obvious that to combat this subjective racism we must, among others:

- *strengthen the capacity of our host, the Human Rights Commission, expeditiously to identify, expose publicly and condemn all manifestations of racism, including anti-Semitism;*
- *strengthen the legal capacity of the State to act against racism, including its punishment as unacceptable hate language, with the necessary respect for the constitutionally protected freedom of speech;*
- *ensure that our school curricula, from the lowest Grade, and the curricula in higher education inculcate in the young the values of non-racism and non-sexism and the celebration of our common humanity;*
- *work to cultivate a common patriotism among all our people, based on recognition of the reality that we share a common destiny, that none can truly succeed without the other, and that we are to one another, our brothers' and sisters' keepers;*
- *strive to ensure that all our national institutions and organised formations, both public and private, properly manifest healthy cooperation within a context representative of our demographic diversity; and*
- *insist that especially Government and the Corporate Sector do everything possible within their own structures, and continuously, such that they serve as exemplars of what it means to have a non-racial society, expressive of the values of true national reconciliation, non-racialism and non-sexism. …*

It would therefore seem obvious that given the fact that all of us are keenly interested to accelerate progress towards the creation of a truly non-racial and non-sexist society, we must do at least three things.

The first of these is that we must carry out a comprehensive and critical assessment of our policies and programmes during our years of democracy to try to discover and determine why we have not made greater and more decisive progress in terms of the eradication of the legacy of colonialism and apartheid as this bears on the strategic matter of the creation of a non-racial and non-sexist society.

The second is that we should then engage the challenging question – what are the genuinely new things we must do, treating the matter of the continuing pernicious existence of material racism in our country as truly a national emergency which does not allow for an approach of business as usual!

The third is that we should encourage action on a process which was visualised by the National Planning Commission in the Diagnostic Report it issued in 2001, when it said:

'A national dialogue involving all South Africans is required to arrive at solutions that are credible and implementable…Tackling (the) challenges (facing the country) will require the involvement of all sectors of society.'

It is obvious that the ANC and its branches should take the lead in developing a mass-based anti-racist movement comprising of different political formations, trade unions, faith-based organisations, youth, women, and student bodies, NGOs, CBOs and foundation bearing the names of icons and our revolutionary struggle, Nelson Mandela, OR Tambo, Thabo Mbeki, Ahmed Kathrada and Steve Biko. Such a movement can than link up with anti-racist progressive forces throughout the world.

That great African-America freedom fighter W E B Du Bois said with outstanding foresight: "The problem of the twentieth century is the problem of the colour-line – the relation of the darker to the lighter races of men in Asia and Africa, in America and the islands of the sea. It was a phase of this problem that caused the Civil War."

It is a sad commentary of the world we live in to say with Du Bois that the problem of the twenty first century is still "the problem of the colour-line".

Free all Palestinian prisoners

A powerful pillar of our revolutionary struggle was international solidarity. In building the anti-apartheid movement the campaign to "free Nelson Mandela and all other political prisoners" had a prominent place.

In enhancing and promoting international solidarity with the embattled people of Palestine we should intensify the campaign for the release of Marwan Barghouti and other Palestinian freedom fighters languishing in Israeli prisons. Below we publish a table courtesy of the Ahmed Kathrada Foundation, graphically illustrating some details of these prisoners

Palestinian Prisoners February 2016
Total: 7000

- Administrative detainees: 670
- Child prisoners: 406 (108 <16)
- Female: 60
- Palestinian legislative council members : 6
  - Prisoners before Oslo:30
  - Prisoners serving life sentences: 503
  - Prisoners serving more than 20 years: 30
  - Prisoners serving sentences above 20 years: 459
  - Prisoners serving more than 25 years: 15

From the above figures it is clear that the Israeli-Apartheid regime is an oppressive anti-democratic, anti-human rights regime. The international community must not only denounce the crimes of the Israeli regime but actively mobilise for the freedom and independence of our Palestinian brothers, sisters, mothers, fathers and children. ■

CHOOSING AN INVESTMENT MANAGER

During periods of market volatility, choosing an investment manager to entrust your savings with can have important implications for your future wealth. In fact, over the long term, even small differences in investment style can result in large variations in cumulative returns. So how would one go about making such an important decision?

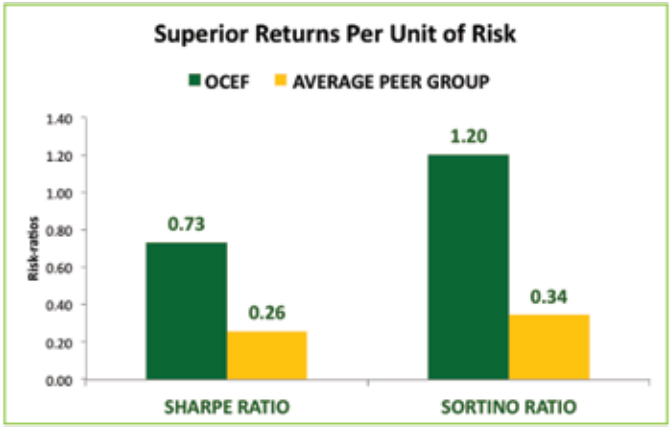
In general, there are a few important factors to consider when choosing the right manager for you. Over and above a simple assessment of fees, it is crucial that the characteristics of the manager being considered suit your specific needs and objectives.

Along these lines, one should have a good idea of what the manager's investment philosophy entails from the outset. A clear and consistent investment philosophy is important in ensuring that the performance of investment returns is consistent through the various market cycles. By contrast, an incoherent or complex philosophy can result in highly random and inconsistent investment performance, with the future value of your savings being left largely to luck. A second important factor to consider is the legal environment in which the manager operates. Too often, it is simply assumed that one's savings are being handled according to tightly controlled regulatory practices. However, this is not always the case, as various product providers can fall under vastly different regulatory regimes. For example, a retail investor invested in an unregulated investment scheme will not benefit from the same protections afforded to collective investment schemes. This can have important implications for the safety of your wealth in the event of fraudulent or Ponzi-like behaviour.

Finally, and undoubtedly one of the most crucial indicators of an investment manager's ability to protect and grow your wealth, is their performance track record over the long term. On this front, there are at least two points to consider. The first is whether the manager has been able to generate returns in excess of the benchmark, or target, over a suitably long period of time, for example, over 10 years. Ultimately, the objective should be to grow your real wealth, and a manager who has failed to generate truly significant real returns over the long term has clearly failed to meet this objective. Secondly, it is equally important to view these returns in the context of the amount of risk being taken by the manager. Higher Sharpe and Sortino ratios over the long term can give one a good sense of this, as they capture the excess returns generated by a specific fund per unit of risk incurred. Through these simple guidelines, individuals can form a strong view on the suitability of any investment manager to meeting their wealth management needs.

A Word on Financial Matters

At Oasis, we pride ourselves in having built our track record on the back of a simple yet powerful investment philosophy. Committed to the protection and growth of our client's wealth, we aim always to deliver consistent real returns, so that our clients' standard of living increases materially over time. We do this through the constant identification of high quality yet undervalued investments across the global and domestic financial markets, providing long term real wealth creation and strong downside protection. We operate within a highly regulated environment across our entire product range, so that our clients have the peace of mind that their hard-earned savings are protected by global best regulatory practices.



Source: Oasis research, January 2016

Most importantly, across the various asset classes and within our balanced fund solutions, the Oasis product range has generated a long term track record that has benefitted our clients immensely over the previous 18 years. The Oasis Crescent Equity Fund, for example, has delivered a cumulative return of 2267% since its inception through January 2016, compared to a peer group average of 756%. Furthermore, the excess returns generated by this fund per unit of risk are significantly in excess of the fund's peer group, with a Sharpe ratio at 0.73 versus a peer group average of 0.26. Through this consistent outperformance, we have continued to add value to our clients' wealth and standard of living.

On 28 February 2016 at the IFN awards ceremony in Dubai, Oasis collected two accolades. The first was for Oasis Crescent Capital, recognized as the Best Islamic Asset Management Company from Africa, and the second was for the Oasis Crescent Global Property Equity Fund which was named the best fund globally in its sector. These awards follow on from the Thomson Reuters Lipper award given to the Oasis Crescent Global Low Equity Balanced Fund, which received the best fund over a three year period earlier in February. The awards bear testament to Oasis consistent investment approach and ability to deliver value over the long term.

From 1 March 2016, a range of Retirement Fund Tax Reforms have come into effect. Oasis' client services team as well as its financial advisors will be able to assist you with all your questions around the changes, and we also encourage you to visit the Oasis Crescent YouTube Channel to view videos which explain how these changes can impact you.

Have You Made Provision for Important Life Events?

Saving for Education

Saving for a Family Home

Saving for Retirement

Whatever your savings needs may be, Oasis has a wide range of investment products for every life stage and risk profile. Contact your financial advisor for more information on how these products can help you prepare for important events in your life or call Oasis on 0860 100 786.

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All contributing analysts write in their personal capacity

Elroy Africa is a progressive governance and development professional. His academic background is in Politics and Industrial Sociology (UCT). He has a Master's degree in Town and Regional Planning (University of KwaZulu Natal). His personal history is embedded in student - civic activism in Cape Town. His interest is in local governance and urban development. Elroy has served as Director-General in the Department of Cooperative Governance. Presently he is project manager for the establishment of a Border Management Agency in South Africa.

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Mervyn Bennun as a schoolboy, sold *The Guardian* in Sophiatown with Joe Slovo and Ruth First. He was at the Congress of the People – where he spoke on the Freedom Charter's section "The Doors of Learning and Culture shall be Opened" when the police raided. He went to the UK in 1965 and completed his LLM at the London School of Economics, joined the Law Faculty of Exeter University in 1968. He was an ANC member for about 50 years, and an activist in the Anti-Apartheid Movement. He returned permanently to South Africa in 2000. He was an Honorary Research Associate in the Law Faculty at UCT from 2000 - 2009, publishing on criminal justice issues.

Seitebaleng Alfred Dikole is a committed cadre of the ANC and the SACP. He has an LLB from the University of the North West. Currently he is a member of the SACP Provincial Executive Committee (North West) and a director for Youth Development in the Department of Social Development in the North West.

Prof Steven Friedman (D Litt) is a political scientist and is Director of the Centre for the Study of Democracy at Rhodes University and the University of Johannesburg. Over the past decade, he has written on the relationship between democracy, social inequality and economic growth as well as the significance of citizen action. Friedman is the author of *Building Tomorrow Today*, a study of the South African trade union movement, and *Race, Class and Power – Harold Wolpe and the radical critique of Apartheid*. He was the editor of *The Long Journey* and *The Small Miracle* (with Doreen Atkinson) on the South African political transition.

Bongani Khanyile has an LLB degree and a Post Grad Diploma (Corporate Law) from the University of Johannesburg. He is an Industrial Relations Consultant at Labournet and is currently studying for his Master's degree in Labour Law. He is a Board member of the Alberton Child Welfare and with his wife runs the Bongani Khanyile Evangelistic Association.

Dr Garth le Pere is extraordinary Professor at the University of Pretoria and senior associate of MISTRA. He received a BA from Rutgers University (USA) and did post-graduate work in political science at Yale University from which he holds MA, MPhil and PhD degrees. His areas of interest include international relations theory, multilateral trade and emerging markets, South African foreign policy, the politics of Africa and the Middle East, and China's increasing role in the world. He has just completed a book, *China's Global Emergence: Reconstructing Power after the Cold War*.

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Professor Alexander Mezyaev is the Head of the Department of International Law, University of Management, TISBI, Kazan, Russia. He is the Editor-in-Chief of the *Kazan Journal of International Law and International Relations*. Mezyaev is a member of the International Law Association and a former member of the Association of Defence Counsel Practicing before the International Criminal Tribunal for the Former Yugoslavia. He has written eight books and many academic articles.

Rachel Mlosy has a Bachelor of Commerce Degree in Economics and Statistics (2014) and B Com(Hons) in Economics 2015 at Nelson Mandela Metropolitan University (NMMU) South Africa. Rachel is planning to start a Master's Degree in Economics in 2016 at the same university. This article is part of her dissertation for her Honours Degree.

Mandla Nkomfe is a special adviser to the minister of finance. He was previously MEC for Finance in the Gauteng Provincial Government. He has a Bachelor of Arts, a Post-Graduate Diploma in Management and a Master of Management (MM) in Public Policy and Development Administration. He has an Advanced Programme

certificate in International and Central Banking. He is a member of the Provincial Executive Committee (PEC) of the ANC in Gauteng.

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Michael Prior is a British economist with over 30 years' experience as an international consultant specialising in energy and environment projects and policy development. He has worked in several African countries including Angola, Ethiopia, Uganda and Sudan. Michael was previously Director of the Stockholm Environment Institute at York University where he initiated continuing work in South Africa on environmental issues.

Oscar Van Heerden completed his PhD & Master's studies at the University of Cambridge (UK) from 2006-2010. He lectures in IR at the University of the Witwatersrand (Part time) and was also a post-doctoral fellow at the University of Johannesburg under the NRF chair for International Relations and African Diplomacy. He is currently the Executive Manager: Strategic Support for a Johannesburg City Municipal entity. He is a fellow of the Mapungubwe Institute for Strategic Reflections (MISTRA) and a trustee of the Kgalema Mothlante Foundation. His interests are International Political Economy, with an emphasis on Africa, and SADC in particular.

Roj Welat is a Kurd who specialises in working towards peaceful and democratic transition in Kurdistan and the Middle East. As the representative of the Kurdistan Communities Union in South Africa he regularly briefs decision-makers in government, political parties and NGOs on developments in the Middle East.

Ambassador Tian Xuejun has a long and distinguished career in the Department and Ministry of Foreign Affairs of the People's Republic of China. From 1985 to 2004 he served in various capacities in Kuwait, Bangladesh and the Ministry of Foreign Affairs. In 2004 he was appointed Ambassador Extraordinary and Plenipotentiary of the PRC to the Hellenic Republic. Prior to coming to South Arica he served as Director-General (2007-2012) of the Department of Personnel in the Ministry of Foreign Affairs of the PRC. Earlier last year he was appointed Ambassador Extraordinary and Plenipotentiary of the PRC in South Africa. ■

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Enrich the Rich; Damn the Poor!

Economic policy debate takes us forward only when it focuses on what is needed to grow our economy in a way which includes many more people.

By Steven Friedman

There is something eerily reminiscent of very ancient religions in current mainstream South African economic discussion. It centres not on what is good for the country but on what is needed to appease an unseen force which is meant to be all powerful unless it is obeyed without question. The force in question is the dreaded ratings agencies, those all-powerful economic arbiters of good and evil with the power to decree whether economies live or die. Their instrument of punishment, of course, is junk status, whose victims are banished to the hopeless eternity of economic despair.

Our current economic debate, therefore, is less of an exchange of views than it might appear. In the mainstream, it consists purely of a discussion of what is needed to appease the-ratings-agencies-who-must-be-obeyed and of exactly how much appeasing they need. It specifically excludes what is normally understood as an economic debate, a discussion of what is needed to provide the greatest good for the greatest many whose livelihood depends on this economy. It is assumed that avoiding junk status is the only rational goal of everyone who understands basic economics.

A very large section of this debate, particularly prominent in the media and among mainstream economic commentators, takes the argument one step further. It very specifically turns the cargo cult behind this thinking (a cargo cult is a 20th century belief by inhabitants of very isolated islands that the prosperity they enjoyed in World War Two would be restored if they performed the rituals needed to get the Americans to appear out of the sky again) into a very thinly veiled attempt to turn back decades of social progress.

Their story currently centres on the events of December, in which then Finance minister Nhlanhla Nene was fired. So angered were the agencies, and that other deity, the foreign investor, that they needed instantly

to be appeased. A heavy price was required to win them over – the only way to appease them was to dash onto the rocks progressive income tax (by raising VAT), a national minimum wage, national health insurance, the jobs of most public servants and the pay packets of the few who were left after the carnage. Anything less and the terror of junk status was inevitable.

It does not have to be this way. A downgrade to junk would obviously be a problem for the country – but it is not the kiss of death. It would make economic recovery more difficult but would not remotely rule it out. Nor, if it came to that, is avoiding a downgrade worth abandoning the first and most important principle of economic discussion mentioned earlier – that what we ought to be discussing is what this economy needs to grow and meet the needs of South Africans. In that discussion, the country's grading in international markets is an important factor but it is just that – a factor. Similarly, we really need to stop talking about the markets and those who invest in them as South Africans do: whether in scorn on the left or reverence on the right and in the centre, they are treated as a machine when they are, in reality, the sum total of decisions by people with lots of money who are subject to the same prejudices and loss of judgement as other people.

This article will begin by discussing the lobby which wants to sacrifice working people and the poor because it is the most common, and at the moment most influential, form of the worship of supposedly unstoppable and inhuman forces which are in reality nothing of the sort. It will then try to show why we can do better – not only by rejecting demands to make the poor pay for politicians' mistakes but also by refusing messages which tell us that we are forced by impersonal forces to do some things rather than others even if what needs to be done fits our needs rather than their desires.

Never Waste a Good Crisis: December 9 and the Rich People's Lobby

Probably the most extreme case of the use of a small group of people from other countries to scare South Africans into submission is the rich person's lobby which emerged after the sacking of former Finance minister Nene.

Oddly, while this lobby championed the rich, it does not seem to have been the work of rich people. While it is customary to assume that lobbies which speak on behalf of the affluent are doing the bidding of big business, there is no evidence that this lobby emerges out of business at all – it no doubt has its supporters in business but clearly also has its opponents too. It is particularly strong among right of centre economists, commentators and, in abundance, the media (on most economic policy issues, any difference between the view of right-wing economists and that of the media is entirely coincidental). As indicated earlier, this lobby's pitch centres around powerful and very angry foreigners who are deeply scarred by Nene's dismissal and who must, therefore, be begged to forgive us for the President's sin. Those who are to be sacrificed in order to appease these irate economic potentates are the poor, who usually lack the muscle to fight back. Fortunately, Finance minister Pravin Gordhan ignored them, of which more later. But the claim that we need to appease angry foreigners and that the only way we can do this is to cut government programmes which serve the poor is still very much with us and seems likely to remain so for a very long time.

> "If it is possible to please the agencies in a way which does not impose severe costs on the economy, this is worth doing. But, if doing so means damaging ourselves, it is surely better to endure the downgrade."

The lobby is more interesting for what it tells us about the state of the economic debate than what it says about the economy (which is nothing at all since its claims are not backed by evidence or argument beyond the tired mantra that the markets must be obeyed). It does not propose its preferred course of action because it is best for the economy but because it is imposed on it by two forces who are portrayed in an extremely misleading way – the ratings agencies and foreign investors. Both are portrayed as machine-like forces which must be obeyed if our economy is to grow. This line of thinking is very popular and looks quite neat in theory. Its only problem – besides the moral issue of blaming the weakest, rather than those who are most responsible, for problems – is that it is entirely wrong.

First, the agencies, whose mediocrity is forgotten amidst a religious awe which places them at the centre of the exercise of wisdom and power. On the wisdom front, their ratings are assumed to be the result of an entirely rational process in which highly skilled analysts interpret top quality data using criteria known openly to all. On power, the agencies are assumed, through their ratings, to be able to shape the economic future of nations, large and small. This reverential awe is usually bestowed only on those agencies based in the US or Europe, not those which originate from Japan and Korea. This is no surprise because the ratings of those agencies which are held in awe are the product of a highly subjective process in which the most important voices are not those of logic or evidence, but that of local business people, in particular bank economists. The idea that the agencies are academic institutions, filled with geeks who are simply interested in where the evidence takes them, is a quaint fiction. They are businesses and their decisions tend to reflect that reality far more than evidence or logic.

Since 2008, the agencies have become far more negative about those they rate; this does not reflect worsening economic conditions – it means that they have become more negative than they used to be given the same set of figures. This has nothing to do with changes in actuarial science and everything to do with the fact that they made over-optimistic calls about

major companies (such as Lehman Brothers), have been threatened with legal action in the US because their incompetence allegedly cost investors lots of money, and are therefore frantically covering their backs in the hope of preventing a repetition.

Having spoken to the American and European agencies for several years, I became increasingly convinced that they were not very interested in evidence and argument. Coincidence presented me with a chance to test how interested they were. During one of their visits, I offered them research findings which contradicted a statement they had made. I offered to send them the findings and they agreed. It then occurred to me that simply handing over the research might turn out to be futile since I would have no way to check whether they bothered to consult it. So I decided to wait to see whether they asked for it – as the Asian agencies had done in previous exchanges. They did not – they showed no interest in the research at all. I then decided that I would not see them again since there is little value talking to people who have no interest in listening. This reached the ears of the media and I landed up on business television, debating the head of one of the agencies based here. The presenter asked me at one point what the agency could do to convince me that they were serious. I said the research was still available and the agency head was welcome to get it from me – I never heard from him.

If the initial incident could have simply been a case of busy people forgetting, the failure of a senior official to show willingness to consult evidence to which they did not have access in any other way, and which challenged their claims, surely shows bias. There is also hard evidence that the agencies take their lead from local business opinion – one local business person boasted in a private discussion that they had persuaded the agencies to downgrade this country in the hope of changing policy. So the local business people who warn repeatedly of what we have to do to please the agencies are really telling us what is needed to do to please them. The ratings agency attitudes of which they warn are actually their own attitudes – which they could, of course, change if they wanted.

The Power of Exaggeration

But, whatever you think of the agencies' ethics or competence, don't they exercise great power? Yes and no. It is true that the agencies wield entirely unjustified power not because their arguments convince anyone but because many companies' systems are programmed in such a way that they automatically sell bonds or shares if a country or company is downgraded to non-investment level or 'junk' status. So it is preferable not to be downgraded: it does become more difficult to borrow money at interest rates which are affordable and it does commonly prompt capital outflows – money which leaves the country. The question, however, is whether meeting that fate is so damaging that just about any sacrifice is worth it to avoid being downgraded to 'junk'. The emphatic answer is no. Most mainstream discussions about 'junk' status imply that it is a fate used for states with non-functioning economies. Even if it is conceded that some 'junk' countries have workable economies when they acquire this status, it is assumed that they don't have them for very long after the downgrade – those who endure this fate, it is claimed, are usually forced to beg for IMF hand-outs and to hand over the management of the economy to the Fund's bureaucrats.

"In fact, the list of economies which have experienced 'junk' status at one time or another includes Turkey, Brazil, South Korea and India. While some are currently in difficulty, others such as India are turning in growth rates of more than 7%."

In fact, the list of economies which have experienced 'junk' status at one time or another includes Turkey, Brazil, South Korea and India. While some are currently in difficulty, others such as India are turning in growth rates of more than 7%. Certainly, none of them would be considered economic basket cases. So a downgrade makes a country's economic life more difficult – it does not end it. It is also worth mentioning that one frequently heard argument – that doing what the agencies are presumed to want is vital if we are not to lose our sovereignty to the IMF – is a little odd because it argues, in effect, that we should give up our sovereignty to ratings agencies to avoid giving it up to the IMF. Finally, and most importantly, people who know the financial markets will tell you that the capital outflows which are predicted to flow from a downgrade here have already happened as a reaction to December 9. So a significant part of what we are supposed to be preventing has already happened – and we are still here, even if our economy is in a poor state.

All of this suggests that, if it is possible to please the agencies in a way which does not impose severe costs on the economy, this is worth doing. But, if doing so means damaging ourselves, it is surely better to endure the downgrade. It also means that, whatever the agencies do, our prospects of resuming growth depend on relations between government and local business, not in finding the (non-existent) magic formula for appeasing the agencies. And, since much of what the mainstream commentators fear has already happened, the really important impact of a downgrade to 'junk' may be political, not economic. If this country is a guide, the real function of ratings agencies is not to pass credible judgments but to play into domestic politics. Until now, they have been used to force the government to make changes which many in positions of authority would prefer not to make – it has been an important lever nudging policy and practice in particular directions. But what if the country is downgraded to junk (which seems likely)?

The lever will then, of course,

have been stripped of its power – a downgrade may then be used to achieve precisely the opposite purpose to that for which it has been used up to now. It could be argued then that, seeing that we have already been downgraded to 'junk', we have no reason to pay any more attention to what the agencies and their allies think. More dangerously for the country, it could be used to discredit Gordhan and the Treasury – it will be said that they failed to prevent a downgrade and should therefore be replaced by someone more competent, such as a politically connected back bencher. The irony of using ratings to impose policy approaches is that the threat of a downgrade works. But actually downgrading to junk could deprive the downgrade of its power – and might actually achieve precisely the opposite of the stated intention by freeing those who want to endanger the economy from the constraints imposed by the rating. There is only one way to make this very unlikely – to persuade the key interests in the economy that life does not end with a downgrade and that the same considerations which prompted an alliance in the cities to demand a credible finance minister would apply if the economy is downgraded to 'junk'.

An equally misleading aspect of this argument is the message it sends on foreign investors. Again, the impression is created here that we are dealing with an entirely machine-like force which we have no power to influence. In reality, foreign investors are even more likely to be influenced by local business people than the ratings agencies. This flows from a common sense reality. If foreigners are considering a significant investment, the people they are most likely to consult are local business people – so again, since it seems reasonable to assume that foreign investors will be heavily influenced by what their local peers say, again what is passed off as foreign opinion is really local sentiment. Much of what we read about investment is also based on a fallacy – that investors invest when countries tick a check list of economic correctness and political pliability. In reality, investors base their decisions on the only issue which matters to them – will they make money? This depends not on meeting check lists but on whether the economy is doing well enough to generate yields on investment – and that depends on whether local investment has been stimulating growth. Here and everywhere, the key to growth is local investors – foreigners come in if the economy is already growing, they do not make it grow in the first place.

In both cases, then, what is presented as a discussion about what foreigners think is really about what locals in business think. Many lessons flow from this but the one most relevant in this discussion is that economic policy debate takes us forward only when it focuses on what is needed to grow our economy in a way which includes many more people. Central to this is a discussion between South African economic interests, what they want and what they are willing to compromise to get it. What the ratings agencies or the 'foreign investor' think is far less important than what the country needs, whatever the people from elsewhere do.

"More dangerously for the country, it could be used to discredit Gordhan and the Treasury – it will be said that they failed to prevent a downgrade and should therefore be replaced by someone more competent, such as a politically connected back bencher."

The 2016 Budget: A way forward?

It is surely not reading too much into this year's budget to argue that it adopted, broadly, the approach recommended here.

Gordhan and his team were clearly under pressure to use the budget to sacrifice the poor on the altar of politicians' mistakes. They decided not to listen and so the budget avoids the dramatic pro-market measures which the economic correctness lobby demanded. On the other hand, Treasury did take seriously the views of business, with whom it had been talking in the period just before the budget in an attempt to restore confidence. And so the budget proposed not an assault on any one interest group but a partnership approach in which the major economic actors worked together, motivated by a common interest in growth. While labour is not currently in a fit state to participate effectively, the door has been left open for it to do this as and when it feels ready.

This clearly is an approach which gives priority to the country's need for growth over the next few decades over the demand for a quick fix which would have won glowing media approval, excited those who adore the agencies, and created so much conflict and so many barriers to opening the economy to the talents and energies of many who have been excluded thus far that it would, in not too long a time, have wiped out all the pluses and would have created a set of new minuses far more than a downgrade.

Whether the approach will work is an important discussion but one which is too complicated to be squeezed into an analysis of broader issues. At this point, the crucial issue to remember, which the budget's framers seem to have understood, is that the verdicts of the ratings agencies are only one of a range of factors which need to be considered when government and private interests discuss how to boost growth in a way which includes many more people than are now part of the economic mainstream. What government, business and labour have been doing needs to change and so there are good reasons for reform, whatever the agencies say. But all the major interests will move us forward only if they devote far more time to what they need to do to relate more effectively to each other than on how to appease those supposedly all-powerful ratings businesses from across the water. ■

Reasons to be cheerful?

For over 20 years, world governments have repeatedly dodged the issues raised at Rio. GHG emissions are 50% higher and increasing. Climate change is real and now. The majority of those who will be flooded from their homes are alive now.

By Michael Prior

Writing in the flood-torn north of England, it is difficult to find reasons to be cheerful, particularly about climate change. Our floods pale in comparison with those in Tamil Nadu or the Pacific North West of the USA, but what each has in common is that they result from record rainfall and that they kill people. Such events will provide little solace to drought-stricken southern Africa as the crops wither and, again, people die. Nor to California, now entering its fifth year of drought.

But here is just a small reason to be optimistic: that finally the message has been fully received. Climate change is not just something that will happen in some future time but is here and now. Climate change is happening as the weather becomes wilder and less predictable. There is no way now to stop it completely. The world has already gained 1 degree since pre-industrial times and it will continue to warm until greenhouse gas (CHG) emissions stabilise with respect to CHG sinks. But there is now almost universal recognition that the problem is real and has to be tackled. (The important holdouts to this recognition will be addressed below).

Just one aspect of the impacts and how they vary with projected temperature rise is worth examining. The great icecaps of Antarctica and Greenland are melting and the sea-level is gradually rising. According to scientists at Climate Central[1]

> *Carbon emissions causing 4 degrees Celsius of warming (7.2 degrees Fahrenheit) – a business-as-usual scenario – could lock in enough eventual sea level rise to submerge land currently home to 470 to 760 million people globally. Carbon cuts resulting in the proposed international target of 2 °C warming (3.6 °F) would reduce the rise locked in so that it would threaten areas now occupied by as few as 130 million people.*

In terms of cities, at 4 degrees, Shanghai, Tianjin and Dhaka will essentially disappear whilst at 2 degrees, only parts of them would be submerged. Africa has fewer coastal megapolises than Asia, but cities such as Durban and Dar es Salaam would also largely vanish.

Even these predictions have been challenged by the respected climate scientist, James Hansen, who together with a group of scientists have suggested that an even greater 5 metre rise may occur by 2100, effectively wiping out many coastal cities in the USA including New York and Miami City. Naturally, this has raised concern even amongst US citizens.

The message that climate change is real was certainly that which came from the Convention of the Parties (COP) 21 in Paris which culminated in wild cheering from the massed ranks of the delegates as the session chair declared that the so-called Paris Agreement had been accepted by all countries. Is this another reason to be cheerful? Let us start at the beginning.

“At 4 degrees, Shanghai, Tianjin and Dhaka will essentially disappear whilst at 2 degrees, only parts of them would be submerged. Africa has fewer coastal megapolises than Asia, but cities such as Durban and Dar es Salaam would also largely vanish.”

COP 21 gets its ungainly title from the fact that the ‘parties’ are those countries which have signed the United Nations Framework Convention on Climate Change (UNFCCC), the treaty negotiated in 1992 in Rio de Janeiro which came into force in 1994 and which set in train succeeding annual conferences. The key passage in this Convention is Article 3(1) which states that Parties should act to protect the climate system on the basis of "common but differentiated responsibilities", and that developed country Parties should "take the lead" in addressing climate change.

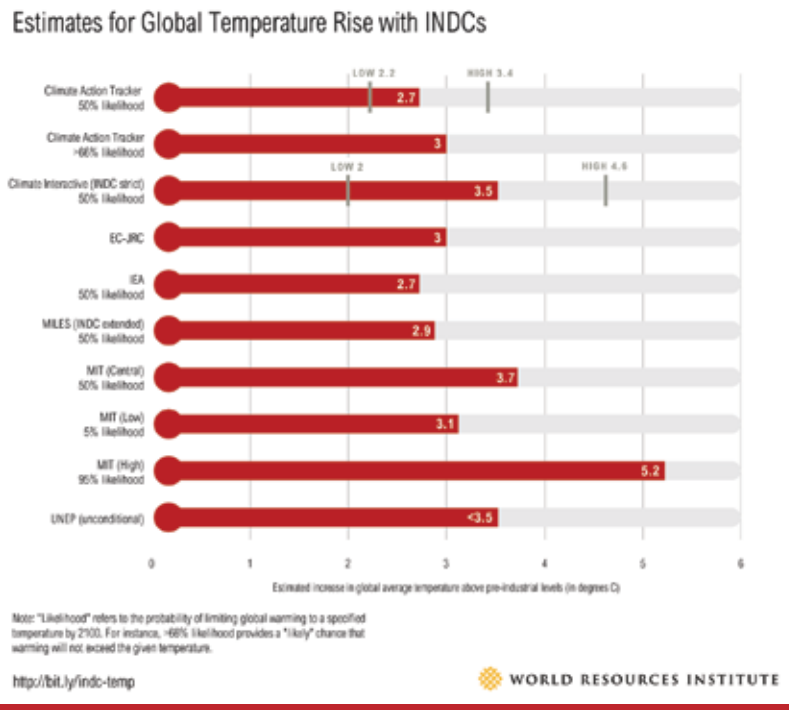
Under Article 4, all Parties make general commitments to address climate change through, for example, climate change mitigation and adapting to the eventual impacts of climate change. Article 4(7) goes on to state that:

> *The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.*

This distinction between ‘developed’ and ‘developing’ countries was clearly defined in UNFCCC in annexes which name 24 countries, essentially all members of the OECD, who have special responsibilities both for reducing GHG emissions and also for assisting all other countries in their efforts to mitigate and cope with climate change. This list and the associated differentiation of responsibilities has been unchanged since. In 1997, these so-called Annex 1 countries agreed the Kyoto Protocol which laid down specific targets for GHG emissions. Kyoto was eventually ratified by all Annex 1 countries with the crucial exception of the USA. It remains legally in force for a rather smaller group of countries who have signed up for extended targets up to 2020 under the so-called Doha amendment. Although Kyoto has had some limited success, by 2012 global GHG emissions were 50% higher than in 1990 despite all the fine words of the Rio Convention.

In 2009, COP 15 in Copenhagen ended in what is often seen as chaos and discord. Since then there have been successive COPs in Cancun, Durban and Doha[2] together with largely meaningless gatherings in Warsaw and Lima. Essentially, all grappled with finding a successor to the Kyoto Protocol faced with the clearly voiced view that the USA,

FIG 1: AGGREGATED CONSEQUENCES OF INDC EMISSIONS



China and India would not sign any treaty binding them to emission reduction; China and India basing themselves on the distinctions of the UNFCCC and the USA on its legislative hostility to any international treaty overseen by an outside agency. The result of this extended process was a commitment by all the Parties to submit Intended Nationally Determined Contributions (INDCs) that is non-binding statements as to what countries proposed themselves to do to limit the climate change catastrophe.

The content of INDCs varied widely between countries, some containing rather specific targets for reducing emissions, others expressing more or less credible and quantitative aspirations to at least reduce their rate-of-growth of GHG emissions. A summary of one of the most detailed and in many ways one of the most important INDC, that of China[3] is that it intends:

- To achieve the peaking of carbon dioxide emissions around 2030 and making best efforts to peak early;
- To lower carbon dioxide emissions per unit of GDP by 60% to 65% from the 2005 level;
- To increase the share of non-fossil fuels in primary energy consumption to around 20%; and
- To increase the forest stock volume by around 4.5 billion cubic meters on the 2005 level.

Bearing in mind the fact that China is acknowledged as being the largest global emitter, the assertion that it will continue to increase its emissions, probably until 2030, might be seen as a problem. However China makes it clear that despite its emission status it remains committed to the basic principle of UNFCCC asserting that:

> *Developed countries shall, in accordance with their historical responsibilities, undertake ambitious economy-wide absolute quantified emissions reduction targets by 2030. Developing countries shall, in the context of sustainable development and supported and enabled by the provision of finance, technology and capacity building by developed countries, undertake diversifying enhanced mitigation actions.*

The differentiation asserted by China is essentially a moral one: that the developed countries as defined in Rio are historically responsible for much of the stock of GHG in the atmosphere and they became rich on the basis of the cheap coal and oil which gave rise to this. It is their responsibility to reduce emissions and to assist poorer countries to become wealthier if not by cheap fuel then by financing some alternatives.

This is too complex an issue to develop further here. What is not in doubt is the overall result of putting together all the submitted INDCs, as it is clear that these show a large gap between the aggregate INDCs emission levels and those required to keep change below 2°C. The official aggregation[4] accepts this but fights shy of converting estimated emissions into a warming impact. Fig. 1 shows a number of the external compilations of this put together by the World Resources Institute. Although different compilations of the sometimes obscure INDCs come up with different results, overall the impact is similar: that under the aggregate INDCs (which remember are supposed to be countries' best efforts to limit emissions and not binding promises), global temperature is likely to rise by at least 3°C. The difference between this likely outcome and the much-touted target of the Paris Agreement of 2°C is simply expressed: at 3°, 432 million city-dwellers are flooded; at 2°C, 'only' 280 million without counting the tens of millions flooded out of low-lying country areas including the virtual wiping out of Bangladesh and the Netherlands. It was one of the successes of the COP spin-doctors that it was the estimate of 2.7°C, very much the lowest of all the estimates, that was floated out to most of the world's assembled media.

The fact is that much of the alleged success of COP 21 relied upon a collective amnesia with regard to what had already been accepted at previous conferences and not acted upon. For example the body of the Paris text states with regard to financial contributions from developed to developing countries:

> *Sec 54 Further decides…prior to 2025 the Conference of the Parties…shall set a new collective quantified goal from a floor of USD 100 billion per year, taking into account the needs and priorities of developing countries.*

This sounds impressive until it is recalled that in 2010 at the Cancun conference, it was stated that Conference:

> Sec 98 Recognises that developed country Parties commit, in the context of meaningful mitigation actions and transparency on implementation, to a goal of mobilising jointly USD 100 billion per year by 2020 to address the needs of developing countries.

So in fact the applauded Paris Agreement actually puts off by 5 years the task of mobilising $100 billion compared with the Cancun commitment. This selective amnesia is something which occurs annually at COP meetings as was noted here in 2012 when the Durban COP also reinvented the same fund.[5]

At Cancun it was agreed to set up the Green Climate Fund (GEF) which should channel "a significant share of new multilateral funding". This agency was set up with its own headquarters in South Korea, a staff of around 80 and an annual budget of over $17 million. According to the GEF "As of November 2015, the Green Climate Fund has raised USD 10.2 billion equivalent in pledges from 38 state governments" which it hopes will, in due course, be changed into actual disbursement. Well, it's a start…

The other much-trumpeted achievement of the Paris Agreement was to fix a target of 1.5°C as a long-term goal. Again this was agreed at Cancun in 2010, when it was recognised that the COP "also recognises the need to consider…strengthening the long-term global goal…to a global average temperature rise of 1.5°C."

So did COP 21 do anything new? Rather bizarrely, one genuinely new agreement (Sec. 122) was *"that two high-level champions shall be appointed to act on behalf of the President of the Conference of the Parties to facilitate through strengthened high-level engagement in the period 2016-2020 the successful execution of existing efforts and the scaling-up and introduction of new or strengthened voluntary efforts, initiatives and coalitions …* Just why the President backed by existing structures is unable to do this is unclear but, hey, it all helps.

FIG 2: POWDER RIVER BASIN MINE

It is very hard to find anything else that was really new coming out of Paris except, as noted above, what seemed to be a genuinely sincere commitment to doing something even though, as we have seen, current promises in the INDCs fail to live up to this commitment. The idea seems to be that the various national delegations will go back to their countries and hold their leaders feet to the fire in order to obtain tougher action. Two big obstacles stand in the way of this.

First, coal. The western industrial revolution was built on cheap coal and the same can be said of the main developing country GHG emitters, China and India. These two countries plus the USA and, despite its green credentials, Germany, remain wedded to the fuel as for caseload electricity generation as seen in Table 1.

TABLE 1: COAL USE IN POWER GENERATION

	% of coal in power generation
USA	39
China	76
India	71
Germany	47

FIG 3: GERMAN OPENCAST MINE

In all these countries, coal comes from huge reserves of mostly surface coal. In the USA for example, the Powder River Basin covers an area of about 60,000 m^2. and contains many billions of tonnes of coal, mostly poor quality, in seams which dwarf the largest vehicles. Coal use in the US power system started to increase in 2014 having declined for some years previously.

Similarly, in Germany, huge opencast brown-coal mines dominate power generation and the German government's decision to close existing nuclear stations following the Fukushima episode means that national CHG emissions have actually increased with greater reliance on brown-coal. In the last five years, the proportion of coal in power generation has increased to 47.5% from 46.1% in the preceding five years.[6] In 2013, Germany began to operate 5300 MW of coal-fired plant, the biggest increase for twenty years.

In India, the dominant state-owned producer, Coal India, appears to be sticking to its plans to almost double production to around a billion tonnes by 2020 and coal use has steadily gone up by five percentage points since 2000.

Only China, already by far the largest coal producer at nearly 4 billion tonnes, appears to take reduction in coal use seriously, partly because of the serious air-pollution problems besetting the country's cities and partly because it has a major nuclear-power programme. Although Chinese used of coal does steadily increase, its proportional use in power has drifted down from nearly 80% in 2011.

Nuclear power remains the central issue in this equation. It has been argued here in *The Thinker*[7] that only an increased use of nuclear power alongside greater use of renewables such as solar and wind-power will push enough coal out of power systems to seriously impact on its use. The arguments will not be rehearsed again but the case of Germany, the country which has been a leader in the introduction of renewable energy, suggests that reduction in the use of nuclear inevitably leads to greater coal use. But after Fukushima, nuclear has become a no-go area for some major GHG emitters in Europe and America and to a significant extent in India which until quite recently had extensive plans for nuclear expansion.

"Only China, already by far the largest coal producer at nearly 4 billion tonnes, appears to take reduction in coal use seriously, partly because of the serious air-pollution problems besetting the country's cities."

The second big reason not to be too cheerful is the upcoming US presidential elections in which the two leaders in the race for the Republican nomination, Donald Trump and Ben Carson, are open climate-change deniers. Now it may seem inconceivable that either of these could become US President in 2016 and certainly Hillary Clinton appears to have a small but clear margin over any Republican opponent. However, if a small swing does occur and the US fruit-cake industry triumphs, then hope for the USA adhering to any climate-change agreement would be remote. It should be remembered that the USA remained adamant in its refusal to ratify the Kyoto treaty, the only initial signatory to do so.

However, let us conclude on a genuine reason to be cheerful. Despite refusing to shift from the fundamental distinction of Rio between developed and developing countries and producing an INDC that maintained growth in GHG emissions, there is every indication that the Chinese leadership is serious about climate change and that they do mean what is stated in their INDC: to make "best efforts to peak early", that is before 2030. One reason for this is that, perhaps because there are significant numbers of trained engineers and scientists in their ranks, they understand climate change and can appreciate that if Shanghai, Tianjin and Hong Kong begin to disappear beneath the sea there will be greater repercussions, particularly in the financial sector, than just a few million homeless. Think, for example, of all those lost mortgages.

"The two leaders in the race for the Republican nomination, Donald Trump and Ben Carson, are open climate-change deniers."

The second reason is that China is now the leading world manufacturer of both photovoltaic panels and nuclear power stations. In a sense, they have it both ways in the great debate on nuclear versus renewables. The U.K., once a developer of no less than five distinct civil nuclear systems, has been forced to accept involvement by the China Nuclear Power Corporation in building a new station at Hinkley Point. The same company is believed to want to build its own design of station at other parts of the U.K. China hopes to build no less than 110 stations by 2030 and is keen to become nuclear builder to the world, a not-unreasonable ambition despite the current anti-nuclear sentiment.

If there is a note of pessimism running through this article, it is because for over 20 years, world governments have repeatedly dodged the issues raised at Rio. GHG emissions are 50% higher and increasing. Climate change is real and now. The majority of those who will be flooded from their homes are alive now. It will take more than the two COP 'champions' to turn this around but concerted public pressure might succeed. Let's try to be cheerful.[8] ■

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THE AFRICAN UNION'S AGENDA 2063

Building Block or False Dawn?

Agenda 2063 represents a promise for an alternate path to growth and development in a continental environment of great uncertainty and many imponderables.

By Garth le Pere

Agenda 2063 represents a transformative vision of the African Union (AU) to achieve "an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena."[1] In celebration of the Organisation of African Unity's 50th anniversary, African Heads of State and Government gathered in Addis Ababa in January 2015 at the AU Assembly's 24th Ordinary Session to adopt Agenda 2063 as a collective charter to move the continent inexorably in the direction of enhanced growth and development over the next five decades. It is a charter that not only provides a vision but also a normative and strategic framework to transform Africa based on a programmatic logic of five ten-year operational plans. Importantly, the programmatic logic which underpins Agenda 2063 is informed by the following seven aspirations:

- a prosperous Africa, based on inclusive growth and sustainable development;
- an integrated continent, politically united and based on the ideals of Pan-Africanism;
- an Africa of good governance, democracy, respect for human rights, justice, and the rule of law;
- a peaceful and secured Africa;
- an Africa with strong cultural identity values and ethics;
- an Africa whose development is people-driven, especially relying on the potential of its youth and women; and
- an Africa which is a strong and influential global player and partner.

These aspirations are meant to find practical expression in goals such as a high standard of living and quality of life for all citizens, modern and liveable habitats, transformed and climate-resilient economies, and a modern agriculture sector. There is also an emphasis on the promotion of democratic values, capable institutions and responsible leadership, full gender equality and an empowered youth, as well as an Africa that no longer relies on aid but which can finance its own growth and development.

This level of ambition raises first order questions about whether Agenda 2063 will be a solid building block for addressing and alleviating decades of poverty, misrule, and underdevelopment or like the mythological Cassandra, endowed with the gift of prophecy, it represents yet another false dawn that will dash the hopes of African citizens? Indeed, Agenda 2063's vision of transformation and its aspirations reflect and draw on a long history and extensive experience of development philosophy, planning matrices, and strategic frameworks – all of which have the economic and political integration of Africa at their core.

Primary among these have been the Lagos Plan of Action (1980), the Abuja Treaty (1991), and the New Partnership for Africa's Development (2001). More recently, these have been complemented by sectoral schemes such as the Comprehensive Africa Agriculture Development Programme, the Programme for Infrastructure Development in Africa, and the Minimum Integration Programme. Africa, however, has laboured under a planning and policy paradox: the more growth and development frameworks were adopted, the more their outcomes and efficacy have been dictated by the law of diminishing returns. There is now a sobering admission that "post-independence plans yielded only modest results in terms of their overarching objectives of structural transformation. The failure of plans was largely due to discontinuities in the planning process, stemming from political instability, institutional and bureaucratic weaknesses, poor plan design and implementation, and over-ambitious targets."[2]

This context and these points of reference are important, since they form a richly textured predicate upon which the success or otherwise of Agenda 2063 will be judged, evaluated, and

assessed both in terms of the changing African and global landscapes and the challenges that these throw up. There are a few germane considerations in this regard. These are considered below.

The changing continental and global environment

Firstly, since the 1990s, Africa has faced a rapidly changing continental and global environment whose systemic dimensions and structural characteristics have major implications for the future of its countries and citizens. These changes are also part of an era of greater structural vulnerability which pose a complex matrix of challenges. These relate, on the one hand, to how the global commons is managed at a time of growing asymmetries between rich and poor countries, now amplified by the global financial crisis and turbulence in global markets.

Then, on the other, there is the spectre which always looms large of Africa's global marginalisation, externally-defined dependency, and weak bargaining power. The discourse about investing greater normative relevance and promoting institutional renewal in the structures of global governance – mainly the United Nations, the World Bank, the International Monetary Fund, and the World Trade Organisation – thus points to the historical erratic workings, inadequacies, and pathologies in the rules, procedures, norms and standards of international organisations. These, in a sense, have conspired to bring the continent to its current juncture.

This juncture is coterminous with the tectonic shifts which have accompanied the end of the Cold War and ushered in an era of globalised interdependence which, paradoxically, has sharpened the cleavages and divisions among countries particularly those that are least developed and remain at the margins of the global political economy.[3]

It is against this background that global governance has become a sad metaphor for inequality, exclusion, and domination and provides the general context for the continued underdevelopment of countries of the global South.

Stagnating economic growth

Secondly, and related to this, much of Africa – but especially its 35 least developed countries – confront the prospect of stagnating economic expansion as a consequence of the cyclical downturn of global commodity demand, especially from China. This already has had profound effects on social welfare, political stability, and citizens' daily livelihoods as well as the capacities of African states and governments to address these. The mutually reinforcing impulses of economic growth and structural change which are at the heart of Agenda 2063 are very weakly articulated in practice and policy and this renders the social landscape equally blighted.

There are, therefore, persistent symptoms that reproduce themselves in a manner that subject growing numbers of Africa's citizens – especially its youth – to a Hobbesian future where life tends to be nasty, brutish, and short. More than 40 per cent of Africa's 1.1 billion citizens continue to struggle with impoverished circumstances like access to basic healthcare, nutrition, primary education, and employment. The UN estimates that the number of Africans living on US$1.25 a day increased from 290 million in 1990 to 414 million in 2010, mainly due to demographic phenomena where the number of people rising out of poverty cannot keep abreast of population growth.[4]

This pattern of poverty is compounded by disease pandemics, militarised and gender violence, politicised ethnicity and sectarianism, religious extremism, destructive conflicts, and environmental degradation.

The record of state performance in Africa

Thirdly, we have to consider the roles of African leaders and their governments as agents of growth and development. Because of their colonial and post-colonial progenies, African countries are very heterogeneous in their political cultures and identities but all of them are united in their survival and bolstering the African state in its current form in the midst of often disorderly and atavistic domestic, regional, and continental politics.[5] As has been argued, "political leaders in Africa are concerned with building and managing the state out of chaos and ambiguity."[6]

This poses particular problems and challenges for the aspirations and goals of Agenda 2063 since there is an imperative to 'domesticate' and incorporate its letter and spirit into national and regional planning so as to ensure effective and judicious implementation of projects and programmes. However, the record of state performance in Africa is not an encouraging one.

The prevalence of informal practices and neo-patrimonial forms of governance causes the post-colonial African state to be weak, fragmented, and unconsolidated to such an extent that "…it continues to survive as a concrete fiction."[7] This institutionalised informality has impaired the ability of states to pursue people-centred growth and development in a manner that accounts for the authoritative use and accountable management of a country's resources and extends the ruling regime's legitimacy across the body politic.

The prominence of personal rule and 'Big Man' politics accounts for real and latent authoritarian tendencies often accompanied by corruption and the ubiquitous appropriation of public resources for personal gain and aggrandisement.(8) For example, it has been reported that over the last five decades, Africa has lost an estimated US$1 trillion due to illicit financial flows and the current figure is about US$50 billion annually.[9]

On the positive side, the third wave of democratisation, starting around 1990, more or less coincided with the erosion – but not the elimination – of autocratic rule in Africa. This provided the strategic opening for democracy, popular participation, and the rule of law to develop a tap-root in African politics that could be nurtured. Nevertheless, sclerotic political cultures and despotic traits continue to co-exist with positive governance changes and institutional reforms.[10]

In what should be salutary for Agenda 2063, the vast majority of African countries have opened their political systems or acceded to some

form of multi-party rule or democratic pluralism. Many have instituted substantive reforms, ranging from token liberalisation to the irrevocable adoption of democratic norms and institutions as well as constitutionally-based forms of government. In particular, authoritarian regimes have come under greater pressure as they experienced increased civil society mobilisation from below and often vocal repudiation of personal rule, elite domination, and official corruption.[11]

Another positive development is the extent to which the African Peer Review Mechanism has brought vertical pressure to bear on African countries to better conform to prescriptions of better governance, transparency, and accountability.

Characteristics of Africa's economic growth

Finally, economic conditions which are so important to the realisation of the Agenda 2063 vision are likely to remain difficult. While Africa's recent average growth of 5 per cent has been extolled as one of the fastest growing regions, for the most part it has been non-inclusive, rentier-driven, commodity-based, and hardly provides an impetus for economic transformation. African countries will continue to experience real challenges related to domestic sources of resource mobilisation, wealth generation, and welfare redistribution. But they also have to contend with the economic impact and knock-on effects of capital flows, terms of trade, levels of employment, investment, and savings rates, the political climate, and the regulatory environment. These have been too unstable and variable to attain the much needed poverty reduction targets that were set out in the MDGs and now revised in the Sustainable Development Goals (SDGs).

If African countries do not take advantage of repositioning their economies in local, regional, and global markets to spur their own growth and development through industrial upgrading and moving up value chains in services and intermediate goods, the continent will remain vulnerable to the vagaries of international forces over which it has little control.[12]

This repositioning has to take account of several factors that arise from the current ethos of capitalism.[13] The first is that global trade has evolved in a more liberal direction, with extensive reductions in tariffs and quantitative restrictions on the movement of goods and services; however, the growth of global trade co-exists with protectionism, neo-mercantilist tendencies, and limited market-access in developed countries of the North but especially the European Union. China, meanwhile, is bound to go through its own difficult period of structural adjustment in order to cope with a constricting macro-economic environment. This has serious consequences for the continued marginalisation of poor African countries.

Secondly, the growth of international capital markets has resulted in the removal of restrictions on financial flows but this mobility has also increased the volatility of financial markets to which recurrent crises and the 2008 global financial meltdown bear eloquent testimony.

Thirdly, there have been shifts in the paradigm of development assistance and finance which have raised policy and normative questions about their effectiveness in engendering growth and alleviating poverty. This helps to explain the decline in general levels of aid to Africa, exacerbated of course by monetary and fiscal retrenchments in developed countries in the wake of the financial crisis.

And fourthly, the technological revolution has demonstrated its potential to raise productivity, innovation, and standards of living but access often depends of the quality of human capital and the absorptive capacity of the economy, areas where many African countries have serious deficits.

There are thus risks, threats, and opportunities for Africa in how it shapes its responses to the challenges of growth and development that arise from the aspirations of Agenda 2063. This resonates in particular with how its countries and citizens plan for a collective future and common destiny. The continent is locked into a complex dialectic of continuity and change that demands greater responsiveness and accountability by African governments and inter-governmental institutions in declaring the moral equivalent of war against poverty, corruption, and underdevelopment. However, there is also an international context where the costs of policy failure, resource and material deficits, weak political leadership, and institutional paralysis are all magnified and more pronounced. Against the backdrop and experience of more than five decades of planning orthodoxy in Africa, Agenda 2063 represents a promise for an alternate path to growth and development in a continental environment of great uncertainty and many imponderables. However, only if it is anchored in a more meaningful and purposive social contract between states and citizens will time tell whether Agenda 2063 has been a real building block or yet another false dawn. ■

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AMBITIOUS GOALS AND BRIGHT PROSPECTS

A New Era for China-Africa Relations

The Summit not only addressed the urgent needs of China-Africa relations, but also reflected the common aspirations of all African countries and the historical choice of developing countries to strengthen cooperation.

By Tian Xuejun

On 2-5 December 2015, Chinese President Xi Jinping paid a state visit to South Africa and co-chaired with President Zuma the Forum on China-Africa Cooperation (FOCAC) Johannesburg Summit. At the Summit, the two Presidents, together with many other leaders across Africa, set ambitious goals for China-Africa cooperation, launching a new era for China and Africa's comprehensive strategic partnership.

Win-win cooperation for common development

The world is going through profound and complex changes. The international community is moving towards the implementation of the United Nations 2030 Agenda for Sustainable Development. African countries are actively pursuing the ambitious goals of the Agenda 2063. China is working to realise its "two centenary goals" – building a moderately prosperous society in all respects by 2021, when the CPC will celebrate its 100th anniversary; and building an affluent, strong, civilised and harmonious modern socialist country by 2049, the 100th anniversary of the People's Republic of China. This new era of development opportunities presents FOCAC with a renewed sense of purpose and greater potential for progress. With this background, last year, leaders from both China and African countries agreed to upgrade the sixth ministerial meeting of FOCAC to a summit, so as to deliberate on China-Africa cooperation under the new circumstances. The Summit not only addressed the urgent needs of China-Africa relations, but also reflected the common aspirations of all African countries and the historical choice of developing countries to strengthen cooperation.

The FOCAC Johannesburg Summit under the theme of "Africa-China Progressing Together: Win-Win Cooperation for Common Development" is the first FOCAC summit held on the African continent. It was an important occasion where Chinese President Xi Jinping, over 50 African heads of state, heads and representatives of governments, and the Chairperson of the African Union Commission, gathered together for

discussions on their friendly relations and plans for common development. During the closing ceremony, President Xi remarked, "the Summit was perfect and extraordinary. Together we have made history." The Summit adopted two outcome documents, namely the Johannesburg Declaration and the Johannesburg Action Plan (2016-2018), laying out comprehensive plans for China-Africa relations and practical cooperation for the next three years through a range of new ideas and policies, which can be summarised as 1+5+10.

The number one represents the new positioning of China-Africa relations, which both sides have agreed to upgrade from a new strategic partnership to a comprehensive strategic partnership.

The number five represents the "Five Major Pillars" for China-Africa relations. These include equality and mutual trust in politics, win-win cooperation in the economy, mutually enriching cultural exchanges, mutual assistance in security and solidarity, and coordination in international affairs. These five major pillars will consolidate the foundation for China-Africa cooperation and further sustain the comprehensive strategic partnership between China and Africa.

The number ten stands for "Ten Key Cooperation Plans" between China and Africa. In the course of next three years, China will commit US$ 60 billion to Africa to carry out practical cooperation in ten major fields, including industrialisation, agri-cultural modernisation, infrastructure, finance, green development, trade and investment facilitation, poverty reduction and people's welfare, public health, people-to-people exchanges, as well as peace and security.

These aforementioned new frameworks provide blueprints to guide China-Africa practical cooperation over the next three years, demonstrating the comprehensive and strategic significance of China-Africa relations. We are confident that China-Africa relations will be lifted to a new height.

The establishment and development of FOCAC

FOCAC was first established in 2000 as a mechanism of collective dialogue and practical cooperation, the purpose of which is to strengthen China-Africa friendly cooperation and develop joint responses to global challenges. Over the past 16 years, China-Africa relations have moved along the fast track and achieved remarkable progress in our all-directional, cross-sector, and multi-tiered practical cooperation. China has announced and carried out close to 30 economic and trade measures for China-Africa cooperation, benefiting countries across Africa. Under the framework of the forum, China announced that it would provide Africa with a loan of US$ 35 billion, to support the construction of more than 400 projects in African countries. China exempted the tariff on 97% of the commodities exported to China from the 31 least developed African countries. Chinese enterprises were encouraged and supported to construct more than 20 economic and trade cooperation zones in Africa. China has helped African countries with the construction of 400 facilities related to people's daily life including a demonstration centre of agricultural technology, schools and hospitals. China also dispatched about 20,000 agricultural experts and medical-team members, provided 55,000 scholarships for programmes in China and trained 83,000 people in various skills. Driven by the measures of FOCAC, China-Africa economic and trade cooperation witnessed rapid growth. In 2014, the volume of China-Africa trade volume reached US$ 222 billion, 21 times that of 2000. China's stock investment in Africa was over US$ 30 billion, more than 60 times that OF 2000. At the same time, the field of cooperation was expanded, and the structure was optimised. The manufacturing industry, finance, tourism, telecommunication, aviation, broadcasting and TV have become new highlights of economic and trade cooperation. Working together, China and Africa have achieved win-win development.

> "In the course of next three years, China will commit US$ 60 billion to Africa to carry out practical cooperation in ten major fields, including industrialisation, agricultural modernisation, infrastructure, finance, green development, trade and investment facilitation, poverty reduction and people's welfare, public health, people-to-people exchanges, as well as peace and security."

In the area of people-to-people and cultural exchanges, programmes such as the China-Africa Cultural Cooperation Partnership, China-Africa Joint Research and Exchange Plan, and China-Africa People-to-People Friendship Action have become leading brands among our peoples. Forty-six Confucius Institutes and 23 Confucius Classrooms have been established in Africa and 24 African countries have become destinations for outbound Chinese tourist groups. In 2014, 3,062,400 Chinese nationals made Africa the first stop of their trips, registering a year-on-year increase of 61.6%. The mutual visits by our cultural personnel, and the joint organisation of art festivals and exhibitions over the years have also further expanded China-Africa friendly relations.

In the area of peace and security cooperation, China has remained an active participant, supporter, and contributor for peace and security in Africa. We strongly support the principle that African people solve Africa's problems in an African way. China has spoken up for Africa at the UN Security Council and is the largest contributor of peacekeepers among the five permanent members of the UNSC, with close to 3,000 Chinese peacekeepers

involved in 16 peacekeeping missions in Africa. Since 2009, China has been consistently engaged in escort missions in the Gulf of Aden and the waters off the coast of Somalia, and has to date escorted over 6,000 Chinese and foreign ships in the area.

In international cooperation, China and Africa have extended mutual understanding and support. At international fora, the two sides have maintained close cooperation on global issues such as the reform of the global governance regime, climate change, the 2030 Agenda for Sustainable Development and counter-terrorism, and upheld the common interests of China and Africa and other developing countries.

Stronger mutually beneficial cooperation serves both Africa and China.

With similar historical experiences, the same development goals, and common strategic interests, China and Africa have always been a community of shared destiny, giving our cooperation a dimension of natural complementarity. As developing countries, China and African countries are at similar stages of development. This makes the experience and technologies of China more relevant to Africa's situation and practical needs. China respects the independent will of African countries and supports the development of Africa in good faith, never attaching any political conditions, interfering with domestic affairs, or imposing our own will on African countries. In the "Ten Key Cooperation Plans" proposed by the Chinese government during the FOCAC Johannesburg Summit, we have identified industrialisation, agricultural modernisation, and the development of public health systems as priorities for China-Africa cooperation, focusing on the three bottlenecks of Africa's development – infrastructure, people, and capital. We hope that by resolving the long-standing problems of jobs, food and health, we can contribute to the systemic solution of Africa's development challenges and put the continent on an independent and sustainable development path.

First, we will implement the China-Africa industrialisation plan. China will actively promote industry partnering and production capacity cooperation between China and Africa and encourage more Chinese enterprises to make business investments in Africa. China will build or upgrade a number of industrial parks in cooperation with Africa, send senior government experts and advisers to Africa and set up regional vocational education centres and schools for capacity building. China will also train 200,000 technical personnel and provide 40,000 training opportunities for African personnel in China.

Second, we will implement the China-Africa agricultural modernisation plan. China will share its experience in agricultural development with Africa and transfer its readily applicable technologies. We encourage Chinese enterprises to engage in large-scale farming, animal husbandry, and grain storage and processing in Africa to create more local jobs and increase farmers' income. China will carry out agricultural development projects in 100 African villages to raise rural living standards, send 30 teams of agricultural experts to Africa, and establish a "10+10" cooperation mechanism between Chinese and African agricultural research institutes.

> "Even faced with the 2008 financial crisis that swept the globe, China never said No to Africa. With the concerted efforts of both sides, the commitments made during the FOCAC Beijing Summit and the ministerial conferences have been honoured as scheduled and some even over-delivered."

China will also provide RMB 1 billion of emergency food aid to the countries affected by El Nino.

Third, we will implement the China-Africa infrastructure plan. China will step up mutually beneficial cooperation with Africa in infrastructure planning, design, construction, operation, and maintenance. We support Chinese enterprises' active participation in Africa's infrastructural development, particularly in sectors such as railways, roads, regional aviation, ports, electricity and telecommunications, to enhance Africa's capacity for sustainable development. We will also support African countries in establishing five transportation universities.

Fourth, we will implement the China-Africa financial plan. China will expand its RMB settlement and currency swap operations with African countries, encourage Chinese financial institutions to set up more branches in Africa, and increase its investment and financing cooperation with Africa in multiple ways to provide financial support and services for Africa's industrialisation and modernisation drive.

Fifth, we will implement the China-Africa green development plan. China will support Africa in bolstering its capacity for green, low-carbon and sustainable development and support Africa in launching 100 projects to develop clean energy, protect wildlife, promote environment-friendly agriculture and build smart cities.

Sixth, we will implement China-Africa trade and investment facilitation plans. China will carry out 50 aid-for-trade programmes to improve Africa's capacity, both "software" and "hardware", for conducting trade and investment. China will support African countries in enhancing law enforcement capacity in areas such as customs, quality inspection and taxation. We will also engage in cooperation with Africa in standardisation, certification and accreditation and e-commerce. China is ready to negotiate with countries and regional organisations in Africa comprehensive free trade agreements covering trade in goods and services and investment cooperation and will increase its imports of African products.

Seventh, we will implement the

China-Africa poverty reduction plan. China will increase its aid to Africa and carry out in Africa 200 "Happy Life" projects as well as poverty reduction programmes focusing on women and children. We will cancel outstanding debts in the form of bilateral governmental zero-interest loans borrowed by the relevant least developed African countries that matured at the end of 2015.

Eighth, we will implement the China-Africa public health plan. China will help Africa strengthen its public health prevention and control system as well as its capacity building by participating in the building of the African Centre for Disease Control. We will support pace-setting cooperation between 20 Chinese hospitals and 20 African hospitals, and upgrade hospital departments. We will continue to send medical teams to Africa and provide medical assistance such as the "Brightness Action" programme for cataract patients and maternal and child care. We will provide more anti-malaria compound artemisinin to Africa, and encourage and support local drug production by Chinese enterprises in Africa to increase Africans' access to medicine.

Ninth, we will implement the China-Africa cultural and people-to-people plan. China will build five cultural centres in Africa and provide satellite TV reception to 10,000 African villages. We will provide to Africa 2,000 educational opportunities with diplomas or degrees and 30,000 government scholarships. Every year, we will sponsor visits by 200 African scholars and study trips by 500 young Africans to China, and train 1,000 media professionals from Africa. We support the opening of more direct flights between China and Africa to boost our tourism cooperation.

Tenth, we will implement China-Africa peace and security plan. China will provide US$60 million of grant to support the building and operation of the African Standby Force and the African Capacity for the Immediate Response to Crisis. China will continue to participate in UN peacekeeping missions in Africa and support African countries' capacity building in areas such as defence, counter-terrorism, riot prevention, customs and immigration control.

China has the willingness and capability to comprehensively fulfill its commitment

These China-Africa cooperation plans announced during the Summit are unprecedented in terms of a wide range of areas, large amount of input and substantial proposals, which have attracted the attention of Africa and the whole world. Some people doubt that, in the context of the sluggish world economic recovery and slowdown in China's economy, these plans can be fully implemented. My answer to this question is YES.

The history of China-Africa cooperation proves that China always honors its promises with good faith. President Xi Jinping pointed out in the Johannesburg Summit that no matter how the international political landscape may evolve, China and Africa will remain brothers, treat each other as equals and trust and support each other. No matter how the international economic landscape may evolve, our fundamental goal of achieving win-win cooperation and common development will not change. No matter how the time and social development may change, the spirit of China-Africa cooperation based on mutual understanding to achieve common progress will not change. No matter what threats or challenges may emerge, the firm resolve of China and Africa to meet challenges in solidarity will not change. In 1970s, the Chinese people assisted the construction of Africa's strategic projects like Tazara Railway against great odds. Even faced with the 2008 financial crisis that swept the globe, China never said No to Africa. With the concerted efforts of both sides, the commitments made during the FOCAC Beijing Summit and the ministerial conferences have been honoured as scheduled and some even over-delivered. Regardless of changes in the world political and economic landscape, China will always keep its promises to Africa, and the sound development momentum of China-Africa cooperation will remain as strong as ever.

> "Regardless of changes in the world political and economic landscape, China will always keep its promises to Africa, and the sound development momentum of China-Africa cooperation will remain as strong as ever."

At present, China's economy has entered a "new normal" of economic restructuring, transformation and upgrading. In 2015, China's GDP increased by 6.9%, which contributed more than 25% to world economic growth. With the sound progress in comprehensively deepening reform and economic restructuring, China will, by pursuing innovative, coordinated, green, open and shared' development, create another miracle in economic transformation featuring steady growth and diversified driving force, which will provide a stronger impetus and broader space for China-Africa cooperation. At the same time, African countries are actively advancing industrialisation and agricultural modernisation. China and Africa meet each other's demands and enjoy respective competitive edges, thus presenting a historic opportunity to align our strategies and comprehensively explore cooperation in various fields. As the core of the Summit, the ten major plans put the key cooperation areas that concern us and that we need the most as the priorities. These carry the expectations of both sides. As long as we work together, all these plans will be carried out in a most effective way.

To ensure the successful implementation of these ten cooperation plans, China decided to provide a total of US$60 billion of funding support. It includes US$5 billion of grant and zero-interest loans to help African countries in the fields such as poverty reduction, health, agriculture and ecological protection

President Xi Jinping and President Zuma

and help improve African people's livelihood and welfare; US$35 billion of loans of a concessional nature on more favourable terms and an export credit line which focuses on supporting African countries to construct some large projects, and helping African countries to improve infrastructure and create more social and economic benefits; the China-Africa Fund for Production Capacity Cooperation with an initial contribution of US$10 billion (already launched on January 7th, 2016); an increase of US$5 billion to the China-Africa Development Fund and the Special Loan for the Development of African SMEs respectively to support China-Africa cooperation in capacity, investment, trade and other fields. The shared aspiration for cooperation and adequate financial support have provided reliable guarantees for the implementation of the ten cooperation plans and will enable China and Africa to move forward more steadily, faster and further on the track of win-win cooperation and common development.

"China and South Africa regard each other as a strategic pivot and priority in our respective areas of diplomacy. Our ties have already gone beyond bilateral scope with growing overarching and strategic influence."

China-South Africa cooperation should and could be the successful model for China-Africa cooperation

During his state visit to South Africa last December, President Xi reaffirmed with President Zuma the commitments to strengthening bilateral cooperation in such key areas as blue economy, production capacity, economic zones, energy, infrastructure development, human resources and finance. The two Presidents witnessed the signing of 23 cooperation agreements, which has lent fresh and strong impetus to the development of China-South Africa comprehensive strategic partnership.

China and South Africa regard each other as a strategic pivot and priority in our respective areas of diplomacy. Our ties have already gone beyond bilateral scope with growing overarching and strategic influence. As an influential African country, South Africa firmly supports China-Africa friendship, leads China-Africa cooperation and safeguards China-Africa interests. China-South Africa cooperation will play a greater role in promoting China-Africa relations. By deepening bilateral cooperation in priority areas including production capacity, blue economy and special economic zones, China and South Africa will boost the practical cooperation between China and Africa. As the co-chairs of FOCAC, China and South Africa will further enhance coordination on the forum affairs and actively push forward the implementation of the plans announced during the Johannesburg Summit. As the important members of BRICS, G20 and the United Nations, China and South Africa will maintain closer collaboration on international and regional issues so as to uphold the interests of China, Africa and the rest of the entire developing world.

2016 is the first year to implement the outcomes of the FOCAC Johannesburg Summit. In the spirit of "wide consultation, joint development and shared benefits", China will join hands with all African countries including South Africa to pursue win-win cooperation and common development and open a new era of China-Africa relations. ■

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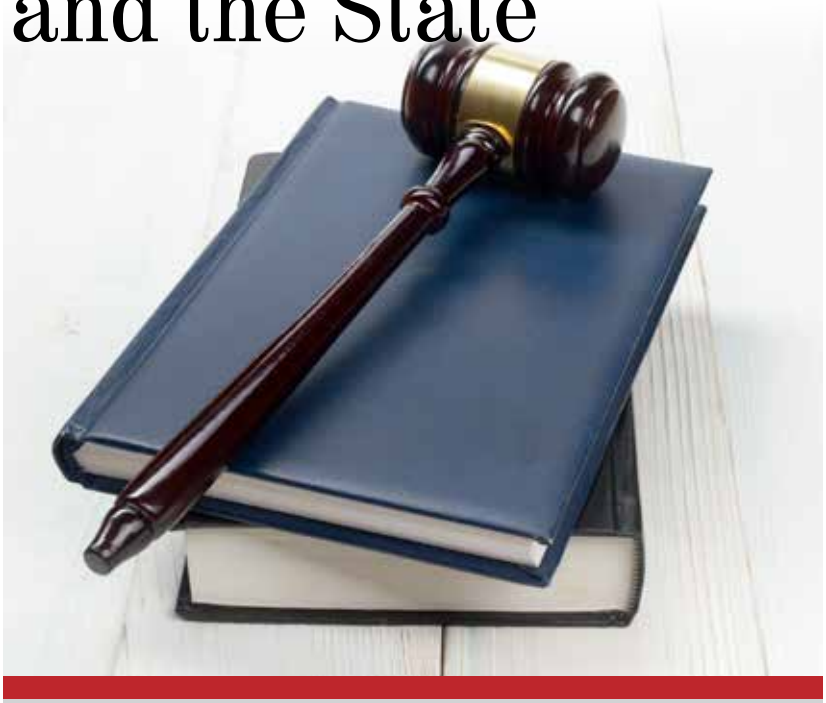
Crisis of the Courts and the State



By our Constitution that law and the doctrine of immunity were once the law of South Africa. However, this was before the Rome Statute was passed and re-enacted as South African law, changing both international law and South African law.

By Mervyn E. Bennun

President Zuma and Ministers and others who have spoken out following the departure of President Al-Bashir from South Africa despite a High Court order that he should be held "pending a formal request for his surrender from the International Criminal Court" are neither naïve nor illiterate. They understand the constitution and the legislation, the implications of their decision to defy the order, and they also understand the implications of their responses to the criticism which has followed.

Their response is significant: little effort has been made to criticise the High Court's decisions in the terms in which they were made – that is, confined to the law which the Court was restricted to.

It is wrong to characterise the situation as a clash between the judiciary and the legislature. In fact, the tension is between the State as established under the Constitution and as represented by the judges, and a political party which happens for the moment to constitute the government. It is irrelevant that it may or may not be re-elected – the Constitution, its conventions and the law endure to be respected across any such changes, and the Constitution itself is designed to ensure that the judiciary cannot compete for power as if it were a political party. For example, the manner in which judges are appointed and their long tenure (to a maximum of age 70) are designed to remove them from the sphere of political activism in civil society and to protect their independence. By design, they outlive any government under which they were appointed.

This is underlined by the "Statement", issued on 8 July 2015 by the Chief Justice and Heads of Court and Senior Judges of all Divisions, on the judiciary's commitment to the rule of law following the defiance of the order of court that Al-Bashir should be held. One paragraph reads: "Our constitution, like others of its kind, sets out the powers of each arm of state. No arm of the state is entitled to intrude upon the domain of the other. However, the constitution requires the Judiciary ultimately to determine the limits and regulate the exercise of public power".

The statement by Lindiwe Zulu, the Minister for Small Business Development, provides evidence that the clash is between the state and the Zuma administration. She told parliament that the decision to let Al-Bashir leave the country was "a collective cabinet decision". Putting justice ahead of all other elements, she claimed, was "counter-productive". Subsequently, she told Parliament during a debate on President Zuma's fitness for office because of this decision, that a motion to investigate and to consider the matter was aimed at discrediting the ANC.

Defending the decision to defy the order of court John Jeffrey (the Deputy Minister of Justice and Constitutional Development), Jeff Radebe (the Minister in the Office of the Presidency), and other commentators, have claimed that the effect of the Diplomatic Immunities and Privileges

Act (the "Immunities Act") is to protect Al-Bashir from being detained. Jeffrey also drew attention to cases involving the extradition of the dictator Augusto Pinochet to stand trial in the UK, claiming that these showed that international law protects sitting heads of state by granting absolute immunity when they visit other countries on official business. He also said:

> *It is interesting to note that Nigeria, when President Al-Bashir visited Nigeria in July 2013, also did not arrest him and the ICC subsequently absolved Nigeria of liability for the failure of its security forces to arrest, as the Pre-Trial Chamber of the ICC ruled that Nigeria has justifiable reasons for its failure to arrest President Al-Bashir.*

It has also been claimed that Article 98 of the Rome Statute is in contradiction to Article 27, which denies immunity to heads of state from the jurisdiction of the ICC.

Examining these claims one at a time, a different picture emerges.

Firstly, the Diplomatic Immunities and Privileges Act, which came into effect in February 2002, makes no reference to the ICC whatever. The long title to the Act states that its purpose is:

> *To make provision regarding the immunities and privileges of diplomatic missions and consular posts and their members, of heads of states, special envoys and certain representatives, of the United Nations, and its specialised agencies, and other international organisations and of certain other persons; to make provision regarding immunities and privileges pertaining to international conferences and meetings; to enact into law certain conventions; and to provide for matters connected therewith.*

Sec. 2 enacts into South African law the Convention on the Privileges and Immunities of the United Nations, 1946, the Convention on the Privileges and Immunities of the Specialised Agencies, 1947, the Vienna Convention on Diplomatic Relations, 1961, and the Vienna Convention on Consular Relations, 1963. The Immunities Act thus brings South Africa into line with universally-observed rules which enable every state's accredited diplomats to do their tasks in the foreign countries where they are sent. Sec. 4 states that "A head of state is immune from the criminal and civil jurisdiction of the courts of the Republic". This is why, for example, diplomats can claim to be protected from prosecution in South Africa even for traffic offences, but neither the Conventions nor the Immunities Act have anything to do with cases before the International Criminal Court, and they were never intended to provide immunity from its jurisdiction. The Immunities Act is valueless to defend the failure to hold Al-Bashir, because the only immunity conferred is in relation to South African courts.

A fundamental rule for the interpretation of statutes is that when passing a law which has the effect of amending an existing law, it is assumed that Parliament intended to make that change or amendment. Article 27 of the Rome Statute Treaty states:

> *This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.*

The Gauteng High Court pointed out that the African Union Convention has not been enacted as a part of South African law. The Immunities Act does not do this, it is therefore not binding in South Africa, and so the "structures, staff and personnel of the AU" do not automatically enjoy privileges and immunity in South Africa. Accordingly, only as a head of state or in terms of the agreement between South Africa and the African Union Commission which purported to grant immunity for the purposes of the AU summit, could Al-Bashir enjoy immunity. The first ground failed because the Rome Statute (and Article 27 in particular) is a part of South African law, and the second also failed because the AU Convention is not.

> "Al-Bashir was not in South Africa as an accredited diplomat in the Sudanese mission but as Head of State for the purposes of the AU Convention which, unlike the Rome Statute, has not been enacted to be a part of South African law."

Secondly, the cases involving Pinochet which were cited by Jeffrey predate the Rome Statute. South Africa signed this in 2000; it came into force as international law in August 2002; and it became the law of South Africa, also in August 2002, by the Implementation of the Rome Statute of the International Criminal Court Act (the "Implementation" Act). The Rome Statute and South Africa's Implementation Act have thus changed totally the pre-existing international law governing the immunity of heads of state, and it was intended that they should do so. Here too, the Pinochet cases referred to by Jeffrey are no authority.

The cases cited by Jeffrey most certainly stated customary international law as it was when they were decided, and by our Constitution that law and the doctrine of immunity were once the law of South Africa. However, this was before the Rome Statute was passed and re-enacted as South African law, changing both international law and South African law.

But is it now seriously contended that those who negotiated and drafted the Rome Statute were unaware of the changes to customary international law made by Article 27 of the Rome Statute, and did not intend them? Is it now seriously contended that the government of South Africa was unaware of Article 27 of the Rome Statute when signing it, that the legislature accidentally overlooked the Article, and did not intend to make the

changes to our law when it re-enacted the Rome Statute to be part of our law? Is it now seriously contended that our legislature was unaware that the Immunities Act and the Conventions behind it had nothing to do with the Rome Statute?

Why is the purported clash between Articles 27 and 98 only now being thought of? The answer to this question is simple: there is no clash, and when the Rome Statute was being enacted by the United Nations and by the South African Parliament nobody thought that there was one.

The long title and Preamble to the Implementation of the Rome Statute of the International Criminal Court Act could not possibly be more explicit about what was intended, and what was said in the National Legislature by Jeffrey is simply wrong.

Ministers Jeffrey and Radebe and others both referred to Article 98, headed "Cooperation with respect to waiver of immunity and consent to surrender" of the Rome Statute as though it created problems for holding Al-Bashir.

When interpreting a statute, there is an assumption that a legislature will not contradict itself with irreconcilable and contradictory provisions, and that one should seek meanings for the provisions which make sense and make the statute enforceable. Clause 1 of Article 98 reads:

> *The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.*

If one replaces the words "the requested State" with "South Africa", and "a third State" with a generic State called "A", then the text becomes clear. Its purpose – for example – is to deal with the situation where a foreigner whose surrender is sought by the ICC seeks refuge in State A or in State A's Embassy in South Africa. South Africa has obligations to State A to respect its territorial integrity and its diplomatic immunity under international law, and accordingly nothing lawful can be done to effect the ICC's request unless State A cooperates with South Africa by – for example – allowing South African authorities to enter its territory or by waiving the diplomatic immunity of its Embassy. The clause is thus irrelevant to the Al-Bashir matter.

Clause 2 of Article 98 reads:

> *The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender is concerned.*

As one distinguished lawyer explains,

> *The expression 'sending state' is not defined in the (Rome) Statute ... but is a well-known term of art in international law, and refers to a state whose armed forces or police or other official or government-employed or government-contracted personnel are stationed or otherwise deployed in the territory of another state pursuant to some sort of agreement to which both states are parties.* (Roger O'Keefe, *International Law).*

> "South Africa was one of the foremost states behind the Rome Statute and was proud to use its newly-won freedom to lead the way."

Hence, the commonly-used term "mission" when referring those who are "stationed or otherwise deployed" to conduct the diplomatic affairs with the host state in terms of "some sort of agreement to which both states are parties". The agreement determines their immunities. This means – for example – that, without Sudan's consent, South Africa cannot "surrender" a Sudanese diplomat who is wanted by the ICC, and who is deployed in South Africa and who holds diplomatic immunity, by removing him from the Sudanese Embassy at the request of the ICC. Without that consent, South Africa would break its obligations – for example, by entering the Sudanese Embassy – under the agreement with Sudan in terms of which Sudan has a mission in South Africa. Al-Bashir was not in South Africa as an accredited diplomat in the Sudanese mission but as Head of State for the purposes of the AU Convention which, unlike the Rome Statute, has not been enacted to be a part of South African law. He thus enjoyed no immunity as a diplomat, and even as a Head of State any immunity he might otherwise have enjoyed had been nullified by Article 27 of the Rome Statute. Accordingly, the whole of Article 98 of the Rome Statute is irrelevant to any attempt to justify the failure to detain Al-Bashir and is consistent with Article 27.

Thirdly, while it is true that the ICC condoned Nigeria's failure to detain Al-Bashir, this was because Nigeria had been physically unable to do so. Nigeria explained that there was an AU Summit on health matters, to which Al-Bashir had not been invited but had "appeared ostensibly" to attend it. The ICC accepted the explanation that:

> *[t]he sudden departure of President Al-Bashir prior to the official end of the AU Summit occurred at the time that officials of relevant bodies and agencies of [...] Nigeria were considering the necessary steps to be taken in respect of his visit in line with Nigeria's international obligations...*

The circumstances of Al-Bashir's presence in South Africa were so different that the authority of the ICC's decision tends to justify detaining Al-Bashir in South Africa, rather than South Africa's failure to do so.

None of the above is arcane rocket-science law. These matters were well-known to the Cabinet when it decided to allow Al-Bashir to leave South Africa in defiance of the ruling of the Gauteng High Court.

Jeffrey and others who supported the political reasons for permitting

Al-Bashir to leave have drawn attention to the refusal of some countries, and the United States in particular, to cooperate with the work of the ICC and even to hinder it.

These matters are true. However, were they not anticipated from the very outset, for the American dislike of the ICC was never secret? Invoking them now to justify South Africa's dealing with Al-Bashir, and now to review South Africa's cooperation with the ICC, is embarrassing when one considers the moment in history when South Africa became a signatory to the Rome Statute and enacted it as our law.

One genocidal holocaust after another had at last brought humanity to the point of creating a mechanism to make an end to impunity, and for the agonised cry, "Never again!" to be the new reality. South Africa was one of the foremost states behind the Rome Statute and was proud to use its newly-won freedom to lead the way. The spirit in which South Africa identified itself with the Rome Statute was carried into the firm refusal of South Africa to sign a Bilateral Immunity Agreement which would exclude US nationals from the jurisdiction of the ICC. The pressure from the United States for countries to sign Bilateral Immunity Agreements was enormous – quite simply blackmail, as a failure to agree meant an end to US aid. In a meticulous paper (tellingly entitled "The Magnificent Seven") in the African Journal of Human Rights Law on the topic, Cotton and Odongo wrote:

> *Certain governments in Africa have declared openly that they believe signing a BIA would violate their obligations as state parties under the Rome Statute. This is especially true concerning South Africa, a dominant power in the region, which has been very vocal in espousing its reluctance on signing a BIA which it believes would undermine the ICC.*

South Africa's commitment to the ICC was a proud moment from the outset – a passionate reflection of our determination to identify with the highest standards in human rights. The "Postamble" to the interim constitution, sadly not included in the final text, spoke of it as providing –

> *...a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.*

This captured the spirit of the moment in South Africa, and unqualified support for the ICC was the finest that South Africa could offer to the world. If it was right to do what South Africa did then, why has it become so wrong now that we can even think of withdrawing from the ICC?

Commentators have justly pointed to anomalies and problems in the work of the ICC. This is not the place to explore in depth the ugly inheritance of colonialism and the attempt by former colonial Powers to abuse the ICC for their own ends. Nonetheless, the simple question must be asked: how are the purposes for which the ICC was founded, and for which South African commitment was total, now advanced by leaving the field in ignominious surrender? The ICC is clearly contested terrain to defend and to develop, not to abandon.

Apparently, so far as the South African government is concerned, the Rome Statute has made no change in international law and practice and the ICC may as well never have been established. Why, one asks, did South Africa ever bother sign the Rome Statute and make it part of South African law? How does returning Al-Bashir to Sudan bring peace and stability to those who live there? How could putting a wanted African genocidaire into the hands of the International Criminal Court possibly leave the AU worse off?

In her speech in the National Assembly, Lindiwe Zulu claimed that history would absolve her for claiming that peace and stability:

> *Speaker, this festival of condemnation that has arisen out of President Bashir's attendance to the AU Summit has sought to impose a disjuncture between the attainment of peace on the one hand and justice on the other,* she concluded. *It should therefore be noted that our efforts for the renewal of the continent will remain void if the fundamental elements which include peace and stability are not realised. Peace and stability is therefore an important ingredient for development.*

It appears that those who criticise South Africa's conduct with regard to Al-Bashir are regarded as hampering South Africa's efforts to bring about peace in Sudan and should still their voices. Sudanese victims of genocide should also show restraint, for unless they heed the South African government's admonitions they will be the cause of their own further suffering. The title of a study Erin Pizzey, published in 1974, about violence against women comes to mind: *Scream Quietly or the Neighbours Will Hear.*

South Africa was a founding member not just of the ICC, but of the United Nations Organisation itself in 1945 – the year World War Two ended. If South Africa does withdraw from the ICC, we will have achieved the record of being the only state to sever links with the United Nations or one of its organs twice. The first time, in 1974, South Africa's membership of the UN was suspended by the General Assembly because of apartheid; one wonders now how turning away from the ICC will be explained to the genocide victims in Sudan.

In terms of section 83 of the Constitution the President must "uphold, defend and respect the Constitution as the supreme law of the Republic" and he has sworn to be faithful to the Republic of South Africa, and to obey, observe, uphold and maintain its Constitution and all other law.

The Ministers who together with the President constitute the Cabinet have sworn or affirmed that they would "obey, respect and uphold the Constitution and all other law of the Republic" and would hold their offices with honour and dignity and be true and faithful counsellors.

Lindiwe Zulu told Parliament that Al-Bashir was allowed to depart from South Africa by a Cabinet decision. Why should those who have sworn thus not be charged with treason?

Sec . 165 of the Constitution states that "An order or decision issued by a court binds all persons to whom and organs of state to which it applies". At the very least, why should those responsible as Zulu has revealed not be charged with contempt of court?

Casting justice aside to secure its own idea of "peace" and "stability" was exactly how the apartheid regime maintained itself, and at the very heart of our struggle for freedom was our belief that without justice there never could be peace and stability. It appears that the Cabinet has betrayed not only our country, but also the fundamental ethic and the very core and founding principle of our entire historic struggle. Why should those responsible not be charged with bringing the entire ANC into disrepute?

After a history of bitter injustice, we have written a constitution which acts as the touchstone of justice which we have defined to the highest standards anywhere. We have commanded our courts to act as our constitutional bodyguards and our judges have given the most solemn undertakings to be vigilant and to strike down any law and to condemn any conduct which clashes with the constitution. What we have done has been saluted across the world. If it now becomes established constitutional doctrine that justice is not necessary for "peace and stability", we are back where we started from.

With this new constitutional convention there is no protection for any section of the Constitution or any law. The executive can decide to ignore any section of the Constitution, any law whatever and any order of the court, if to do so would be better for "peace and stability". Under the new jurisprudence, it seems that justice has become an optional extra.

We claim to have free and fair elections. In our democracy, ruling parties can win and lose elections and so governments can change, but the constitution and its laws and conventions endure. Whichever party wins an election, it inherits what the previous government leaves. What has now happened is that the current ANC government has established a new constitutional convention: in order to preserve what it considers to be "peace and stability", the ruling party may disregard any provision of the constitution, any enacted law, and any order of a court. Sec. 37 of the Constitution, which regulates states of emergency, would be valueless because this itself would have been suspended.

South Africa's judges, in their statement issued on 8 July, said:

> *The Rule of Law is the cornerstone of our constitutional democracy. In simple terms it means everybody whatever her or his status is subject to and bound by the constitution and the law. As a nation, we ignore it at our peril. Also, the rule of law dictates that court orders should be obeyed.*

> "Commentators have justly pointed to anomalies and problems in the work of the ICC. This is not the place to explore in depth the ugly inheritance of colonialism and the attempt by former colonial Powers to abuse the ICC for their own ends."

The comment by the Gauteng High Court was even grimmer:

> *A democratic State based on the rule of law cannot exist or function, if the government ignores its constitutional obligations and fails to abide by Court orders. A Court is the guardian of justice, the corner-stone of a democratic system based on the rule of law. If the State, an organ of State or State official does not abide by Court orders, the democratic edifice will crumble stone-by-stone until it collapses and chaos ensues.*

Law and politics are intimately linked. The Cabinet tried to find arguments to justify the release of Al-Bashir, and had no intention to comply with the Rome Statute. That they knew that the law was being shamefully broken is evidenced by the words of Lindiwe Zulu, quoted above, that Cabinet had decided that peace and stability were more important than justice.

But this was precisely the justification for the atrocities of our own past. Can there ever be peace and security without justice? The apartheid regime claimed that its injustices were in the interests of "peace and stability", and "peace and stability" is all that Al-Bashir seeks in Sudan. Was there ever a "just" genocidaire, or one who made no claim to be acting in pursuit of "peace and stability"? We are entitled to an explanation: when and how will those to whom Al-Bashir has brought "peace and stability" be given justice also?

Lindiwe Zulu said, and other ANC speakers endorsed her words, that the criticism of the Zuma government's action in the Al-Bashir matter was intended to discredit the ANC. There is now no barrier to a political decision by the government of the day that electoral opposition to it is intended to discredit it, and that its defeat in a general election would accordingly endanger "peace and stability" in South Africa. Resorting to the constitutional convention which has now been created, the ruling party can now brush aside all constitutional laws governing free and fair elections and take any action it feels is necessary to ensure that it remains in power.

Why is this not a quiet *coup d'état*?

The courts in our democracy are not constitutionally required to jump to the crack of the executive's whip, whichever party wields it. The alternative is a different South Africa to the one we fought for and are now working to breathe life into. Our peace and stability both at home and in our international relations are possible only with justice and for our constitution to be respected meticulously.

Having violated South Africa's international legal commitments, our own constitution, and defied an order of court, what reason is there to have confidence in any claim that the ANC government remains committed to the rule of law? ■

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Rebuttle of Mervyn E Bennun

It is clear that the correct legal duty of South Africa was to desist from arresting a sitting Head of State. And it is noteworthy to stress – this duty lies in the competence of the executive, not the judiciary.

By Alexander Mezyaev

The article by Mervyn Bennun attempts to prove that the current government of South Africa is responsible for the violation of the Constitution, its international legal commitments and for defying a court order. But the faulty legal propositions underlying his argument must be analysed.

The main arguments of the Author may be summarised as follows:

- Firstly, the African Union Convention and Diplomatic Immunities and Privileges Act that established the immunity of the Heads of State have not been enacted as a part of South African Law, and therefore are *not binding* in South Africa.
- Secondly, the Rome Statute and South Africa's Implementation Act totally changed the pre-existing law governing the immunity of Heads of State.

Both arguments are defective. Let us analyse them in more detail.

The claim that the AU Convention has not been enacted to be a part of South African law and is therefore not binding in SA

Claiming that the AU Convention Diplomatic Immunities and Priviledges Act (DIPA) is valueless in defending the position of the government in the present case, Bennun states that this Act makes no reference to the ICC Statute. Why so? Bennun thinks that it is so because the only immunity DIPA conferred "is in relation to South African courts".

To use such an argument to attack the position of the government is really strange, because this argument is 100% in favour of the government. The core of the present case is not the ICC, but the local state court. The government is under fire for not implementing the local court decision. And Bennun just

explained why it is fine – because foreign Heads of State have immunity *in South African courts*.

Do – according to DIPA – foreign Heads of State have immunity in relation to South African courts? The answer is a definite yes. This answer is yes in each and every case these local courts are intended to resolve. Simply this kind of court has no jurisdiction to try Heads of State. Later we will explain a bit more about how the matter of jurisdiction was just "forgotten".

The Author (Bennun) does not understand the confusion of subject-to-subject matter of the case. This case is not between the South African government and the ICC, but between the South African government and a South African court. Thus the norms on immunity of Heads of State before local courts are applicable, not the norms of the ICC Statute!

Analysing this argument of the Author further, it is interesting to notice an attempt to substitute the object of some international treaties on immunities and diplomatic law by playing with the definition of 'diplomat'. The Author always stresses that the Vienna Convention on Diplomatic Relations and DIPA grant immunities to 'accredited' diplomats, giving the impression that diplomatic missions are confined only to embassies with their staff. In another place the Author writes directly that "Al-Bashir was not in South Africa as an accredited diplomat in the Sudanese mission but as Head of State for the purposes of the AU Convention which, unlike the Rome Statute, has not been enacted to be a part of South African law. He thus enjoyed no immunity as a diplomat, and even as a Head of State any immunity he might otherwise have enjoyed had been nullified by Article 27 of the Rome Statute…".

The claim that Omar Al-Bashir was not in South Africa as an accredited diplomat is quite an odd argument and may be a misrepresentation of international law. Diplomatic immunity covers other members of all kinds of diplomatic missions. The Vienna Convention of Diplomatic Relations enumerates these missions, which include temporary missions like governmental delegations etc.

The argument that the AU Convention and DIPA were not enacted as South African laws and thus are not binding is not sustainable. Yes, article 231.4 of the South African Constitution provides that any international agreement becomes law in the Republic when it is enacted into law by national legislation. But it does not mean that any non-domesticated international agreements are non-binding! The second part of the same article states that a self-executing provision of an agreement that has been approved by Parliament (i.e. ratified) is law in the Republic. A non-domesticated international treaty may contain perfectly self-executed provisions and thus be binding to the state-party. The Author is just confusing two matters – the binding nature of the source of a law as a whole and nature of the norms contained in the source as well as the mode of the implementation of such norms.

> "The rules governing the jurisdiction of national courts must be carefully distinguished from those governing jurisdictional immunities: jurisdiction does not imply absence of immunity, while absence of immunity does not imply jurisdiction."

The weakness of this argument is also based on the lack of taking the law as a system. South African law consists not only of the ICC Statute Implementation Act. It also consists of other treaties and norms of customary international law. The Author demonstrates total disregard of customary international law, claiming that it was completely changed. This is quite strange, because the main point of the Author in claiming that the SA government violated the Constitution and it is exactly the SA Constitution that established the following regime of customary international law:

- the customary law is law in the Republic of South Africa,[1] and
- the interpretation of law must be conducted in a good faith.

Taking all law (and not only selective part of it) into consideration is a clear part of such a good faith approach.

South Africa is not a signatory to the Vienna Convention on the Law of Treaties (VCLT), which was concluded in 1969 and entered into force in 1980. But VCLT is regarded as declaratory of customary international law and binds all states regardless of whether they are a party to it or not. South Africa is not a party to the Vienna Convention on the Law of Treaties, but, as explained by the Chief State Law Advisor (IL), is bound to the provisions of the Convention.[2]

Thus, interpreting the legal force of the AU Convention it is important to refer to the most fundamental rules of treaty status from the Vienna Convention of 1969. Article 18 of VCLT ("Obligation not to defeat the object and purpose of a treaty prior to its entry into force") says that a State is *obliged* to refrain from acts which would defeat the object and purpose of a treaty even before the ratification (i.e. formal entry of the treaty into force) of the treaty.

It is clear that international treaty and customary law proclaim a special regime for the object and purpose of the treaties even those which are not ratified or entered into force. What is the purpose of AU Convention, DIPA and some other treaties, claimed to be non-domesticated? The purpose is to establish the regime for the diplomatic missions (not only for accredited diplomats as the Author claims) that assure the safe implementation of their tasks. The immunity of Heads of State is a necessary part of such a regime. So the claim that non-domestication of the DIPA or any other treaty makes them non-binding is wrong.

The Claim that the Rome Statute and South Africa's ICC Implementation Act totally changed the pre-existing international law governing the

immunity of heads of state

This claim is repeated so many times in so many different sources that it becomes a kind of an axiom that does not need to be proved. The only "proof" of this claim is an article 27 of the ICC Statute (repeated verbatim in Implementation Act). But let us read this text more attentively:

Article 27 Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

The Author states that article 27 "denies immunity to heads of state from the jurisdiction of the ICC". But then he applies this conclusion to South African courts and not to ICC!

The very first sentence of the para 1 of the Article 27 shows that it is applicable to the ICC and individuals before the ICC. It clearly shows that it regulates the relations between individuals (be they heads of states or of governments) and the ICC only. There is nothing in this article that may impose any obligations to any other subject than these two. It must be said very clearly: this article may not be used as justification for the "abolition" of the immunity of the heads of states. At most it may be interpreted as a prohibition to the accused not to use a reference to his or her official capacity (as a special defence in criminal proceedings.

Article 31 of VCLT (General rule of interpretation) names as the first rule the rule of good faith: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".

All attempts to 'interpret' a clear norm should be considered as made not in a good faith. Moreover when the norm is clear no interpretation is allowed. The correct establishment of the subject-to-subject matter shows that the article 27 of ICC Statute is really clear. It establishes relations between the accused and the ICC. To 'extend' this article to relations between ICC and states is simply a manipulation and violation of interpretation in good faith.

It is a pity that the Author spent so much space on a totally wrong proposition, but never proved his main argument. It is interesting to note that this mistake was made by the Author again by the wrong take in subject-to-subject matter. We are fully aware that this negation of the customary international law immunity is not an exclusive argument of the Author. In fact he took it from the North Gauteng High Court (NGHC) Judgment issued on 24 June 2015. In para 28.8 of this Judgment the court says that the ICC Statute "expressly provides that heads of states do not enjoy immunity under its terms" and that "similar provisions are expressly included" in the IRSA. The court then drew an extraordinary conclusion:

> *It means that the immunity that might otherwise have attached to president Bashir on customary international law as head of state, is excluded or waived in respect of crimes and obligations under the Rome Statute.*

The conclusion totally lacks basis in any citation, explanation or interpretation. It simply states – "it means…" – and constructs a formula that suits the court. This 'forgetfulness' leaves the court's decision with no legal force because it is not explaining how the ICC-to-accused norm was extended to ICC-to-states relations! It is absolutely clear that the North Gauteng High Court made a mistake claiming that ICC Statute and IRSA exclude or waive the immunity of heads of state and it changed the customary international law norm on immunity.

> "It seems that is not the law that brings the Author to the idea of charging the government. It is idea of charging the government that brings him to his selection of the law and arguments to be cited or ignored."

We just analysed the two main arguments of the Author. Most of his article is based on these two defective arguments. We have already shown how often the Author confuses the subject-to-subject matters in analysing law. His uncritical reliance on the NGHC judgment is also wrong. If he had taken a critical approach to this Judgement he would have noticed at least one other confusion made by the court. And the court's confusion is really amazing where it confuses jurisdiction and immunity! It assumed that the existence of jurisdiction (though established very unconvincingly) could just be equated with the absence of immunity! The International Court of Justice reminds us: "the rules governing the jurisdiction of national courts must be carefully distinguished from those governing jurisdictional immunities: jurisdiction does not imply absence of immunity, while absence of immunity does not imply jurisdiction".[3]

Bennun is very selective in choosing which of the government's arguments to battle with and which to ignore. He goes much further than the court and claims that government officials must be charged with treason. This selectivity does not sit well. In fact the article is based not on the analysis of the legal arguments of the government but on battling with words spoken by several government officials, made outside the court. The Author consistently avoids the legal arguments the government presented in court.

He avoids even some arguments that with due and genuine consideration might disprove his idea of bringing the government to trial. For example, he ignores the impracticability of the NGHC decision. Article 165 of the

Constitution states that "An order or decision issued by a court binds all persons to whom and organs of state to which it applies". But this article is critically important in his analysis, because later he asks the questions: "Why should those who have sworn thus not be charged with treason? At the very least, why should those responsible, as Zulu has revealed, not be charged with contempt of court?" It is clear that if the Author honestly considered the argument of impracticability he could not have come up with these notions of treason or even contempt. So it seems that is not the law that brings the Author to the idea of charging the government. It is idea of charging the government that brings him to his selection of the law and arguments to be cited or ignored.

By the way the argument of the impracticability of the NGHC decision is a very interesting one. It is most probable that this argument meant that president Al-Bashir was already out of the country when the court ruling was made. But there is another sense in this argument too. One does not require a very rich imagination to predict that the arrest of a head of state could lead to a declaration of war. The impracticability of a decision that might cause a war is a serious argument that could not be easily ignored.

Let us, unlike Bennun, consider the government's arguments; they are public. It was impracticable to execute the court's decision, because the court ordered something that violated South African international legal obligations. Moreover, the court decision contains a lot of legal defects. Here some of them:

- The court acted contrary to established international law as was stated by the International Court of Justice in its Judgment in the Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium): "it is firmly established that ... certain holders of high-ranking office in a State, such as the head of State ... , enjoy immunities from jurisdiction in other States, both civil and criminal". Thus NGHC clearly erred in law stating that President of Sudan "does not enjoy immunity in accordance with the rules of customary international law".
- Article 32 of the Vienna Convention on Diplomatic Relations (1961) provides that only the sending State may waive such immunity", and this "reflects customary international law". The domestic legislation giving effect to this Convention requires that any such waiver always be explicit and in writing. No such waiver exists in the given case.
- There exists under customary international law no form of exception to the rule according immunity from criminal jurisdiction and inviolability to incumbent high state officials, where they are suspected of having committed war crimes or crimes against humanity. The NGHC again erred in construing an exception in the case of "international human rights law".
- The NGHC misconstrued Articles 86 and 89 of the Rome Statute. Both provisions are internally qualified. Article 86 is subject to other provisions of the Statute, and article 89 is subject to Part 9 of the Statute. Thus both provisions are expressly subject to article 98(1) of the Statute. The effect of article 98(1) is that a request by the ICC which would require South Africa to act inconsistently with the immunity of Sudan's President may not be made by the ICC unless the ICC can first obtain the cooperation of Sudan for the waiver of the immunity. Thus not only is it Sudan (not the Security Council) which must waive the immunity. The immunity is also expressly extant - otherwise there could be nothing to waive.[4]

To summarise, it is clear that the correct legal duty of South Africa was to desist from arresting a sitting Head of State. And it is noteworthy to stress – this duty lies in the competence of the executive, not the judiciary. Neither the ICC Statute nor the Implementation Act requires member States to violate the sovereign immunity of third party States' heads of state. But the North Gauteng High Court not only held that they do, but also imposed such legal duty on the Government. It did so by declaring in the first order that Government's failure to take steps to "arrest and/or detain" President of Sudan was inconsistent with the Constitution of South Africa".

The claim that the Government violated the Constitution

Aiming to prove that the South African government violated the Constitution, Bennun feels safe to make such a claim based on the court's decision. The NGHC in its Judgment of 24 June 2015 indeed stated that the conduct of the governmental officials "is inconsistent with the Constitution". This is another statement that was made with no convincing proof.

In fact this statement was made the first time in the same court's decision of 15 June and was left without any explanation at all. The count promised to issue the written reasoning 'next week'. In fact it was issued later, but the Judgment of 24 June still contains no reasoning proving the violation of the Constitution. First of all, it was not said what exact article of the Constitution was violated by the government. Secondly, there was no legal reasoning leading to this conclusion. The only attempt to do this was reference (without citation) of the articles 1 and 2 (where it is declared that the State is founded on the supremacy of the Constitution and the rule of law), reference (without citation) to article 231 (where it says that international agreements bind the Republic) and full citation of the article 165 that enumerates the power of the judiciary. All this fills a little bit more than half of a page. Needless to say, this in no way proves that the government violated the Constitution.

The Author's critique is that the government supposedly missed the point: "Their [government] response is significant: little effort has been made to criticise the High Court's decisions in the terms in which they were made – that is, confined to the law which the Court was restricted to". But whether the Author himself is correct in the object of his analysis? On one hand the Author refers to the High Court *decisions*, but in the very analysis he confined himself only to *one decision*. Is this accidental, or are there are more serious reasons for such a self-limitation?

Talking about the Al-Bashir case we are indeed facing several decisions of the NGHC, namely: Decision of 14 June 2015 ordering the SA authorities to stop Al-Bashir from leaving the country, Decision of 15 June 2015 claiming that the SA government violated the Constitution, and Decision of 25 June 2015 explaining why it had decided that the SA government violated the Constitution.[5]

Bennun refers only to the third decision, consistently avoiding the second one and acting as if there was no first one. This looks illogical. It is not logical to analyse the decision proclaiming the government as a violator of law without having a look at the very decision the accused is supposedly violating. But having a look at the first decision made this illogicality understandable.

Let us have a look at this first decision of 14 June 2015, signed "by the court" by "the Registrar" (without giving his or her name). It states that the respondents are compelled to prevent President Omar Al Bashir from leaving the country "until an order is made in this Court". A draft order is attached to the same decision (an interim order is granted as follows):

1. President Omar Al Bashir of Sudan is prohibited from leaving the Republic of South Africa until a final order is made in this application, and the respondents are directed to take all necessary steps to prevent him from doing so.
2. The eighth respondent, the Director General of Home Affairs is ordered:
   - to effect service of this order on the official in charge of each and every point of entry into, and exit from, the Republic, and
   - once he has done so, to provide the applicant with proof of such service, identifying the name of the person on whom the order was served at each point of entry and exit.[6]

What is the most amazing part of this decision? In it is a lack of legal reasoning. The decision was made "having heard counsel for the parties and having read the documents filed of record." No matter of jurisdiction was resolved. No legal authority was cited. No single reference to the law was made.

Notwithstanding such 'forgetfulness' there are very serious questions of law that must be resolved before the court may be bold enough to prevent the head of a foreign state from returning to his home and, even more so, to oblige the government to prevent this head of state from leaving the country.

It is very clear that in issuing such an order the court needed to resolve these matters; and as we see, that was not done, good or bad. There was not even an attempt to resolve these matters. And it is clear why. Because there is no law that gives the court jurisdiction to judge a head of state. Then the question arises: is there an obligation on the government to implement an order that was made contrary to law and without legal reasoning?

The Al-Bashir case brought up a lot of interesting questions concerning national and international law. Some of them still have to be discussed and analysed. We do not think that these matters can be deeply analysed in the framework of a short article, so we only list them with a short commentary.

> "Thus not only is it Sudan (not the Security Council) which must waive the immunity. The immunity is also expressly extant - otherwise there could be nothing to waive."

One of these is a question of foreign policy in the context of the separation of powers in South Africa. The implementation of the relations between South Africa and the ICC, including dealing with arrest warrants, is a prerogative of the executive. IRSA clearly names these governmental organs: Central Authority (meaning the Director-General, Justice and Constitutional Development) and National Director (meaning the National Director of Public Prosecutions). The role of the High Courts is limited to the implementation of the process that was started by the executive. For example, article 5.4 of IRSA states that the Cabinet member responsible for the administration of justice must … designate an appropriate High Court in which to conduct a prosecution against any person accused of having committed a crime. In all other instances the courts are mentioned only in relation of the process that was started by the government. There is nothing in the IRSA to claim that the South African courts may direct the government to implement ICC arrest warrants. Moreover there are quite clear indications that such a claim directly contradicts certain norms of IRSA. For example article 8.1 (Endorsement of warrants of arrest) says that *any request received from the Court for the arrest and surrender of a person for whom a warrant of arrest has been issued by the Court must be referred to the Central Authority and accompanied by such documents as may be necessary to satisfy a competent court in the Republic that there are sufficient grounds for the surrender of that person to the Court*. There are at least two main conclusions that may be drawn from this text.

First – the execution of the arrest warrant is not a matter for the courts; it is a matter for the executive. Second – there is no automatic execution of arrest warrants. Before sending for the execution the Central Authority must verify that the received warrant is accompanied with very precise documents. Let us imagine that the Central Authority have not received the abovementioned documents. Or these documents were received but they do not satisfy a competent court that there are sufficient grounds for the surrender of the person. These conditions must be verified.

There is no way to claim that execution of the arrest warrant is something automatic, as all protagonists of the ICC are claiming. However, these protagonists claim it so repeatedly and so aggressively, that they indeed succeed in making us believe that South Africa must arrest at the first wish of the ICC! But the general and probably the main conclusion from the IRSA is that the relations between ICC and the Republic

of South Africa is a competence of the executive.[7] According to the IRSA the judiciary has no power to interfere with ICC-government relations. We must expect serious consideration of the matter of interference in the executive competence.

Another matter that definitely must be addressed is a problem *victims v. people*. The Author wonders: "how turning away from the ICC will be explained to the genocide victims in Sudan". First of all it is quite strange why a lawyer claiming the sanctity of the rule of law throughout the whole text, totally disregards one of the fundamental element of this rule, namely the presumption of innocence? Why does he call Sudan's President "genocidaire"? Now even non-lawyers know about presumption of innocence. There is no court's decision proving the guilt of Al-Bashir in committing genocide. Second, the Author is concerned with what to say to victims of the crimes in Sudan, but seems to be totally not interested what will be the explanation to the population of the Republic of Sudan, who just elected Omar Al-Bashir as their Head of State.[8] The same non-interest is demonstrated in relation to the explanation to the people of South Africa that may be plunged into war, if the government implemented the NGHC decision.

The possible withdrawal of South Africa from the ICC

We would like to finish the analysis of the Author's article on his emotional rhetoric on the withdrawal of the Republic of South Africa from the ICC, when he calls the review of South African cooperation with the ICC as 'embarrassing'. Trying to placate the critics of the ICC, the Author says that 'commentators have justly pointed to anomalies and problems in the work of the ICC' but that 'this is not the paper to explore in depth the ugly inheritance of colonialism and the attempt by former colonial Powers to abuse the ICC for their own ends'. These definitions are misleading. The position that the ICC 'is not perfect' is a sly one.

The wily nature of the position that the ICC is just 'not perfect' is that all the problems with the ICC work are not anomalies, they are rules. What is really embarrassing is the manipulation with made-up urgency when the ICC decision that South Africa must arrest Al-Bashir was made by one judge instead of the full bench. What is really embarrassing is that the ICC judge refused to meet with the Chief Legal Advisor of South Africa who had gone to the Court. What is really embarrassing is that the ICC is delivering decisions with no legal reasoning or when these decisions are reasoned but contrary to international law.[9]

The review of relations with the ICC is a legitimate and reasoned decision. The time for illusion is over for many states. It is now clear: more and more states are starting to realise that the ICC is not an international institution. That means the International Criminal Court is not acting in the name and in the interest of the member-states. It acts in the name and in the interest of global powers with their own agenda. Thus all primitive arguments like "we shall stay in the ICC and influence it from inside" are just naïve.

It is difficult not to see the process of radical changes that modern international law is experiencing. First of all – there are continuous and aggressive attempts to destroy the very substance of international law as law of common benefit, created by all members of the international community by their free will.

One of the most important appendices to the current negotiations on the treaty called 'Transatlantic Trade and Investment Partnership' – Trade in Services Agreement – is an attempt to create a new trade regulation system outside the WTO. This is a clear attempt to create the club of privileged states acting to the detriment of the majority of states. The BRICS states were not invited or even informed about the very fact of these negotiations. The agreement was prepared in secrecy until last year. Even in 2015 we were merely informed about the fact that this treaty is in preparation, but the content is confidential. If it will be signed it will remain confidential for five years. On the European side the negotiations were conducted by the European Commission in its own name, without consultations with EU member-states.

The destruction of Ukraine as a state was as a result of an open threat to the country to sign the treaty of 'association' with European Union. The Government of President V. Yanukovych who postponed (only postponed, not refused!) the signing, was overthrown.

The destruction of international law is not going on as a side effect. It is being implemented as a policy, thus there were special institutions established. The International Criminal Court is one of these institutions. One of the aims of the ICC is to destroy current progressive international law and to create new – regressive and then repressive – international law. One of the features of the laws being created is the abolition of the fundamental norms of international order, including the immunity of heads of state. The Al-Bashir case is not a case about a man called Omar Hassan Ahmad Al-Bashir. Immunity is not a personal thing, it is an integral part of the sovereignty of independent states.

So South Africa was being forced to take part in a violent attack on the sovereignty of a foreign state, putting the peoples at risk of war. In this context the Author's question – "Why is this not a quiet *coup d'état*?" – might be very useful for deeper reflection. Though it might lead us in a different direction from that which Bennun seeks. ■

References:

1. Article 232 of the Constitution says: "Customary international law is law in the republic unless it is inconsistent with the Constitution or an Act of Parliament.
2. http://www.dfa.gov.za/chiefstatelawadvicer/general.html
3. International Court of Justice. Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium). Judgment of 14 February 2002. Para 59.
4. More detailed arguments of South African government see: Supreme Court of Appeal. Notice of Motion. 30 September 2015 // http://www.southernafricalitigationcentre.org/1/wp-content/uploads/2015/06/Bashir-state-SCA-FA.pdf
5. There are some other decisions, like the Judgment of 16 September 2015 on the application for leave to appeal and may be another decisions in other courts, taking into account the ongoing hearings in the Supreme Court of Appeal. Here we are enumerating only those decisions that were issued in June 2015 and critically important in the context of the point of «forgetting» of the very first decision of the court.
6. http://www.southernafricalitigationcentre.org/1/wp-content/uploads/2015/06/Interim-interdict.pdf
7. There are many other examples of this in IRSA. Article 5.1 – «Institution of prosecutions in South African courts» provides that no prosecution may be instituted against a person accused of having committed a crime without the consent of the National Director.
8. In April 2015 President Al-Bashir got 94% of votes in the general election.
9. For further detailse see Mezyaev *The Thinker* Vol 67

AN URGENT AFRICAN APPEAL TO THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT

Côte D'ivoire and Africa needs former President Laurent Koudou Gbagbo in order to achieve Peace and Justice!

We publish, below, extracts of the Appeal by AFRICA FORUM to the ICC to "initiate the process of withdrawing or otherwise discontinuing" the charges against Laurent Koudou Gbagbo. This is a critically important forum consisting of former Heads of State of our continent. In many respects the Forum acts as the conscience of all our peoples and their collective view; and their appeals should be given the highest consideration by international institutions including the ICC.

1. As Africans we are deeply concerned that our Continent, Africa, should resolve its problems as urgently as possible, including the interconnected challenges of peace and justice in post-conflict countries.
2. This *urgent Appeal* we address to you concerns the situation in Côte d'Ivoire and in particular its former President, Mr Laurent Gbagbo, who, as you know, is currently standing trial at the International Criminal Court.
3. We make it in the context of our serious concern that Côte d'Ivoire should continue to grow and develop for the benefit of all its citizens, in conditions of peace, democracy and the rule of law, national reconciliation and unity.
4. We are absolutely convinced both that the country can and must achieve these objectives and that Mr Laurent Gbagbo can and would make an important and unique contribution in this regard.
5. Needless to say, he cannot make this contribution from a prison cell somewhere in the world but as a free citizen in his own country.
6. Within the context of what we have said, which relates to the unresolved conflict in Cote d'Ivoire, we would like to say that the detention and trial of Laurent Gbagbo have further entrenched the divisions and animosities among the Ivorian people. This development is fuelling the country's slide towards the resumption of the civil war which would claim the lives of hundreds of thousands of innocent people.
7. There is a real risk therefore that should the ICC find him guilty and sentence him to any term of imprisonment this could very well serve as the spark that results in the destructive conflagration we fear.
8. Madame Prosecutor, it is vitally important that in the context of the above there is profound appreciation of the fact that the events which brought Laurent Gbagbo to the ICC were the outcome of an intense and historic strategic political struggle about the future of Côte d'Ivoire, and that this contestation continues to this day.
9. Thus you will understand that notwithstanding the good faith in which your Office will have discharged its formal legal functions, a significant section of Ivorian society, particularly the supporters of Laurent Gbagbo, will view the intervention of the ICC as an extension of the political domination by the other side – a manifestation of "victor's justice". Yet the situation in Côte d'Ivoire requires and demands that the Ivorian people continue to engage their strategic challenges by democratic means and in a truly inclusive manner, working together in conditions of peace.
10. The polarisation around the question of the prosecution of Laurent Gbagbo is fuelled by the understanding within Côte d'Ivoire, which is corroborated by information in the public domain, that violations were in fact committed by all sides in the then conflict.

The Historical Context of the Ivorian Crisis

11. Madame Prosecutor, we hope you will bear with us as

we substantiate some of the comments above by briefly reflecting on some of the political developments in Côte d'Ivoire during the last fifteen (15) years.

12. As you know, before Mr Laurent Gbagbo was elected President of Côte d'Ivoire in 2000, his predecessors had introduced a philosophy which they designated as "ivoirité". Essentially this sought to divide the Ivorian population into two groups. Over the years Côte d'Ivoire had attracted large numbers of economic migrants with the majority of these coming from Burkina Faso. The concept of ivoirité made the assertion that the population of Côte d'Ivoire was divided into two parts – one part being the *indigenous Ivorians* and the second being the *economic migrants* we have mentioned. The policy of ivoirité sought to discriminate in favour of the *indigenous Ivorians* who were mainly Christian.
13. As it happened, the economic migrants, largely Moslem, constituted the majority of the population in the North of the country.
14. As a consequence of Constitutional provisions based on this ivoirité, the current President of Côte d'Ivoire, Mr Alassane Ouattara, himself a Moslem, was excluded from running for the position of President of the Republic on the basis that his parentage made him a Burkinabe rather than an Ivorian. Naturally this had a negative impact on the Moslem economic migrants largely from Burkina Faso who were resident in the North of Côte d'Ivoire. It was therefore obvious that these would also support Mr Ouattara.
15. Mr Gbagbo was elected President of Côte d'Ivoire in 2000. In 2002, while he was out of the country on a state visit, an armed rebellion broke out in the country. Though it was suppressed in the South of the country, it resulted in the rebels (the Forces Nouvelles) seizing the North, thus breaking the country into two. Thus Côte d'Ivoire became two territories, each with its own government and army.
16. As part of the process of ending the civil war, the United Nations deployed a peacekeeping mission, named UNOCI. France deployed its own independent peacekeeping force.
17. Following those held in 2000, the next Presidential Elections were supposed to be held in 2005. However, because of the war situation in the country, and its attendant consequences, these Elections were only held towards the end of 2010.
18. In the meantime the Ivorian parties had entered into various agreements to end the civil war and to return the country back to normality. In this context they had also agreed to hold peaceful, free and fair Presidential Elections.
19. Of major significance in this regard was the decision taken by then President Gbagbo in 2005 to use exceptional Presidential powers provided for in the Ivorian Constitution to enable Mr Alassane Ouattara to contest the position of President of the Republic of Côte d'Ivoire.
20. It was because of this decisive contribution made by Mr Gbagbo that it became possible for the Ivorian Parties, again in 2005, to sign an agreement which among others:

20.1. Formally ended the war throughout the Ivorian territory;

20.2. Laid down processes relating to the implementation of the National Disarmament, Demobilisation and Reintegration (DDR) Plan for the armed forces;

20.3. Brought the Forces Nouvelles back into the Transitional Government;

20.4. Spelt out provisions on the structure and functioning of the Independent Electoral Commission; and,

20.5. Indicated a timetable for the holding of Presidential and Legislative Elections.

21. The Parties had agreed that to enable these Elections to take place, it would be necessary, among others:

21.1. To re-unite the country under one administration; and,

21.2. To integrate the armed groups in one national (republican) army.

22. During 2005, the Ivorian Parties requested the United Nations, through its Secretary General, to run the Presidential Election. The UN turned down this request on the basis that Côte d'Ivoire was not a failed state and had constitutionally prescribed institutions to run the Elections. This was unlike Timor l'Este where the UN did run the first elections as there were then no equivalent state institutions in what was a brand new country. Responding to the request of the Ivorian Parties, the UN Security Council authorised the appointment of a UN High Representative for Elections who would assist the Ivorian electoral institutions.
23. Regrettably, because of external pressure, the Presidential Election was held prior to the realisation of the two agreed objectives of the reunification of the country and the creation of one national army. The two final candidates were Messrs Laurent Gbagbo and Alassane Ouattara.
24. The result of the contest was that the election results as announced by the Independent Electoral Commission (IEC), which decided that Mr Ouattara had won, merely entrenched the division of the country as the rebel controlled areas were reflected as having voted for Mr Ouattara and the government controlled ones for Mr Gbagbo. The Head of UNOCI who acted as the UN High Representative for Elections also announced that Mr Ouattara had won the elections.
25. The Ivorian Constitution provided that the final arbiter of any national election, including the Presidential, is the

Constitutional Council (CC) and not the IEC. The IEC submits its report to the CC which has the power to alter the determination of the IEC on the basis of its own assessment of any element of the elections.

26. Exercising its own mandate, the CC annulled the elections in various parts of the territory controlled by the Forces Nouvelles on the basis that it had concrete evidence that extensive fraud, etc, had occurred in these areas. It determined that Mr Gbagbo had won the elections.
27. Despite the fact that the UN Security Council had mandated the UN High Representative for Elections only to act in support of the Ivorian electoral institutions, this Representative elected to endorse the finding of the IEC that Mr Ouattara had been elected and openly repudiated the determination of the CC that Mr Gbagbo was the victor …
28. In this situation Mr Gbagbo called for a recount of the votes and suggested the involvement of various international institutions in this process, including the United Nations, the African Union and the European Union. This call was ignored by the UN and everybody else concerned.
29. Mr Gbagbo ultimately contacted the African Union and informed the organisation that he was ready and willing to leave the President's seat in order to end the conflict in the country. He requested that the AU should send a delegation to Côte d'Ivoire to facilitate the process of his handover to Mr Ouattara so that the then current conflict was brought to an end and future conflict was avoided. The AU accepted this proposal.
30. Accordingly, the AU informed UNOCI that a delegation of African Heads of State would visit Abidjan to carry out their mission as proposed by Mr Gbagbo. UNOCI undertook to make the necessary security arrangements for this delegation and would communicate these to the AU. This was never done. As a result of this the AU never succeeded in carrying out its mission which would have resulted in ending the then conflict peacefully.
31. Instead, during 2011, both the UN, through UNOCI, and France, through Opération Licorne, deployed in Côte d'Ivoire as neutral peace keeping forces, commanded these forces to launch military attacks against Mr Gbagbo. They then captured him and handed him over in fact to the same Forces Nouvelles which had rebelled against the elected government of Mr Gbagbo in 2002.
32. In 2011, subsequent to Mr Gbagbo's transfer to the ICC, National Assembly Elections were held in Côte d'Ivoire. Mr Gbagbo's political party, the FPI, called for a boycott of the elections and did not participate in these. More than sixty percent (60%) of the registered voters did not participate in the elections.
33. Madame Prosecutor, in the eyes of many Ivorians the foregoing tells a story of a litany of injustices. This serves as one of the principal factors which feed the dangerous division and animosity affecting large sections of the Ivorian population - among others being that: …

33.6. Especially the UN High Representative for Elections failed to act on the very normal request by Mr Gbagbo to hold an internationally supervised recount of the votes to end the controversy about who had won the Presidential Election, even after Mr Gbagbo also stated that both he and Mr Ouattara should accept the result of the recount as final and binding.

33.7. The UN in particular, and others, failed to acknowledge the vital role Mr Gbagbo played to bring peace to Côte d'Ivoire when he used exceptional Presidential powers provided by the Constitution to allow Mr Ouattara to run for the post and serve as President of the Republic if he won the elections. Thus did Mr Gbagbo boldly address one of the central matters that had led to the 2002 rebellion and attempted coup d'état, and therefore begin the process of the repudiation of the divisive policy of ivoirité which his predecessors had instituted.

33.8. Similarly, these players paid no attention to the vitally important position which then President Gbagbo had taken when he agreed that an inclusive multi-party interim Government should manage the transition leading to the Presidential Elections. To emphasise his determination in this regard, he even agreed that the leader of the Forces Nouvelles should serve as the Prime Minister, heading the Interim Government….

35. Pertinent questions for the ICC

35.1. Therefore the question arises as to how the ICC should respond to this situation in which the removal of Laurent Gbagbo from Côte d'Ivoire is jeopardising the prospects of stability in that country, and the Court is perceived by a significant section of Ivorian and African society as having been co-opted by one political faction to neutralise Laurent Gbagbo and his party!

35.2. This question must surely weigh heavily on the Court, particularly in the light of the adverse effects of its action on the critical and urgent need to prevent a return to war and achieve *national reconciliation* in Côte d'Ivoire, which results will not be achieved without the participation of Mr Gbagbo, the FPI, and their followers.

35.3. While our engagement with them informs us that the FPI is keenly interested that such national reconciliation should take place and is committed to participate in this process, it will not do so without Mr Gbagbo, who is himself determined to contribute to this reconciliation without seeking re-election to any governance institution.

35.4. While we acknowledge that the Prosecution must follow its

evidence in bringing the charges, and is entitled to await the final determination of each case by the judges, we consider that a re-assessment of Mr Gbagbo's case is merited by the current fragility of the situation in Côte d'Ivoire, and by his particular circumstances, especially the need for his positive engagement in the processes of national reconciliation, unity and stabilisation. In this regard, it is very relevant that:

(i) Mr Gbagbo was not the cause but the target of the resort to arms by others in 2002 to address political differences;

(ii) Mr Gbagbo was not the originator but an opponent of the policy of ivoirité which lay at the base of the conflict;

(iii) Mr Gbagbo, against the wishes of large numbers of Ivorians, acted to enable Mr Ouattara to accede democratically to the Presidency of Côte d'Ivoire, and thus communicated the message to the millions of resident economic migrants that they would not be treated as second-class citizens;

(iv) Mr Gbagbo was so interested that Côte d'Ivoire re-establishes itself as a democracy that he even allowed those who had sought to remove him by coup d'etat to lead the Government that would oversee the transition to democracy, in the person of the leader of the Forces Nouvelles;

(v) Mr Gbagbo was committed to step down as President of the Republic in favour of Mr Ouattara despite his conviction that he had won the elections, thus to save the country from more deaths, suffering and destruction of property; and,

(vi) Even some judges within the ICC have raised questions about the existence of sufficient evidence to convict Mr Gbagbo. …

37. The questions raised by the confirmation process

37.1. As you know, Madame Prosecutor, the progress of Mr Gbagbo's case is followed very closely in Côte d'Ivoire, and the process of the confirmation of the charges preferred against Laurent Gbagbo was of particular interest. It is fair to observe that this process was not smooth. You will recall that in June 2013, by a majority decision, Pre Trial Chamber (I) found that there was insufficient evidence adduced at that stage to confirm the charges brought against Mr Gbagbo.

37.2. The fact that the Chamber nevertheless allowed the prosecution additional time to provide more evidence to strengthen its case, and one year later, in June 2014, the Chamber was able to confirm those charges only by the decision of the majority was not lost on observers. Neither was the fact that one of the learned judges gave a completely Dissenting Opinion, explaining why she remained unconvinced about the quality of the evidence supposedly pointing to Mr Gbagbo's involvement in the alleged crimes.

37.3. To interested observers, especially within but not only in Côte d'Ivoire, this was therefore a qualified endorsement of the charges against Laurent Gbagbo, and furthermore the split in judicial opinion has added to the perception of the legal deficiency of the case against Mr Gbagbo.

37.4. Even worse, you will understand, Madame Prosecutor, that all this has firmly suggested to Mr Gbagbo's supporters that he never had a case to answer in the first place, and that the ICC was at pains to ensure that the pre-determined objective to find him guilty was achieved.

38. The delays in the case

38.1. There are other elements of the case which need to be borne in mind. Nearly four years after his transfer to the Hague, the trial of Mr Gbagbo has still not commenced. Although this delay has arisen for a range of reasons, including the sheer complexity of the procedures, and the necessity to ensure that all sides are adequately prepared for any trial; and although delay in the context of ICC cases may not be unusual, it is undeniable that the longer this case has gone on, the more it has served to stoke the political tensions within Côte d'Ivoire to which we have already referred.

38.2. As you would know, the delays would be seen by Mr Gbagbo's followers as a deliberate and hostile expression of the principle – justice delayed is justice denied.

39. Prolonged detention

39.1. The delay in this case is significant at a level personal to Mr Gbagbo because of his continuing detention in The Hague. Despite the best efforts of his defence team, he has been unable to secure interim release even though, according to the decisions of the Court, a third State had apparently agreed that Mr Gbagbo could be released into its oversight, and that it would ensure his attendance at the Court whenever required. A particularly sad aspect of his detention is that Mr Gbagbo could not be released even for a few days to attend his mother's burial last year.

40. While various judicial decisions may have been made to confirm charges and to maintain Mr Gbagbo's detention, it is impossible to ignore the reality that this case continues to polarise Côte d'Ivoire, and to complicate the very necessary transformation of its general historic landscape.

40.1. This is an important concern motivating our Appeal, and creating, in our view, the imperative to reassess the Gbagbo case, and in particular to interrogate the necessity

of a prosecution, which has already manifested evidential deficiencies which are sufficiently serious to have attracted strong judicial dissent against the confirmation of charges.

41. The broader context

41.1. When it was agreed in 1998, States recognised that the Rome Statute would have to operate within the system of international relations and would entail an inevitable intrusion on the sovereignty of states. However, the negotiators of the Treaty rightly rejected the idea of any external oversight or filtering mechanism of the work of the ICC as this would have constituted an unacceptable interference with the exercise of the discretion and decision-making of the Prosecutor and the Judges.

41.2. However, in protecting the independence of the Court, States were not abandoning the idea that the new Court needed to operate in a manner that recognised the complexities of the international system or of the situation in national settings and relied on the option to pay due regard, as appropriate, to the need to nurture national processes.

41.3. Rather, and instead, the signatories to the Statute entrusted to the Prosecutor and the Judges, through the judicious use of their discretion, the right and duty to make the necessary determinations as to when the proceedings of the ICC might be inappropriate or inimical to the best interests of justice, taking into account all relevant considerations, including the impact of its interventions on sustainable peace and stability in the specific societies.

41.4. We therefore consider that the Rome Statute should remain in the hands of the ICC a living instrument, capable on the one hand of pursuing individual accountability for the most serious crimes, while at the same time retaining the capacity to respond flexibly to the specificities of each case, avoiding doing harm. This approach in our view is consistent with the purpose and text of the Statute as we understand it.

41.5. In our view, Madame Prosecutor, the very independence of your office, and that of the Judges, serves to insulate the Court's decision-makers from interference, freeing them to exercise the wisdom that is necessary to enable the Court to contribute to solutions to the major crises within which the Court inevitably operates. Thus the strength and value of the Rome Statute will be judged not by the inflexibility of the ICC in dispensing justice, but by its responsiveness to the complexity and nuance of the various situations of which the ICC will be seized.

41.5.1. In this regard, we must emphasise that our Appeal is in no way intended to question or undermine the need to hold accountable all those who commit the grave offences detailed in the Rome Statute, and the obligations of the ICC in this regard. We would like to believe that as they address the vitally important matter of national reconciliation, the Ivorians would also focus on the issue of justice, fully conscious of the interconnection between the two.

42. Withdrawal of Gbagbo charges

42.1. Madame Prosecutor, we recognise that the challenges that Côte d'Ivoire faces are not unique to that country and that in other contexts too, your Office will be familiar with the tensions between the work of the ICC and the imperatives to ensure stability in the particular countries. But as we have sought to demonstrate, the arrest of Laurent Gbagbo has manifestly failed to contribute towards political reconciliation and the recovery of that country, but has instead hindered that process, polarised opinion and exacerbated the divisions in Ivorian society to the extent that we are now gravely concerned about the prospect of the renewal of conflict in that country. …

42.4. Madame Prosecutor, we must stress that none of what we say here seeks to minimise the crimes that have been committed in the context of the political contestation in Côte d'Ivoire. We subscribe to the idea that the most serious crimes that are of concern to the international community as a whole should not go unpunished but should be addressed principally through steps taken at the national level. In our humble opinion, under the Rome Statute the Court should, in such circumstances as prevail in Côte d'Ivoire, defer to the existing national processes and the mechanisms that the Ivoirians collectively will adopt to ensure accountability and reconciliation with respect to the violations arising from the crisis in that country.

42.5. While we do recognise that any decision to withdraw charges may have to be subject to the authorisation of the Judges, we are convinced that in the light of the ample information and analysis at your disposal, as well as the matters we have humbly identified in this letter, your Office, Madame Prosecutor, is well-placed and equipped to address this matter in a manner that will at the same time advance the cause of the Court and of the people of Côte d'Ivoire, and Africa as a whole.

43. We would therefore request you, Madame Prosecutor, to review the case against Mr Laurent Gbagbo and initiate the process of withdrawing or otherwise discontinuing it. We are convinced that in this course lies the best way for the Court to contribute towards the attainment of national reconciliation and unity, stability, recovery and accountability for Côte d'Ivoire, by allowing the possibility for all Ivoirians to come together to resolve their differences without resort to the use of arms. ■

It's gonna get ugly before it gets better

Because of the way in which structural racism normalises white dominance and superiority, it entrenches and perpetuates inequalities in power, access, opportunities and treatment

By Oscar van Heerden

When considering the racism so prevalent in South African society and wanting to have a correct understanding of the phenomenon it is important that one look at all three aspects of racism: individual, institutional and structural.

The historic injustice of the South African chapter of racism can be found in a very neat theory coined by the liberation movement as 'Colonialism of a Special Type'. This theory in short states correctly that the coloniser and the colonised live side by side within the same borders, which is different from the more typical situation where the coloniser is indeed a foreign power located afar. This is an important theory and it explains a situation that gave rise to legal segregation of the races, later known as Apartheid, which obviously was upheld by fundamental institutionalised racism.

According to Professor Vernellia Randall in a paper named, 'Speaking Truth to Power', institutional racism must be understood as an interaction between prejudice and discrimination. Prejudice she states is an attitude that is based on limited information or stereotypes. While prejudice is usually negative, it can also be positive, she contends. No one is completely free of prejudices, although they may not have any significant prejudice against a particular group. Oppression, she says, is a systemic subjugation of a social group by another social group with access to power.

She goes on to say that power is the ability to control access to resources, the ability to influence others, and access to decision makers. Discrimination on the other hand is behaviour, intentional or not, which negatively treats a person or group of people based on their racial origins.

In the context of racism, power is a necessary precondition for discrimination.

Professor Randall further states that racism depends on the ability to give or withhold social benefits, facilities, services, opportunities, etc., from

someone who is entitled to them, and is denied on the basis of race, colour or national origin. She concludes that the source of power can be formal or informal, legal or illegal, and is not limited to traditional concepts of power.

So what gave white South Africans this power?

The constitutional law expert, Pierre de Vos (2013) goes to great lengths to expose the impact of structural racism in South Africa and it is worth quoting him here at length in order to illustrate the point.

He begins by telling us of his personal experience in Thailand some time back where he noticed how most of the advertising in that country aspired to the notion of European(ness) and or what he called whiteness. He concludes that the often-invisible but prevalent assumption in most societies that have been economically, culturally and socially colonised by the West is that white "Europeans" are the norm against which all others are implicitly measured – and often found wanting. This assumption is deeply problematic.

He says that these anecdotal examples hint at the dominant normative assumptions about white superiority that are so deeply embedded in modern society in our globalising world that they can easily appear to be normal and natural when, in fact, they are nothing more than a manifestation of structural racism.

He goes further to say that if you care to look with a critical eye, you quickly spot the myriad of ways in which popular culture, workplace rules and practices, academic discourses, social norms and standards, rules that validate certain types of knowledge and discount other types of (often indigenous) knowledge, and commercial advertising send out (sometimes explicit and at other times concealed) messages that normalise and even celebrate the superiority of white Western ways of being in the world.

De Vos states that this is so because when you experience the world as a white person, as someone who does not really have a race or a culture that is systematically denigrated and held up as inferior, you may not realise that you are lucky (one should say privileged) enough to have your general disposition and belief system (if not always all individual traits and actions) held up as normative, as ideal, as "just the way the world is" or "ought to be". You might not realise that this position of privilege grooms you for success, signals to you that success is nothing less than your due. It creates a world in which others assume that you are competent, hardworking, honest, intelligent, socially well-adjusted and appropriately ambitious.

In conclusion de Vos contends that structural racism means the entire system of white superiority described in anecdotal forms above. He is not talking about the gross forms of individual racism in which a person knowingly and flagrantly display racial prejudice. *Sparrow a case in point*. Instead, he is talking about the assumptions with regards to white superiority and whiteness as the assumed norm of goodness and competence that is diffused and infused in all aspects of society, including our history, culture, politics, economics and our entire social fabric.

> "One does not address the consequences of structural racism merely by creating opportunities for black people to 'assimilate' into the normative white world."

Because of the way in which structural racism normalises white dominance and superiority, it entrenches and perpetuates inequalities in power, access, opportunities and treatment.

Because of structural racism, race is not a proxy for disadvantage – it is always and remains a form (if not the only form) of disadvantage.

Finally, de Vos provides us all with a solution in which he indicates that one does not address the consequences of structural racism merely by creating opportunities for black people to 'assimilate' into the normative white world. Instead he says, you transform the society and challenge the basic meaning-giving assumptions according to which society operates and in terms of which goods, services and opportunities are distributed. In short, you attack and dismantle white privilege, which is the flip side of the coin of structural racism.

Some of us call this 'transformation', de Vos stated. I couldn't agree more with his cogent understanding of structural racism and indeed how one must simply go ahead dismantling it – a bitter pill to swallow for many white South Africans I have no doubt, but a necessary endeavour to say the least.

Institutional racism is not always manifested knowingly and intentionally: the power of it lies exactly in its ability to make itself invisible. This allows its beneficiaries to deny its existence (and genuinely believing in its absence) while benefiting from it.

Individual Racism & Social Cohesion

In order for all of us to consolidate our infant democracy, to safeguard the so called miracle, post 1994, we must all collectively concentrate on the 'small' issues. Small, meaning the *interpersonal*.

These last few months saw individuals using social media to share their racist views about black people in South Africa, little did they know that what they started would be a race war and in war there are bound to be casualties and lots of collateral damage.

The question we must all ask ourselves, are we prepared for it? The Penny Sparrow and other eruptions of hate speech, what does this all mean, why is it happening now and what might result from it?

It's gonna get ugly before it gets better and perhaps that's what we need as South Africans.

We are all in agreement about the shortcomings of our beloved TRC processes and the fact that many victims and families did not feel justice had been done, not enough remorse were shown or empathy shared, to say the least.

As a result, complacency crept in and an acceptance that more of the

old will simply continue. Whites will still have their black domestic workers and gardeners and certainly their land as Chris Hart so aptly reminds us of, with no regard or consideration of the Native Land Act of 1913.

Let me share my understanding of what is the state of play with regards to race relations in South Africa. Professor Njabulo Ndebele once shared with a certain audience some short stories to illustrate a simple point with regards to consolidating South Africa's infant democracy.

The first was the "Reitz Koshuis" incident some few years ago at the University of the Free State, you would recall the utter vulgar behaviour of some of the white students towards their respective black "house mothers". These were individuals responsible for the cleaning of the student koshuis and the students' general well-being. Yet these white students deemed it important to belittle these mothers, offer them food that they had urinated in and many other disgusting things, all the while videoing the whole affair for the purposes of sharing it on social media, I presume.

The second story related to educators and learners, during the usual annual strike action of SADTU members who choose their timing so well to coincide with the end of year Matric exams (so important to learners whom have come to the end of their schooling lives and seeking entry to Institutions of Higher Learning). In order to put pressure on the Department of Basic Education they basically refuse to administer these exams. Realising that this action can jeopardise the future of such learners some teachers wanted to opt to assist with the exam whilst the strike action continued. However their colleagues had other plans and the disagreement resulted in teachers' fist fighting with each other in front of the learners in order to bring their respective points across.

The third story was about the South African Police Services who during a routine service delivery protest decided to isolate someone whom they thought was one of the main instigators of the protestors, tied him to the police vehicle and proceeded to drag him down the road, ultimately resulting in his death. Those that are supposed to uphold the law were now actively breaking it; all this in front of citizens whom they expect to abide by the law at all times.

One can also mention the tragic massacre of Marikana, where miners were shot down in cold blood, but not only from the perspective of the police and the mine workers but also from the point of view of white Capital. The latter considered it ok for enormous profits and bonuses to be paid out to their board members/shareholders and yet frowned on a living wage for ordinary black workers.

The point I think Ndebele was making with these short stories is that as a country we have successfully satisfied the 'big issues', meaning, As a country, Post-Apartheid, we have:

> "Institutional racism is not always manifested knowingly and intentionally: the power of it lies exactly in its ability to make itself invisible. This allows its beneficiaries to deny its existence (and genuinely believing in its absence) while benefiting from it."

- ensured successive Free and Fair general elections;
- we have established a world admired constitution and the requisite institution to protect it in the form of the Constitutional Court;
- an Independent Judiciary;
- a Free Press;
- a Bill of Rights, protecting the citizens of South Africa; and
- (last but certainly not least) our Chapter 9 institutions to give effect to all enshrined rights and responsibilities of citizens.

I accept that at some point or the other these are separately and collectively threatened by the state and/or government but this is surely consistent with the ebbs and flows of a vibrant democracy. Having said that, however, civil society must at all times safeguard itself against the abuse of state power wherever it may manifest itself. This is again an important feature of democracy.

Allow me to repeat: in order for all of us to consolidate our infant democracy, to safeguard the so called miracle post 1994, we must all collectively concentrate on the '"small' issues. Small, meaning the *interpersonal*.

If those Reitz students don't manage their respective relations and attitudes towards those caregivers, consolidating our democracy will remain under threat.

If the Educator and the Learner don't have mutual respect for each other and Teachers don't lead by example in society, our democracy will remain under threat.

If those who took an oath to uphold the law do not abide by it, our democracy will remain under threat.

And unless captains of industry do not accommodate ethical considerations with regards to wage negotiations, our democracy will remain under threat.

Take stock of our history and ask yourself whether this country's dark history accords with your nonsensical utterances.

The *interpersonal:* that is where we must do battle, not with each other, for I fear that race war will have no victor on either side.

To conclude, are you ready for a war? Are you ready for the unravelling of the so called miracle, the rainbow nation?

Racism has no place in our new democracy. We have fought too long and too hard to rid ourselves of it. To regain our dignity and pride as equal citizens. You talk of monkeys and entitlement as if you've read it in a book. Do you know how that chapter ends, Ms Sparrow & Mr Hart?

Do you?

One only has to look at the devastation race and ethnic war has brought to the people of Syria, Libya, Palestine, Nigeria and France, to mention but a few places.

Perhaps I should just say to Sparrow, Hart and their ilk, THINK!! ■

TINKERING ON THE EDGE OF THE DECOLONIALITY DISCOURSE – #Feesmustfall and a Missing Professoriate

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To millions of young South Africans education is the only way to break the cycle of poverty in their home fronts. This holds true for the collective endeavours to achieve sustainable development. Ultimately, this is what the transformation of higher education ought to be aimed at.

By Mashupye H Maserumule

Was "2015 South Africa's year of the student?" An influential young Pearl Pillay asked this question in her reflection on the student activism that brought the university sector to its knees. Although she argued that it was not, the mainstream media argued that the student activism of 2015 was one of the defining moments in the post-apartheid South Africa. Either way, yet another inevitable question is: what does 2015 portend for 2016? In other words, does 2016 mark a fresh start or a continuation of 2015? I can just imagine a grimace in the faces of the vice-chancellors as they ponder over these questions. For, how a university sector turns out this year is to become a litmus test of their leadership.

These questions follow on many others in the public intellectual space asked to make sense of what was increasingly being characterised as the surging student activism. On Tuesday of 21 April 2015 eNCA hosted a debate on this subject, titled *Students rise – the return of student activism*. In order to contextualise the discussion the following questions were formulated: "Is this [activism] a 'student spring' or will this moment dissolve in the twittersphere? Is this brand of activism targeting the right issues, or distracted by symbolism?" The *Mail & Guardian* aggregated the events of 2015 in its end-of-year edition, themed *People Power*. Featured prominently in this edition was student activism and the hashtag unity, with one of the articles daring to ask a more troubling question: "Is the student uprising of 2015 a harbinger of revolution?"[1]

These questions require thought leadership, strategic insight and extraordinary ingenuity. This is where a professoriate is needed desperately to assume leadership, especially in the context of the recurring decolonisation theme in the hashtag activism of the students. In the context of the socio-economic inequities that continue to define post-apartheid South Africa, a persistent question is: What does this activism represent, two decades into democracy? An answer is implicated in Njabulo Ndebele's analysis: youth activism on campuses represents "a radical edifice of hope and aspiration."[2] But, isn't this an irony?

Student Activism

The discontent of the students has long been simmering. Largely in the historically black universities, protests have always been part of the inauguration of the new academic year. Yet these universities have always accommodated students from poor socio-economic backgrounds. Historically black universities need to be venerated for this. It is historically false to say, as some analysts have done, that student activism has returned now the Ivy League universities are affected.

Student activism has always been part of a university culture. Some of the historically black universities are characterised as sites of anarchy. This is because of the violence associated with student protests, resulting in the destruction of the very property that should be jealously protected and preserved for posterity. This behaviour is beyond the pale. It needs correction.

An important question is: what is the psychology of a poor student who is academically gifted but faces the prospect of not completing his/her studies because of his/her socio-economic circumstances, with a university education being perceived as the only key out of poverty? This challenges the university management to look beyond the securitisation or militarisation of university campuses and court interdicts as a way of managing student protests.

With more black students gaining

admission to the historically white universities the reality of the historically black universities is now being shared. #FeesMustFall illustrated this. In 2015 students in South Africa grabbed the attention of the country and the curiosity of the international community. In their co-ordinated voice, transcending party political and ideological biases, students unequivocally said their socio-economic circumstances cannot be used to determine access to higher education. This argument is encrypted in the resolve of the liberation struggle for the emancipation of those who colonialism and apartheid bequeathed pejoratively the epithet of the 'Other'. The demands of the students have a blessing of history. They laid bare the fact that political freedom does not necessarily mean economic and social equality.

In the *Mail & Guardian* end-of-year edition I referred to earlier, Sipho Hlongwane captured this stand of the students aptly: "We're liberated, but we're not free."[3] This talks to the socio-economic inequities in the post-apartheid South Africa. #FeesMustFall challenged this anomaly – the inequality of educational opportunities. It was part of a continuing struggle for social justice, meaning equity in the distribution of "benefits and burdens of a common existence."[4] Their struggle challenged the logic of managing higher education as a commodity rather than a public good, including the underbellies of this neo-liberal system such as outsourcing and the casualisation of workers. Students challenged the "economics of inequality."[5] But, was #FeesMustFall just simply about the economics of higher education?

Some commentators and analysts seem to suggest this. Likewise, government's response followed this logic, with the announcement that tuition fees for the 2016 academic year would not be increased. #FeesMustFall was misunderstood as a demand for zero increment of tuition fees while in actual fact, what it meant, according to the students, is free education. In the same way #RhodesMustFall was not just simply about the removal of the Cecil John Rhodes statute, #FeesMustFall was a mobilisation that reinvigorated the transformation agenda with the decoloniality intonations demanding engaged scholarship for liberatory science. It was a demand for social justice – a praxis of public good – and cognitive justice – "equal treatment of all forms of knowledge".[6]

Commentators, analysts and government failed to read the multi-vocal demand of the students: free, quality education in liberated zones, free of the institutional racism manifest in the culture of whiteness bedevilling their spaces of learning. Malegapuru Makgoba captured this aptly: "students want knowledge system decolonised and white institutional culture transformed to be in line with the identity and culture of our country, and not with the identity and culture of some foreign country". From what Makgoba characterised as a "single-item-focussed solution"[7] to #FeesMustFall a question arose: how can analysts fail to interpret correctly a public demand in its entirety? Were the analysts perhaps fazed by the show of anger in the protests? Or perhaps a show of frustration, misconstrued as anger?

> "The graduates of policy analysis should be placed strategically in the administration of the state to properly read situations that require policy choices and accordingly advise the political leadership."

An attempt to answer these questions is an exercise in conjectures, except to emphasise that government's response to students trivialised the totality of the issues at play. Looking deeper with a penetrating eye and taking into account its antecedents, including #RhodesMustFall and Open Stellenbosch, #FeesMustFall was a stand against the edifice of the colonial culture lurking in the epistemologies and the pedagogical praxis of modernity "specifying the content of otherwise abstractly universal conceptions of rational personhood and moral claims, and insinuating into these conceptions the identities necessary to sustain and legitimate the exclusions and exploitations".[8]

#FeesMustFall should be understood beyond the economics of a demand for free education. A lesson in reading a public demand for policy choices for the leadership of the country, including commentators and analysts, is urgently required. Where were the schools of public policy analysis? This question is not asked with tongue in cheek. For, it implicated the strategic ingenuity of public leadership. The graduates of policy analysis should be placed strategically in the administration of the state to properly read situations that require policy choices and accordingly advise the political leadership. Let me revert back to free education, as opposed to zero increment of tuition fees. This is an important part of the article. For it provides a context for the analysis of the South African professoriate in the #FeesMustFall and its location in the decoloniality discourse.

Free education

Free education is a means to an end. Its interpretation solely in monetary terms as access to tertiary education is simplicity. The end is quality education. But, how do we achieve this? Surely by not throwing money at what was superficially diagnosed as a problem. Lessons from the history of Africa's development through the Structural Adjustment Programmes teach this much. Are we listening to history as we navigate our contiguity?

At issue here is a colonial culture pervasive in the epistemologies and the pedagogies, which after decades of Africa's independence from colonialism, still continue to define the enterprise called education. This is not surprising because, as Maja van der Velden observed: "almost all post-colonial nationalist movements embraced the modernisation premises of Western science."[9] The university students reminded the African nationalists of the commitment to bring to an end colonial and racist ideologies stereotyping Africans as bereft of the cognitive faculty to spawn anything that amounts to logic

and reason. An important addition in the contemporary discourse on the transformation of higher education is that education as a public good must have a utilitarian value. In other words, it must be contextually-relevant and easily accessible to address the challenges of Africa's development. In Iain McLean's words: "public good is any good that, if supplied to anybody, is necessarily supplied to everybody, and from whose benefits it is impossible or impracticable to exclude anybody".[10] This is what education is – a public good. Its "freeness" is not only a function of access, but also of quality and relevance.

In Derek Barker's words, engaged scholarship is "a distinct set of practices within the general movement towards civic renewal" of higher education, with a posture that enhances public discourse directed at untangling "complex questions" that require "deliberations" to effect "social change" and "structural transformation".[11] It is "scholarship of consequences"[12] – not an ivory tower enterprise detached from reality. Engaged scholarship is a means to a liberatory science, which given the edifices of the colonial apartheid and the hegemony of Western epistemology in Africa, its significance cannot be over-emphasised. It is a praxis of integrating academic learning with existential realities. Liberatory science is not synonymous to postmodern epistemology. The distinction lies in the fact that, although the postmodern epistemology rescued knowledge from the irrationalities of modernism, it did not do so to achieve cognitive justice. In Andrew Ross' words, liberatory science is "publicly answerable and of service to progressive interests".[13] Engaged scholarship and liberatory science are important variables for free education.

To millions of young South Africans education is the only way to break the cycle of poverty in their home fronts. This holds true for the collective endeavours to achieve sustainable development. Ultimately, this is what the transformation of higher education ought to be aimed at. University students agitated for "going beyond colonialism and its ideologies, broken free of its lures to a point from which to mount a critique or counter-attack" in their decoloniality version of the transformation of education.[14]

I was exposed closely to this reality in the 2nd National Higher Education Summit in Durban, themed *Transforming Higher Education for a Transformed South Africa in a 21st Century World: A Call for Action*, where the university sector was in conversation with itself. The leadership of student activism articulated eloquently its position on decoloniality in the Summit, which was followed by country-wide protests. One wonders whether the Summit's *call for action* prompted students into action. I am asking purely on the basis of a possibility of causal link between a persuasive power of the decoloniality language and human behaviour. Indeed, students acted and their demand is forthright: free education.

Those with pretensions to elitism are quick to say free education is an equivalence of low standard. This argument is a construct of discrimination; a logic of those who do not want the sanctuary of their privilege interfered with. It is an illusion of the bourgeoisie. For, a question that never gets answered is: whose standards?

> "This is what education is – a public good. Its "freeness" is not only a function of access, but also of quality and relevance."

Of particularly importance in the free education discourse and transformation is the question of the theory of knowledge or philosophy of science. In other words, what is the epistemological and gnoseological dispositions of free education university students are demanding? These are inevitable questions in the epistemic decolonisation. As argued earlier, free education cannot simply be reduced to economics. It is freedom from the tyranny of coloniality. This is achieved by building "new concepts and being willing to revise critically all received theories and ideas".[15] When a discourse on the transformation of higher education reaches this proportion, an important question arises: where is a professoriate – a fulcrum of academia – in the decoloniality discourse? Its thought leadership on a matter as important as the transformation of knowledge is desperately needed. What is its posture? Is it predisposed to engaged scholarship for liberatory science? I considered these questions in the article *Why Africa's professors are afraid of colonial education being dismantled*, which was published in *The Conversation Africa* (25.11.2015). The article drew a huge response, suggesting that it is important to take the discourse on the professoriate and decoloniality further.

A Professoriate and Decoloniality

In the said article I asked a question, in the context of #FeesMustFall as laced with the decoloniality intonations: how can a professoriate transcend the edifice of the Western epistemology and build a counter-hegemonic narrative? This is because, as I argued, a larger proportion of the professoriate in African universities is cut from the cloth of Western epistemology. In other words, as I asked, how does a professoriate change the essence of its edifice? Kwame Nkrumah's observation that African intellectuals [professors] are "anointed with a universalist flavouring which titillates their palate that so agreeably they become alienated from their own immediate society"[16] was used to exemplify a professoriate problematique in the decoloniality agenda. Because of all these, I wondered whether students and their supporters were not asking too much from a professoriate.

By a professoriate I am not necessarily referring to the bureaucracy of the universities, but professors who are at the coalface of academia teaching, engaged in research and community service. Those who the Irish poet Yeats characterises as "Bald heads, forgetful of their sins,/Old, learned, respectable bald heads/Edit and annotate the lines/That young men tossing on their beds,/Rhymed out of love's despair/To flatter beauty's ignorant ear".[17] Those who use "wisdom, learning and high ideals to fortify the citadel of truth";

and can also "turn those same skills to raising their own exclusive fortresses, from where they rain down erudition and abuse on one another"[18] or their students.

The edifice of the professoriate is embedded in the Western epistemology. This needs to change. But, how do we go about it? In other words, how do we create a professoriate with a decoloniality posture? This is no easy task. Coupled with the falsehood of vagueness, a standard response, which is increasingly becoming a pattern of nihilism, is that decoloniality in the transformation discourse is a "false pursuit", "misguided", "obsessed with whiteness", and a "narrow nationalist project".[19] In Hellen Moffett's words, these are "defensive impulses that…generate so much white noise [to] suck up the oxygen of public dialogue".[20] This is intended to sustain the sanctuaries of privilege. Its self-referential inscriptive approach does not in any way contribute anything to the decoloniality discourse. I mean, if it is a "false pursuit", what is the "right pursuit"? An answer to this question is not forthcoming. Because of this, one can only assume that nihilism does not see anything wrong with the status quo. It therefore prefers that it remains. To it, institutional racism, inequality of educational opportunities, and the Western epistemologies are the normalcy of existentialism.

That the decoloniality discourse is "misguided", as some dare conclude "armed with little beyond a bundle of misconceptions",[21] that it is "obsessed with whiteness", and it pursues a "narrow nationalist project" reveal little knowledge, if not ignorance, of the philosophical and theoretical foundations of the discourse, including the extent of its universality. Walter Mignolo – an Argentine semiotician and a professor at Duke University in the United States – is an outstanding theoretician on decoloniality. Following my article which I referred to earlier, I had the privilege of e-mail exchanges with Chandra Raju on decoloniality, including access to his work on this subject. Raju is a computer scientist, mathematician, educator, physicist, and polymath researcher in India. He is attached to the Centre for Studies in Civilisations in New Delhi. He talks decolonisation of hard sciences, based on his experience in this pursuit in India, Malaysia, and Iran. I deliberately make this reference to Raju, including his works to dispel the myth that decoloniality is for the humanities and social sciences, not hard sciences – often referred to as "real sciences".

Lurking in this argument are the same old stereotypes of racist scholarship that humanities and social sciences are for blacks. The attitude is that decolonisation can be a pet project of uncouth professors, who are misguided. Misguided, because they dare question the logic of the Western epistemology? As the plea of those that seek to protect the sanctuaries of privilege go: "hands off our real sciences with your decolonisation delusions".

This is a shockingly hollow understanding of the very concept of science. It perpetuates the falsehood that science has never been part of Africans. If so, how do we explain the pre-colonial African civilisation? In other words, is civilisation not a function of science? Of course it is, as Niall Ferguson demonstrated in his book *Civilization*.[22] The purpose of science is to "better the accounts of the world".[23] It "serves the perfection of man in this world[24]". Treating natural/physical sciences and humanities/social sciences as binaries is absurd. Francis Neumann exposed this in his analysis that non-linear system "appear to have great implications not only for the physical world, but also for the social world".[25] The nihilists of the decoloniality discourse do not want to hear any of this. In their desperation to protect the status quo, one fundamental point they miss is that the "true object of scientific study can never be the realities of nature, but only our observation on nature".[26]

Their positivist illusion of objective truth is exposed, as Jacques Derrida did. If it is only the "hard sciences" that are capable of being "real sciences", therefore secure "absolute truth", why would the "relativistic Einsteinian universe" have evolved to lay bare the inadequacy of the non-linear paradigm?[27] The answer is simple: truth is the function of epistemic relativism, both in humanities/social sciences and natural/physical sciences. As an imminent physicist Sir James Jeans (1981) too suggested, "the positivist definitions of science may not even be wholly satisfactorily for the traditional natural sciences".[28] Science is always in question.

This is the context from which the concept of decoloniality as a subtext of transformation in the #FeesMustFall, and its praxis, should be understood. In other words, "science is a continuous process of creation rather than a constructed edifice".[29] Where is the professoriate with the decoloniality posture to provide leadership on these issues, which are clearly not within the reach of the ordinary mind?

Towards a professoriate for decoloniality

Earlier a question was asked: how can a professoriate with a decoloniality posture be created? It all starts with the courage to transcend the Western epistemology. This requires the revolution of the mind. Ngũgĩ Wa Thiong'o makes this point in his celebrated literary work, *Decolonising the mind*.[30] Likewise, Thabo Mbeki – whose heretical thought leadership ruffled the sanctuaries of the establishment – had long challenged the African intelligentsia, in the concept of the African Renaissance and subsequently in a book *Africa define yourself*, to go beyond the Western lenses.[31]

A professoriate in the transformation discourse should assume a revolutionary posture, disrupt its sanctuaries and confront the edifice of its making. Walter Mignolo characterises the courage to achieve this as "epistemic disobedience".[32] This pursuit should draw insights from the decoloniality theory. Among others, W.E.B Du Bois is considered a twentieth century authority on this subject. Aime Cesair and Frantz Fanon solidified the decoloniality theory in their counter-hegemonic narratives of the mid-twentieth century. Their pursuit enthused a plethora of ruminations from intellectuals largely in Latin America, the Caribbean, the United States and Africa "in the second half of the twentieth century to the beginning of the twenty-first century".[33]

A body of knowledge exists from where the decoloniality discourse could draw theoretical and philosophical insights to spawn the African epistemology. In Africa a rich body of scholarship includes the works of Archie Mafeje, Dani Nabudere, Cheikh Anta Diop, Molefi Kete Asante and Bernard Makhosezwe Magubane among others.

In Nabudere's words, Mafeje "tried to deconstruct structural functional Anthropology and attempted to construct a new research methodology that was free from…colonially inspired disciplines, within the wide sciences discourses".[34] Nabudere himself challenged the colonial theorisation of Africa. He sought to mainstream the indigenous knowledge system.[35] Diop situated the origin of civilisation in Africa and, in the process, nullified German philosopher G.W.F Hegel's contention that Africans do not have history.[36] Asante, meanwhile, aggregated pan-African thoughts into Afrocentricity. He described this as a paradigm that represents "a revolutionary shift in thinking proposed as a constructural adjustment to black disorientation, decentredness, and lack of agency".[37]

Magubane is best known for his work on the political economy of race and class in South Africa. He exposed the falsehood of colonial apartheid and liberal narratives of history, thereby asserted African perspectives in the centre of historical consciousness.(38) These are courageous scholars who dare "shift the geography of reason": "opening reason beyond Eurocentric horizons".[39] In their footsteps followed, among others, Achille Mbembe, Kwame Anthony Appiah and Sabelo Ndlovu-Gatsheni. These are contemporary scholars at the cutting edge of the discourse on decoloniality, including Malegaburu Makgoba and Xolela Mangcu. They are among the few in the South African professoriate that have publicly taken a stand and challenged Western epistemology. Their courage needs a wider emulation for a serious discourse on decoloniality.

Serious debate

In order to provide thought leadership on decoloniality, a serious debate is required. In other words, we need honest yet critical reflections to enhance the philosophical and theoretical profundity of the concept, including its contextuality in the hashtag unity of student activism. For me, Sabelo Ndlovu-Gatsheni's rejoinder to Mbembe and Appiah, including other post-colonial theorists, who criticised the theorisation of decoloniality along with African nationalism and Marxism as the autarky of African scholarship, exemplifies the kind of serious debate I am talking about. Ndlovu-Gatsheni made a very important observation: "the postmodern and postcolonial critique of nationalism, Marxism and decoloniality is informed by a deep misunderstanding of how the modern world was constituted and how it works".[40] He further explains this misunderstanding: "modernity had two faces, particularly that the progressive rhetoric of modernity including liberal democracy and human rights discourses help in hiding coloniality as the negative side of modernity".[41] Perhaps a fiercer critic is the natural resource governance expert Jeremy Weate:

> *The postcolonial theory is in danger of getting tangled up in its own paradigms, losing sight of the existential horizon of the contemporary post-colonial situation. The key risk is that post-colonial theory remains caught up in a semiotic frame of reference that blinds its adepts to all phenomena that cannot be readily be referred to as a text. Post-colonial theory is presently trapped within a self-referential inscriptive paradigm that by definition does not and cannot recognise phenomena that are not inscribed. This starting point means that post-colonial theory is destined to continue disengaging with postcolonial lived experiences, in favour of ever more baroque and solipsistic readings of texts.*[42]

> "The real power of the West "resides in the power to define". Those who refuse to conform are "defined out of existence".

What does all this mean? The answer is simple: there is much still to be discoursed in re-theorising decoloniality to situate it contextually within #FeesMustFall. This cannot be a discourse of students in the absence of a professoriate to provide thought leadership in the decoloniality discourse. The contributions of Ndlovu-Gatsheni to the theory and praxis of decoloniality in the following books are very important: *Empire, global coloniality and African subjectivity* (2013); *Coloniality of power in postcolonial Africa* (2013); and *The Decolonial Mandela: peace, justice and the politics of life* (2015). We are looking forward to his yet another publication on the subject, *Epistemic break in humanities and social sciences*. I mention all these contributions, including Achille Mbembe's book titled *On the postcolony* (2001), to demonstrate that a body of knowledge on decoloniality exists, enabling a serious debate on the subject. A full version of Weate's paper is easily accessible on-line. It is titled *Post-colonial theory on the brink: a critique of Achille Mbembe's 'On the Postcolony.'*

The post-colonial scholars agree that coloniality is a "fundamental problem in the modern age".[43] However, decoloniality as a solution is fraught with theoretical contestations. This is where thought leadership of a professoriate is needed to rain down erudition instead of leaving the decoloniality discourse for navel-gazing, lest it become an ideological rhetoric for student activism rather than a cause for epistemological revolution. Theoretical and philosophical questions belong to the sphere of episteme – a realm of scholarship.

In the Summit on transforming higher education the Minister of Higher Education, Dr Blade Nzimande made a poignant observation in his concluding remarks: Academics' voices in the discourse have been mute. Could this be because of the fact that the transformation of higher education is now increasingly becoming pursued through the prism of decoloniality, which may require repudiation of their make-up? Or perhaps they do not just want to disrupt their sanctuaries? What

about the possibility of a fear of being defined out of existence by the colonial matrices of power? I dare ask these questions because, in cultural critic and Muslim thought scholar Ziauddin Sardar's words: the real power of the West "resides in the power to define". Those who refuse to conform are "defined out of existence".[44]

Most accepted the definitions and prescriptions of the West as the template of their world outlook. This is a defeatist posture. Or perhaps cowardice? If a professoriate does not heed the multivocal cues in the activism of the millennial generation, especially in being prepared to assume thought leadership in the decolonisation of the curricula, it would not be the West that define it out of existence, but the contiguity of its existential reality. So, the question for the South African professoriate on the decoloniality discourse for the transformation of higher education is: quo vadis?

I am picking up on a professoriate as it is a fulcrum of a university and a connoisseur of knowledge. So, when we talk decoloniality in the transformation discourse, a professoriate should be a primary audience and a thought leader in theorising the project from which insights could be drawn for the recurriculation endeavours or curricula development. Going back to the observation the Minister made, I am compelled to ask: where is the South African professoriate in the transformation discourse? Missing in action?

This question is asked because only a fraction of a professoriate in South Africa engages with the concept of decoloniality as a subset of the transformation of higher education. It is tinkering on the edge of the theatre of a play in which it should be playing as a protagonist. The question asked does not need the physical presence of a professoriate, but its ideational presence. Its thought leadership is required for ideational capacity, as lurking in the decoloniality discourse is the question of a complexity of epistemology. The decoloniality discourse, using Thabo Mbeki's words: "obliges us to revert back to the fundamental question of epistemology and gnoseology - what is knowledge!"[45] In order to answer this question a professoriate needs to, as argued already earlier, confront the edifice of its making, assume a revolutionary posture, and go beyond the falsehood of the West on the theory of knowledge or philosophy of science.

As the archaeological discoveries confirmed, humanity started in Africa. Africans in their antiquities had cognitive faculties. A South African paleoanthropologist Phillip Tobias made this point very clear, which is consistent with the work of an Afrocentric historian Cheikh Anta Diop. His study of the African origins of civilisation arrived at the conclusion that Africa is "the cradle of the first major civilisation of antiquity".[46] This nullified a German philosopher, G.W.F Hegel's thesis that, using the Senegalese philosopher Souleymane Diane's words, "Africans could not produce anything comparable to a thought".[47] In spite of this the irony is that the basis upon which the logic of the education of an African is based continues to be, in visible and occult forms, Hegel's falsehood as insinuated in the Western epistemology, which spawned much of a professoriate in our universities.

The millennium generation at our universities is increasingly becoming agitated by the colonial education. It is rebelling courageously against the falsehood propagated in the books prescribed for its studies. This rebellion needs thought leadership, which the professoriate should provide. Perhaps yet another summit is required to thrash out the theoretical questions of decoloniality. ■

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The Fourth Industrial revolution and the case for equitable distribution of income

Instead of rejecting the emergence of the fourth industrial revolution, labour movements and progressive thinking people should argue more forcefully about fundamentally altering the ownership pattern of the means of production so that income distribution becomes more equitable.

By Lufuno Marwala and Mandla Nkomfe

Karl Marx in the Communist Manifesto wrote: "Owing to the extensive use of machinery, and to the division of labour, the work of the proletarians has lost all individual character, and, consequently, all charm for the workman. He becomes an appendage of the machine, and it is only the most simple, most monotonous, and most easily acquired knack, that is required of him".[1]

In formulating his theories Marx had been a keen observer of the British industrial revolution which today will be referred to as the first industrial revolution. He observed that the role of the worker would be minimised and trivialised by the introduction of advanced machines; but that German sage did not stop there, he further speculated about what is today called the fourth industrial revolution. In Grundrisse[2], Marx speculated about the production process saying that:

> "Invention then becomes a business, and the application of science to direct production itself becomes a prospect which determines and solicits it. But this is not the road along which machinery, by and large, arose, and even less the road on which it progresses in detail. This road is, rather, dissection – through the division of labour, which gradually transforms the workers' operations into more and more mechanical ones, so that at a certain point a mechanism can step into their places."

Although not stated explicitly, Marx could only have been speaking about intelligent robots.

The first industrial revolution began in the late 18th century in Britain and was symbolised by the mechanisation of the textile industry. Hand weaving, then a very labour-intensive process, was replaced by the cotton mills which astronomically increased production output at lower production costs. This was followed by the second industrial revolution which came about when Henry Ford introduced the assembly line in the early 20th century and mass production became a norm. Furthermore, oil began to replace coal and electricity was developed during this period. The third industrial revolution was mainly driven by the development of the internet. Internet revolutionised the global communication system and it culminated in the convergence between software systems and communication technologies now called information and communication technology (ICT).

ICT is a paradigm shift from analogue to digital systems and as result of the shift certain industries became extinct. For example, at the height of its power, Kodak had a staff complement of 120 000 with a net worth of $28 billion but today it is bankrupt.[3] People today prefer digital photography on Instagram which had 12 employees AT its inception and is now worth billions.

Science and technology has advanced to a stage where machines with cognitive abilities, albeit limited, have become a reality and are on the verge of replacing workers, including blue collar workers.

In light of this coming revolution, could there be a case to be made for a society that lives by the Marxist principle: "…to each according to his needs"? It is hard to think about future artificial intelligence without a feeling of optimism as well as a sense of apprehension. Optimism arising from the potential triumph of scientific understanding of how the human brain functions. And apprehension stemming from the possible negative implications that artificial intelligence (AI) could have on human existence.

In some way AI presents a kind of fork on the road whose paths' destination are yet unknown. Artificial intelligence is inspired by what is thought to be how the human brain functions which is still very much misunderstood. However, scientists have developed the computational model of the brain which is largely responsible for the direction artificial intelligence research has taken.

The origins of AI go as far back as the work of the English Mathematician Alan Turing. In a paper written in 1940 called, "Can machines think?", Turing speculated that in time a thinking machine would be devised, with the ability to deceive humans into believing they were interacting with another human being. This is what is today called a Turing test. What sets AI machines apart from earlier automation systems, is that AI machines can learn new tasks and information by themselves which means they can get smarter over time; they can make decisions with incomplete information sometimes better than humans; and they can communicate amongst themselves (internet of things) and with humans. The emergence of AI is a step along the vector pointing towards revolutionising forces of production. The rapid development of productive forces through innovation is the engine that Marx attributes to the sustenance of capitalism. Rejection, fear, caution and excitement are some of the responses that technological advances that have a potential to cause a paradigmatic shift in production have elicited in the past and AI is no exception. Thus AI critics, luddites and researchers alike have been highlighting the dangers that it poses. The first group's view is that the AI research programme should be abandoned and the latter group is encouraging humans to start developing coping mechanisms to cope with the advent of super-intelligent machines.

In a paper written by a group of AI researchers, called "Research priorities for robust and beneficial artificial intelligence", the economic impact of AI is cited as one of the most important research areas. They consider, for example:

> *Labor market forecasting: When and in what order should we expect various jobs to become automated? How will this affect the wages of less skilled workers, creatives, and different kinds of information workers? Some have argued that AI is likely to greatly increase the overall wealth of humanity as a whole. However, increased automation may push income distribution further towards a power law, and the resulting disparity may fall disproportionately along lines of race, class, and gender; research anticipating the economic and societal impact of such disparity could be useful".*[4]

The major concerns raised in this extract focus firstly on the relations of workers, wage labourers, to the production process after machines become a dominant part of labour provision. Secondly, it raises the issue of equitable wealth distribution amongst the different groupings in society. There is, amongst AI researchers, scientists and economists, a fear that intelligent machines will enrich only the few, following what is called the power law economics -– a concept to which we will return later.

"There is, amongst AI researchers, scientists and economists, a fear that intelligent machines will enrich only the few, following what is called the power law economics."

The change in the production process from labour-intensive to a more automated process is taking root in all spheres of production. The combination of ICT, AI and 3D printing will lessen the need for human labour. Adidas has recently announced that it is building a new shoe and clothing factory based on the concept of industry 4.0 in Germany. The factory will combine the latest digital technology with the automation possibilities of big data and new production methods. Manufacturing of shoes and clothing had been outsourced to low-wage countries because it was a hand labour-intensive industry. This move by Adidas can only mean a rise in unemployment in low-wage countries. This type of factory manufacturing will go back to Europe, and according to Adidas, "the goal is a whole network of new sites that use intelligent robot technology that will exchange data with each other".[5]

A Chinese company, Changying Precision Technology Company, which produces cellphones, has automated its factory and it is now operated by robots; this resulted in a reduction in its employees from 650 to 60.[6] A Japanese company has developed a robot named Pepper. They sold all 1000 copies in one minute.[7] According to the manufacturer "Pepper is designed to read emotions as well as recognise tones of voice and facial expressions in order to interact with humans." But most importantly, Pepper tries to make people happy. Moley Robotics has introduced a robot chef which is able to learn and mimic the movements of a human chef in order to cook a meal from scratch[8]. The meals it prepares are more consistent in quality than those produced by a human chef.

According to Karl Marx, under capitalism workers experience alienation. He defined alienation as the estrangement of the commodity product from the worker who produced it, the result of which is the enslavement of the worker to a system of production, namely Capitalism. If it is correct that all humans are born with the natural impulse to think and to create, it therefore stands to reason that we all have a natural inclination to pursue activities which help our lives to be bearable. It is because of need, the need to reproduce ourselves, that many are forced to expend their labour in producing commodities, under severe exploitation, that lead to their immiseration and alienation. With the advent of robots, the production floor of the future will be populated by things that will not experience alienation unless programmed to do so. A decent working environment and decent wages will no longer be a

concern for the owners of capital. One hardly requires prophetic powers to guess the fate of unionism.

A factory of the future, for example, will have machines on the production floor, supervised by other machines. In this factory the maintenance department will be run by machines fixing other machines, failing which they will instruct other machines to do a 3D print of the machines that are beyond repair. Machines will not only replace blue collar workers but they will replace people at all levels. For example, a paper recently published by Marwala and Hurwitz[9] has shown that an intelligent machine agent in the market can outperform a human agent because the use of machines will reduce information asymmetry between buyers and sellers. Consequently, markets will become more efficient and the quality of the products in market will also improve.

An analysis of the economic impact of AI and other new technologies by Erik Brynjolfsson, Andrew McAfee, and Michael Spence in 2014 [10] includes the following statement:

> *Machines are substituting for more types of human labor than ever before. As they replicate themselves, they are also creating more capital. This means that the real winners of the future will not be the providers of cheap labor or the owners of ordinary capital, both of whom will be increasingly squeezed by automation. Fortune will instead favor a third group: those who can innovate and create new products, services, and business models.*
>
> *The distribution of income for this creative class typically takes the form of a power law, with a small number of winners capturing most of the rewards and a long tail consisting of the rest of the participants. So in the future, ideas will be the real scarce inputs in the world – scarcer than both labor and capital – and the few who provide good ideas will reap huge rewards. Assuring an acceptable standard of living for the rest and building inclusive economies and societies will become increasingly important challenges in the years to come.*

The cheap labour theory of growth is particularly important for the African continent because of its growing young population. Economists have looked upon this growing population as a blessing for the continent, potential labour power waiting to churn out massive amounts of manufactured commodities. However, as Brynjolfsson, McAfee, and Spence have predicted *"the real winners of the future will not be the providers of cheap labor…."* As exemplified by Adidas, the profits of its new factories will only accrue to the shareholders.

In the same paper by the AI researchers, they also register their concern about intelligent machine control, "how to enable meaningful human control over an AI system after it begins to operate", as one of the challenges that needs to be looked at seriously. However, their concern for control is only limited to technical control. Critical to this concern is the danger posed by machines in that they will evolve to a point at which humanity will not be able to control its own creations, leading to the demise of our entire civilization. Elon Musk, Bill Gates and Stephen Hawking have been in? the forefront of raising this concern, mentioning the use of autonomous military systems as one of the greatest threat to humanity.

We believe that, from an economic perspective, the issue of control needs to be expanded to include control over what machines produce. This means ensuring the distribution of income derived from intelligent machines does not take the form of a "power law". Instead of rejecting the emergence of the fourth industrial revolution, labour movements and progressive thinking people should argue more forcefully about fundamentally altering the ownership pattern of the means of production so that income distribution becomes more equitable.

The fourth industrial revolution, as it is called, is not a distant destination to which we still have to travel, it is here. Physical robots, just like a computer device today, will, in time, become readily available to all; but it is what we do with the robots that will matter the most. In this vein, *"ideas will be the real scarce inputs in the world"* which means that it will be those with ideas on how and what to produce with the robots who will benefit the most.

In a knowledge driven society education, good education, is a fundamental requirement. Free universal education is critical if we are to ensure that in South Africa no one is left out of the fourth industrial revolution.

In his book, *Zero Marginal Cost Society*, Jeremy Rifkin says that new technology *"…frees up human beings from the market economy to pursue nonmaterial shared interests on the Collaborative Commons."*[11] And he adds, that *"The very idea that a human being's worth was measured almost exclusively by his or her productive output of goods and services and material wealth will seem primitive, even barbaric…"*. With the rising productivity individuals will have time for full development so that they will be able "to hunt in the morning, fish in the afternoon, rear cattle in the evening, criticize after dinner…". As it now stands, millions are facing a future of joblessness and poverty and it is only through a change in ownership patterns of the means of production that equity will be achieved. A new social compact should be developed amongst the social players in order to create a new society ready to embrace the fourth industrialisation. ■

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Labour Broking in Southern Africa and other Legislative Interventions in Labour Relations

This massive victory for the workforce began to look like a Pyrrhic victory, as clients of labour brokers started preparing to conduct mass retrenchments because they simply did not have the capacity to take over the employees on a permanent basis.

By Bongani Khanyile

Recently we have experienced, to borrow Harold McMillan's famous words, "winds of change" in South Africa in so far as labour laws are concerned.

In this article we will discuss the practice of labour broking and the amendments or reforms brought by the legislature either to repeal or to regulate the practice. The focus of the discussion will be limited to the position in South Africa and Namibia. We will also look at the proposed bill on maternity leave in South Africa as well as the controversial Taxation Laws Amendment Act 2015 just recently signed by President Jacob Zuma which is tearing at the fabric of the tripartite alliance as COSATU is vehemently opposed to aspects of the law.

THE NAMIBIAN SITUATION

Labour broking in both South Africa and Namibia is fraught with the unpleasant past of apartheid and racial discrimination. It is a system that was used as a political tool to conscript workers, mostly to work in the mines. One word that has become synonymous with this system is "exploitation."

In Namibia (or South West Africa as it was previously called) a contract labour system was used. That system depended on the employer's

recruitment and placement agencies which, in 1943, were amalgamated into the South West Africa Native Labour Association and, notoriously, became known as "SWANLA". In 1972 this was abolished after the "Owambo Strike" and replaced by an "employment bureaux system." In terms of this system, employees signed employment contracts at a minimum wage which could be for a period of up to two years at a time without any leave.

In 2009, the Supreme Court of Namibia, in Africa Personnel Services (Pty) Ltd v Government of Republic of Namibia and Others (SA 51/2008) (2009), handed down a judgment on the question of the banning of the practice of labour broking.

The Court had to deal with the constitutionality of S128 of the Namibian Labour Relations Act. The section reads:

"128 Prohibition of labour hire

(1) No person may, for reward, employ any person with the view to making that person available to a third party to perform work for that third party".

Shivute CJ said in this judgment that the freedom of contract is a fundamental principle in law and that the abolishing of labour brokers was unconstitutional. The importance of this judgment is that in Namibia, the practice of labour broking was not outlawed; the above section had to be removed.

It is important to state that the Court did recognise the abuse often accompanied by this atypical form of employment, and the sordid past with which this arrangement is associated, but the Court based its decision on policy considerations and the freedom to contract.

THE SOUTH AFRICAN POSITION

In South Africa, the Labour Relations Act 66 of 1995 recognised the practice of labour broking, referred to in that jurisdiction as Temporary Employment Services ("TES").

Calls were made by COSATU to scrap labour brokers and intense debates took place at NEDLAC amongst all the relevant stakeholders. The Draft Amendment Bill scrapped labour broking as a practice. However, in the end, a compromise was reached which resulted in labour brokers being highly regulated, instead of being banned.

The Labour Relations Amendment Act of 2014 brought about an amendment to Section 198 dealing with temporary employment service. Section 198A was inserted. In terms of this new section, the term "temporary service" has now been defined and restricted to mean "work for a client by an employee –

(a) For a period not exceeding three months;
(b) As a substitute for an employee of the client who is temporarily absent; or
(c) In a category of work and for any period of time which is determined to be a temporary service by a collective agreement concluded in a bargaining council, a sectoral determination or a notice published by the Minister, in accordance with the provisions of subsections (6) to (8)."

"It is important to state that the Court did recognise the abuse often accompanied by this atypical form of employment, and the sordid past with which this arrangement is associated."

The controversial provision is subsection (3)(b)(i) which provides:

"for purposes of this Act, an employee –

Not performing such temporary service for the client is deemed to be the employee of that client and the client is deemed to be the employer.'

As expected, floodgates of litigation were opened as employees of labour brokers took to the CCMA and referred a dispute to be deemed, in terms of this provision, to be employees of the client after three months had passed since being placed at the client of a labour broker.

The matter between Numsa v Assign Services (Pty) Ltd & Krost Shelving was determined by the CCMA. This was to be the test case for the so-called deeming provision.

The question that the Commissioner had to determine was whether the "deeming provision" has as its consequence the effect that employees remain employees of the labour broker (Assign) for all purposes and are deemed also to be employees of the client (Krost), which position is referred to as the "dual employment", or whether the deemed employees are employees of the client for all purposes, this position is referred to as the "sole employment."

Commissioner Abdool Carrim Osman found that the correct interpretation of section 198A(3)(b) is that after three months have lapsed, the client becomes the sole employer of the placed employees who are earning below the Basic Conditions of Employment Act threshold (currently R205 443.30).

This massive victory for the workforce began to look like a Pyrrhic victory, as clients of labour brokers started preparing to conduct mass retrenchments because they simply did not have the capacity to take over the employees on a permanent basis.

The matter went to the Labour Court for review. The matter was heard before Brassey AJ. Brassey, in his judgment, invoked section 198D(1) which provides "any dispute arising from the interpretation or application of sections 198A, 198B and 198C may be referred to the Commission or bargaining council with jurisdiction and, if unresolved, to arbitration."

The learned judge found that for purposes of this matter, there was no dispute that arose from the interpretation of the provision of section 198A(3)(b). He held further that the CCMA did not have jurisdiction in the absence of a dispute and in instances such as this one where it was asked to interpret whether the said section meant "dual

employment" or "sole employment" which argument he found to be neither here nor there but to be confusing.

Brassey AJ found that the correct interpretation of "deeming" did not mean to take over as in a transfer circumstances such as provided in section 197 of the LRA. However, "deeming" meant that for purposes of the LRA, the client is "deemed" to be the employer and does not escape liability, in cases of unfair dismissal for instance.

It can be argued that the Namibian judgment, although not binding in South Africa, served as persuasive authority in preventing the banning of the practice of labour brokers.

The author suggests that if the court had interpreted the above provision to mean that the client takes over as the employer of the employees, this would effectively ban labour brokers as they would cease to exist and this would be unconstitutional as it would be an infringement of the constitutionally entrenched freedom of trade.

PROPOSED AMENDMENTS TO MATERNITY LEAVE

The new Labour Laws Amendment Bill proposes the insertion of Section 25A, 25B and 25C to the Basic Conditions of Employment Act 75 of 1997.

The inserted Section 25A makes a provision for parental leave. It provides that "an employee, who is a parent of a child, is entitled to at least ten consecutive days' parental leave." Sub-section (2) goes on to state that the parental leave may commence on the day that the employee's child is born or the day that the adoption order is granted.

This amendment brings about a significant change in labour relations in South Africa. Reference is made to "a parent", which means that provision is made for same sex couples who have children through surrogacy.

Furthermore, the apparent discriminatory provisions of maternity leave that did not allow fathers to take leave when their children are born, merely limiting then to 3 days of parental responsibility is done away with.

Section 25B provides for adoption leave and affords an adoptive parent of a child who is below the age of two, ten weeks consecutively or takes parental leave in terms of Section 25A explained above.

These amendments should be lauded as the law is now keeping pace with the modern society as the author is of the view that the current provisions of the Basic Conditions of Employment Act, specifically Section 25, is out of touch with modern requirements and is somewhat still primitive.

> "Floodgates of litigation were opened as employees of labour brokers took to the CCMA and referred a dispute to be deemed, in terms of this provision, to be employees of the client after three months had passed."

TAXATION LAWS AMENDMENT ACT 2015

Few issues have shaken the very core of the tripartite alliance like the Taxation Laws Amendment Act of 2015. The President of the Republic of South Africa, Jacob Zuma, signed this Bill into law, much to the outrage of COSATU and NUMSA.

COSATU has spoken against the decision by the number one citizen of the country to sign this Bill into law without, so the allegation goes, consulting with them as the representatives of the workers. This has caused a serious rift and COSATU is threatening to organise massive opposition to this Act.

Exactly what does this Act provide? The Act provides reform on taxation specifically to provident funds and pension funds. Of relevance to this article is the provision relating to provident funds.

The Act provides that effectively from 1 March 2016, employees who retire from this period can only withdraw one third as a cash lump sum (net of tax) and that at least two-thirds must be used to purchase a compulsory annuity. The compulsory annuitisation applies to fund balances above R247,500.

Sizwe Pamla, COSATU National Spokesperson, was quoted as saying "this is an outrageous and blatant act of provocation by the African National Congress-led government that will have dire and lasting consequences on the relationship between government and workers. It is an offence against all working people, who have their deferred wages to look forward to after retirement."

COSATU views this Act as a unilateral decision by government to dictate to workers how and when to spend their retirement savings.

It is more likely that this will result in en-masse employee resignations as they try to beat the deadline of 1 March in order to be able to determine by themselves how they spend their retirement monies.

The reasoning behind the promulgation of this legislation was the desire by government to intervene and "assist" employees on the management of their retirement funds as many withdraw all of it at once and spend recklessly, resulting in their being in need shortly after retirement.

Whatever and however noble the intention by government, this Act has a significant impact on employees given the fact that retirement monies are sensitive and employees feel hard-done by for being imposed upon them how to spend their money. At the time of writing Minister Jeff Radebe was assigned by the Presidency to work with COSATU to find a negotiated compromise.

Due to his intervention the implementation of the amendment was postponed to 1 March 2018. At that point this law will either become effective or be scrapped. If scrapped, National Treasury will revisit the tax deduction available on contributions to provident fund. ■

PUBLIC GOOD

Who has the Right of Access to Enjoy?

By Lusanda Batala

The racist and demeaning utterances that have unravelled in our public discourse in South Africa at the beginning of 2016 are a cause for concern. They trigger thoughts on some pertinent issues that touch society; issues that not only affect one particular race but cut across the race spectrum.

These outrageous developments have begun to make people ask themselves if they are being called derogatory names for simply enjoying what they believe is a basic right to recreation. In order to deal with these issues, one needs to take a step back and begin to examine some concepts that might be useful in understanding why certain things are happening.

This therefore has also made me to go back to economics and understand the meaning of what is called a "public good". What it is? Who is meant to enjoy it? Who has a right to it?

Economics defines "public good" as a good where no one can be excluded from enjoying it and also it is a good that is not contested. This means that no individual can be excluded from the use of such a good. The definition further goes on to indicate that where the good is used by an individual this does not reduce its availability to others. Paul A. Samuelson (1954), who has been credited as the first economist to coin the theory of public good, defines the term as a "collective consumption good".

Then, one begins to ask, what kind of good is public? This includes such things as fresh air, knowledge, public infrastructure, national security, education, street lighting etc. this kind of public good is available everywhere.

During my re-educational investigation of a public good, it is worth sharing that one needs to be aware also that a public good might at times be subject to excessive use that can result in negative externalities that may affect all users. Examples of this could be air pollution and traffic congestion. Therefore, when these instances happen, remedial steps to counter negative externalities need to be taken. This does not mean blocking access to the good, but finding workable means.

It is worth mentioning in order to avoid confusion that a public good may be naturally available and is not restricted to that which is provided by the government.

"Economics defines "public good" as a good where no one can be excluded from enjoying it and also it is a good that is not contested. This means that no individual can be excluded from the use of such a good."

Beaches are also part of the public good that society can enjoy without any prejudice. What happened on beaches around Kwa Zulu-Natal might be a development of the struggle to preserve public access to the beach. This also reminds me of a similar incident in California where the wealthy beachfront enclave of Malibu and media mogul David Geffen filed suit to cut off the people's right to reach the beach. Also, the developments in South Africa are a reminder of what happened in Southern California, where public beaches were off limits to Blacks and other people of colour during the twentieth century. Is this really where we want to go as a country after overcoming apartheid? I hope not.

"I also hope that we intensify the struggle against all forms and manifestations of racism, institutional racism in particular. Surely this is not the route we can take going forward in dealing with reconciliation?"

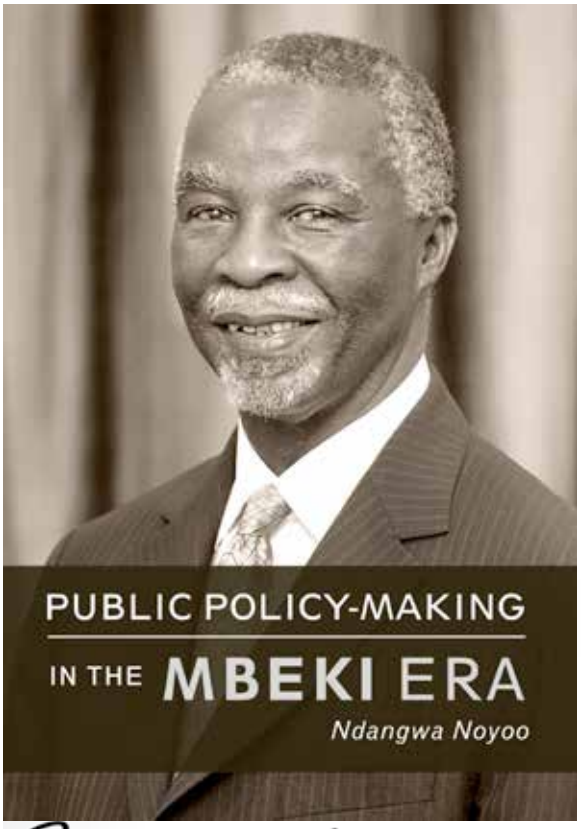
The problem we have in South Africa is that we treat beaches as a luxury, which they are not. A beach is a public space that provides a different set of tempos to renew public life. A beach is a democratic common place that brings people together as equals. It is where people swim and splash in the waves, people watch, surf, while away the afternoon under an umbrella, scamper between tidal pools, or gaze off into the sunset. Public access to the beach is integral to democracy and equality.

Access to beaches for all is necessary for equal justice and democracy. Beaches are a public space where people exercise their fundamental rights of association and expression.

Now, were the recent derogatory remarks necessary on access to public beaches? Absolutely not. The constitution of South Africa clearly stipulates in Chapter 2, Bill of Rights – equality, human dignity, and freedom (sections no.: 9, 10, and 12).

These were all violated by the comments and discriminatory remarks against the enjoyment of a public good. These remind one of the struggle song "SENZENI NA" (What have we done? Our sin is that we are black?). This can create resentment and anger within. It can lead one to second-guess if what we are experiencing in South Africa indeed has the true features of reconciliation. Is reconciliation a one way or two way trajectory? These are some of the questions that can make one conclude that "we got a raw deal".

I hope not – and I also hope that we intensify the struggle against all forms and manifestations of racism, institutional racism in particular. Surely this is not the route we can take going forward in dealing with reconciliation. Reconciliation is a process that takes time. Derogatory comments such as the one expressed on access to the beach can never lead South Africans to the actual reconciliation we all envisage. Instead, such sentiments will lead to more societal divide and more resentment among the races. To prevent the unfortunate outcomes the racial slurs may produce, there is a need for a robust debate on reconciliation, racism, sexism and national identity. ■



Rationale for writing *Public Policy-Making in the Mbeki Era*

By Ndangwa Noyoo

At the outset it is important to underline the fact that African academic discourses are, in the twenty-first century, still highly influenced by Western thought and paradigms. More often than not, we still find Western scholars (or their proxies on the African continent) writing about us and our continent without our voices informing such narratives. Even our heroes and heroines are in some cases defined to us by the West. Those Africans who are perceived as not representing the "interests" of the West are usually caricatured in such academic discourses. Therefore, there was a need to approach the subject of public policy in the period when Thabo Mbeki was in power from a non-conformist and Pan-Africanist stance. In this regard, this book sought to champion African indigenous intellectual agenda-setting, whilst focusing on public policy-making in the Mbeki era. It is noteworthy that we African people have the capabilities to tell our own stories – and actually we are the best people to tell our own stories.

So this book is essentially about

public policy-making in post-colonial and post-apartheid South Africa. It is also broadly located in Southern Africa and the African continent. It uses the former president of South Africa, Thabo Mbeki, as an entrée into the policy-making agenda which was spearheaded by the governing party, the African National Congress (ANC), from 1994, onwards. It begins by casting light on the modernisation project that Mbeki and his colleagues initiated. This approach is followed because public policy-making is synonymous with the modern state. Indeed, Mbeki and his colleagues had sought to make South Africa a functioning, democratic, modern African state that was propelled by a productive and viable economy. They also tried to extend this thinking and approach to the Southern African Development Community (SADC) region and the rest of the African continent through the African Renaissance agenda and via structures such as the New Partnership for Africa's Development (NEPAD).

The author decided to select the former president and the period when he was in power as building blocks for his analyses and points of departure vis-à-vis public policy-making in post-1994 South Africa, because this is when:

- the foundation of a post-apartheid, democratic, non-racial, non-sexist society was firmly laid; and
- this was the period when innovative, ground-breaking and strategic public policy interventions were championed by Mbeki and his colleagues both in government and the ANC.

The central character in this narrative is indeed Mbeki as he was the initiator, conceptualiser, shaper and driver of innovative and strategic public policy forays, in league with his colleagues in government, the ANC, and at times the broader South African society. Some of these cutting-edge, innovative policy processes raised South Africa's stature globally and indeed made the world to take note seriously of this country.

The author is in awe of this great African leader, scholar, intellectual, politician who was and continues to be very passionate about his country and his continent. He is a public figure who is an extremely hard-working individual with a very incisive mind. That is why he was able to drive many development agendas in his country of birth, South Africa, and the rest of the African continent. Nonetheless, even though Africa was blessed with leaders such as Mbeki, sadly, we continue to be inundated with malevolent, brutal and mediocre leaders in Africa. In short, Africa suffers from a serious deficit of quality leadership in this twenty-first century. Hence this book stems from a deeply concerned premise of the lack of quality leadership in Africa and for the need to preserve the memory of the few high-standing leaders we have on the continent such as Mbeki. It would be a great travesty if Mbeki's good deeds remain unrecorded and even get deliberately omitted from historical books.

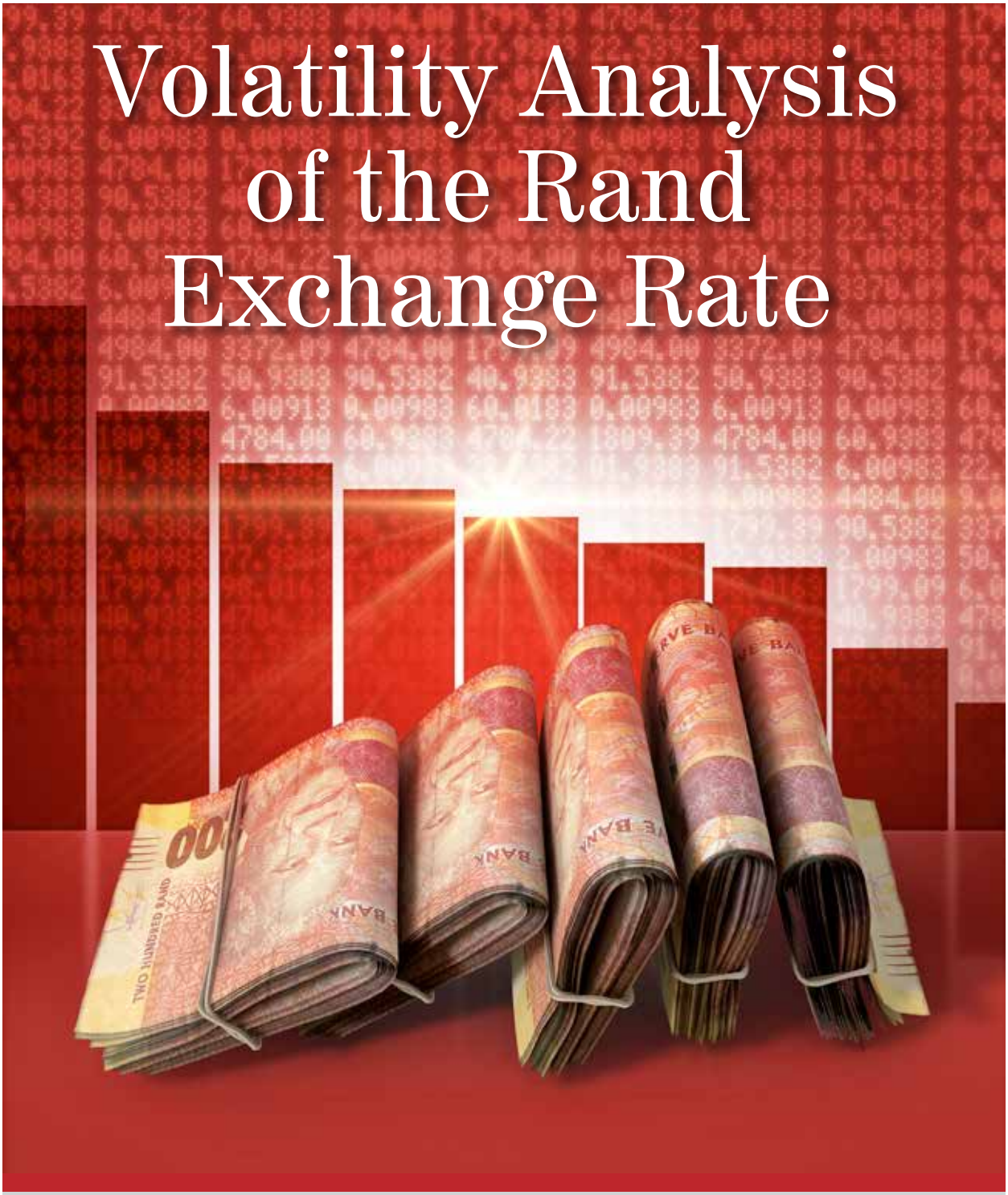
"The central character in this narrative is indeed Mbeki as he was the initiator, conceptualiser, shaper and driver of innovative and strategic public policy forays, in league with his colleagues in government, the ANC, and at times the broader South African society."

This book is written by someone who has vantage points of having seen the ANC as a liberation movement in Lusaka, Zambia and as a governing party of a free and democratic South Africa. In Zambia, this author was privileged to have grown up at a crucial time, notably, the 1970s and 1980s, when the decolonisation of Southern Africa was unfolding. Zambia had been hosting various liberation movements of the region since its independence in 1964. Hence, growing up in Lusaka allowed this writer to have first-hand experience of the liberation struggle against colonial and racist regimes in Southern Africa. Many Zambians knew the ANC and what it stood for. The ANC was part of the Zambian social fabric as its members were Zambians' neighbours, friends, teachers, lecturers, doctors, etc. Crucially, the ANC was an intellectually inclined liberation movement that produced a variety of publications pertaining to the armed struggle and the fight for the liberation of South Africa.

Such literature served to radicalise and inspire young Zambians at the time, including this author, who also sought to change their society from a one-party state dictatorship to a multi-party system. This author's first memory and knowledge about Thabo Mbeki emanates from his father who pointed out this great African to him when he was a young boy in the lobby of the Lusaka Intercontinental Hotel in the late 1970s. Later in life, he would verify some of the things that his father said about Thabo Mbeki, for instance, that he was a great African thinker and a committed revolutionary and that his father, Govan Mbeki, had paid the high price of being incarcerated on Robben Island by the brutal apartheid regime. Indeed this writer would continue to draw inspiration from Mbeki and his works even when he was an adult and an academic.

Finally, it must be noted that this book, *Public Policy Making in the Mbeki Era* does not purport to have exhausted all the areas that needed to be examined in regard to its title. However, it tried to open certain doors for future research and exploration. It is hoped that the issues that are raised in the book will allow other Africans who were not in South Africa when Mbeki was president to appreciate him on merit. It would be a historical tragedy if Mbeki – who had inspired a whole generation of young Africans who are now in their late thirties and forties – is not recognised for his deeds that sought to make South Africans and Africans proud people. ■

Volatility Analysis of the Rand Exchange Rate



South Africa considers the exchange rate as a key macroeconomic policy instrument in relation to ensuring export promotion and economic growth.

By Rachel Mlosy

For the past twenty years, many voices have demanded that we leave no one behind, ensuring equity, non-discrimination, inclusion at all levels and pay special attention to the people most in need. This is the country of South Africans.

Public discourse has underscored the call for the urgent need to recognise and address the volatility of the Rand. All inputs have emphasised the need to integrate economic, social and financial dimensions across the new agenda. To make this happen, they want norm-based policy coherence at all levels and to ensure that no harm is done to the country. These, they tell us, should be based on the solidarity, cooperation, mutual accountability and participation of government and all stakeholders.

Implementation of any system is not just about quality. It is also about doing things together, uniting around the problem. Sustainable development provides a platform for aligning private action and public policies. Therefore, all public funds must positively impact on the poorest and most vulnerable in all societies.

South Africa has witnessed the consistent depreciation of her exchange rate, the lowest levels being in December 2001 and December 2015. The Rand was established as the official South African currency on 14 February 1961 – and has since developed into a liquid emerging market currency, most commonly traded against the US dollar. In June 1974 the South African authorities decided to delink the Rand from the dollar, and introduced a policy of a managed floating exchange rate. The South African Rand was worth US$1.40 from the time of its inception in 1961 until 1982, when mounting political pressure combined with sanctions placed against apartheid South Africa started to erode its value. By February 1985, it was trading at over R 2 per dollar, and, in July that year, all foreign exchange trading was suspended for 3 days to try to stop the devaluation. The current flexible exchange rate regime has led to greater volatility of the Rand against the major currencies and such variability has implications for South Africa's exports. At the time of writing the Rand was trading at 16.725 to the dollar.

Exchange rates across the world have fluctuated widely particularly after the collapse of the Bretton Woods system of fixed exchange rates. Since then, there has been extensive debate about the impact of exchange rate volatility analysis. Volatility refers to the amount of uncertainty or risk relating to changes in a security's value. A higher volatility means that a security's value can potentially be spread out over a larger range of values. The most commonly held belief is that greater exchange rate volatility generates uncertainty, thereby increasing the level of riskiness of trading activity and this will eventually depress trade.

The vast majority of economic literature on volatility analysis, however, contains highly ambiguous and inconsistent theoretical and empirical results. An increase in exchange rate volatility accompanied by sufficiently risk averse agents will lead to an increase in trade, because the increase in volatility leads to a rise in expected marginal utility of revenue from exports and an insignificant relationship exists between exchange rate volatility and trade. Sometimes policy-makers advocate less expensive currency in order to boost the export sector. They should be aware whether such a policy might depress the stock market and the link between the two markets may be used to predict the path of the exchange rate.

> "The proportion of foreign exchange transactions stemming from cross border-trading of financial assets has dwarfed the extent of currency transactions generated from trading in goods, services and employment opportunities."

The Rand Exchange Rate in the Economy

Keynesian economists often argue that private sector decisions sometimes lead to inefficient macroeconomic outcomes which require active policy responses by the public sector, in particular, monetary policy actions by the Reserve Bank of South Africa and fiscal policy actions by the government, in order to stabilise output over the business cycle. Keynesian economics advocates a mixed economy – predominantly private sector, but with a role for government intervention during recessions. Keynesian economics served as the standard economic model in the developed nations during the latter part of the Great Depression, World War II, and the post-war economic expansion (1945-1973), though it lost some influence following the oil shock and resulting stagflation of the 1970s. The advent of the financial crisis of 2007-08 caused a resurgence of Keynesian approaches.

The Post Keynesian group repeatedly distinguishes itself from the current mainstream by proposing various forms of capital controls and fixed exchange rate policies. It is argued that currency volatility, particularly that caused by speculators, is disruptive to the real economy; this leads to proposals for a fixed but adjustable exchange rate system.

South Africa considers the exchange rate as a key macroeconomic policy instrument in relation to ensuring export promotion and economic growth. The South African Reserve Bank's exchange policy aims at providing an environment that promotes exchange rate stability and assists the government's objective of accomplishing export-led growth.

Therefore, over the last two decades, South Africa has moved towards greater exchange-rate flexibility and deeper financial integration. At the same time, buffered by sizable reserve holdings, the county has also retained a fair degree of monetary autonomy, even as financial integration has continued. Modern infrastructure, increasing domestic demand and a competitive exchange rate are important factors in boosting a country's manufacturing sector and trade. A special focus is

required in order to achieve the target fixed for increasing the share of the manufacturing sector and trade in the country's economic growth.

The Reserve Bank of South Africa's policy of flexibility in the exchange rate coupled with the ability to intervene in foreign exchange markets is an important economic measure, taking into account that the primary purpose of the Bank is to achieve and maintain price stability in the interest of balanced and sustainable economic growth in the country. Together with other institutions, it also plays a pivotal role in ensuring financial stability and increasing Foreign Direct Investment (FDI) in critical sectors of the economy such as sustainable energy, infrastructure and transport, as well as information and communication technologies. The public sector needs to set a clear direction.

Exchange rates are determined in the foreign exchange market, which is open to a wide range of different types of buyers and sellers, where currency trading is continuous. Each country, through varying mechanisms, manages the value of its currency. As part of this function, it determines the exchange rate regime that will apply to its currency. For example, the currency may be free-floating, pegged or fixed, or a hybrid. If a currency is free-floating, its exchange rate is allowed to vary against that of other currencies and is determined by the market forces of supply and demand. Exchange rates for such currencies are likely to change continuously as quoted on financial markets, mainly by banks, around the world.

The exchange rate is an important macroeconomic policy instrument that ensures economic growth. After the collapse of the fixed exchange rate regime in the 1970s among several countries, a number of research studies have been carried out to understand the sources of exchange rate fluctuations and its subsequent influence on inflation, investment, risk management, trade and welfare. For example, the 2001 September 11 attacks on the World Trade Centre in the USA caused the Rand to skyrocket to R13.84 to the dollar – year average of R8.60 – its worst level ever at the time – with a recovery period happening the following year.

> "South Africa can gain an advantage in international trade if the Rand keeps its value low."

The volatility of the exchange rate is essentially a measure of the fluctuations of the exchange rate (Abdalla 2011:217). It can be measured on an annual, monthly, weekly, daily or hourly basis. Provided that the changes in an exchange rate follow a normal distribution, the volatility gives an idea of how much the exchange rate can adjust within a certain period. Just as in the case for financial assets, the standard deviation is used to calculate the volatility of exchange rates.

In financial calculations two measures of volatility are used, namely the implied and historical volatility. Implied volatility is calculated using estimates of market participants of what outcome may most likely occur; therefore this approach is forward looking. Whereas historical volatility is calculated using past data of exchange rates. Using the historical approach we can utilise past daily data and from this obtain the standard deviations of the price changes and then the annual exchange rate volatility.

Just like the volatility of financial assets, the volatility of exchange rates changes in response to new information. As the level of uncertainty of an economy rises, the level of confidence in holding that currency for market traders falls. Traders are less willing to hold currencies that have a negative future prospect. Within the currency market, changes in the volatility can mainly be attributed to uncertainty about the future. Changes in the volatility of the exchange rate can also arise from an adjustment in the proportion of speculators and hedgers. Furthermore, an announcement from the central banks to intervene in the currency market can cause changes in the volatility.

> "The study revealed that the exchange rate variability has a positive impact on the competitiveness of agricultural exports from South Africa to the European Union."

The Impact of Exchange Rate Volatility on Trade and Employment

The increasing volume of trading of financial assets (stocks and bonds) has required a rethink of its impact on exchange rates. Economic variables such as economic growth, inflation and productivity are no longer the only drivers of currency movements. The proportion of foreign exchange transactions stemming from cross border-trading of financial assets has dwarfed the extent of currency transactions generated from trading in goods, services and employment opportunities. The asset market approach views currencies as asset prices traded in an efficient financial market. Consequently, currencies are increasingly demonstrating a strong correlation with other markets, particularly equities. South Africa can gain an advantage in international trade if the Rand keeps its value low.

A study done by Obi, Ndou and Peter (2012:229) on the impact of exchange volatility on the competitiveness of South Africa's agricultural exports revealed some rather uncommon results. The study was on exchange rates of export volumes for sugar, apples, peaches, maize, grapes, utilising laspeyres-indexed export prices. This was done to assess the impact that exchange rate volatility had on agricultural exports to the European Union (EU) for the period of 1980 to 2008. The study revealed that the exchange rate variability has a positive impact on the competitiveness of agricultural exports from South Africa to the European Union.

If a government chooses a fixed exchange rate policy, and simultaneously attempts to achieve full employment, it could very well lose its foreign exchange reserves. Interest rates would rise as expressed by the forward price of the currency falling, while the

spot price would be supported by a diminishing pool of foreign exchange reserves. This could happen with either a base programme, or a more traditional spending increase. Unemployment continues to pose significant challenges in South Africa: it reached 24.3% and youth unemployment 49% at the end of 2014 (Statistics SA 2014).

Adjustments in the levels of employment and unemployment are tied to changes in output through the production function (Hodge 2005:10). Generally, currency depreciation (appreciation) is related to employment increases (decreases) for both low and high profit margin industry groups. Furthermore these conditions are aggravated as industries increase their export needs. In the case where a firm is heavily reliant on imported inputs, the positive effects of a currency decline can be reversed, leading to a zero net gain for the firm.

The sensitivity of employment and unemployment to the exchange rate is affected by labour regulations and market structure. In a market that is perfectly competitive, it is expected that any changes that have an impact on the price of a firm's output result in changes of its returns. On the contrary, a firm is a price setter in an imperfect market. Therefore, the firm responds to a price increase by adjusting the mark-up as opposed to changing employment and output. A study by Goldberg and Tracy (1999) on the impact of changes of the exchange rate of the U.S. dollar concluded that local industries significantly differ in their hours worked, earnings and employment changes in response to changes to the exchange rate.

In a study on employment response to exchange rate movements for firms in Hungary, Koren (2004) found that the cost and demand effects were largely industry specific. Koren went on to conclude that the overall effect of the exchange rate on the demand for labour was ambiguous (Hodge 2005:13). A study on the Turkish manufacturing sector by Filiztekein (2004) revealed how currency depreciation may in fact bring no gains for a firm. This is the case were a depreciation negatively impacts wages and employment. Cases where depreciation has a negative impact on wages and employment are the result of an industry being too reliant on imported intermediary goods. This is the case for the Turkish manufacturing industries. If an industry's foreign inputs outweigh the positive effect of deprecation, depreciation in the currency will have a negative effect on wages and employment.

"If an industry's foreign inputs outweigh the positive effect of deprecation, depreciation in the currency will have a negative effect on wages and employment."

Conclusion

Economically weak and powerless South Africans feel the pinch the hardest. Poor people as a group suffer most from an ailing and inequitable national economic system. A decline in production and the disruption of trade create financial shortages, development programmes are the first to be cut, and poverty, hunger and diseases are prolonged. The end of apartheid and the relatively peaceful transition to democracy, combined with the introduction of financial market liberalisation, led to large increases in the amount of capital inflows into South Africa. One of the main concerns since the flexible exchange rate regime was introduced has been the extent to which the increase in exchange rate volatility has impacted on trade and employment.

"One of the main concerns since the flexible exchange rate regime was introduced has been the extent to which the increase in exchange rate volatility has impacted on trade and employment."

A broad and comprehensive analysis between real exchange rate volatility and trade shows that there are theoretical models that postulate both positive and negative effects of the exchange rate volatility on trade and employment opportunities. However, earlier empirical evidence, using different measures of exchange rate volatility, usually fail to establish a statistically significant relationship between exchange rate variability and volume of trade. Where such a relationship is established, the coefficient of exchange rate volatility is either negative or positive.

Therefore from the policy perspective, South Africa needs to maintain a competitive exchange rate in order to sustain its export performance and create decent employment opportunities. As a country we cannot ignore the real exchange rate variability of the Rand in relation to policies that aim at enhancing its export performance and overall macroeconomic stability. South African policymakers should enact intervention policies that aim at reducing excessive variability of the real exchange rate of the Rand in order to improve its export sector, economic growth and overall external macroeconomic stability. This should be done to create decent employment opportunities in the rural and urban areas for men, women, young people and people with disabilities. ■

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THE ELECTIONS IN TURKEY

Beginning of a new stage in the struggle

Erdogan regained power by promising to crush Kurdish aspirations for freedom and by scaring off the liberals.

By Roj Welat

The November 2015 elections in Turkey marked a new stage in the struggle for democracy, human rights and the resolution of the national and religious questions.

The parliamentary election was 'forced upon' the citizens, which puts its legitimacy into question. Why did the country go for another general election after the June 7 elections in 2015? In the June elections, the AKP (Justice and Development Party) received a total of 18,864,864 votes and in the 1 November elections that number increased to 23,669,933 votes. How did the AKP gain 4,805,069 votes over the past five months? What were its political tactics to regain power?

Prior to the June elections the AKP did not want to form a coalition government with other parties because they wanted Turkey to move from a parliamentary system into an authoritarian presidential system under the rhetoric of 'one nation-one flag'. This one nation-one flag narrative was the cause of conflict with the Kurdish citizens in the Turkish republic, when they were violently suppressed and deprived of their linguistic and cultural rights. This is the biggest obstacle to the democratisation of the country.

The victory of the HDP (Peoples' Democratic Party) in passing the 10 percent electoral threshold in the June elections marked a first time in the history of Republic of Turkey that a pro-Kurdish party had entered into parliament. The HDP's success involved winning seats for HDP representatives which had been occupied by the ruling AKP for the last thirteen years. How did this happen? Previously, pro-Kurdish parties would go to the elections with independent candidates. Now the HDP went to the elections as a party; so if they lost the 10 percent threshold they would have no representatives in parliament at all. Whereas for the AKP, the goal was to get the majority alone, change the constitution to enable them to install a presidential system which would give Erdogan enormous powers to rule the country. Thus the HDP's passing the 10 percent electoral threshold meant that Erdogan's plans for an autocratic presidential system were defeated.

The electoral success of HDP was due to its strategy of *Turkiyelileşme*, meaning that it represented the pluralist face of the country, highlighting the following:

- establishing the Kurdish issue as a struggle for democracy, human rights and national identity;
- raising the profile of gender issues, establishing a forty percent gender quota, advocating closing the gender gap, encouraging more women to take part in politics actively, introducing a system of co-leadership of one woman and one man at all different levels of organisation; and
- promoting minority languages and minorities such as Assyrians and Alevis, who were also represented among their candidates.

Not only did the HDP receive the support of women but also the

support of intellectuals, academics, environmentalists and LGBT groups. Its pluralist programme led to the emergence of greater freedom of the press, with more expression of views outside the official narrative. The success of the HDP in the June elections meant the Kurdish issue and the plural face of Turkey which were once suppressed and taboo were no longer so.

It created a climate of tolerance and freedom of expression where some sections of its citizens shared ideas on social media. This positive atmosphere assisted the ongoing negotiations between the imprisoned Kurdish leader Mr Öcalan and the AKP government. Öcalan has been in prison for 15 years in complete isolation on an island of Imrali. We should intensify the struggle for the freedom of Öcalan.

The majority of the Kurdish people never trusted the AKP as a partner at the negotiation table, and they were not wrong. There were two conflicting aims on the table: the AKP proposed an 'Ottoman dream', where all peoples would be united under the Sunni Turkish-Islam synthesis, resulting in the exclusion and suppression of other ethnic identities and beliefs like Zoroastrianism, Alevism and Christianity. Mr. Öcalan and the Kurdish freedom movement in general proposed a multi-cultural, multi-belief, multi-lingual Turkey with democratic autonomy not based on ethnicity but geography under the rule of law.

The Kurdish Freedom Movement declared a ceasefire but the state further insisted on them laying down their guns. However the questions that PKK had asked remained unanswered: What would be the changes in local, national laws and the constitution that would never again allow for the suppression of the Kurds? And all the other ethnicities in the country? How would individual and collective rights be secured for all those who live in Turkey? Where and how would the guns be laid down? What would happen to the armed forces and its leaders? How would the reconciliation process go ahead?

Instead, after the positive 7 June elections results violence and intimidation were used to push the country back to the classical alliance of the state-army, Kemalist nationalists and the Turkish-Islamist nationalists to force the fascist type rhetoric of one-nation, one-language and one-religion upon the peoples of Turkey.

The Kurdish struggle for identity, language and culture rights over the last four decades in the Middle East had given the Kurds and other peoples the opportunity to breathe and open some space to exercise their human rights. This space also gave them the opportunity to show how they wanted to live with their neighbours and the people with whom they shared the same geographical space.

This drastic difference in vision and goals are the reasons behind this sinful alliance in Turkey, the return to the unsustainable and unacceptable fascist type slogan of one-nation, one-flag. And the air raids started against PKK camps. The King is now naked and the AKP mask is completely down.

> "The electoral success of HDP was due to its strategy of *Turkiyelileşme*, meaning that it represented the pluralist face of the country"

Violence and Fear

The November elections were not free and fair. The AKP had more campaign time on television channels than other parties. Even though the Kurdish side declared a ceasefire during the campaign, the AKP insisted on war, bombing an Ankara peace rally (Isis never accepted responsibility for it) leaving 102 dead; all this aimed to suppress the Kurds and the democratic forces. The reason AKP continues to attack the alliance of the Kurdish Freedom Movement and democratic forces is because this alliance prevented the AKP from winning an overall majority in the June elections.

Violence as well as sinister death threats were directed in particular against the HDP. Their election offices were bombed, their campaign vans were attacked. A few days before the elections two bombs were exploded at an HDP rally in Diyarbakir, the largest city in the Kurdish region, killing two and injuring hundreds.

The threat of bombings of HDP meetings led to the cancellation of their election campaign. Thus elections could not be conducted in an atmosphere conducive to free and fair elections.

This violence and fear was also used against the media during the elections. Many journalists on TV channels were threatened not to give time to HDP. Ahmet Hakan, a prominent journalist in Turkey, was physically attacked. Attacks against newspapers such as *Hurriyet* were designed to intimidate the liberals. Not only was press freedom largely curbed but also the safety of journalists was at risk; thus freedom of expression was severely compromised.

In addition, the arrest of tens of co-mayors in Kurdish cities and attacks on HDP party buildings obstructed the HDP election campaign. Given that the whole Kurdish region was besieged, elections in towns such as Cizire took place under conditions of occupation.

International observers such as the Swiss representative of the parliamentary assembly of the Council of Europe, Andrew Gross, also criticised the Turkish parliamentary elections asserting that they were conducted amid violence and fear. Gross said: "Unfortunately we come to the conclusion that this campaign was unfair, and was characterised by too much violence and fear."

Erdogan regained power by promising to crush Kurdish aspirations for freedom and by scaring off the liberals. The major parties in Turkey share similar views in the question of denying the Kurdish people their just demands.

But the Kurds have shown that they shall not only continue to resist but by proclaiming self-governance they have started at the same time to implement their own vision of life and liberty. This certainly is a new beginning, although not the new beginning the Kurds desired, since this is happening under the imposition of a renewed war by Turkey. Nevertheless, nothing can ever again be the same. ■

Party Building and Class Struggle

The main challenge for the Communist Party is to be scientifically objective in this current political trajectory and provide leadership as a working class vanguard.

By Alfred Dikole

The current political crisis that we are facing in terms of organisational polarisation remains a real challenge for the future of the SACP in the North West Province as well as the country. Opportunism and factionalism within the ranks of the movement emerge as a result of marginalising revolutionary theory as well as the deliberate agenda of weakening structures by those who are in a position of power in class relations. Both factionalism and opportunism are cornerstones for self-enrichment and the anchor for engendering compradorial strata in the capitalist system. After 22 years of democracy they symbolise gains and setbacks in the transformational programme of our country from three centuries of colonialism followed by 'colonialism of a special type'.

The process of transformation has been conducted within the capitalist framework of oppression. The founding fathers of our democracy point out that the current phase of social transformation is more complex than the fight against racist tyranny.

The main aim of this article is to focus on creating the framework needed to wage a relentless struggle against capitalism. Central to this process is the need to identify the nature and strength of capitalism in our society.

The emancipation of the working class should be the work of the working class itself, according to Marx. This means that we should build a strong organisation with capable leaders to lead the class struggle. Obviously this cannot happen without an advanced detachment of the class that has to make history.

Capitalism played a meaningful role in history by destroying the feudal system. It also simplified oppression by dividing society into hostile camps: those of the oppressors and the oppressed, the exploiters and the exploited.

Working class demobilisation

A bourgeois revolution expresses the needs of capitalist development, and, far from destroying the foundations of capitalism, it has the contrary effect – it broadens and deepens them. The revolution, therefore, expresses the interests not only of the working class but of the entire bourgeoisie as well. Since the rule of the bourgeoisie over the working class is inevitable under capitalism, it can well be said that a bourgeois revolution expresses the interests not so much of the proletariat as of the bourgeoisie. But it is quite absurd to think that a bourgeois revolution does not at all express proletarian interests. Many people in the trade union movement believe that by virtue of ascending into power the ANC has defeated the ruling class. Some amongst us believe that the working class should not engage government and capital through mass action because they are discrediting the leadership and the state.

However, as the ANC has explained in many of its documents, it does not lead a particular section of society, but broader social classes and strata. In a real sense there is a bias towards creating an environment conducive to the triumph of capitalism. This leaves working people with no option but a programme of destabilising the capitalist system. As Marx puts it the working class has to play the key role in liberating itself. A fundamental point of departure is the creation of working class unity against capital, coupled with a historically determined mobilisation against social exploitation.

> "Both factionalism and opportunism are cornerstones for self-enrichment and the anchor for engendering compradorial strata in the capitalist system."

A bourgeois revolution is a revolution which does not depart from the framework of the bourgeois, i.e., capitalist, socio-economic system. The main challenge for the Communist Party is to be scientifically objective in this current political trajectory and provide leadership as a working class vanguard. There is no way in which a Communist Party can compromise its class interests solely for capitalist advancement. Equally a Party cannot be dogmatic in fighting to champion working class hegemony. Tactical compromises can be made precisely to reinforce the main strategy of overthrowing the capitalist system.

Working class unity

Basically this is all about unity of purpose, precisely to undermine and destroy the capitalist system where we work, live and study. The Vanguard Party of the working people has to become more committed in agitating, mobilising and organising cadres who will become critical components of the advanced detachment. It means that within the same context the Communist Party should train members in Marxism and Leninism as a revolutionary theory. Equally training must be on a simple basis wherein the complexity of the theory gets unpacked.

One of the great mistakes that we normally commit as an organisation is to entertain the idea that if a worker is a shop steward or a leader of a trade union we can assume that he/she possesses ideological clarity and communist values. In his letter to his friend and comrade, Karl Marx conceded to Friedrich Engels that he thought Irish workers and English workers could easily unite against the capitalist system, but it was not so. Clearly it tells you that workers are vulnerable to the politics of race, chauvinism and the repressive political system despite common challenges and oppression from the capitalist system. Therefore the workers' party must agitate amongst workers and teach them about these demons. As a revolutionary party we should clearly identify capitalism as well as its modus operandi. At an ideological level the SACP has always emphasised that it will serve as a vanguard through democratic contestation with other political parties. It has the capability to bring differing left ideologies into its ranks.

The dynamics of capitalism

Marxist-Leninist theory helps us

to identify the distinctiveness of the capitalist system. It is not sufficient to show the irrationality and injustice of capitalism, implying the need for a rational alternative. Capitalism is not a monster that can be slain by a single strategic force. We face a complex and constantly mobile organism, half machine with its automatic drives towards accumulation, half animal with reflexes to get around barriers, cannibalise other capacities and reproduce itself by feeding rapaciously off its environment. Members of the Communist Party must take into cognisance the fact that the struggle is against a hydra-headed kind of a system that cannot be destroyed at any one point but can only be overcome through multiple points of transformation based on an ecology that has at its centre the drive for the well-being of humanity.

The economic crisis of the capitalist system is that bourgeois growth does not necessarily transcend into development. The current form of the economy does not have a commitment to the creation of decent and qualitative jobs. In reality the youth remains one reserve army of the unemployed community. The accumulation regime which is based on a compradorial paradigm does not necessarily undermine the good intentions of creating quality jobs. The state has the capacity to absorb many young people and expand the public sector. Some analysts claim that government is more committed to skilling young people without job creation. The state must change the Expanded Public Works Programme from being a short term intervention to a qualitative productive sector of the state with the intention of contributing to economic development led by the state. The Youth Accord was signed by business, government and various political Youth formation in the interests of creating qualitative jobs.

It is a good framework which has laid a basis for different role-players to engage in commitment to job creation. The state must enforce the deliverables of the Youth Accord to be practically implemented without any hindrances. Progress reports must be published in the public domain so that we can see the successes or failures of the Accord.

> “It is quite absurd to think that a bourgeois revolution does not at all express proletarian interests.”

Rivers, streams and dams are daily being contaminated by chemicals from mines and a lot of animals depending on this water are dying. The mining companies are consuming a lot of water for free, and yet in every village where there is mining, communities have some days in each week where they receive no water at all. This situation – where capitalists can access water and poorer people cannot – seems to have become acceptable to many in municipal leadership. One becomes suspicious as to whether local leaders have not been co-opted into the system.

A leap forward through decisive leadership

Not a single class has existed in history without producing a person who is capable of leading the movement and taking it to particular heights. We need a determined leadership which can be bold and take the system of capitalism by the horns. The struggle for basic needs in the country has exposed the failures of the capitalist system and the blame is now laid at the door of government. The Fees Must Fall movement is a clear sign, in many respects, that people understand that they must become their own liberators for a good cause. It is also important to

> “Workers are vulnerable to the politics of race, chauvinism and the repressive political system despite common challenges and oppression from the capitalist system.”

say that there is a need for a great leap forward in the context of a National Democratic Revolution.

By its very nature, a leap is a radical approach to dislocate revisionism and reformism which are key drivers of neo-liberalism. The science of Marxism-Leninism equips revolutionaries correctly to coordinate it in order to achieve a determined objective. The entry point for championing a leap forward must focus on the following:

- the socialisation of the ownership of the means of production;
- the expansion of an effective public service;
- the provision of quality relevant people’s education;
- the provision of people’s housing;
- the establishment of a people’s economy;
- the development of the productive forces;
- the eradication of corruption at political level;
- the implementation of radical land reform; and
- the transformation of the financial sector.

The SACP is endeavouring to lay the foundation in this regard. For the past 20 years the Party has independently engaged with communities in the struggle to create a framework for a leap. We must discipline capital through the state and enforce responsibility and accountability for development.

The character of the SACP and the broader liberation movement

It is precisely for these reasons that we should interrogate our understanding of vanguardism and the Party as a vanguard of the working class. Vanguardism encompasses leadership that is located within a class for the historical mission of a class. For example the mission of the working class is to overthrow the capitalist system and build an egalitarian socialist society wherein the producers (proletariat) own what they produce. The leadership of the working class should not be at the tail end, nor leading far ahead of the class it represents. For the Party a vanguard is a well-informed concept wherein activism (on scientific basis) is a bedrock, coupled with class consciousness, selflessness and

iron hand discipline to bring about meaningful changes. The Party should follow principles which guide its day to day struggle to fundamentally change society. The principles must be applied in relation to a clear analysis of society and develop measures which will impact in proper planning against the capitalist system.

The SACP maintains that it will ideologically contest as a vanguard Party through democratic means with other left parties. The SACP contributed immensely to building the congress movement and this is clearly captured in many of the policies and other historical documents of the movement. The death of the ANC will also means the death of the entire liberation movement.

The alliance has been made up of independent formations which are committed to common objectives which include the democratisation of society as well as deepening and entrenching prosperity. Challenges that the entire movement faces come directly from its relation to capital. The multiclass character of the movement will experience internal class struggles wherein different class forces fight each other to build the movement in their own image.

Therefore this also influences the collective leadership which normally emerges from congresses at the national, provincial and local levels.

When the revolutionary process of establishing class alliances was introduced by Lenin, it meant that each party had to develop its own strategies and tactics of nation building and building a democratic society. Critics of the Alliance are trying to use the same method (building class alliances) through vulgarisation of the ANC led alliance by saying that it has adopted capitalism as a programme. This is erroneous because there is no policy in which the ANC has pronounced capitalism as a socio-economic system as a viable alternative. It is through that process that many of its leadership are now capitalists and compradors. This phenomenon creates challenges in the movement in particular and society in general. But simply moving out of the Alliance and building your profile through the capitalist media doesn't resolve the problem; it exposes opportunism in the form of left-sounding rhetoric.

Marxism-Leninism is a revolutionary theory which is a guide to action for radical change of society through the liberation of humanity from the chains of exploitation of labour power and national oppression. A Party member is expected to be well conversant with its content. There cannot be theory without practice; practice is the criterion of truth. Party members are expected to be the standard bearers of high communist ethics and morality and they must bring credibility to the entire organisation. Therefore the SACP should develop a tool that can be used to measure the deepening, advancement and championship of this noble concept amongst its membership.

> "The SACP must assist in organising communities in different formations, ranging from burial societies, cooperatives, street committees, stockvels and so forth."

Broadening SACP mass work

The main work of the SACP is to unite society around its immediate needs and develop strategic and tactical methods to address the question of unity and cohesion. Party structures must fight to rally all societal forces against any particular form of oppression that might be facing society at a given time. The struggle for socialism is about the establishment of a popular and united front against oppression and labour exploitation. Central to that the SACP must assist in organising communities in different formations, ranging from burial societies, cooperatives, street committees, stockvels and so forth. Party organisations must be able at any time to become genuine representatives of these nucleus formations with the intention of bringing about fundamental changes in society. The party must develop structures at the local level which are well equipped to work with various formations in communities so that the Party becomes rooted within communities. The SACP should establish a permanent war room which will assist lower structures to report to the higher organ about the life and activities of Party organisations. Emphasis should also be focused on Party members being well conversant with the ABC of the Party as it was developed by Lenin in *What Is to be Done? (*1902).

Conclusion

In a class divided society there will always be inequality and manifestations of oppression. Therefore civil protests and unrests are characteristic of a capitalist system because profit becomes primary and services are peripheralised. Workers must organise and become united to fight against capitalist exploitation. Shop stewards and officials of workers' formations must be educated politically so that they do not become sell-outs but earn the confidence of workers in fighting against capitalism. The struggle against capitalism must be waged in different terrains of society. Unity of purpose is important for the sole purpose of deepening the crisis of capitalism in society. The state remains a critical instrument of class rule, despite the fact that other scholars have introduced new concepts such as the developmental state. The struggle for socialism must be coupled with defending the gains of the workers and also the building of a strong organisation which is rooted amongst South Africans and well equipped with revolutionary theory. ■

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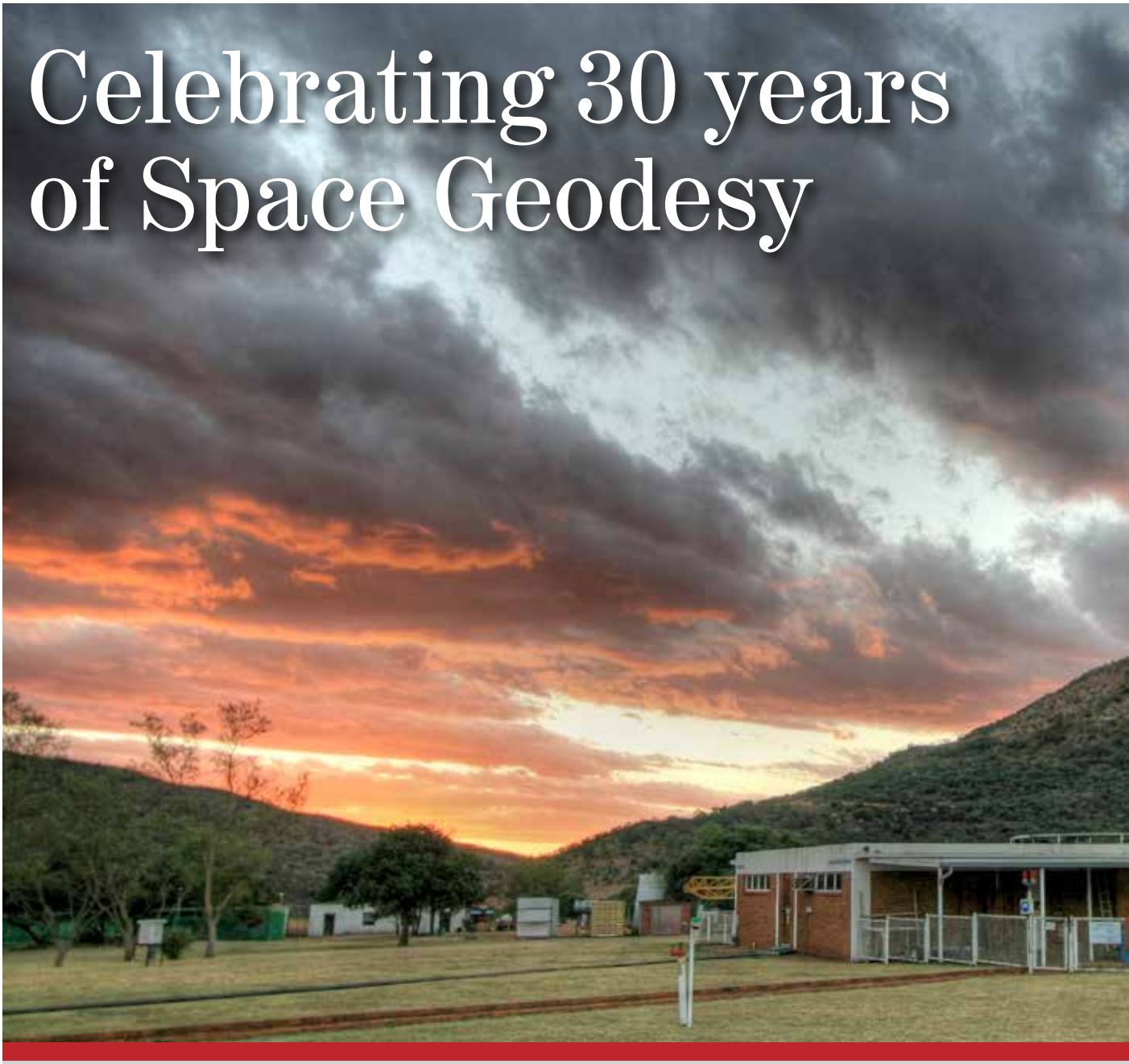
Celebrating 30 years of Space Geodesy



By David Mandaha

Did you know that Africa is drifting in a north-easterly direction at a rate of 25 mm a year?

More importantly, did you know that such precise data is measured in South Africa by an institution called the Hartebeesthoek Radio Astronomy Observatory (HartRAO), which is celebrating 30 years of space geodesy.

It began as Deep Space Station 51, built by NASA to track manned and unmanned Moon and space probe missions, but since its establishment in 1961 it underwent a transition, becoming a facility of the National Research Foundation.

Located west of Johannesburg, HartRAO has repositioned itself in the field of space geodesy. Space geodesy uses space techniques and instruments to take precise measurements of great distances.

New high-tech developments at HartRAO have given South Africa a vital new global role. The country can join scientists around the world in measuring – to the highest degree of accuracy – the orbits of satellites and the movement of continents. The high-precision data has many applications, including understanding climate conditions such as the El Niño effect.

One of the measuring applications

used at HartRAO is the Very Long Baseline Interferometry (VLBI) technique, which became operational at HartRAO in January 1986. VLBI consists of a network of radio telescopes that measure the movements of continents and the shape and rotation of the Earth.

The 26-m radio telescope (at the site since 1961) was ideal for collaboration with 20 or so other VLBI networks – in Europe, North and South America, Australia and elsewhere. Its location provides north-south as well as east-west baselines that can be used for measuring long distances over the Earth's surface with great accuracy.

These countries, including South Africa, contribute to the measurements from their unique positions on land and combine results to provide crucial information about dynamic phenomena on Earth, such as the rotation of our planet and movements of the Earth's crust that can result in natural disasters such as volcanoes and earthquakes.

HartRAO's 30 years of activity in the field of space geodesy has grown and strengthened, to such an extent that the facility is able to participate at a high level in global networks, which allows South Africa to play a significant role in using astronomy and geodesy worldwide.

The institution is also home to a satellite laser ranger (SLR) system – a global network of observation stations that measure the round-trip time of ultra-short pulses of laser light to satellites equipped with retro-reflectors – as it hosts and operates NASA's MOBLAS-6 SLR.

It is also developing a lunar laser ranger, which will send and receive laser pulses to and from the Moon to test the general theory of relativity.

In 2016 HartRAO will be commencing the construction of a new, next-generation geodetic VLBI radio telescope. This telescope will participate in a new global network of similar telescopes, with the objective of producing even higher accuracy results within a short period of time, enabling users to get near real-time results. There are some scientific applications that require accurate results quickly, and others that do not mind a wait of a week or two.

This antenna will function within the Global Observing System, which consists of a number of measuring techniques, and therefore has been named a VGOS antenna (VLBI in the Global Observing System). Similar antennas are currently being built or have been built in other countries as part of this new network.

As part of the 30-year celebration, HartRAO will also host a high-level international conference on radio astronomy and space geodesy research.

This conference will give Africa an opportunity to play a more active global role in these networks. ■

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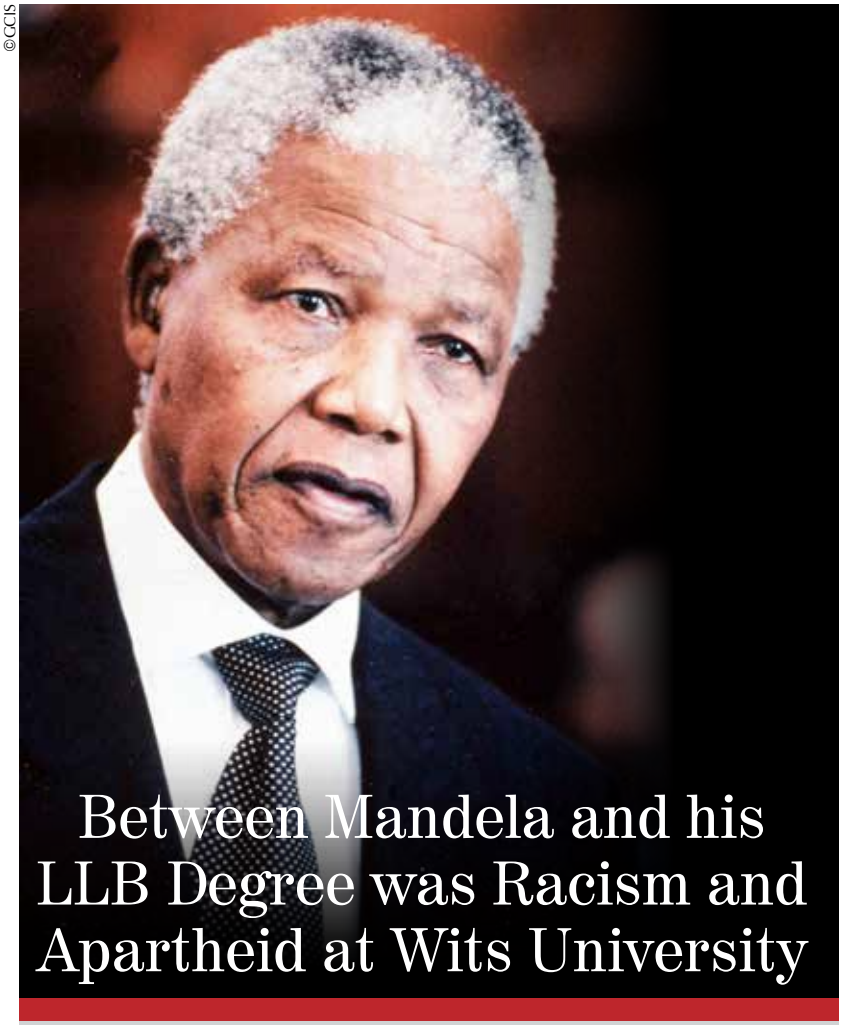

Between Mandela and his LLB Degree was Racism and Apartheid at Wits University

By Neo Lekgotla laga Ramoupi

Bruce Murray's "No easy walk to LLB for Madiba" (*Sunday Times* 26.07.15) does not point very clearly to the actual difficulties faced by Madiba and other black people studying law at the University of Witwatersrand during this period. Rather it succinctly makes the point that it took N Rolihlahla Mandela 46 years to pass his Bachelors of Laws (LLB) degree at Wits.

Murray writes "In 1974, he (Mandela) contemplated completing his Wits LLB, eliciting a cautious and legalistic response from the university rather than a sympathetic one." One wonders why Murray does not explain why Wits's reply to political prisoner Mandela on Robben Island at the time was not sympathetic. Rather, the liberal excuse Murray cites is that the apartheid government and its Department of Prisons prevented Mandela from continuing his law studies by blocking the political prisoner's correspondence with Wits and other universities inside and outside South Africa.

The same pretext was mentioned by another liberal university, the University of Cape Town, six years earlier, in 1968, in the case of Archie Mafeje. By supporting apartheid legislation as it related to Mafeje's proposed appointment in 1968 as a senior lecturer in the Department of Social Anthropology, and not challenging the Minister of Education, Jan de Klerk, father of former President, F. W. de Klerk, UCT entrenched and strengthened apartheid in the university system and in education overall. So the self-proclaimed status of Wits, UCT and other English language medium liberal universities about their opposition to apartheid, in particular when apartheid obstructed academic freedom, is farcical and deceitful. The cases of these two African leaders in politics and scholarship, Mandela at Wits and Mafeje at UCT, respectively, are profound examples of the English liberal hypocrisy in apartheid South Africa.

I frequently find myself returning to the miscarriage of justice at the Truth and Reconciliation Commission with regard to the universities. The TRC provided South Africa with a chance to interrogate South African universities about the roles these institutions played in supporting and keeping apartheid alive. Many sectors of society appeared and made their submission to the TRC, but not the education sector. The TRC should have called on universities to come before the commission and account. Wits should have been called to account at the TRC for its treatment of the law student, Mandela, and other black (African, Coloured and Indian) students.

In addition, it should have been asked to explain its alliance with the apartheid government, in particular the Department of Justice and its Minister PC Pelser, against Mangaliso Robert Sobukwe after his release from Robben Island prison in May 1969. GR Bozzoli, who at the time was Vice-Chancellor and Principal of Wits (1968 to 1977), and was the father to Belinda Bozzoli, the current Democratic Alliance (DA) Shadow Minister of Higher Education and Training in the South African Parliament, wrote a letter to the Justice Minister Pelser, just days before Sobukwe was released, dated 5 May 1969. In the letter the vice-chancellor of Wits reassures the apartheid justice minister that since "this University was his previous employer; I feel that we might be thought to have some moral responsibility to assist him in his rehabilitation on his release from prison." I support Sifiso Ndlovu in his opinion that this was not rehabilitation but simply a case of Wits University officially assuming the duties of the apartheid regime (see, "Robert Sobukwe: How Wits and the Department of Justice shaped his

life," http://www.sadet.co.za/robert_sobukwe.pdf).

Likewise, UCT should have appeared at the hearings of the TRC to account for the role the university played in alliance with the apartheid Minister of Education, de Klerk, against Mafeje's academic career and the other black students and lecturers at UCT; then the former University of Natal and so on. The point I labour here is that the English in South Africa continue to invent the idea that apartheid was created and implemented by the Afrikaners and the English were never part of it. But Bantu Biko warned us about the liberal in *I Write What I Like*… we must re-read it.

The narrative of Murray at Wits, as presented in this *Sunday Times* article, is inadequate to explain "No easy walk to LLB for Madiba" because it pits Mandela's intellect, to a greater degree, as the problem – and to a lesser extent Mandela's political activism – for his failing his law courses and for taking all these decades just to earn an LLB degree. This kind of thinking is at the heart of racist ideology and white superiority.

Apartheid and white superiority, I maintain, stood between Mandela and the attainment of his LLB degree at Wits University. For a start, just look at the format of this 1949 picture of Mandela's almost all white classmates with the racist Dean of Law, Professor HR Hahlo. Mandela is standing at the back next to another colleague who could be either coloured, Indian, if not African like Mandela; and all the whites are standing from first row all the way up. Apartheid legislation prohibited Mandela from living in the city, Johannesburg, where Wits is located; he had to take public transport, probably a train or bus, after his LLB classes in the evenings daily to commute to Orlando in Soweto where he lived with his young family. During the day he had to work to support his family and himself.

The human aspect of racism and apartheid that was the elephant in the Wits Faculty of Law that stood between Mandela and his LLB degree was none other than Herman Robert (Bobby) Hahlo, who was appointed temporary part-time assistant of the Department of Law in 1940 to keep the faculty integral when its head, Robin McKerron, was about to leave.

This man looked down upon black students and women as inferior. Partly, his ill-treatment of Mandela and women could be driven by the fact that he had twice been rejected from serving in the Defence Force on medical grounds. Born in the United States in 1905, at an early age Hahlo went with his parents to Germany, where he took the Dr Jur at the University of Halle and commenced practice. He could not stomach living under Hitler, and he emigrated to South Africa in 1934. In two years he completed the LLB. At the graduation ceremony on 20 March 1937, LLB degrees were conferred on the sixteen candidates who had passed the Final Examination in the previous December, the highest number until 1950; that provides the impression of the law faculty in its formative years. Several of the sixteen were to achieve prominence, including PC Pelser, who became Minister of Justice; and Hahlo, the person most responsible for raising the faculty to its 1990 stature. In 1946 Wits promoted Hahlo to a professorship.

Mandela, writes Murray, "wrote his final-year LLB examinations on three occasions, from 1947-1949, but failed at each attempt. In 1952, and again in 1974, while incarcerated on Robben Island, he took steps to complete his Wits LLB, but they came to naught." A livid fact that Murray omits in his narrative is that throughout Mandela's failure to complete his LLB degree, it was HR Hahlo at the helm, as the head of the Wits Department of Law and later as Dean of the Faculty of Law from 1947 until 1968 when he emigrated – again – to Canada; certain that Mandela, the African freedom fighter, was locked, stocked and barrelled on Robben Island – and there was just no way the radical and militant Mandela could become an LLB graduate, not only of Wits, but of any university inside and outside South Africa.

To labour this point of Hahlo's 'imprisonment' of Mandela in the Law Faculty at Wits, Hahlo, in the course of World War II, carried the Department of Law, teaching half the LLB courses. It would be interesting to audit how many blacks graduated with their LLB during Hahlo's tenure at Wits, considering that Murray says Hahlo's advice to Mandela was that he was wasting his time studying law as "law was a social science and women and Africans were not disciplined enough to master its intricacies." This racist line of thinking continued in the universities in South Africa when my generation of black South Africans entered university in the late 1980s when registering for a Philosophy or English course at UND where I went, white English liberal Professors – with or without a PhD – would tell you, you cannot do this course – it is not for blacks!' Today in the twenty-first century at UCT during the Rhodes Must Fall Movement in March 2015, black students echoed this experience.

In 1973 Wits conferred the LLD honoris causa on Hahlo; probably thanking him for keeping Mandela a complete failure at LLB. On Robben Island, Mandela probably heard from his most white, English and Jewish Johannesburg-based and Wits-trained attorneys that his law faculty persecutor had been honoured by Wits. Thus the following year, in 1974, prisoner Mandela took steps to complete his Wits LLB; and it was for the first time that he tried with Hahlo out of sight, out of mind. But he did not succeed. Murray does not tell us why that was the case, except to say "they came to naught." Mandela was settled now in his Island prison environment and its sameness of routine; I bet he was ready to conquer that Wits LLB!

Fortunately, Hahlo lived long enough to bear witness to the aura and wisdom of Mandela, especially Madiba's raw sincerity when it came to dealing with his oppressors and jailors because he lived to age of eighty-one years, with his mental capacity intact.

Do Not Tell Me How To Remember My History. ■

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THROUGH A CREATIVE LENS

THE RIGHT TO A LINGERING CITY

Casablanca

By Elroy Africa

It's dusk in Casablanca. Three blind middle-aged men are chatting reminiscently in a crowed and dimly lit street while begging passers-by for small change. One is seated while the other two are standing. Not far away two primary school aged boys are affectionately hanging on each other as they speak to a fruit seller. They look like the best of friends.

A homeless man, not older than 30 years old, stands in the shadows of a narrow bazar alley between the vendors, sniffing glue. He is happy in his lost world. After sniffing his grimy disheveled plastic friend he brings it to his ear as if to listen what his only friend has to say.

Three teen girls are hugging and laughing carelessly as they stroll past the countless bazaar vendors, who are mostly men of varying ages. They are in that place of adolescence where everything is possible and frivolous fun seems endless. A group of young men let their testosterone take over as they try to interact, but the girls continue unperturbed.

Young boys and men on scooters race recklessly between pedestrians young and old, locals and tourists, shoppers, families and kids, as if it were the end of the world. Amazingly they are like an unstoppable stream of water undeterred in a pebbled and rocky stream causing no obvious harm.

In a long badly lit pedestrian-street-cum-alley it is the elderly women in their colourful traditional dresses who have occupied prime floor seated positions selling their wares on the length of one side of the street. Almost everything required for daily subsistence is sold. Oranges, large ripe yellow bananas, eggs, nuts, spices of all sorts with a distinctive Arabic aroma, cheap toys, unfamiliar branded cigarettes and recycled, stained and well-aged clothes are spread out on thin ground cover. Some women have small babies and kids keeping them company as they try to solicit would-be buyers. They seem to have a special sixth sense in detecting non-locals.

In another part of the city under the watchful eye and shadows of the majestic and imposing Hassan II mosque, young boys are playing street soccer. The council street lights will

have to do. Home-made goal posts not more than half a meter high and a meter wide are strategically placed in a T-junction that serves as the soccer field. Some locals are sitting on the street corners and outside their humble run down homes watching the local match under the council street lights.

In another narrow, but crowed alley away from the tourists, a disabled boy runs clumsily at walking pace to catch up with friends ahead of him. They all disappear quickly into a side alley that is almost pitch dark. A young woman in her early adult years stops at a kiosk that can only serve one person at a time to buy milk. She is smartly dressed with a modern bright blue and white striped top and figure-hugging jeans. Her dark thick plaited hair rests effortlessly down her back. She too disappears in a tiny small side alley.

In a shorter, filthy and smelly walkway, running off the long and busy one next to the walled medina, the quality and spread of goods and wares peddled drops dramatically. It looks like a garage sale of and for the homeless and penniless. Some people are trying to sell not more that three loose items, an old badly used cooking pot, a cigarette lighter of a different generation and a few loose toilet rolls. This alley seems to also specialise in cheap kitchenware and electronic appliances. Some appear extremely old, if not unusable. Most goods and appliances are replicas of well-known brands.

Small barbershops occupy rooms that cannot accommodate more than four people at a time. Mostly elderly men appear to own and manage these barbershops with authentic metal and leather barber chairs that take pride of place in these modest establishments. Flat round bread is sold everywhere. If you look carefully behind some of the semi-closed doors in the mazed alleyways, brick ovens are noticeable where the bread is baked.

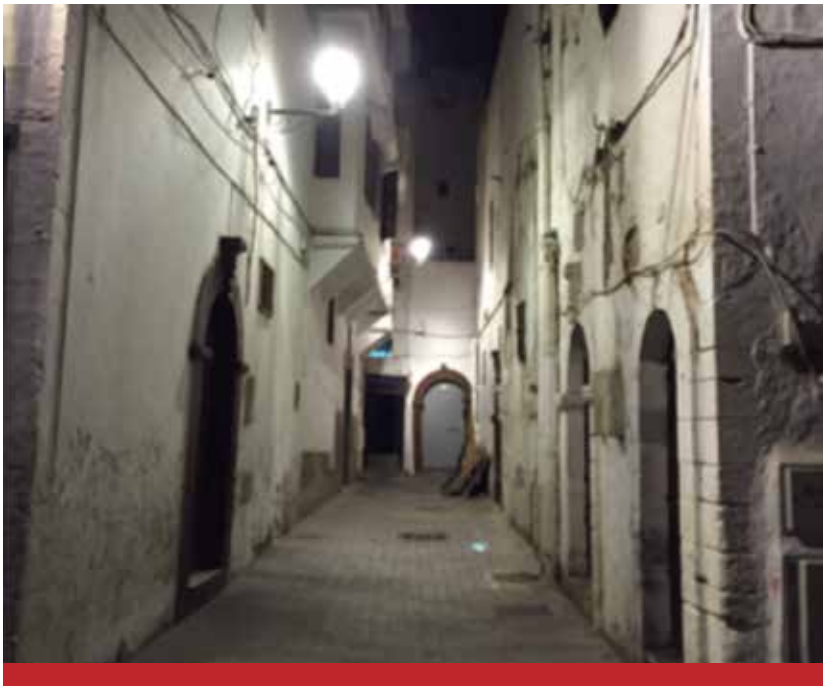
Most of the mazed alleyways within the medinas and adjacent poorer areas are neatly stoned and paved. Trash is both painstakingly piled in some places and carelessly littered and reeking in other areas. A lonesome young man is picking up trash in a quiet alley. He is not a council worker. It looks like he lives close by. The council has made a special effort to light up most alleys. The street lights are high up which prevent easy and opportunistic tampering.

The djelleba and traditional hooded gowns are seen everywhere. These garments are genderless and mostly formless. From behind some look eerie and sinister, like the anonymous black hooded man who was hurrying, if not scurrying, between casual shoppers and other pedestrians in the bazaar. Many locals seem to know each other. There are always people standing, chatting and giving each the traditional greeting kiss on the cheeks. Between them an elderly man is cautiously balancing a silver tray of mint tea that he is delivering to his regulars. He crouches with a limp in his walk as he navigates kids, tourists, a loving couple and a scooter in the bazaar.

The souks and bazaars are an explosion of colour. A rusty red earthiness seems to ground the Casablancan rainbow found in the bazaars and medinas. The vibrancy of these bright deep colours shout at you through the various items being sold: clothing pieces, kelims, leather bags, cheap touristy trinkets and artifacts of different shapes and sizes.

This colorful Arabian kaleidoscope in the city appears to be matched only by an undefinable tolerance and coexistence between locals and between locals and non-locals. The crazy speeding of young men on scooters, the homeless men occupying spaces they do not own, the loud vendors selling virtually identical bags, dresses, Moroccan souvenirs, freshly caught fish, luscious fruit and vegetables and young girls gaily on their way as young boys and men cajole, whistle or just smile wishfully – this is the chaotic order that is tolerated by all.

Tonight is English football. The local Casablancan men are out in full force.



It's amazing, they fill bars, cafes and pavements that all have uninterrupted sight of a television. It's like being in a mosque or church, they sit captivated and speechless on their benches and rickety chairs in rows all focused in one magnetic direction. Ever so often they erupt in raucous jeers and even louder cheers. Not a woman in sight. What if a woman decided to sit amongst them?

The men of Casablanca occupy key public and semi-private spaces of the city. Old and middle-aged men wear thread-bare suits and jackets bought in the 1950s and 1960s. Whether early in the morning, throughout the day or after sundown they sit alone, in pairs or groups in and outside tiny cafes, bars, restaurants or simply any public place that makes this possible. Sipping strong sweet mint tea is the pastime. Half of the tables and chairs don't speak to each other. All the chairs face one direction away from the street café, bar or restaurant directed at passers-by. Many are smoking while others read newspapers, speak on mobile phones or just stare unobtrusively and blankly at whatever or whoever crosses their path. Some sit closely together in deep conversation, it's as if they are co-joined at the hip. Some kids end up in light scuffle over a ball game in the street and the lonely man sitting in his chair shouts at them with the tone of a scolding parent. The local men epitomise the lingering city of Casablanca.

Casablanca offers elements of a vision for a new and alternative 21st century global metropolis. It is a city where space is predominantly communal and common. Most human activity is undertaken in spaces and places which are shared or easily accessible to all. Private spaces are tiny, if not hidden in many instances. While ornate and intricate designed wooden and metal doors are a brand-mark of the city, hidden alleys and impossibly steep single person stairs to dwellings are also widespread and appear inviting to all.

The medinas, souks and bazaars are first of all not tourist attractions. These spaces and places embrace a chequered spread of delightful differently sized public squares, countless highly compact and unassuming dwellings and a narrow maze of twisted alleys and streets. Real people live, play, work, rest and linger here. They were there yesterday and most likely will be there tomorrow.

Here private space is the exception. Community- and communal-based norms, values and ways of living of pre-industrialised and pre-capitalist urban spaces echo and reverberate silently yet loudly. The sense of community and familiarity is unmistakeable. Time, place and people exist as contradiction here. The human condition is displayed in all its frailty and hopefulness, it's youthfulness and hopelessness.

But the quality that rises above all is idleness. Was it not Bertrand Russel who spoke of the praise-worthiness of being idle? In this context it manifests primarily in older men lingering for hours at cafes and bars, younger men spending their days selling their wares or lazily flirting with passing young women and girls, or teenage boys huddled under street lights or in the shadows scheming and just being boys, or grown women selling all manner of basic necessities and oddities sitting and the street or the ragged smelly homeless men wandering around aimlessly without causing anyone harm.

The ability to linger in the city is and must be a right. It must be a right for all people.

Imagine the older men, many of pensionable age, being prohibited from sitting for hours at cafes only sipping tea or at the tiny public squares chatting with their lifelong neighborhood friends. Imagine the city police chasing the three blind men away from there regular meeting spot. Imagine the teenage boys being told their innocent loitering with catcalls aimed at young women and girls was illegal. Imagine the two young boys at the fruit stand being told to scurry away because they were a deterrent to potential customers. Imagine a city without being able to sit in a public and common space as long as you desire. Imagine a city where lingering and idleness are healthy desirable qualities.

Was it not an old bearded man in the 19th century who spoke of a future society where the 24 hours in a day would be equally spread between work, sleep and leisure. We should add the right to decent work, safe sleep and free leisure. Casablanca is far from the ideal city for the majority of its inhabitants and it certainly does not have the idealist quality of 8 hours of labour, rest and leisure by a long shot. But it can teach us something about the condition of pausing longer than usual and living tolerantly in urban spaces that reflect a meaningful set of communal values that is so desperately needed for the lingering city of the future. ■

POLO

- SINCE 1976 -

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