



NEW AGENDA

SOUTH AFRICAN JOURNAL OF SOCIAL AND ECONOMIC POLICY

THE STUDENT UPRISING

V-C JONATHAN JANSEN
PROF SIPHO SEEPE
LEIGH-ANN NAIDOO

MARKET ECONOMY IS NOT WORKING

JOSEPH STIGLITZ

WHO HAS POWER IN RURAL AREAS?

MINISTER NKWINTI AND NOLUNDI LUWAYA

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GREEN TECHNOLOGIES RESEARCH CENTRE: A HUB FOR CLIMATE-SMART AGRICULTURAL INPUTS

By Prof Phatu Mashela, Faculty of Science and Agriculture at the University of Limpopo



Phatu W Mashela, Senior Professor of Nematology and Lead Researcher at the Green Technologies Research Centre

Halogenated pesticides were among products associated with depletion of ozone layer in the 1990s. The ozone layer absorbs ultraviolet rays, thereby moderating temperatures on earth, with its depletion resulting in more ultraviolet rays reaching the earth. The earth-reflected radiation to the atmosphere is deflected back to earth by another man-induced layer: greenhouse layer - primarily produced by excessive use of fossil energy. In the formation of the layer, agricultural activities play a significant role. The layer covers the earth like a transparent plastic, with the trapped heat increasing temperature and therefore, global warming. The latter has been conspicuous in climate change, with increased incidents of droughts and/or floods. Worldwide, various mitigation and adaptation strategies are being researched and developed to reverse global warming.

In agriculture, the starting point in mitigation had been the withdrawal of halogenated pesticides from the agrochemical markets. The use of methyl bromide was phased out at the end of 2005, thereby shifting agricultural activities to climate-smart agriculture (CSA). In the early 2000s, the Land Bank

Chair of Agriculture at the University of Limpopo (UL) conceptualised the use of selected organs from plants that are indigenous to Limpopo Province as alternatives to halogenated pesticides.

Plant-parasitic nematodes are soil-borne worm-like pests that cannot be seen with unaided eyes. Yield loss due to nematode damage can run as high as 50 percent and even complete crop failure, particularly among smallholder producers. Two phytonematicides were researched and developed from *Cucumis myriocarpus* and *Cucumis africanus* fruits to manage these soil-borne pests. The University provided physical facilities for the research team – the Green Technologies Research Centre (GTRC). This has since become an R&D hub for CSA inputs such as phyto-nematicides, phyto-fertilisers, phyto-insecticides and phyto-herbicides for use in CSA. The Chair also developed an Integrated Irrigation System (IIS), with capabilities to irrigate nine plants/ha of drip irrigation. The system is currently being subjected to on-farm trials for development of smallholder producers with high adoption rates.

At least 41 Masters and 10 PhD students had since conducted their research in green technologies at the Centre. Additionally, 46 BSc Agriculture final-year students and 143 B. Agriculture Management honours students also conducted their research projects in green technologies as a deliberate measure to build a base for locally-produced postgraduates.

Highlights for GTRC were R&D of non-phytotoxic concentrations for phyto-nematicides, using an Australian-originated computer-based model. The research team conceptualised the Mean

Concentration Stimulation Range [MCSR = $Dm + (Rh/2)$], which was successfully validated under diverse soil conditions. This concentration stimulates plant growth while suppressing nematode numbers. The concept is actively being shared with peers in through conference presentations and journal publications at national and international platforms. MCSR has since promoted the potential commercialisation of phytonematicides for use in CSA.

The collaborative partners for the GTRC include ZZ2, Agricultural Research Council (ARC), University of KwaZulu-Natal, University of Fort Hare, two universities within the Forum for Agricultural Research in Africa (FARA) and six within the Flemish Interuniversity Council in Belgium. The collaboration encompasses the provision of bursaries, co-funding of research activities, co-supervision of postgraduate students, farmer training, co-authorships, short student/professional exchanges and co-application of research grants. Active funders of GTRC include UL, ARC, VLIR, Land Bank, National Research Foundation, AgriSeta, Department of Science and Technology and the Department of Agriculture, Forestry and Fisheries.



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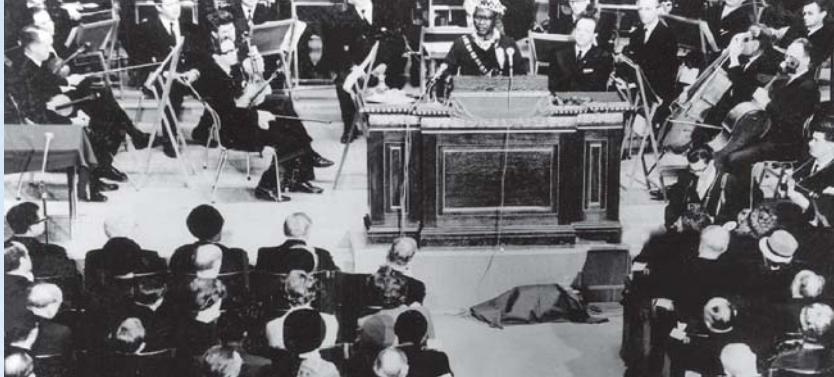
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can be no peace
in any part
of the world
where there are
people
oppressed...”

- Chief Albert Luthuli
Africa's First Nobel Peace Laureate



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NATIONAL CRISIS CALLS FOR A NEW AGENDA

By Ben Turok

The dismissal of Finance Minister Nhlanhla Nene and the resultant crisis in the South African economy may turn out to be the most ill judged decision of Jacob Zuma's presidency.

The fallout in financial terms has been huge, but the loss of confidence in his judgement has been even greater. Nene had started his parliamentary career in 1999 as a backbencher and joined the cabinet as deputy minister of finance in 2009. The leadership saw him as a safe pair of hands who could be trusted to conform with official policy. Although Nene's replacement of Pravin Gordhan in 2014 came as a surprise, his orthodox, cautious temperament was well suited to managing the turbulence that affected the economy, and business was comfortable with him. Hence the shock at his dismissal on 9 December 2015, especially given the external economic shocks already on their way.

New Agenda believes that this crisis is part of a continuing trend of bad governance, mismanagement, and the appointment of incompetent people in the public service and state-owned enterprises. Questions have been raised about the potential risk of state capture for the purpose of looting through elements of the private sector. The malfunctioning of the state can

be traced back to the fact that the ANC won political but not economic power in the transition to democracy, with the economic powerhouses of the apartheid era left intact. Government performance in the economy over the past twenty years has been inadequate.



***New Agenda* hopes that the crisis will lead to a new national conversation about where we are going**

It has failed to address the growing inequality and create meaningful jobs. As a consequence, South Africa remains the most unequal country in the world. Leaders of big business extract extraordinary profits while the majority rely on social grants.

The optimism of the early years of democracy has been displaced by deep pessimism. The goals of building a

decent society have been replaced by greed and conspicuous consumption, fed by pervasive corruption in both public- and private-sector institutions. Cronyism rules the day. The once proud organisations that led the struggle for freedom are wracked by infighting (as witness the demonstrations by ANC members against ANC leaders in the streets of Durban) and noted more for noisy rhetoric and bombast than reasoned argument.

New Agenda hopes that the crisis will lead to a new national conversation about where we are going. This journal is committed to developing a deeper analysis of the social, political and economic structures of society in order to understand the way forward and take corrective action. The aspirations of the liberation movement, developed over many decades, cannot be allowed to be lost or forgotten. South Africa and the world expect far better from a movement that was once respected everywhere. **NA**





A BREATH OF FRESH AIR

By Ben Turok

Since 2010, *New Agenda* has given special coverage to youth and student issues. We have published interviews with leaders of SASCO and SAUS and held meetings with student leaders at UCT and CPUT. Unfortunately, our efforts were unproductive as these organisations were not firmly rooted in students and their concerns. There seemed to be a preoccupation with gaining positions in the SRCs, although even winning office did not seem to lead anywhere. Given the universities' ingrained conservatism and white hegemony, these student institutions and organisations seemed to be vehicles of cooption and frustration. And so it was that Rhodes Must Fall and the dramatic events that followed took us by surprise. We will all remember 21 October 2015 as a crucial moment in our political history.

It is therefore with appreciation that we received Leigh-Ann Naidoo's article on the emergence of the 2015 student uprising, which articulates the driving philosophy of this important movement. Naidoo makes some very important points concerning the role of black consciousness and Pan-Africanism in the student struggle; the alliance of various student formations across the country on agreed issues; the rejection of both party-aligned politics and reformist SRCs; the convergence that emerged between the movement, SRCs,



Prof Ben Turok

workers and staff; a "radical praxis" that rejects the division between "leaders" and "followers"; and that the "born-frees" are no longer willing to accept the limitations of the formal democracy they have inherited.

Politics in South Africa has yet to digest the import of these positions. In particular, the ANC and its organs will have to indicate clearly their stance on this movement, as will all other political formations. Through years of neglecting student affairs, the token support offered to student formations, and the ANC's preoccupation with its own Youth League, the liberation

movement has been seriously derelict in its responsibility to these students.

The student movement is obviously correct to point out that our best universities are not pursuing transformation to become relevant South African and African institutions of higher learning, but continue to mimic Oxbridge and European traditions in their governance and, in many cases, their curricula.

The protest movement of students must be welcomed as a breath of fresh air. However, we do need to caution against the lack of organised structures, the vague or nostalgic recall of black consciousness, and the failure to analyse the fundamental structure of political economy that created the colonial edifice they condemn. How on earth will we remove the legacy of colonialism if we do not understand the mechanics of that structure?

We also have some concern for their dismissal of the struggle for reforms as insignificant, and the rejection of formal political party formations. Ours is a country steeped in struggle by political organisations with long histories. They will not go away and – even if they are not responding properly to present needs – their presence remains important. Perhaps, rather than going it alone, the student movement should place their demands squarely before these movements and insist on proper support. **NA**

A QUIET CONTEMPLATION ON THE NEW ANGER

THE STATE OF TRANSFORMATION IN SOUTH AFRICAN UNIVERSITIES

By Jonathan D Jansen

The author is vice-chancellor and rector of the University of the Free State

This is an edited version of the inaugural Stephen Ellis Memorial Lecture, delivered at the Netherlands Embassy in Pretoria on 9 October 2015.

There is a disturbing vignette in *Memoirs of a Born Free*, by the young black activist Malaika Mahlatsi who renamed herself Malaika wa Azania. As a learner in a middle-class white school, she learns that her teacher's precious cat has died. Looking around at the teary group of learners and the heartbroken teacher, Malaika bursts out laughing. "In the township, cats and dogs die all the time," she smirks. The school calls young Malaika on her heartlessness, but the future author would carry the memory of her dismissal of the pain of others as a badge of pride.

I have studied the emergence of this new anger with a mixture of intrigue and concern. Intrigue, because the critics are mainly middle-class black students who attended white schools and white universities. Unlike the vast majority of young people who enjoyed access to premium institutions and used that experience to benefit themselves, their families and communities, this group of disaffected graduates is angry. Their complaint is very simple: they are still not free. They see a generational break between the old-timers' accounts of struggle and victory and a new generation caught in the daily grind of a white-dominated economy and



untransformed universities.

But I also have a deep concern that, once again, radical behaviours from the past show up in the character of student protests. There was a glorious element to student and community protests that set us free. But there was also the dark side of unbridled anger, intolerance of dissent and violent confrontation which, while understandable in the heat of apartheid, cannot possibly define protests after apartheid. That dark side sometimes included complete disregard for the humanity of others, such as

the horrific "necklacing" episodes and the torture, even death, of suspects in camps. It included a disregard for education, teachers and teaching from which the post-apartheid school system has never recovered. That anger and intolerance shows up all too frequently in the way we protest on the streets, in parliament and on campuses.

We have lost the dignity of protest exemplified by people like Walter Sisulu, Beyers Naudé and Neville Alexander, radical forms of protests not reducible to violence, insult and degradation.



GRIEVANCES OF RECOGNITION

“F*** off, whites!” The shocking words that a young black man yelled out during the 2015 Ruth First Memorial Lecture found support in the crowded Great Hall at Wits University. I have felt the heat of this hatred among young people who have not spent a day living under apartheid or a night in the cells of the white regime.

But what exactly is the grievance? The institutional critique is much clearer: too few black professors, a neo-colonial curriculum, an unwelcoming institutional culture, everyday racism on campus. On that score, there can be little disagreement and most university leaders will acknowledge the complexity of overcoming these problems as quickly as we all wish we could.

The grievance becomes more complex, however, when it moves into the realm of black/white relationships. This was what the Ruth First Lecture promised to bring to light – the complexity of interracial friendships. At this point, what happens is a public baring of something long suppressed: an unrequited love. The anger becomes intense, even threatening. Some believe that interracial friendships carry no value. Others castigate whites along these lines: *We have to speak their language and they make no effort to learn ours. We are tired of smiling in friendships that demean us, make us feel less. We become like them on the outside even though our essence remains black. We are tired of living these two lives between our poor mothers and families and cavorting with whites in the realm of privilege. We are coconuts no more.*

It is important to pay attention to this strain of disaffection among black youth. In one sense, it is nothing new. In *The Rage of the Privileged Class*, Ellis Close described similar experiences of African-Americans inside the hostile corporate world in the US. It signifies that simply being allowed in is not enough; being accepted on one's own terms matters. The problem of social, cultural, intellectual and symbolic recognition is a common and powerful lament in the

former white campuses in South Africa. Put bluntly, simply adding more black professors to the senate or broadening the curriculum or commissioning more studies on institutional culture will do little to pacify this rage. It could make matters worse.



Without solving the leadership problem at universities, large injections of state bail-out funding would be a terrible waste of resources.

It is important to distinguish patterns of institutional recalcitrance among South African universities. Some of the historically white Afrikaans universities still have a problem with the first order of business: basic access. The Open Stellenbosch movement was long overdue, and the *Luister* documentary is merely the start of an extended campaign to open up undergraduate studies to many more African students. It is really sad that the transformation of this otherwise top academic university was held back for decades by refractory language crusades to “protect Afrikaans” which kept the institution predominantly white and especially non-African. In the same way, repeated ugly assaults on the first black vice-chancellor of the North West University by white defenders of the Potchefstroom campus are nothing more than attempts to protect white dominance in language, culture and demographics.

In the historically white English universities, black student numbers have grown steadily, to a comfortable majority in some instances. The vice-

chancellors speak the language of transformation and senior colleagues drive change programmes. Their curricula are open, progressive and critical of their own foundations. There are funded initiatives to recruit older and promote young black scholars. So what's the problem?

In the first instance, these institutions still convey an overwhelming sense of whiteness, from the complexion of the professoriate to the cultural rituals of everyday life. But there is more: they impose an English whiteness on newcomers that is hard to describe. Over the years, I have asked accomplished black scholars at UCT why they were so angry. Time and again, the answer was the same, conveyed with deep emotion: “It's the way they make you feel.” I have been at the receiving end of those withering white putdowns by prominent UCT academics. I know exactly how it feels.

At the Afrikaans universities, racism comes blatantly in a Nazi salute or urinating into black people's food or wearing blackface. At the English universities, it is the snub in the hallway, the put-down about your promotion, the clipped accent and Oxbridge references, the biting criticism of your manuscript, the talk behind your back, the fear of reprisal if you speak out, the inability to hug or deliver an unconditional compliment, and the constant reminder that you are not part of the club.

COMTSOSTIS AND OTHER HOOLIGANS

That said, there is a kind of gangsterism masquerading as progressive politics at the core of many of the disruptions at the former white English universities, a vile *comtsotsi* hooliganism that beats up other students, violently disrupts meetings, assaults members of staff, spews anti-Semitic and anti-white froth, and gratuitously attacks the dignity and integrity of leaders. When, in scholarship or journalism or everyday observation, we conflate this element with the progressive element, ➤

we undermine the seeds of what could become a very powerful movement in student protests. This is a crucial point.

Where does this hooligan behaviour come from? There is no question that it mimics the off-campus behaviour of political parties, to begin with. The ongoing fracas in parliament is a model for some of these youths. Often they come from political and community contexts where intellectual disagreement and tough debate must escalate into verbal abuse and physical confrontation.

Needless to say, this violence is worrying in terms of our country's future, as it sustains conditions embedded in our society by apartheid and colonialism. The role of leadership and education is to change that behaviour and to tame those passions. The failure to discipline this particular angry mob is a failure of education and leadership at home, in schools, in community organisations and in our universities.

But to simply dismiss this rage as irrational is not helpful either. The angry black students are hungry on campus, struggling to find finances for tuition, and hustling to secure cheap accommodation. Then, perhaps with a dodgy quality of school education behind them, they find themselves in a laboratory or lecture hall with a white person standing in front and make a direct connection between their miserable state and the race of the lecturer. Where institutions fail to *recognise* this student's estrangement, fire and oil meet.

In this tight and twisted bundle of raw emotions, the anger is not always clearly articulated and there is no particular enemy, so everyone is. The political philosophy is similarly dense and confusing, ranging from a broad pan-Africanism to narrow black ethnic nationalism with more than a hint of poisonous anti-white racism. The language is straight out of an introductory social science course, such as repeated references to "the black body": simply to go to classes at Rhodes or UCT is to "subject the black body" to

an unrelenting oppression.

All kinds of figures are invoked in these angry flashes, from Biko to Fanon to Cornel West – but not, unsurprisingly, to King or Gandhi or Mandela. If Mandela gets any mention at all, it is as a sellout, the man who led South Africa into a soft transition that left white privilege undisturbed and black poverty undiminished. This instant re-interpretation, and dismissal, of Nelson Mandela is the most marked feature of the new anger.



The problem of social, cultural, intellectual and symbolic recognition is a common and powerful lament in the former white campuses in South Africa.

WHAT OF THE FUTURE?

These problems are not insoluble. They can be solved through a different kind of leadership. The students are not the problem.

Will the leadership of top universities like UCT and Stellenbosch truly accelerate the deep transformation of their institutions in ways that satisfy the demands of justice? If they retreat into their pre-Rhodes-Must-Fall or pre-Open-Stellenbosch slumbers, those universities themselves will threaten the future stability and academic standing of higher education in South Africa. To blame the students in this case would be disingenuous.

Which raises the question of the historically black universities, and here we need to be frank. There has to be a radical new financing model that effectively makes university education

free and accessible to all poor students for purposes of undergraduate studies. Until this happens, the chronic violence that keeps so many campuses in turmoil is not going to go away. It is as simple as that.

In the meantime, the historically black universities need courageous leaders who, with government support, can steer these institutions into stability so as to provide students with the depth and quality of training required for their degrees. Some of these universities are under threat of losing accreditation for some qualifications due to the lack of focus on the academic project. This means disrupting regressive union "activism" that holds universities to ransom with single-minded salary agendas. It means appointing leaders with political savvy and strong, disciplined management teams who can anticipate staff and student demands and redirect crises towards positive resolution.

Let me say this clearly: without solving the leadership problem at universities, large injections of state bail-out funding would be a terrible waste of resources that could have been deployed elsewhere. And only when leaders can win the confidence of students by actively and personally demonstrating their commitment to financial, academic and emotional support for students – when an ethic of care and compassion is threaded through the management of everyday student life – is it possible to require a discipline of student organisation and politics.

If we fail to do this, South African universities will remain a mirror of the national school system: a small elite group of functioning institutions and a large, chronically dysfunctional set of institutions surviving from one month to the next in a state of stable crisis, without being able to attend to the academic project. The small elite group of universities, under the constant demands of students, staff, government and business, will also unthread in time, until they too become part of an all-too-familiar postcolonial tale. [NA](#)

DISMANTLING THE FALSE POST-1994 NARRATIVE

By Sipho Seepe



Prof Sipho Seepe

The author is an advisor to the ministry of human settlements, writing in his personal capacity

The student movement demonstrates the failure of the post-apartheid narrative of rainbows and miracles to effect real change in people's lives.

In terms of melodrama, coverage, impact, agenda-setting and far-reaching consequences, 2015 will go down in history as epoch defining. The students disrupted the routine way of seeing and being. In the fullness of time, this year might prove to be a point of no return and a catalyst for more radical changes in the political and socio-economic landscape of South Africa.

The speed with which the movement assumed a national character indicates the depth and pervasiveness of frustration in the country. It could be argued that, as far as the young people are concerned, the post-1994 narrative failed to appreciate the scale of historical challenges. While the movement was popularised with the #FeesMustFall hashtag, its key grievances coalesce around the seemingly anti-black, anti-poor, and anti-worker post-1994 agenda.

This agenda camouflaged itself by deploying the appealing language of reconciliation and non-racialism. Stripped of its beguiling tone, the agenda is more about reconciling

citizens to the material realities spawned by the logic of apartheid. Through policy choices and missed opportunities, these realities continue to play themselves out in people's daily experiences 21 years later. The country remains largely a country of two nations, as described by former president Thabo Mbeki. Addressing a house of assembly session on 25 May 1998, when he was deputy-president, Mbeki observed:

South Africa is a country of two nations. One of these nations is white, relatively prosperous, regardless of gender or geographic dispersal. It has ready access to a developed economic, physical, educational, communication and other infrastructure... The second and larger nation of South Africa is black and poor, with the worst affected being women in the rural areas, the black rural population in general and the disabled. This nation lives under conditions of a grossly underdeveloped economic, physical, educational, communication and other infrastructure. It has virtually no possibility to exercise what in reality amounts to a theoretical right to equal opportunity, with that right being equal within this black nation only to the extent that it is equally incapable of realisation.

The policy choices and misses can be attributed to a sleight of hand that was meted out to the ruling party during negotiations. Whereas apartheid had always been considered as a system of subjugation, it was repackaged as mere acts of terror, violence and violation ➤

committed by individual bigots. Thanks to the disservice meted out by the Truth and Reconciliation Commission, less emphasis was placed on how the rest of white society benefited from the oppression of black people. In one fell swoop, the entirety of white society was exonerated. The effect was to not only entrench the historical socio-economic inequalities but to provide them a cover of legitimacy.

Somehow the country was duped into believing that apartheid's structural challenges could be wished away by lofty phrases of reconciliation and rainbows. The country was fed the false notion of a miracle nation, and a majority bought into it. In politics and economics, there are no miracles. The idea was captivating, but wrong diagnoses and incorrect prescriptions to socio-economic ailments were bound to catch up with us. Columnist and author Jonny Steinberg (2014) drives this point home:

The freedom South Africans acquired in 1994 was mercurial and slippery. Politically, the changes were dramatic. The electorate expanded overnight to include every adult. But the structure of society stayed much the same. And white people remained white people, doing what white people had always done: running the professions, the corporations, the universities. Expertise, wealth, technical knowledge, social confidence – all of these remained deeply associated with whiteness.

In seeking to address the unfinished business of transition, the #FeesMustFall student movement places the post-1994 narrative in the dock. Nothing exposes the bankruptcy of the post-1994 narrative than the issue of access to higher education. Access requires not only academic capability but also one's ability to afford it. Thanks to apartheid's policy of systemic impoverishment, the dice were already heavily weighted against the black students. Financial handouts and the National Student Financial Aid Scheme could only go so far. The dispensation was anti-black from the onset.

The advent of managerialism and marketisation in higher education did not help. As universities embraced the language of the private sector, schools and departments were reduced overnight to cost centres. To cut costs, certain functions – unsurprisingly, those performed in the main by black and poor workers – were outsourced.



The greatest indictment is perhaps of the black leadership and self-appointed spokespersons of the working class.

In a split second, they lost the pension, medical aid, and leave days enjoyed by their fellow, mainly white, university workers. Their children could no longer study for free as their colleagues' children did. It is perhaps an indictment in the first instance that the department of education allowed this policy: it should have been obvious that it would entrench racial and class divisions and perpetuate the cycle of poverty. One would have thought that the new mandarins would remember the words of Nelson Rolihlahla Mandela that they quote with monotonous frequency at graduation ceremonies:

Education is the great engine of personal development. It is through education that the daughter of a peasant can become a doctor, that the son of a mineworker can become the head of the mine, that a child of farmworkers can become president of a great nation.

The greatest indictment is perhaps of the black leadership and self-appointed spokespersons of the working class. They should know

better. The #FeesMustFall student movement proved that being black may be a necessary condition to advance transformation, but it is not enough. There is merit to the proposition that those appointed in historically white institutions are carefully chosen precisely for their incapacity to bring about any transformation. Having become invested in the system, they have become active propagandists of a system that is largely anti-black, anti-poor and anti-working class.

There are several lessons that the students' protests have brought to the fore:

1. The movement exposed the inadequacy of intellectual critique that is not rooted in working class struggles. Tomes of studies critiquing the current dispensation accumulate dust on library and office shelves without leading to any change in policy. It is only when these critiques are coupled with the blunt instrument of mass actions and mass struggles that they are likely to bring about any effective change. The protests show the effectiveness of organised struggles to bring about transformation.
2. The movement exposed the racism and white supremacy that continue to afflict institutions of higher education.
3. The movement exposed the leadership weakness in higher education. It can be said without fear of contradiction that a majority of the highly paid and esteemed vice-chancellors were found wanting. It was embarrassing to see some running for cover and refusing to address their own students. In a majority of cases, they resorted to the use of police. The use of force indicates a deeper intellectual crisis and crisis of leadership. It says that vice-chancellors have not been able to take the students along with them. It reflects poor stakeholder management. Can the current management regain the respect it had prior to the protests? Or, put



differently, what kind of leadership does South Africa require to address the fundamental questions raised by the student movement?

4. Lost in the hurly-burly of analysis is the racial dimension. Protests around academic and financial exclusions have played out routinely in historically black universities without raising eyebrows, and have somehow been resolved without assuming the spectre of a national crisis. It is only in historically white spaces that protests invite national attention and require presidential attention. The message is quite clear – white concerns matter more.
5. The student protests have also exposed the hypocrisy of the so-called analysts, a majority of whom are university academics. Societal protests are routinely described as reflecting a crisis of legitimacy and leadership, yet we have not seen this description accorded to their own bosses in response to the students' protests and demands that include the decolonisation project.
6. There is probably a bigger question raised by the form and nature of the protest. That the most privileged in our society can resort to wanton destruction of property in the face of meagre resources, as well as the violence that has been witnessed, call into question the nature of intellectual engagement students find on a daily basis in the lecture halls.
7. Through organised mass action, the students have been able to force institutions to review policies on hiring practices and conditions of services – a feat that unions such as National Education, Health and Allied Workers' Union had failed to achieve. It is commendable that students linked their struggles with those of a broader society. This is mark of political maturity and should also not come as a surprise. After all, the very workers who are exploited by university management are their

mothers, fathers, sisters and brothers.

8. Students have embarked on a process of decolonising their institutions. The first and probably the easiest step is that of dismantling apartheid and colonial symbols adorning their campuses. They have initiated the process of renaming institutional spaces and buildings with names of struggle icons. In doing so, they have rejected the rewriting of history that has taken hold and challenged the narrative of capitulation that allowed offensive symbols of oppression to remain unperturbed in our midst, such as the statue of Cecil John Rhodes. It is also a serious indictment that this matter escaped both the esteemed vice-chancellors and those who parade themselves as progressive intellectuals.



In politics and economics, there are no miracles.

9. Young people are not impressed with simply having black faces at the top. These were allowed to getting away with incompetence on the basis of black solidarity. Professor Malegapuru Makgoba is one of the notable exceptions. In a few years, he transformed the University of KwaZulu-Natal. First, Makgoba proved that the common mantra that black and women scholars are hard to find and expensive is a blatant and racist lie. Second, UKZN demonstrated that diversity does not necessarily lead to the lowering of standards. Under Makgoba's leadership, the number of staff with PhDs increased and so did the university's research productivity. Third, Makgoba did not suffer from the "I am the only black" syndrome that

has afflicted blacks when they assume positions of power and influence.

In the final analysis, the #FeesMustFall student protests have raised fundamental issues about our transition and the assumptions that informed it. The linking with broader struggles is correct, as the pace of transformation will be constrained by general social and cultural attitudes. A resolution of this challenge cannot be achieved without debunking social myths regarding transformation, as the case of UKZN demonstrates. The process of change requires courageous, politically conscious and astute leadership. The student protests show signs of how this can be done.

The #FeesMustFall student protest achieved what political parties failed to do in twenty years. Unfortunately, the speed with which both university management and government capitulated to the students' demands cements a view that both government and university management only understand the language of protest. In itself, this is not a problem, but a responsive government should not wait for protest. While university academics and management have routinely castigated the political leadership for not caring, for being out of touch and for mismanagement, the #FeesMustFall protest suggests that they are not any different. If anything, the higher education sector has avoided scrutiny for a long time. [NA](#)

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Wits Vice-Chancellor Adam Habib negotiates with Leigh-Ann Naidoo. Photo: Zen Marie

WE SHALL NOT BE MOVED OR LED ASTRAY

THE EMERGENCE OF THE 2015 STUDENT MOVEMENT

By *Leigh-Ann Naidoo*

The author is a PhD student in the school of education at Wits University and a co-convener of the Johannesburg Workshop in Theory and Criticism (www.jwtc.org.za).

Activist Leigh-Ann Naidoo offers some key thoughts from the midst of the student protests

How does one even start telling the stories of what happened during those three weeks in October? Let me thrash out six key points to consider in reflections on the current student movement in South Africa.

SITUATING THE MOVEMENT

This is not a movement that started at the University of the Witwatersrand

or that started about fees. This is a movement of student protests that has been developing for more than a decade: so think carefully when anyone or any political party wants to claim it as theirs.

Some have suggested that the 2015 #FeesMustFall protest is comparable to the 1976 student uprisings, because of the masses of students across the country that took to the streets. To my mind, it seems more appropriate to look back to 1969, the year that the South African Students Organisation (SASO) was formed. From this radical black student organisation came the politics of black consciousness,

which encouraged self-reflection and a centring of the black self as well as insisting on a Pan-African outlook. It also, in its beginning phases, critiqued the education system in South Africa and fought to improve higher education for the black student, while also developing its own organisational practices and structures and a political education programme for its members.

The last few years have seen black consciousness and Pan-Africanism re-emerging at universities through a range of student formations. The student mobilisation of 2015 started in March at the University of Cape



Town (UCT) with Rhodes Must Fall, the black-student-led movement. It spread to Rhodes University in the form of the Black Student Movement, Transform Wits at the University of the Witwatersrand, Open Stellenbosch at the University of Stellenbosch, the Black Student Stokvel at Nelson Mandela Metropolitan University (NMMU) and, more recently, Transform Pukke at the University of the Free State (UFS) and Tuks UPrising at the University of Pretoria (UP). What we saw in the October protests were student movements from across the country linking up around key issues that they all agree on.

POLITICAL PARTIES CANNOT CAPTURE THE WAVE

Political parties more broadly, and student political parties specifically, cannot capture the democratic wave of protests sweeping South Africa.

The various student movements have battled to ensure that student political parties do not lead the movement, and that people who form the movement leave their political affiliations at the door. Over and over again, I have heard students describe their inability to connect and join in the struggle together when political party regalia becomes a barrier between them. Student movements across a range of institutions have had to deal with political parties' offers of donations, from food to money to strategic guidance. Not only have movements resisted these donations but they have also started to insist that students not wear political party regalia, as this becomes yet another distraction from the critical issues at hand.

At a more organisational level, student movements have rejected the idea that they stand behind student representative councils (SRCs), who are in some way more legitimate or democratic than the movements themselves. This has to do with a disillusionment with student politics marked by dwindling numbers of voting students, turf warfare between varying parties, and the lack

of SRC response to calls from the more radicalised student movement to "decolonise" rather than "transform" the university. Student struggles are concerned with the total change of the institution and the colonial systems that it continues to maintain, such that incremental transformation could never be understood as sufficient.

The #FeesMustFall campaign was led by SRCs in many instances and there was a convergence between SRCs, the incumbent student political parties and the non-aligned student-led movement in collaboration with workers and staff. The zero-percent increase was the symbolic moment where SRCs and ANC-inclined student political parties diverged from the broader student movement. Not only is it plausible that SRCs led by ANC-aligned student leaders were toeing the party line, but it also seems that the broader question of transformation-vs-decolonisation played itself out. SRCs were too happy to grab the shallow transformative gesture of President Zuma and his government rather than push ahead for a more radical change or, as some would claim, the decolonisation of higher education such that free quality education for the poor was attained.

NOR CAN SRCs, SENATES AND COUNCILS

Higher education SRCs, senates and councils are also unable to capture the emerging democratic practices and needs of the student movement.

The constitution of these bodies is part of the reason why. SRCs, because they are largely distracted by party political alliances and mandates. Senates, because they (still!?) are largely controlled by white, heterosexual, middle-class, able-bodied, educated men. Councils, because they are dominated by businesspeople and others deemed educated and skilled enough to lead a university, and yet so far from the ground that they bear some responsibility for how long the shutdown of universities continued.

The student movements' practice –

"radical praxis", I would call it – is one that speaks truth to power by demanding decolonisation and social justice as opposed to incremental change through transformation. Radical praxis also insists that all people involved in the movement share responsibility for the thinking and the doing: there is no division of labour between "leaders" who discuss, decide and communicate the strategy and "followers" who rock up for the marches and the mass meetings, following the "leadership" like silent lambs with no serious questioning.

It is a difficult task to value everyone's voice and contribution and to listen closely to all. Since 1994, we have become more and more accustomed to making an X on the ballot and leaving the rest up to representatives. We have become less and less accustomed to taking part in conversations and strategic critical thinking or various forms of principled action. Running regular mass democratic meetings with students, workers and academics requires time and patience and skill. University governance structures operating on corporate time do not relate to or understand this.

CRIMINALISATION OF PROTEST

Universities under apartheid are rumoured to have had policies against allowing the police and army to come onto campuses, and when they did come, academic staff stood between students and police. And now, in 2015? Most universities called in the police as well as private security companies to deal with mostly peacefully protesting students.

University managements, under the orders of largely lily-white senates and councils, continue to waste time criminalising, victimising and, even more problematically, ignoring students. They could instead be listening, critiquing and joining the call for government to implement its own findings around free quality higher education for the poor and, more broadly, figuring out what a decolonised public >>

African university could look like.

Beyond the actual violence meted out by private security guards and police, a dozen universities wasted time and resources to secure high court interdicts against protesting students, often naming one or two – but in some cases up to eleven – poor black students and adding the nebulous “and anyone else participating in disruptive actions”. In effect, these interdicts put the police on standby to come charging in to shut down dissenting voices and critique. Violence therefore looms large on campuses where interdicts have been posted around campus.

The more sophisticated – or maybe I should rather say the “more liberal” – argument for such actions claims that they are protecting the majority of the student and staff population who do not want to disrupt the everyday business of university life. And that the disruption caused by protest actions will surely further disadvantage the same poor black students whom the protest seeks to help. Many students themselves have pointed out that private security, police and the courts are in fact the means to protect those who benefit from business as usual, those who are mostly middle-class and mostly white. This forgets that South Africa is the most unequal society on the planet: to argue for business as usual is to argue for the maintenance of an unjust status quo.

CHECK YOUR PRIVILEGE

Student movements at historically white institutions (Wits, UCT, Rhodes, Stellenbosch, UP, even the University of Johannesburg) have been challenged to recognise their privilege relative to other institutions. They have also understood the urgent need to incorporate the situation at the many historically black institutions (HBIs) into their own analysis, thinking, and plans. As the march to the Union Buildings showed, students at the HBIs have been fighting more bravely and desperately than us for years, and they have been far more violently and systematically suppressed.

Through the legacy of apartheid, some institutions are much better endowed than others. Student movements are no longer content when privileged institutions strike deals with their managements. When people tie their fate to those who are worse off, the struggle can focus on the most marginalised and oppressed.

On the subjective level, the student who can pay fees can stand with ones



Student struggles are concerned with the total change of the institution and the colonial systems that it continues to maintain, such that incremental transformation could never be understood as sufficient

who can't. The white students who see themselves reflected in the curriculum can stand with black students who wonder if the work of any black thinker is significant enough to merit a philosophy course of its own. The academic who earns a living wage with the outsourced worker who earns R2 500 per month, with no benefits, after 15 years of service. The academic based in an elite research institute with the department-based academic who has to fit research around a heavy teaching load.

At the structural level, the privileged white university with the historically black university of technology; the university of technology with the agricultural college; the agricultural college with the FET college; the FET college with the community college. And so on.

This move turns the tables on the

power dynamics and hierarchies that maintain our higher education system. According to Frantz Fanon – who is the main decolonisation scholar being read and put into practice – the process of decolonisation is a painful one as it undoes the system as we know it, and it does so declaring that “the last shall be first, and the first shall be last”.

VIGILANT ENGAGEMENT

To my mind, the key lesson so far, for all of us from the 2015 student movement, is that we need to take the time to inform ourselves more about the status quo and to be more proactive so that we cannot say “we did not know” or “we knew, but we could not do anything”.

We know this is the most unequal place on the planet. We know this is a result of colonialism, and then apartheid, and now the neoliberal post-apartheid state. We have learned that sometimes the youngest, the least experienced or the least knowledgeable may indeed be the ones to start charting a new way. We also know that what is sold to us as the best constitution and the most peaceful transition to democracy may be true in their moment, but everything must remain under the critical eye of us all. Age-old struggles remain the struggles of today, even as conditions and contexts change and forms of oppressions morph before our eyes. We must struggle to remain vigilant and engaged to ensure that the small gains we will inevitably make are protected for generations to come. Racism must fall, capitalism must fall, patriarchy must fall, homophobia must fall, and apathetic uncritical citizenship must fall.

Let us hope that, as the new national student movement grows, and as it connects with the struggles of unemployed youth, high school students, communities and workers, we learn from the bravery and tenacity of this generation, supposedly “born free”, who are no longer willing or able to fit into the narrow forms of democracy that remain in South Africa. [NA](#)

The School of Economics at the University of Cape Town

is one of the largest departments in the university.

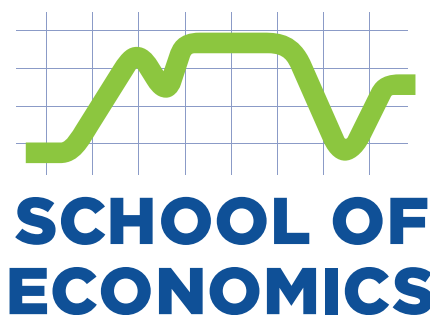
Located in two faculties, namely the Faculty of Commerce and the Faculty of Humanities, the School has more than 3000 undergraduate students and between 300-400 postgraduate students in a given year. Due to the rigorous mathematical and analytical nature of our syllabi, many of UCT's postgraduate students have been accepted into top US and European universities for PhD studies.

For those undertaking their PhD in the School, we provide two options. In addition to the traditional PhD by thesis programme, the School has a course-work-and-thesis based PhD programme which is offered in collaboration with seven other

universities on the African continent.

The School has 52 academic staff members, as well as five honorary professors. A number of staff are among the leaders in their research areas: fifteen academics have NRF ratings, including two A ratings. The School is also home to two SARChI chairs and two Fellows of UCT.

Current research activity, with an emphasis on policy-related research, is spread across a number of fields, including development economics, financial theory, health economics, environmental economics, and political economy. Most of the School's research takes place in the context of big projects coordinated by the five research units hosted by the School. We profile these units below.



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The **Development Policy Research Unit** specialises in socio-economic research with a focus on the areas of labour markets, poverty and inequality. Through the application of economic and statistical techniques, it aims to produce academically credible and rigorous policy analysis. The DPRU has been actively engaged in policy-relevant socio-economic research for

the past 25 years, establishing itself as one of South Africa's premier research institutions in the field.

The DPRU has partnered with, amongst others, the Human Sciences Research Council and the University of the Witwatersrand in The Labour Market Intelligence Partnership (LMIP) which was launched by the Minister of Higher Education and Training in

2012. The LMIP aims to build a credible institutional mechanism for skills development in South Africa. The DPRU is responsible for research into skills-biased labour demand, the new growth path, SETA labour markets, and the informal sector. As a whole, the project will focus on setting up systems for reliable data indicating skills needs, and supply and demand in our labour market. This information is crucial to all post-school systems and to all sections of the labour market itself, and will allow South Africa to plan better for human resources development.

The **Environmental Policy Research Unit** is a collaborative association of academic researchers specialising in environmental and natural resource issues. The unit was established in 2007 to promote sustainable development and poverty reduction in Southern Africa, and is one of nine centres in the world which make up the Swedish Environment for Development (EfD) Initiative.

Informing policy with solid scientific research is central to the EPRU's

mandate, since governments of developing countries like South Africa face the challenge of marrying together sustainable growth goals with wise management of natural resources. In a recent study funded by the Fiscal and Financial Commission, researchers at EPRU found that South Africa's current agricultural policy to support small farmers in the face of climate change is insufficient. While the current approach recommends diversification of crops alone, EPRU work indicates that the



approach should rather support a mix of crop and livestock farming amongst subsistence farmers in order to make them more resilient to the impact of climate change. >>

Policy Research in International Services and Manufacturing

is a research and policy unit conducting work broadly on issues of globalisation, trade and industrialisation. PRISM's work has an applied focus, responding to economic policy questions and issues in South Africa, the rest of Africa and beyond. With the involvement and cooperation of the Department of Trade

and Industry, PRISM has partnered with the German Development Cooperation Agency on a project looking at the rapid expansion of South African supermarkets into the rest of Africa. The diffusion of modern retail supermarket formats in developing regions has profound implications for retailers, informal vendors, intermediary traders and consumers. A supportive policy



environment is necessary to manage this process, but what exactly this involves is less clear. PRISM's work aims to fill this knowledge gap.



RESEARCH UNIT IN BEHAVIOURAL ECONOMICS AND NEUROECONOMICS

The Research Unit in Behavioural Economics and Neuroeconomics

is an interdisciplinary group of researchers who use economic experiments, often together with fMRI imaging techniques, to examine the role that social, cognitive and emotional

factors play in economic decision-making. In particular, the methodological approach in which the members of the team are experts allows the estimation of risk attitudes and time preferences of individuals, households and communities in the field. One of RUBEN's research

associates, Professor Martine Visser, is currently involved in the roll-out of a large scale study aiming to impact the electricity usage of government employees as well as households. For the last two years, RUBEN and IDEAS42 have been working with the Western Cape Government in an effort to change government employees' behaviour with regards to energy use in the building where they work and hopefully also have spill-overs to their home lives.

The Southern Africa Labour and Development Research Unit

carries out research in applied empirical microeconomics with an emphasis on poverty and inequality, labour markets, human capital and social policy. In addition to its re-search activities, SALDRU has implemented a range of innovative surveys in South Africa and conducts training and capacity building activities in the use of survey data to analyse social well-being. As part of an intensive multi-million rand effort on

the part of the government to track and understand the shifting face of poverty, SALDRU partnered with the South African Presidency to run the National Income Dynamics Study. NIDS is South Africa's first national household panel study, closely following more than 30 000 people over a period of years. To date, four waves of data have been collected in 2008, 2010, 2012 and 2015. The data have been, and continue to be used extensively for policy-relevant research in the areas of



poverty, inequality, unemployment, internal migration, savings, health and education.



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COMMUNAL LAND TENURE POLICY

By Gugile Nkwinti

The author is the minister of rural development and land reform in South Africa



Minister Gugile Nkwinti

PREAMBLE

The Freedom Charter (1955)

We, the People of South Africa, declare for all our country and the world to know:

- that South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of all the people;
- that our people have been robbed of their birthright to land, liberty and peace by a form of government founded on injustice and inequality.

Ready to Govern: ANC policy guidelines for a democratic South Africa (1992)

Restoring land rights, land reform and redistribution. Our approach to land issues must be placed in the context of our overall developmental strategy addressing problems of poverty, malnutrition, landlessness and unemployment.

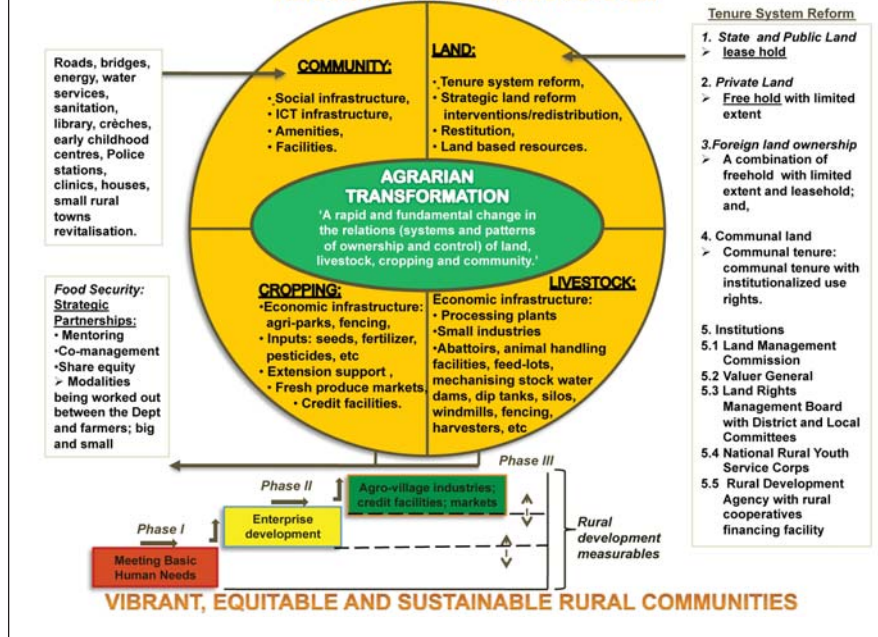
Our approach must ensure that the homeless and landless will have access to land, shelter and necessary services for family security.

The programme will include a policy

of affirmative action within a viable and sustainable economic development programme. The major beneficiaries of affirmative action should be the landless, rural poor and women who have been deprived of rights to land through patriarchal systems of land allocation and tenure.

Redistribution of land. The present pattern of land ownership which is the direct result of apartheid laws must be fundamentally changed to address landlessness and land hunger. The state ➤

**Figure 1: RURAL ECONOMY TRANSFORMATION:
AGRARIAN TRANSFORMATION SYSTEM**



will play a key role in the acquisition and allocation of land.

Access and rights to land. All South Africans are entitled to equitable access to land and shelter. In order to achieve the realisation of this entitlement, an equitable balance shall be established between the legitimate interests of the holders of rights to land, and the legitimate needs of those without land and shelter.

Preamble to the Constitution of the Republic of South Africa (1996)

We, the people of South Africa,
Recognise the injustices of our past;
Honour those who suffered for justice and freedom in our land;
Respect those who have worked to build and develop our country; and,
Believe that South Africa belongs to all who live in it, united in our diversity.

We, therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to –

Heal the divisions of the past and
establish a society based on democratic

values, social justice and fundamental human rights;

Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;

Improve the quality of life of all citizens and free the potential of each person; and,

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

THE PROBLEM STATEMENT

The general background to the evolution of land tenure in South Africa can be looked at in terms of following periods:

- a precursor period, from the initial Dutch East India Company settlement at the Cape, until the Great Trek in 1834
- the 19th century era of white usurpation, in which the future South Africa was shaped and the power structure determined
- 20th-century consolidation of white

control on racial basis, until the early 1990s

- the beginning of segregation policy
- the apartheid era. (Carey Miller and Pope, 2000)

The aim of the Communal Land Tenure Policy is to reverse the legacy of colonialism and apartheid as set out in the problem statement; and, to ensure a “just and equitable” distribution of communal land among those who live in, and work, it. This includes offloading land from the 13 percent to the 87 percent.

POLICY MEASURES

With the advent of democracy in 1994, land in South Africa reverted to the ownership of all South Africans, in various forms – private, public, partnerships, trusts, and other forms of communal ownership.

With the dissolution of bantustans, their former land was transferred to national government with vestiges of patrimonial authority remaining in some parts of the country.

The 53rd National Conference of the governing party resolved on a single four-tier land tenure system:

- state and public land: leasehold
- private land: freehold with limited extent
- foreign land ownership: a combination of freehold with limited extent and leasehold
- communal land: communal tenure with institutionalised use rights.

Legislative measures

The Communal Land Tenure Bill, 2015. A Draft Bill has been developed to give effect to the provisions of this policy. This Bill provides, inter alia, for:

- the regulation of communal land
- the transfer of communal land to communities
- the registration of communal land
- land rights enquiries
- the acquisition of more land for use as communal land
- choice on the administration of communal land

- dispute resolution mechanisms
- the provision of municipal services on communal land.

INSTITUTIONAL MEASURES

Three critical substantive issues are proposed, insofar as institutions are concerned: (a) testing the will of the people with respect to the kind of governance, tenure form and investment and development model they prefer; (b) the socio-economic impact of such an institution on the lives of the people; and (c) inclusivity (gender, race, class, everybody who has some form of ownership or claim on the land).

The authority of the state

South Africa is a constitutional democracy and this is what defines our state. Therefore, the Constitution is the supreme law in our country. With the dawn of our constitutional democracy, communal land was vested in the national sphere of government, and it became the responsibility of post-independence administrations to address the multitude of challenges facing these areas, such as developing the productive capacity of recipients of transferred land and establishing the necessary institutional infrastructure to ensure sustainability of transformation efforts.

The governance structure

The establishment of a number of governance structures is proposed to achieve the objectives of strengthened tenure rights, democratic and accountable land governance, equitable land access, food security and inclusive development.

Key to this approach, an independent body must workshop with the people prior to making a decision in respect of the type of governance structure they prefer. Such a governance structure must be accountable to the people.

The investment and development structure

Another key institution, which people must put in place, should manage and control their investment, development and financing facility. Such a facility could be managed either by themselves alone or with a strategic partner of their own choice.

The investment and development structure will be separate from, yet accountable to, the relevant governance structure undertaking land administration in the area. This is intended to ensure adequate accountability, management and oversight in respect of integrated landholding and development within the respective communal areas.

All the above throws into sharp relief the question of institutional roles, role relationships and security of tenure for communal land occupants.

In this regard, the department of rural development and land reform (DRDLR) has developed two “Wagon Wheel” models, representing static land-use frameworks for both forms of communal land: Figure 2(a) envisages the existence of a royal household within the community, while 2(b) is without a royal household.

Each “Wagon Wheel” is complemented and enhanced by clearly delineated administrative and development institutions, each with a defined role and designated responsibilities as illustrated in the Rural Economy Transformation Model (RETM): Institutional Role and Role Relationship Model.

The household

As active citizens, households have rights and responsibilities. The basic role of households, as holders of comprehensive or limited real rights over land, is the following:

- basic unit of production and retailing
- manufacturers and consumers of goods and services
- rate payers
- voters.

The accountability system

The RETM creates a cycle of institutional accountability, which is illustrated in ➤

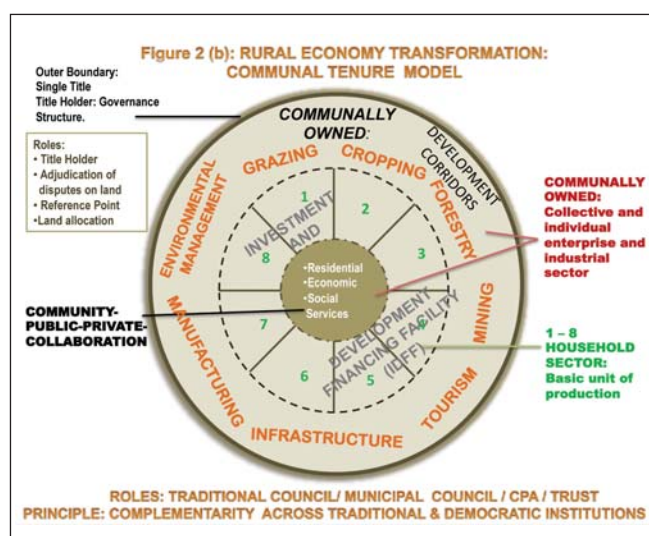
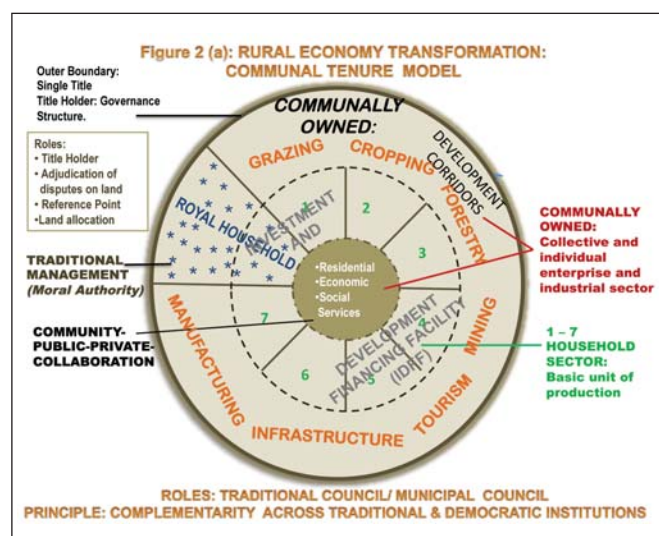


Figure 2(c):

- the governance structure is accountable to the state, in terms of the Constitution and the law
- it is accountable to the people, in terms of its own constitution, which must be based on relevant law
- the investment, development and financing facility, which must be established in terms of relevant law, is accountable to the governance structure, in terms of its own constitution.

Key elements of the accountability system include:

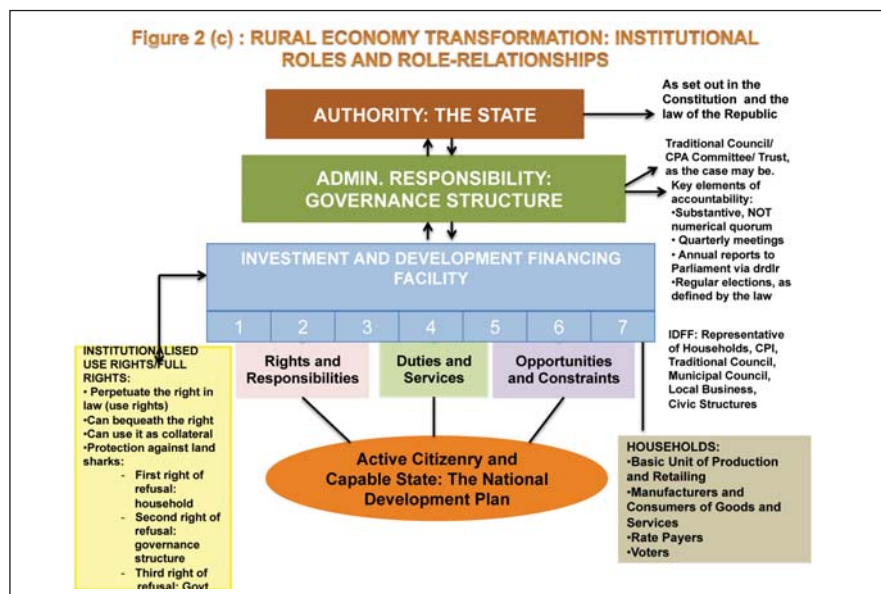
- quarterly community meetings
- the quorum at these meetings is substantive, NOT numerical – at least 60 percent of households with rights to the land in attendance
- quarterly reports to the DRDLR, which must, in turn submit annual reports to parliament
- regular elections, to be conducted in compliance with relevant law and its own constitution, which must itself be legally compliant.

A BRIEF OVERVIEW OF ROLES AND ROLE-RELATIONSHIPS

- The state's authority is derived from the Constitution and the law.
- The governance structure's authority is derived from the will of the people.
- The investment, development and financing facility (IDFF) is the creation of the people.
- It is strongly proposed that the royal household, as distinct from either tribal councils or traditional councils, should revert to its historical role of being a moral authority, which must be above politics.

The government, particularly the municipal sphere, will perform roles and responsibilities as mandated by the Constitution and other relevant legislation.

Local government is required to "give priority to the basic needs of the community, and to promote the



social and economic development of the community" through specific responsibilities that will include:

- duties and services to the community
- the creation of opportunities for residents
- through by-laws, create the environment for the exercise of constitutional rights by residents and the provision of duties and services to communities by itself.

To protect communally-owned land from land sharks, communal land rights shall be protected from alienation or and other form of infringement by instituting the following regime:

- first right of refusal shall be given to the household
- second right of refusal will be enjoyed by the governance structure
- third right of refusal to be given to the state.
- the establishment of an inter-ministerial committee (IMC) comprised of DRDLR (as convenor) and the departments of small business development; environmental affairs; cooperative governance and traditional affairs; agriculture, forestry and fisheries; transport; water and sanitation;

telecommunications and postal services; human settlements; trade and industry; public works; and economic development.

CONCLUSION

We conclude by drawing the reader's attention to the principle, as contained within our policy and legislative framework, that was concretised in the recent Bakgatla-Ba-Kgafela Constitutional Court judgement: "Where a traditional community or the majority of the members ... have chosen the democratic route contemplated in the Act, effect must be given to the wishes of the majority".

This system of institutional roles and role relationships speaks to the National Development Plan's platform of "active citizenry and a capable state". The state cannot merely act on behalf of the people: it has to act with the people, working together with other institutions to provide opportunities for the advancement of all communities. ^{NA}

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RURAL COMMUNITIES' RIGHT TO CHOOSE

“CAREFULLY CONSIDERED AND PRINCIPALLY DISCOURAGED”

By Nolundi Luwaya

The author is a researcher with the Rural Women's Action Research Programme at the University of Cape Town



Nolundi Luwaya

Although the Constitutional Court has confirmed the right of communities in the former bantustans to choose how communal land is governed, government policy continues to promote rule by traditional councils.

Recent policies developed by the department of rural development and land reform (DRDLR) form part of a wide network of legislation and policies that seek to govern the lives of rural South Africans in relation to land and citizenship rights. At stake here are the rights of 18 million of the poorest South Africans, their rights to secure tenure, and their rights as citizens in

a democratic South Africa. Fuelled by widespread poverty and rampant abuse of power, rural land and governance struggles are racing towards boiling point. The type of legislation being crafted by the state to govern customary land rights and governance structures in “communal areas” is a clear indication of who the state places at the centre of customary law.

The state is tasked with upholding and protecting the right to secure tenure, which is afforded to all South Africans under the Constitution. In the former homelands, where some communities eke out an existence that is deeply connected to land they have lived on for generations, these rights are of particular importance. It is therefore of concern that several of the DRDLR's policies are flagrantly out of sync with the Constitution, particularly the announced intention to transfer title of communal land to traditional structures. The department has recently tried to convey that it has reconsidered its approach, promising that the forthcoming Communal Land Bill will give rural communities the ability to exercise some choice over who owns their land and how it is administered. As this contradicts the department's existing policies, the current legal framework, and the reality of deeply embedded unequal power relations on the ground, this change of heart seems doubtful. Making community choice a reality would signal a fundamental change of direction in the department. ➤

POLICY AND PRACTICE

In 2013, the department released its Communal Land Tenure Policy (CLTP). The policy proposes to transfer the outer boundary of communal land to traditional councils, which are headed by traditional leaders. It gives households only “institutional use rights”. Communities living on communal land, together with land rights activists and researchers, have consistently warned that the 2013 CLTP conflicts with section 25 of the Constitution.

The legal requirements for valid traditional councils are set out in the Traditional Leadership and Governance Framework Act of 2003 (the Framework Act): 40 percent of the council membership must be elected and a third of the members must be women. Research commissioned by the Centre for Law and Society shows that there have been no elections at all in Limpopo, and the election process has been flawed in other provinces. This calls into question the legal status of many traditional councils and makes the plan to transfer land title to these bodies deeply flawed and potentially unconstitutional.

In addition, by ignoring the ownership status of African groups that purchased land historically, the proposal would essentially strip many people and families of their underlying indigenous ownership of land inherited over generations. Not to mention the fact that the rights held by individual households would be subject to the rights of the prevailing “tribal” titleholder. In spite of these flaws, the DRDLR’s position showed no sign of wavering until very recently.

In August 2015, the Constitutional Court handed down judgment in the case of Bakgatla-ba-Kgafela Communal Property Association v Bakgatla-ba-Kgafela Tribal Authority and Others. This case concerned the correct reading of certain sections of the Communal Property Association Act of 1996 and the status of the Bakgatla-ba-Kgafela Communal Property Association

(the CPA). At issue was whether the community’s provisional CPA had lapsed when its formal registration was delayed beyond 12 months.

CPAs allow communities that hold land collectively to administer that land jointly in a democratic manner. They are subject to democratic processes including developing a constitution and holding elections for CPA leadership. Although not perfect, the model allows for much community involvement and joint decision-making.



Communities living under customary law are clear that what they see reflected in the laws, bills and policies is not the customary law that they know, nor is it the democracy that they fought for.

The Court ruled that a correct reading of the Act meant that the CPA did not cease to exist upon the expiration of the 12-month registration period. The Court also took the opportunity to endorse the right of a community to choose the vehicle for land administration and underscored the duty and responsibility of the department’s director-general to give effect to that choice.

In its unanimous ruling, the court explains that the Communal Property Association Act envisages a pivotal role for the director-general in facilitating and supporting the registration of a CPA, thereby affirming the community’s choice as to how its land is to be administered:

It is clear from the scheme of the Act that once a traditional

community expresses a desire to form an association, the Director-General must do everything permissible to assist the community to accomplish its goal ... Where a traditional community or majority of its members ... have chosen the democratic route contemplated in the Act, effect must be given to the wishes of the majority. (CCSA, 2015)

The court is also clear that the interests of traditional leaders should not be privileged over those of the majority or used to derail attempts to emphasise democracy: “The fact that a traditional leader or some members of the traditional community prefer a different entity to the association is not a justification for withholding registration.”

The judgment goes on to criticise the director-general for failing to facilitate and support the registration of the Bakgatla CPA, thereby thwarting the community’s attempts to have the land that was returned to them through restitution held by a democratic institution.

In the days following the judgment, Thami Mdontswa, the deputy land claims commissioner, used a social media platform to claim the judgment affirmed the position of the department in upholding people’s ability to choose their landholding structure (CLS, 2015). He also revealed in a television interview that the forthcoming Communal Land Bill, which is not yet in the public domain, would offer communities a choice as to whether land is administered by a CPA or a traditional council.

Clearly the department’s change of heart was forced by the Constitutional Court judgment. More than that, the judgment’s reference to the duties and failures of the director-general and its categorical statement against privileging traditional leaders over communities sum up why there can be no real choice: in practice, the DRDLR undermines the registration of CPAs and favours the interests of traditional leaders. The experiences of numerous



Source: www.customcontested.co.za

CPAs across the country are a clear testament that the department is failing to support communities in their choices for landholding and its administration.

DOUBTFUL CHOICE

There are real questions as to whether communities will be able to exercise any choice in practice. Firstly, given skewed power dynamics, choosing a CPA over the traditional council may never amount to much more than an option on paper. The struggle of the Bakgatla went all the way to the Constitutional Court because their traditional leader wanted the land held in a trust rather than a CPA. In some cases, traditional leaders opposed to the formation of a CPA or other community structure have stalled the process through expensive court challenges. In some rural communities, going against the traditional leader can put one's personal safety in jeopardy.

Secondly, communities who want to legally register a CPA are likely to find themselves in a never-ending disheartening process. The Bakgatla case was by no means an exception. Communities across the country have been trying for years to register their associations with little to no support from the department. Considering that

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Traditional leaders are a part of their way of life in many areas, and so is the ability to choose.

CPAs are a vehicle through which people who have been dispossessed of land can access their constitutional rights to secure tenure and restitution, the failure to provide appropriate support is a failure to enable those rights.

Lastly, it is unclear how the department's purported change of position could be enacted in the context of their expressed position on CPAs in areas under traditional authority. An affidavit by the chief director of the DRDLR in 2011 indicates that a moratorium has been imposed on the transfer of land to CPAs in the Eastern Cape because of objections from traditional leaders (cited in RWAR, 2013a). In a 2013 speech, Minister Gugile Nkwinti said, “It is an exaggeration to think that it is only traditional leaders who have a problem with the CPA. It's not entirely

correct. It is a wrong model from us as government, which we introduced” (cited in RWAR, 2013a). More recently, the minister assured traditional leaders that they are the “‘de facto’ owners of the land” (cited in Gasa, 2015). This in spite of the fact that traditional leaders were never the “owners” of the land under customary systems and that their elevation to owner was a colonial construct.

This trend continues in the most recent versions of the department's policy documents regarding the former Bantustans. The August 2013 version of the CLTP states that “the registration of new CPAs on traditional communal tenure areas [will] be *carefully considered and principally discouraged*” (p. 29, original italic, cited in RWAR 2013b). The September 2014 version makes it clear that traditional councils will hold title in “conventional traditional communal areas” while communal property institutions will hold title in “non-traditional communal areas”: i.e. outside the former bantustans. The May 2014 draft policy paper on CPAs proposes to resolve the tension between CPAs and traditional leaders in communal areas in a manner that seems to favour the latter: by attempting to harmonise the relationships and by clarifying the role of traditional leaders and supporting them ➤

to be moral authorities. It goes on to state that new CPAs will only be established “where no traditional authorities exist”. In this context, the department’s statements about plans to give people a choice ring hollow, as does its claim that the Constitutional Court judgment supports its recently revealed position.

CUSTOM LEGISLATION

While this article is primarily concerned with choice as it relates to rural South Africans’ land rights, the picture would be incomplete without a brief mention of other bills dealing with important aspects of rural democracy. They all come together to lock rural people into ascribed tribal identities and lock democracy out.

The Traditional and Khoisan Leadership (TKL) Bill introduced on 25 September 2015 builds on the problematic boundaries used in the Framework Act, which deems any “tribe” or “tribal authority” that existed prior to the Act to be a “traditional community” or “traditional council”. These structures were created by the Bantu Authorities Act of 1951, an Act against which rural communities waged a long and hard struggle. By consolidating structures based on boundaries delineated by apartheid legislation, the Framework Act locks people into the jurisdiction of traditional leaders they do not necessarily recognise or may have been forced under during the Bantustan consolidation period. This deprives them of the ability to choose who they affiliate with and goes against the well-documented principle of customary law being an opt-in system. The Framework Act is set to be replaced by the TKL Bill. Unfortunately, the Bill does not take the opportunity to align itself with customary law as an affiliation-based system.

Recognition as a traditional community under the Bill is subject to the community having a traditional leader. This potentially places people under traditional leaders they may never have had in the past or compels

them to affiliate with a leader they may not recognise. Historically, there have always been communities that did not subscribe to the hierarchy and authority of a traditional leader. The draft bill erases this history.

The version of the Traditional Courts Bill that was resoundingly rejected by rural South Africans and withdrawn in 2014 attempted to give traditional leaders a role in the administration of justice as envisaged by section 20 of the Framework Act. The Bill made it an offence for a person summoned to the traditional court to not appear before it, thereby depriving rural communities of the ability to opt into the jurisdiction of these courts instead of, or in addition to, the statutory courts. Worse still, the Bill did not give women the right to represent themselves in front of these courts. The clauses dealing with representation created a situation where women could be represented by male family members, some of whom would be the very people against whom these women were seeking justice. It is common sense that community members will use a traditional court if it offers the kind of redress that they seek. Locking people into the jurisdiction of the court serves no one’s interests except those whose interests are self-serving. Given the indications that legislation to govern traditional courts will be introduced later this year, the department of justice should well be mindful of this.

CONCLUSION

It is unclear what exactly the department’s communal land bill will look like, or whose interests will shape it and the other bills and policies aimed at governing rural South Africa. What is clear is that rural communities continue to live in limbo, struggling to secure their rights and make their choices a reality. Government documents currently in the public domain do not reflect the opt-in nature of customary systems. If departments continue this

trend of depriving people of meaningful choice, their drafts will find no legitimacy with rural communities and they will be rejected.

Communities living under customary law are clear that what they see reflected in the laws, bills and policies is not the customary law that they know, nor is it the democracy that they fought for. They are equally clear that traditional leaders are a part of their way of life in many areas, and so is the ability to choose.

The issue is not about certain groups wanting to undermine or oppose traditional leaders. It is not about critics rejecting or undervaluing customary law in favour of Western law. It is about celebrating customary law as a system that people can opt into and affirm. It is about recognising systems and leaders that work with and for people. It is about providing real choice for all South Africans. 

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MEMORY AND THE CONSTRUCTION OF SOCIAL COHESION IN SOUTH AFRICA: BACK TO THE FUTURE

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South Africa is an almost perfect example of deep-rooted social conflict (Azar, 1990, Burton, 1984). As such, it should come as no surprise that many of the challenges that we currently face, are directly related to our inability to manage conflict creatively. Issues relating to land reform, conflict over monuments, tertiary education, inequality, service delivery and xenophobic violence can all be traced to an incomplete conflict resolution process in the course of the transformation during the years between 1990 and 1996. Different identities, and different values are at the core of much of the conflict that we experience. These conflicts should not be simply seen as isolated, negative incidents. They are an interrelated, and complex consequence of our recent history (Byrne, 2001).

Conflict management in contexts of cultural difference has long been regarded as one of the greatest challenges to the field of conflict management. The very notion of deep-rooted social conflict, or intractable social conflict has been associated with the special challenges posed by conflicts among groups that do not share the same cultural norms and values. Attempts to resolve such conflicts have suffered from the fact that different identity groups seem to operate in different 'universes of discourse'. These forms of conflict have given rise to novel

approaches that reject the traditional forms of intervention – such as mediation – to achieve their resolution. For instance, John Burton and his colleagues of the Centre for the Analysis of Conflict proposed that because these deep-rooted social conflicts were based on frustrated human needs, they could not be settled by any means involving a compromise of basic human needs, as any such agreement would not prove durable (Burton, 1984).



Conflict management in contexts of cultural difference has long been regarded as one of the greatest challenges to the field of conflict management.

It is widely accepted in contemporary social science, that identities are 'constructed'. They are not unchangeable, and neither are they handed down to us intact. Identities are dynamic, and to a large extent, we 'make our own identity'. Identity consists of many elements, but various definitions of identity include aspects

such as a shared sense of a common history. Obviously that may be very difficult to achieve after decades of deep-rooted conflict.

Memories comprise another relationship between culture, conflict management, and social cohesion. According to Miall, (2004): '...memories are part of each party's socially constructed understanding of the situation, shaped by culture and learning, and discourse and belief. The way groups remember and construct their past is often central to the mobilization for conflict, and thus a crucial matter to address in reconciliation and cultural traditions work.'

In South Africa, we have many different memories. Three types of memory are extremely important for us. Firstly, there is a memory of oppression, and it is important to remember oppression, so that we avoid experiencing it in future. We also have a memory of struggle, and for many of us, this is the essence of our memory. It is important to celebrate our victories; they have been hard-earned.

But we also have a memory; a particular meme, of a fleeting moment in our history; a moment, perhaps globally unique in modern times; of a negotiated agreement to peacefully transfer power from a minority to a majority government. This is a meme that is often neglected by South Africans. It is sometimes forgotten, though it is the feature that most ➤

significantly sets us aside from other societies. It earned us the appellation of 'The Rainbow Nation'.

When things don't go well, as sometimes they don't, we tend to give up our narrative of transcendence, in favour of narratives of oppression, and struggle. There are many reasons why this should not be the case.

Faced with difficult challenges to our social cohesion, we tend to lose hope; to carry on with 'politics as usual'. South Africans are a resourceful, and ingenious people, however. Taking a leaf from George Santayana, we argue that we need to draw from the lessons of our past.

South Africa made three influential contributions to the field of conflict management. These were:

- the Truth and Reconciliation Commission, one of the most widely studied conflict management interventions in the literature
- our CODESA negotiations, and
- our National Peace Accord, another unique contribution to the field (Bradshaw, 2008).

We have many resources that we should draw upon in confronting the challenges that we currently face. The negotiated transition left us with:

- negotiation forums such as NEDLAC
- world-renowned experts in conflict management and transformation,
- research institutions such as Accord, and the Institute for Reconciliation and Justice,
- internationally recognised university conflict resolution programmes, such as that at NMMU

These resources have the collective expertise to deal with the challenges currently facing the country. Recent developments in the field, including conflict transformation approaches, and the development of conflict management systems, offer improved understanding, and more creative and efficient approaches to the management of conflict (Miall, 2004,

Costantino and Merchant, 1996).

The South African 'miracle' which the world gives us credit for, is something that we don't sufficiently celebrate in our own education system. Not just an historical study, which we do to limited extent, but also, skills-building, the teaching of negotiation, facilitation and mediation. These are all important life skills that would add value to the economy in many different ways, and contribute to social cohesion. Even teaching non-violent protest skills to the young, might be a very good thing.

The conflict management field needs to be consulted, reactivated and resourced. We need to more assertively take our understanding to the rest of our continent – as we do through our leaders who mediate and facilitate on the continent – but also, to build our centres of excellence, at a scholarly level, so that we contribute to international learning and understanding of peace processes, through our own lenses. Together with government policies for greater resource distribution and access as per the National Development Plan, they offer a cost-effective route to greater social cohesion, which research indicates, underpins patterns of improved economic growth and social stability (Bradshaw 2015). That will set in motion a virtuous circle in which improved cohesion in turn contributes towards development. We have a collective memory of solidarity and transcendence in the recent past that we must quarry to construct a more cohesive future.

It is widely accepted within the conflict management field, that social conflict is not necessarily a negative. Coser (1956) has famously highlighted the positive functions of conflict, to stimulate understanding, creativity, and problem-solving. The issues currently facing South Africa could be interpreted as an opportunity for a continued, and intensified effort in conflict management.

POLICY IMPLICATIONS

- Future development policy in South Africa and beyond would seem to benefit by embracing more distinct and integrated aspects of conflict resolution.
- There is also a challenge to academics and practitioners in the conflict resolution and management field/s to broaden their intellectual and practical engagement with social and economic policy making.
- Current manifestations of conflict can and do provide opportunities for more substantive and innovative ways of linking past and present endeavour in regard to national social cohesion.

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THE GLOBAL MARKET ECONOMY IS NOT WORKING

An interview with Joseph Stiglitz

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I would have been more aggressive in competition policy, breaking up the oligopolies that were created under the apartheid regime.

Prof Joseph Stiglitz



One of the world's foremost economists, Joseph Stiglitz is a Nobel laureate, former chief economist of the World Bank and former chair of the US Presidential Council of Economic Advisors. Ben Turok interviewed him at the BRICS conference in Durban in November 2015. They spoke about US responses to the financial crisis, startling new thinking at the IMF, and options for South Africa's economic future.

USA 2008: BIG MISTAKES

Ben Turok: You are known to be critical of the measures taken by the United States government in response to the international financial crisis of 2008.

Joseph Stiglitz: The main mistakes we made were, first, we bailed out the banks – or more accurately, we bailed out the bankers, the shareholders and the bondholders – rather than focussing on just making sure that lending

continued. In fact, lending stopped.

It created, from a political economy point of view, the most disastrous effect because ordinary Americans believed the government, both Republicans and Democrats, was out to save the bankers, not to save ordinary Americans. They lost their jobs. They lost their homes. It was an economic and a political and a social mistake. They could have done it in ways that would have been better for ►►

the government's treasury and would have provided more money.

The second big mistake was that they underestimated the depth of the downturn, and therefore they underestimated what needed to be done. They stimulated the economy for a short while, but it was too little, too short, and not as effectively designed as it could have been and should have been. They say it was the best they could do politically, but I think that's totally wrong. I think they could have asked for more. The Democrats controlled the Congress, the Senate, the House. They were just too timid.

Two years later, you had a Republican-controlled Congress and you're not going to get any stimulus. The United States went into a mild form of austerity. Today, six years after the crisis, we have 500 000 fewer public sector employees. At normal growth, we would have had 2 million more public sector employees. So we have austerity of 2.5 million jobs. That's significant. Those were my two main criticisms.

BT: What were the mechanisms of the bailout?

JS: The main mechanism was providing funds to the banks in return for what were called "preferred shares". The government was basically underwriting the banks totally.

BT: Was this the central bank?

JS: No, it was from the Treasury – \$700 billion. It was effectively a loan, but they wanted to be on the equity side of the balance sheet, just for accounting reasons, so they called it "preferred shares". They were basically the owners of the firms, but they said, "We're not going to interfere. You can continue manipulating markets, manipulating Libor [the benchmark international inter-bank lending rate], abusive credit card practices, predatory lending. Do all the bad things that you've done to make money before, because we want you to make money so that you could

be strong." The banks just continued doing that. In fact, some of the worst practices occurred after the government had bailed them out.

To me, it was unconscionable. The government, as owner, was complicit in some of the worst practices of the banks. They were throwing people out of homes who didn't owe any money. The banks were signing affidavits saying that they've looked at the records and the guy owes money when they had not looked at the records. They were just lying. By the thousands, by the tens of thousands, people who didn't owe any money were thrown out of their homes in America.



My view is very strongly that a combination of monetary tools could probably allow you to invest more, even with your debt.

BT: It was a bailout, not nationalisation.

JS: No. It should have been nationalisation: we owned it. But we decided not to take control, using the preferred-shares gimmick. Obama explicitly said that Sweden had done otherwise and done it very well, but that's "not the American way". My response was that the American way is not to just suspend the rules of capitalism.

We're supposed to be playing by the rules. If a bank can't pay what is owed, it goes bankrupt and the government, through the Federal Deposit Insurance Corporation (FDIC), takes over the bank. In banking, you call it conservatorship not bankruptcy, but that's the rule. Geithner and Paulson [secretaries of the Treasury under Barack Obama and George W Bush respectively] and Obama and Bush decided to suspend the rules of capitalism for the benefit of the big banks.

BT: What was "quantitative easing" as a mode of intervention?

JS: Quantitative easing is part of monetary policy, intended to stimulate the economy. After interest rates went down to zero and it didn't have a very big effect, they saw they had to do something more. They wanted to try to bring down the long-term interest rate, and that's what quantitative easing is about. It worked a little bit but not very much. My cynical view was that the Federal Reserve felt guilty because it caused the crisis – through deregulation, etc. – so it felt it ought to do something. But I don't think that's what was really going on.

BT: Is that policy continuing?

JS: No, it's stopped. Interest rates have been at zero since 2008 and now they're discussing this miniscule move: whether they should increase the short-term interest rates by a quarter-point.

IMF U-TURN

BT: What do you think of statements by the head of the IMF [International Monetary Fund] recently about inequality, about avoiding austerity? There seems to be a big debate going on.

JS: This is a major change in the position of the IMF. There are three major changes that are very, very dramatic. The first is the recognition that *austerity doesn't work*.

BT: Is it really so? That's a reversal of their position.

JS: It's a total reversal! That's the first major change. The second is the recognition that *inequality is really bad for economic performance, growth and stability*. The third is that *capital controls may be an important instrument for economic policy*.

These are three things that I fought the IMF very vigorously on in the late 1990s when I was chief economist at the World Bank. They called me a snake-oil salesman then, and now they've changed. So I feel a little bit of, at least at the intellectual level, a kind of victory.

BT: But doesn't the US dictate policy in the end?

JS: No. But it tries, and there are things the IMF cannot do. For instance, the G20 agreed that there ought to be a change in [IMF] governance. The US Congress refused, so there's no change in the [voting participation] of the developing countries and emerging markets. The IMF was supportive of the criticism of the US court decision about Argentina's debt, which was outrageous, but the US Treasury put pressure on the IMF and they had to back off – even though, subsequently, the UN came out and said we need a better way of restructuring debt. The IMF has repeatedly said that we need a better way of restructuring. The US said: we don't.

BT: What about Greece?

JS: If it were up to the US government, I think there would be more support for Greece, less austerity. I do know that the US government was very concerned about what the troika [European Central Bank, European Commission and the IMF] was doing in Greece. But in the end, it's European policy.

SOUTH AFRICA'S OPTIONS

BT: "Prudence" is the favourite word of our National Treasury, and we've been pursuing it for twenty years, through Gear [Growth, Employment and Redistribution] and other austerity policies. Now the economy is at zero growth. Change is needed, and we don't know what. Would you be willing to say anything about South Africa's trajectory?

JS: I can say a couple of things. First, in 1994, there was a concern about establishing credibility in the financial market for the new government – a challenge that very few governments have had to face. I think they succeeded in doing that. Gear was intended to both do that and promote economic growth. I think we can say, twenty years later, it succeeded in the first but it failed in promoting growth. The numbers say that. It's a fact.

BT: It's conceded.

JS: Would I have done something different? Yes, I think I would have. I would have taken a more proactive policy of promoting employment, promoting inclusion. When I see unemployed labour and huge needs in housing and infrastructure, I get deeply upset. It's a market failure; something is deeply, deeply flawed in the economic system. Just like in America, where we've had homeless people and empty homes. We all have to recognise that: at the global level, the economy is not working. Going from there to the question of "what do we do?" is a big step. But if you don't first recognise that the system is not working, you're not going to make that step.

I have some things that I would have liked to try. I would have been a little more aggressive in exchange rate policy, keeping the exchange rate more competitive. The industrial sector, export sector, could have grown a bit more robustly. I would have been more aggressive in competition policy, breaking up the oligopolies that were created under the apartheid regime. I would have recognised there was a legacy of a non-competitive economy and asked how we would deal with this legacy. I would have wanted – but I don't know if I could have – to have dealt more aggressively with the housing problem, where you have inadequate housing and relatively unskilled people who could have been put to work – and could gain skills as they were working – to create some of the housing. These are, you might say, on my dream list.

BT: Would you do it the same now, given that we are in big trouble?

JS: Yes, I think I would. Last year, when I was here, I talked about trying to create a more competitive real exchange rate. You know, all the natural resource-based economies are now regretting that they didn't use the opportunity of the resource boom to reinvest in their economy. One of the consequences of

that were higher exchange rates. They should have used that moment to invest in their future.

BT: So you would have taxed the mines more?

JS: Very much so.

BT: But they object! [laughter]

JS: Of course they're going to object. But you have some very difficult problems, because you have some very high-cost gold mines, so you can't be insensitive to the cost of production.

BT: South Africa has high debt and the repayments are now very high. And yet, we need to boost the economy; we are stagnant in mining, industry and agriculture. What determines the choice that you make between reducing debt because repayments are high and/or stimulating the economy?

JS: What is your debt-to-GDP ratio now?

BT: About 45 percent.

JS: But that's not high. At the end of World War II – which was the period of our fastest economic growth – the US had about 100 to 120 percent [debt-to-GDP], and the UK had 240.

BT: And Japan now has over 200 percent. The problem is that the interest rate in South Africa is 5 percent, while Europe and the US is zero.

JS: You could try to engineer a monetary policy that sets interest rates lower. The naïve view that that would be inflationary is, I think, wrong. What causes inflationary pressure is the pace of creation of credit, not just the interest rate. There was this naïve view that the only instrument you should use is the interest rate. That's been totally discredited. A monetary authority has a range of instruments. It may be that you have to impose capital controls.

BT: We need inflows because of our balance of payments.

JS: Then it may entail the use of other >>

instruments. In the United States, Warren Buffett – hardly left-wing – has proposed that whenever you export something you get a chit; you want to import something, you have to use a chit. Balance of trade.

The Washington Consensus was wedded to too narrow a set of instruments, based on the ideological position that markets work perfectly. My view is very strongly that a combination of tools could probably allow you to invest more, even with your debt.

There is another set of ideas, which I have pushed very strongly for, called the “balanced budget multiplier”: if you increase taxes on natural resources and increase spending continuously, it actually stimulates the economy, creates jobs, and improves the balance sheet of the country.

GLOBAL TRADE, NATIONAL INTEREST

BT: Can we talk about South Africa’s integration into the world economy? We are now told that we are very deeply integrated, partly because the mining companies are now listed offshore, in London. Is there nothing we can do as a country in the national interest?

JS: A country’s natural resources always belong to the people. Some foreign company may currently have management responsibility, but you always view that as a fiduciary responsibility. If they don’t exercise that responsibility in an appropriate way, they should lose it.

BT: You are very bold! [laughter]

JS: I should say, just to be a little less bold, there has to be a legal framework with which one does that. But the legal and regulatory framework should be such as to ensure that whoever is the owner is pursuing the national interest. Problems have been created in some bilateral investment treaties, which is why South Africa tore those treaties up. They have to be rethought. They’re oppressive: they represent the interests of the corporate

world against the ordinary citizens. That fact has now been recognised – even in the United States, with all the Democratic Party candidates for president coming out against these provisions.



A country’s natural resources always belong to the people.

BT: This discussion is raging in South Africa at the moment. Our producers suffer enormously from cheap imports, not only from China. The United States wants to export cheap chickens. Our minister of trade and industry says, “If we can’t produce chickens, what can we produce?” People say that import-substitution industrialisation (ISI) has run its limit, that protectionism is not possible in the new order. What is your view?

JS: A central aspect of US trade policy is not based on free trade: it’s “managed” trade. And it’s managed for our corporate interests. We make sure that other countries don’t dump their goods on us – while we’re sure that we have the right to dump our goods on other countries. It’s an anti-symmetric policy. What maximises profits for American companies is what we care about. It’s a producer-oriented trade policy. We don’t care about our consumers, only about the campaign contributions, to put it bluntly.

So in the case of chickens, you should also worry about sanitary conditions, because our chickens are not produced under good conditions. There are “organic” chickens that are not safe to eat.

BT: Non-tariff barriers?

JS: I wouldn’t call from “nontariff barriers”; I’d call them “ensuring the health and safety of your citizens”. That should be the first priority of all policy. I think you should at least look at that: the conditions under which chickens are raised, the

kind of drugs they’re given, real concerns about the use of pharmaceuticals, where we know drug resistance can set in. It’s actually a global concern. Clearly, our corporate interests have put aside the general interest, and even the national interest, in order to profit.

South Africa obviously has to recognise that the US is the big gorilla in this burly world. The question is: how do you adapt? The US will use rhetoric about how we don’t believe in protectionism. But what do you think all of our agriculture subsidies are about? There’s a whole set of subsidies that go into so many of our industries. We believe in protectionism of a kind, according to our rules. The bottom line is not the rhetoric of principle: it’s the reality of power. I’m not sure the United States even grasps how hypocritical it is about its free trade rhetoric and massive subsidies.

The view of import-substitution industrialisation is, I think, wrong. There have been failures because of excessive protection, but at the same time, many successful countries used those strategies. Many of the successful countries in East Asia used export oriented policies, but that was in a particular period where exports were growing rapidly. The challenge facing Africa is that manufacturing employment will be going down around the world, and there will be an intense competition for those scarce jobs. It will not be possible for all countries to use an export-oriented growth strategy like East Asia did.

BT: You can turn to internal markets as a substitute.

JS: Large countries clearly can, and will have to. That’s not going to be possible for South Africa. That’s where South Africa’s policies to promote African integration and integration with other emerging markets become important. I’m more hopeful of South-South cooperation, where the abuse of power is probably less prevalent than in North-South relationships where abuses of power and hypocrisy are pervasive. **NA**

CREATING A BETTER AFRICA IN A BETTER WORLD

By Minister Malusi Gigaba



Minister Malusi Gigaba

The Department of Home Affairs believes it takes the entire populace to transform society, thus the conscious effort on its part to encourage democratic participation in all of its programmes.

One of the key priorities is creating, with the support of an active citizenry, a clean, secure and reliable National Population Register, a task overseen by the Civic Services Branch and headed by a Deputy Director-General.

The work of the Department is critical to the realisation of the strategic objective to create a united, democratic, non-racial, non-sexist, and prosperous state. For the state to fulfil its mandate of providing effective administration of public affairs and public goods like education, it must know who its citizens are. Home Affairs plays a critical role in

this regard as the custodian of identity and the arbiter of citizenship status. Huge strides have been made, as we see in a single National Population Register for all, irrespective of race, gender, class or other divisive notion of power.

There is a deliberate drive to improve immigration management and overhaul the country's international migration policy. Getting citizens and other clients "travel-ready" serves to advance smooth and secure management of who enters or exits the country and how this gets done.

The Department believes in managing international migration through thoughtful policies and regulations best to enhance South Africa's development, security and fulfilment of constitutional and international obligations. This work falls within its Immigration Services.

Over and above the travel requirements Home Affairs is striving to communicate through the Travel Ready Campaign, the documents people must have, like the unabridged birth certificate, which reflects the particulars of both parents of the child, enhance the drive towards a secure National Population Register, while promoting legislation for protecting the most vulnerable within communities, like children in the context of the Children's Act of 2005.

Restating the outcomes of his Department, Director-General Mkuseli Apleni spoke to the need for secured South African citizenship and identity, a secured and responsive immigration system and services to citizens and other clients that are accessible and efficient.

Over the previous electoral cycle (2009–2014) a rock-solid foundation was

laid for building a department that is modern, professional and secure.

The first phase of information technology (IT) modernisation was initiated with the conversion of 140 front offices from paper-based to fully digital systems and more than 1.4 million new Smart ID Cards, replacing the old Green ID Book, were issued to citizens.

Going forward, focus is on completing work on building an integrated digital platform as part of the department's modernisation programme, strengthening accountability, fast-tracking the rollout of the Smart ID Card, with a partnership with banks as one of innovative outlets, and replacing late registration of birth with early birth registration within 30 days.

On the immigration affairs front, the review of international migration will continue, and efforts will be stepped up to establish the Border Management Agency and strengthen management and infrastructure at ports of entry.

Working with stakeholders, the Department will ramp up the implementation of the South African Cabinet's concessions regarding the new immigration regulations. It is absolutely committed to easing travel for legitimate visitors to South Africa, especially for SADC and African citizens, and remains committed to managing immigration for development, guided by the country's foreign policy objective of creating a better Africa in a better world.



home affairs

Department:
Home Affairs
REPUBLIC OF SOUTH AFRICA

MORE OF THE SAME: PATH DEPENDENCE AND CORRUPTION IN SOUTH AFRICA

By Steven Friedman

The author is the director of the Centre for the Study of Democracy at Rhodes University/University of Johannesburg

Corruption is not a symptom of a country which has changed too much, but of one which must change a great deal more.

A prevalent story in the public debate about corruption assumes that South Africa solved its problems in 1994 and set off into the future with a clean state. But then greedy politicians took over and began to loot the wealth created by efficient companies and hard-working middle-class citizens. And so the stereotype of corrupt African politicians inevitably wrecking their societies is neatly confirmed.

Fortunately, for those of us who dislike stereotypes, the evidence tells a different story – corruption is, in reality, a continuation of patterns that have developed over decades. The government did not create these patterns, but is responsible for failing to change them.

PATH DEPENDENCE

We can best understand our economic and social reality since 1994 with the economic term “path dependence”. Douglass North takes it up in his landmark work, *Understanding the Process of Economic Change*, which investigates why some economies seemed condemned to continue low growth even when their political or economic order changed dramatically. He argues that societies in transition could be trapped



The cosy club that produces corruption will not police itself, and the elites who benefit from path dependence will need prodding from below to mend their ways.

on the old path by patterns of thinking, behaviour and social relationships that serve to keep the past alive.

In our circumstances, although power passed from a minority to the representatives of the majority, the thinking, behaviour and networks of the past have remained. In 1994, the economy and society were controlled by an exclusive club to which only whites could belong. Since then, new members have been admitted, but the club remains, and it still excludes most people. This does not mean nothing has changed – people now have many more opportunities and a black middle class has emerged – but the divide between the insiders and the outsiders remains.

The data are well known. The economy

is still dominated by a relatively few large companies; income inequality remains high, perhaps the highest in the world; workers' pay is eroded by the need to support unemployed family members and by a consumer culture, inherited from our past, that spurs people to borrow money to pay for goods they cannot afford. All this speaks to a reality in which the insiders do well and the outsiders must scramble.

But the way in which black people have been absorbed into the upper reaches of the economy is equally important. The story started in the 1990s when exiled activists began to return. Most had no money, but they were headed for leadership in the government of a society where an upper-middle-class lifestyle is considered a sign of human worth. So businesses began providing the returning exiles with what they needed to make it into the middle class: a house, a car, private school for the children. While nothing may have been asked in return, at least at first, people don't generally give any problems to those who have helped them.

This pattern expanded. Before long, corporate share options or board positions were on offer. They went not to people who were considered to have a flair for business (most whites believed that only they knew how to run companies), but to the politically

connected who could link the company to the government. And so black people were absorbed into the club. Why did political leaders accept this? The answer is illustrated by the story of Alexandra township, which adjoins well-heeled Sandton in Johannesburg. Because it was one of only a few urban areas where black people could own property, the apartheid state tried to turn it into an area for single-sex hostels only. A residents' committee defeated the plan and then insisted that Alexandra become a garden suburb. Town planners told it this could not be done without displacing thousands of people. The committee responded that the planners, who were white, could live in garden suburbs – why should this be denied to black people? This argument won the day, thousands did lose their homes, and Alexandra became a battleground. The residents' committee wanted the privileges that whites enjoyed under apartheid extended to everyone. But this was impossible and thousands lost out.

In a sense, the moral claim seemed faultless. Why should black people not enjoy what whites have? But what whites enjoyed under apartheid (and mostly still do) could not be extended to everyone: it is what a small minority could afford when they used force to suppress the majority. The real moral challenge was not to ensure that everyone had what the pampered minority enjoyed but to ensure that the minority was no longer pampered. The real question was what people in Sandton needed to do to ensure that people in Alexandra had enough. The question was what non-racial standard should be applied in an unequal middle-income country and what the affluent needed to give up to ensure a fairer and more sustainable economy. The post-1994 political leadership did not ask these questions because it took the same view as the 1980s residents' committee. And so we are left with a "path dependence" that makes corruption inevitable.

INSIDE THE CLUB

Path dependence has ensured that black people seeking to find a way into the market economy substitute politics for business. While corruption is often portrayed solely as the use of public resources for personal gain, it is often an attempt to gain access to private wealth by holding public office. At the grassroots, the difference between serving as an elected councillor and losing that position is often the difference between being middle class and falling into poverty. And so people hang onto their seats – and may use them to accumulate resources – because they have no economic alternative. Higher up the ladder, black people who want to make their way in business are often blocked because they are not part of the insider networks. Knowing that political office can get companies' attention, they do everything they can to gain and hold onto it.

In some cases, corruption does not result from a link between individuals and corporates: networks, in which public officials work with their own private networks (illegal and legal) for mutual gain, are very common. The corruption that is blamed on a few politicians in the governing party is often based in these networks. An example is the turmoil at the South African Revenue Service (SARS). Officials who were seen as effective lost their jobs, and a common explanation held that President Jacob Zuma was weakening SARS to prevent it scrutinising him. But court papers show that networks that included public officials, private companies and a tobacco smuggling ring were targeting officials who investigated them. This pattern is repeated in many parts of government.

Contrary to the conventional story, corruption is not purely a public sector problem: one of the few iron laws of society is that it is impossible for public officials to bribe themselves.

While some officials do help themselves to public money, the core problem is links between the private and public sectors to accumulate wealth at citizens' expense. Corruption may be South Africa's only effective public-private partnership.

In some cases, corruption is a direct product of the economic club's methods of recruitment. But even when it is not, the behaviour of public and private insiders colluding to defraud the public is consistent with a path where the route to wealth is not skill or energy, but connections.

BEYOND THE CLUB

This analysis suggests that corruption is likely to stay until the economic patterns of the past are broken. Changing the pattern requires a period of negotiation between the key economic actors to agree on what needs to change to ensure more inclusive growth. Since it is highly unlikely that any private interests will initiate this, it will not happen unless the government takes the lead, and it has thus far failed to develop and implement a strategy to do so.

But South Africans cannot be expected to wait for a lengthy bargaining process before they are protected from corruption. Action is needed now. What this would entail cannot be fully canvassed here, but what the government does may depend on what private actors do. Corruption must become an ethical issue in the formal economy. Some pioneering business figures have begun to insist that business ethics require an attack on corruption, but progress will depend on whether they can persuade key business actors.

Beyond that, the cosy club that produces corruption will not police itself, and the elites who benefit from path dependence will need prodding from below to mend their ways. It is the citizenry – those parts that are organised enough to do so – which will need to launch the campaigns that will force the insiders to change. [NA](#)

AFRICA CANNOT ADVANCE WITHOUT INVESTING IN SCIENCE



Across the world nations increasingly seek to harness the potential of science as an instrument for growth and development. Science is also an integral part of the global effort to advance sustainable development.

Against this backdrop Africa's inaugural Science Forum South Africa took place on 8-9 December attracting scientists, researchers, academia, government leaders and other stakeholders from all over the world.

Held under the theme, 'Igniting conversations about Science,' the forum sought to foster public engagement on science and technology, showcase science in South Africa, and to provide a platform for building strong African and global partnerships.

Minister of Science and Technology

Naledi Pandor said during her opening address in Pretoria that the primary rationale for the conference was the conviction that science, technology and innovation can and must play a central role in achieving sustainable development.

"Africa cannot advance without investing in science. At present, there are efforts to enhance the status of science and to increase investment in research development and innovation.

"Unfortunately, science is still at the margins of government attention – seen as less significant than water scarcity, food security and disease burdens. Yet all of these can be addressed through science," the Minister explained.

Minster Pandor urged African Governments and institutions, to devote increased attention to developing robust national systems of innovation.

"We must have eco systems that allow a smooth flow and take up of creative ideas from knowledge generating institutions through to enterprises and industry. We need joint industry research, public private partnerships, technology diffusion and movement of human capital," said Minister Pandor.

The event was also attended by African Union Chairperson, Dr Nkosazana Dlamini-Zuma, founder of Japan's renowned Science and Technology in Society Forum, Mr Koji Omi, Dr Jean Claude Burgelman, European Commission and Prof. Gordon McBean, International Council of Science, among others.

Dr Dlamini-Zuma echoed Minister Pandor's sentiments during her address. Unpacking the AU's Africa Agenda 2063 (the AU's blueprint for sustainable development for the continent), the AU Chairperson said the continent must take control of its future.

Agenda 2063, is a 50-year development framework for the continent, to build an Africa that is integrated, people-centered, peaceful and prosperous, and takes it rightful place in the world. Agenda 2063 does this by prioritizing investments in people including education and health.

Dr Dlamini-Zuma said that Africa Agenda 2063 also recognised the importance of investing in the continent's young people.

"We have to invest in their health. Secondly we have to invest in their education, with a major focus on Science, Technology, Engineering and Maths skills as well as innovation and research since these are the skills we will require to modernise Africa. These skills will also bring prosperity. This outlook is rooted in a firm belief on education as an equalizer, in the

context of poverty, inequality and underdevelopment. Education focusing on Science, Technology, Engineering, and Maths (STEM) is a definite equaliser as it's the quickest way you can break intergenerational poverty in families and communities. We must ensure that young people are skilled in these areas," said the AU Commission Chairperson.

Dr Dlamini-Zuma said Agenda 2063 is also looking to improve agriculture. "Science is critical in improving the agricultural productivity and activities in ensuring that we have better equipment, because African women who are 75% participants in the sector continue to use hand held hoes, so there is no chance of improving their productivity, with such equipment. Science and engineering is very critical in ensuring that we have modern equipment, that we understand the soil, the seeds, the climate so as to transform agriculture and to get into the full value chain up to and including agro processing and businesses. So science is critical," said Dr Dlamini-Zuma.

Part of the SFSA 2015 was the launch of the very first Science Forum South Africa (SFSA) Science Diplomacy Awards. The SFSA Science Diplomacy Awards, recognises excellence and achievements in international scientific cooperation. It was divided in different categories honouring various organisations and individuals working to foster partnerships.

(1) International STI partnership which has made an outstanding contribution to advancing global sustainable development

Recipient: Group on Earth Observations (GEO)
The GEO is a voluntary international partnership of 96 governments and 87 organisations working together since 2003 to harness Earth observation as a tool to inform policy- and decision-making.

(2) International STI partnership which has made an outstanding contribution to human capital development, especially for young and women scientists

Recipient: European & Developing Countries Clinical Trials Partnership (EDCTP)

The EDCTP is a partnership between Europe and Sub-Saharan Africa aimed at building capacities to undertake clinical trials in Africa for the fight against both the major and neglected infectious diseases.

(3) International STI partnership which has made an outstanding contribution to international peace, understanding and solidarity

Recipient: Science and Technology in Society (STS) Forum (Japan)

The STS Forum has since 2004 been one of the preeminent international forums for promoting a global dialogue on the role of science and technology in society.

(4) International STI partnership which has made an outstanding contribution to advancing African regional cooperation, integration and development

Recipient: Africa VLBI Network (AVN) consortium and the Regional Universities Forum for Capacity-Building in Africa (RUFORUM)

The Africa Very-long Baseline Interferometry Network (AVN) consortium brings together South Africa and 8 African partner countries to develop radio astronomy cooperation initiatives with the long-term objective of preparing to host components of the global Square Kilometre Array (SKA) global radio telescope.

The Regional Universities Forum for Capacity Building in Agriculture (RUFORUM), established by ten Vice Chancellors in 2004, is a consortium of 55 African universities operating within 22 countries spanning the African continent.

(5) International STI partnership which has made an outstanding contribution to harnessing scientific advice for multilateral decision-making

Recipient: International Council for Science (ICSU)

ICSU is the foremost international non-governmental organisation, which seeks to provide a platform for the

advancement and coordination of the global scientific community, bringing together national scientific bodies and international scientific unions.

(6) International STI partnership which has achieved excellence in global science

Recipient: International Institute for Applied Systems Analysis (IIASA)

Founded in 1972, IIASA is an international scientific institute that conducts policy-oriented research into problems that are too large or too complex to be solved by a single country or academic discipline, such as climate change.

(7) Recognition of an individual effort over a career to put science at service of fostering international friendship

Dr Khotso Mokhele was the first President of the National Research Foundation of South Africa and played a leading part in developing many of democratic South Africa's international research cooperation programmes.

Dr Bernie Fanaroff as the Project Director of the SKA South Africa has through his scientific career contributed significantly to international partnerships within the domain of radio astronomy.

Dr Lindiwe Sibanda is the CEO of the Food, Agriculture and Natural Resources Policy Analysis Network (FANRPAN), a multi-stakeholder, multi-national policy network that supports the development and implementation of better food, agriculture and national resources policies in Africa.

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REPUBLIC OF SOUTH AFRICA

DEFENDING THE JUDGES

A CRISIS OF COURTS AND GOVERNMENT

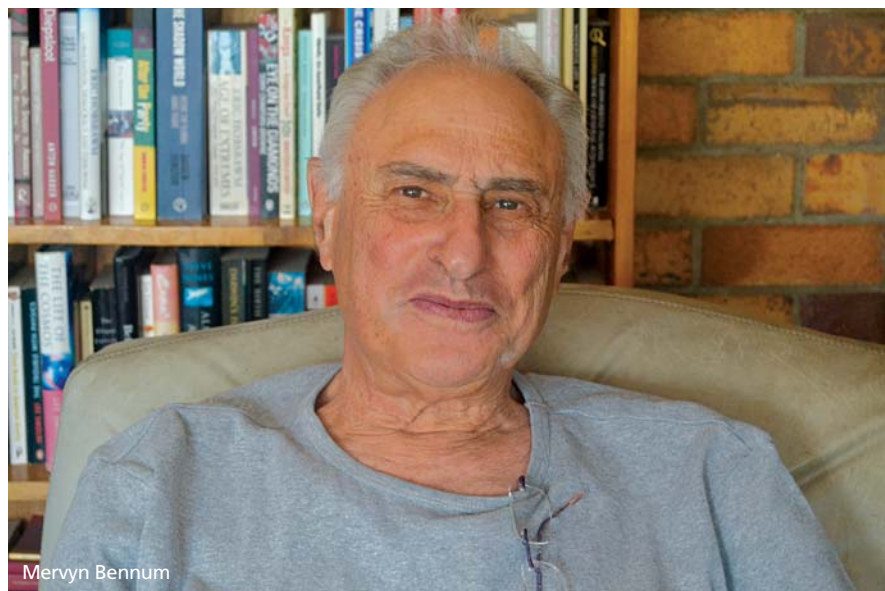
By Mervyn E Bennun

The author is a retired professor of law

Mervyn Bennun argues that the conflict between the government and the Gauteng High Court over the International Criminal Court and the Al-Bashir ruling is not legal but political.

President Jacob Zuma, cabinet ministers and others who spoke out following the departure of President Omar al-Bashir from South Africa – despite a High Court order that he 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 the implications of their responses to the criticism which has followed.

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. The Constitution, its conventions and the law endure and must be respected across any change in government. The manner in which judges are appointed and their long tenure (at maximum, to the age of 70) are designed to remove them from



the sphere of political activism and to protect their independence. By design, they outlive any government under which they were appointed.

This is underlined by the statement on the judiciary’s commitment to the rule of law that was issued by the Chief Justice and Heads of Court and Senior Judges of all Divisions on 8 July 2015, following the defiance of the court order that Bashir should be held:

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. (Mogoeng, 2015)

MINISTERIAL POSITIONS

Several statements by Lindiwe Zulu, the minister for small business development, provide evidence that the clash is between the state and the Zuma administration. She told parliament that the decision to let Bashir leave the country was “a collective cabinet



decision” (Joubert, 2015). She claimed that putting justice ahead of all other elements was “counter-productive” (RDM, 2015). And during a subsequent debate on the President Zuma’s fitness for office because of this decision, she told parliament that a motion to investigate and to consider the matter was aimed at discrediting the ANC (Reuters, 2015).

Defending the decision to defy the order of court, John Jeffery, the deputy minister of justice and constitutional development, and Jeff Radebe, the minister in the office of the Presidency and former minister of justice, claimed that South Africa’s Diplomatic Immunities and Privileges Act (the “Immunities Act”) protected Bashir from being detained (Jeffery, 2015).

The same speech claimed that Article 98 of the ICC’s founding treaty, the Rome Statute, contradicts its own Article 27. Article 27 denies heads of state immunity from the jurisdiction of the ICC, while Article 98 sets conditions on the ICC’s ability to request third-party surrender of a person with immunity.

Jeffery also drew attention to a judgement in the British House of Lords involving the extradition of the Chilean 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 commented:

It is interesting to note that Nigeria, when President 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 Bashir.

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

Firstly, the Immunities 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 [t]o 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. (RSA 2001)



None of this 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.

Section 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, thus bringing South Africa into line with universally-observed rules that enable accredited diplomats to do their tasks in the foreign countries where they are sent.

The Gauteng High Court pointed out

that the African Union Convention, which purported to grant immunity for the purposes of the AU Summit, has not been enacted as a part of South African law and is therefore not binding in South Africa. Since the Immunities Act does not do this, the “structures, staff and personnel of the AU” do not automatically enjoy privileges and immunity in South Africa.

Section 4 of the Immunities Act states: “A head of state is immune from the criminal and civil jurisdiction of the courts of the Republic.” The Immunities Act is valueless to defend the failure to hold Bashir, because the only immunity conferred is in relation to South African courts. And neither the Conventions nor the Immunities Act has anything to do with cases before the International Criminal Court, and they were never intended to provide immunity from its jurisdiction.

Secondly, Article 27 of the ICC’s Rome Statute 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. (ICC, 2002; emphasis added)

Thus the ministers’ 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.

Turning now to the 1998 House of Lords cases involving Pinochet, it is significant that they 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 in August 2002 by the Implementation of the Rome Statute of the International Criminal Court Act (the ►►



Cheering supporters greeted Mr Bashir at Khartoum airport, Source: BBC.com

“Implementation Act”).

A fundamental rule for the interpretation of statutes is that, when passing a law that has the effect of amending an existing law, it is assumed that parliament intended to make that change or amendment. The Rome Statute and South Africa’s Implementation Act thus totally changed the pre-existing international law governing the immunity of heads of state, and it was intended that they should do so.

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, and did not intend them? 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? That our legislature was unaware that the Immunities Act and the Conventions behind it had nothing to do with the Rome Statute?

Ministers Jeffery and Radebe referred to Article 98 of the Rome Statute as though it created problems for

“

The ICC is clearly contested terrain to defend and to develop, not to abandon.

holding Bashir. Article 98 deals with “Cooperation with respect to waiver of immunity and consent to surrender”. Its first two clauses prevent the ICC from proceeding in a request for surrender or assistance if it would require the requested state “to act inconsistently with its obligations under international law” in two respects:

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 ... [or] ... 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.

“Sending State” refers to a state whose official personnel are deployed in the territory of another state pursuant to some sort of agreement between them, such as members of a diplomatic or military mission. If one replaces the words “the requested State” with “South Africa”, and “a third State” with a generic “State A”, then the text becomes clear. If, under international law, South Africa is obligated to respect State A’s territorial integrity and its diplomatic immunity, and a person whose surrender is sought by the ICC seeks refuge in State A or in State A’s embassy in South Africa, South Africa can do nothing to effect the ICC’s request unless State A cooperates 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 Bashir matter.

Why is the purported clash between Articles 27 and 98 only now apparent? The answer is simple: there is no clash, and nobody ever thought there was one.



Another assumption when interpreting a statute is that a legislature will not contradict itself with irreconcilable and contradictory provisions, and that one should seek meanings for the provisions that make sense and make the statute enforceable.

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 Jeffery is simply wrong.

Bashir was not in South Africa as an accredited diplomat in the Sudanese mission but as a 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 whole of Article 98 of the Rome Statute is thus irrelevant to any attempt to justify the failure to detain Bashir and is consistent with Article 27.

Finally, while it is true that the ICC condoned Nigeria's failure to detain 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 Bashir had not been invited but had "appeared ostensibly" to attend it. The ICC accepted the explanation that:

[t]he sudden departure of President 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. (ICC, 2013: para. 12)

The circumstances of Bashir's presence in South Africa were so different that the authority of the ICC's decision tends to justify detaining

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 Bashir to leave South Africa in defiance of the ruling of the Gauteng High Court.

SOUTH AFRICA, THE ICC, AND THE RULE OF LAW

Those who support the political reasons for permitting Bashir to leave draw attention to the refusal of the United States and other countries to cooperate with the ICC. This is true. However, the US's dislike of the ICC was never secret from the very outset. Invoking this now, and to review South Africa's own cooperation with the ICC now, is an embarrassment to the moment in history when we became a signatory to the Rome Statute and enacted it as our law.

South Africa, with its newly-won freedom, was one of the foremost states behind the Rome Statute and was proud to lead the way. One genocidal holocaust after another had at last brought humanity to create an international court to put an end to impunity, and to affirm the cry of "never again!"



The courts in our democracy are not constitutionally required to jump to the crack of the executive's whip, whatever party wields it.

South Africa also refused to sign a bilateral immunity agreement (BIA) that would exclude US nationals from the jurisdiction of the ICC. The enormous pressure from the United States for countries to sign BIAs was

quite simply blackmail, as a failure to sign meant an end to US aid. South Africa's commitment to the ICC was a passionate reflection of our determination to identify with the highest standards in human rights.

Commentators have justifiably pointed to anomalies and problems in the work of the ICC. This is not the paper to explore in depth 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 to which South Africa was fully committed, to be advanced by leaving the field in ignominious surrender? The ICC is clearly contested terrain to defend and to develop, not to abandon.

In her national assembly speech, Lindiwe Zulu claimed that "our efforts for the renewal of the continent will remain void if the fundamentals elements which include peace and stability are not realised". How does returning 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 terms of the South African Constitution (section 83), the president and ministers have sworn to obey, respect and uphold the Constitution and all other law of the republic, to hold their offices with honour and dignity, and be true and faithful counsellors. If Bashir was allowed to depart from South Africa by a cabinet decision, as Zulu said, why should those who have sworn thus not be charged with treason?

Section 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 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 there never could be peace and stability without justice. 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 that acts as the touchstone of justice, to which we have defined 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”, then 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 could decide to ignore any section of the Constitution, any law 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 is an optional extra.

In our democracy, ruling parties can win and lose elections and governments can change, but the Constitution and its laws and conventions endure. Whichever party comes to power, it inherits what the previous government leaves. Now the current ANC government is establishing 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. Section 37 of the Constitution, which regulates states of emergency, would be valueless because

this itself would have been suspended.

In their July 8 statement, South Africa’s judges 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.

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 cornerstone 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. (Gauteng High Court, 2015: 37.2)

The courts in our democracy are not constitutionally required to jump to the crack of the executive’s whip, whatever 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 only possible with justice and for our constitution to be respected meticulously. NA

NOTE

1. The ICC has asked South Africa to defend the decision not to arrest Bashir. The government requested extra time to study the High Court ruling and to prepare its response. A new deadline for the report to the ICC has been set for 31 December.

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ICC RELATIONS: A TIGHTWIRE, NOT A CRISIS A RESPONSE TO BENNUN

By John Jeffery, MP

The author is the deputy minister of justice and constitutional development in South Africa

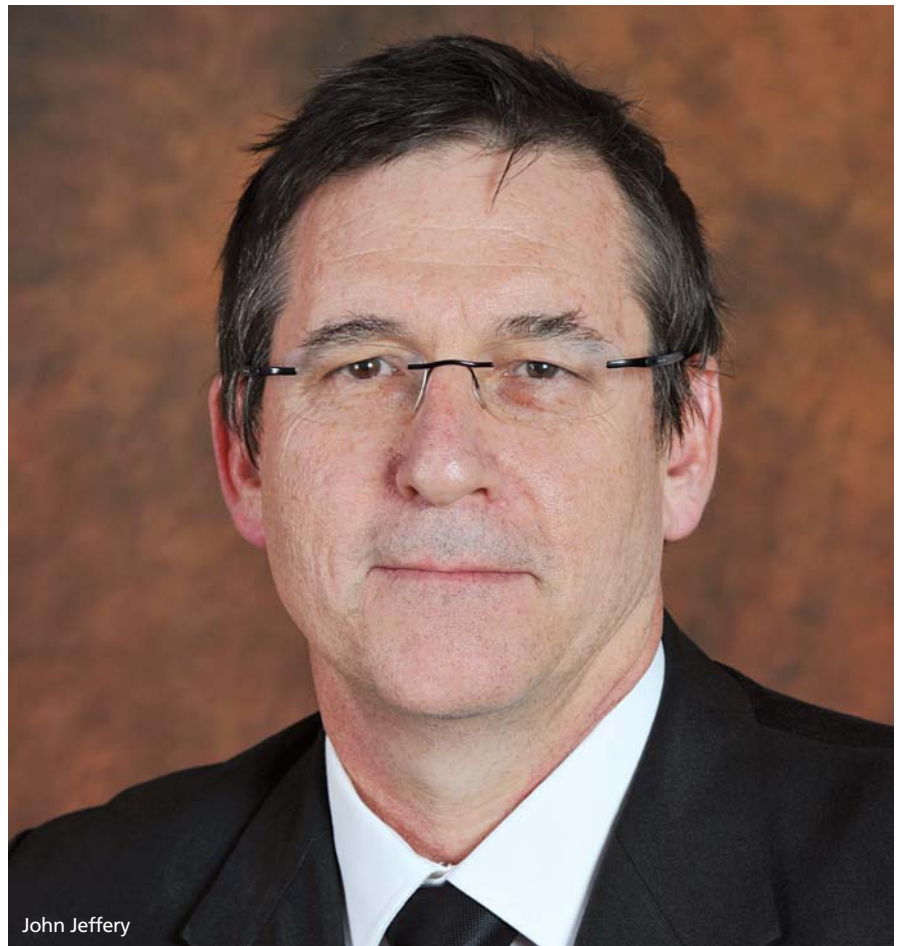
*Deputy Minister Jeffery
presents the government's
view of the Al-Bashir affair*

The recent visit of Sudan's President Omar Al-Bashir raised many issues. Mervyn Bennun seems to think that the legal argument as to whether or not to arrest President Bashir in South Africa was simple and clearcut. It was neither.

Our argument, in broad terms, relates to the interpretation of two pieces of South African legislation: the Implementation of the Rome Statute of the International Criminal Court Act, Act 27 of 2002, and the Diplomatic Immunities and Privileges Act, Act 37 of 2001.

We argued that the Court should have held that immunity precludes the endorsement of a warrant. Alternatively, the Court should have held that section 8 of the Implementation Act only imposes a duty to endorse a warrant of arrest for execution but, for as long as the person to whom the warrant relates enjoys immunity, it does not impose a duty to execute the warrant.

Mervyn Bennun's article speaks of a "crisis of courts and state". There is no crisis. He refers to statements made by Ministers Zulu, Radebe and myself and says that "little effort has been made



John Jeffery

to criticise the [Gauteng] High Court's decisions". The simple reason for this is because the matter is still very much before the courts.

As is common knowledge, the High Court refused to grant leave to appeal, largely on the basis that the issue is now moot. Government has since approached ►

the Supreme Court of Appeal (SCA). Our argument is that the dispute is still relevant – as President Bashir may need to return to South Africa at some stage in future, particularly given the bilateral relations between South Africa and Sudan and with both being members of the African Union.

We are of the view that the court's declaration that the government had acted unconstitutionally in failing to take steps to arrest President Bashir is a serious adjuration of the government's conduct. Government is therefore taking the matter to the SCA – precisely *because* we believe in the rule of law and in our courts and because we need to seek clarity on the correct legal position.

DIPLOMATIC IMMUNITY

On the issue of diplomatic immunity, South Africa hosted the African Union (AU) Summit of Heads of State and Government in Johannesburg from 14 to 15 June 2015. The AU invited heads of state and government of all AU member states, including President Bashir, to attend the Summit.

We accepted that he had diplomatic immunity – on the same basis that the USA does not arrest foreign heads of state when they attend the UN General Assembly. Bennun argues that a previous example I gave in a parliamentary debate, namely the case of Augusto Pinochet, does not apply.

Could Bennun then please explain on what basis the UK – in the same week as the Bashir controversy – chose not to arrest Tzipi Livni, a former Israeli foreign minister accused of war crimes? The UK chose to give full diplomatic immunity to Livni to attend an event in her private capacity. Livni is not even a sitting head of state, but merely a former minister. And barely a word was said about it, both in the UK and internationally. I am not justifying the granting of diplomatic immunity outside of the Immunities Act, but I am raising this example to show that double standards are at play in the world.

There is, under Article 86 of the Rome Statute, a duty to cooperate with the International Criminal Court (ICC). There is, however, an exception to the duty to arrest and surrender. This exception can be found in Article 98 of the Statute. We are of the view that South Africa's obligations under international law, with respect to diplomatic immunity of President Bashir, bring the circumstances surrounding his attendance of the AU Summit squarely within the ambit of Article 98. As such, we were of the view that the exception of Article 98 applies.



South Africa is of the view that a serious infringement of South Africa's rights as a state party has taken place and that the Court has acted against the letter and spirit of the Rome Statute.

Prior to the Summit, acting on the possibility that President Bashir might attend, the ICC wrote to the South African government, stating that it was under an obligation to arrest President Bashir and surrender him to the Court, should he attend the Summit, and also inviting it to consult with the Court in terms of Article 97 of the Rome Statute.

Article 97 provides that, where a state party to the Rome Statute receives a request for cooperation with which it identifies problems that may impede or prevent the execution of the request, the requested state shall consult with the Court in order to resolve the matter.

Recognising that South Africa was faced with possible conflicting obligations with respect to the Court's

request for arrest and surrender and the immunities that international law accords to serving heads of state and government, as acknowledged by Article 98 of the Rome Statute, South Africa then approached the Court with a view to consult with it in terms of Article 97.

However, what South Africa interpreted to be a diplomatic and political process morphed into a judicial process when the Prosecutor of the Court made an urgent application for an order on the South African obligations to the Court.

South Africa was unfortunately not afforded the opportunity to present legal arguments on this application, and hence it is of the view that the principles of justice were not adhered to. In light of the above, South Africa is of the view that a serious infringement of South Africa's rights as a state party has taken place and that the Court has acted against the letter and spirit of the Rome Statute.

South Africa will therefore approach the Secretariat of the Assembly of States Parties to the Rome Statute (ASP), the political body of the ICC, to ensure that the ASP meeting in The Hague from 18 to 26 November 2015 will discuss the rules and procedures that must be developed to ensure clarity on the Article 97 consultation process and on the interpretation of Article 98, dealing with the complex issues around the immunities of serving heads of states which are not parties to the Rome Statute, like Sudan. It is of the view that these discussions will serve to enhance the proper execution of international criminal justice.

JUDICIAL INDEPENDENCE

The second issue Bennun raises relates to the independence of the judiciary.

There was never an attack on the independence of the judiciary. It must be remembered that judges are invested with great constitutional powers: they are permitted to override measures enacted by the legislature



and the executive, measures that that the legislature and executive regard as being within their constitutional domain. It is therefore natural that tensions will occur.

The purpose of separating the powers of these three branches of state is to prevent an excessive concentration of power in one branch to the detriment of the others. Our Constitutional Court has held that that in South Africa, as in other well-known constitutional designs, a *complete* separation of functions between the three branches of government was never intended. The Constitutional Court has confirmed that boundaries of the doctrine of separation of powers are flexible and undetermined, and shaped by each country's realities, struggles out of which the Constitution, the supreme law, was carved.

Although the broad pattern of instituting some separation is apparent in all democracies, the degree of it differs. In the landmark *Van Rooyen* judgment (*S v Van Rooyen* 2002 (8) BCLR 810) on the subject, former Chief Justice Chaskalson confirmed this when he contended that different democracies have drawn the boundaries at different places, depending on their constitutional framework and socio-political context, while maintaining the universally acknowledged core principles of judicial independence as articulated in the United Nations Basic Principles on the Independence of the Judiciary.

Having said that, judicial power should, of necessity, be vested in a mechanism independent of the legislative and executive powers of the government with adequate guarantees to insulate it from political and other influences.

Discussions on the doctrine of the separation of powers and the so-called counter-majoritarian dilemma (where unelected judges use the power of judicial review to nullify the actions of elected public representatives in the executive or the legislature) are part and parcel of the constitutional law discourse and many legal arguments

have been raised in respect thereof.

There is nothing wrong, in a constitutional democracy and within the separation of powers, with critical debate on perceived judicial overreach. Such debates should not be viewed as attacks on the judiciary. At the same time, such debates must take place in a spirit of respect for the separation of powers and the integrity of the institutions of state.

The significant meeting of the judiciary and the executive in August this year was the first of its kind. It is our conviction that such interactions can only advance and deepen our constitutional democracy.

PEACE AND JUSTICE

Finally, Bennun raises the "justice or peace and security" question, asking if can there ever be peace and security without justice.

Former President Thabo Mbeki, currently the head of the AU High Level Implementation Panel, recently said that President Bashir is a critical component of the peace-making process in Sudan, according to the wishes of the people there. He said:

Among the Sudanese, both Sudan and South Sudan, over the years that we have worked with them, what they have been saying is that they need President Bashir there in order to get him to help them achieve peace. That is what the Sudanese have been saying to us. People who are required to achieve peace, to end wars, to end conflicts – you can't take that person away and say in the interest of justice we are going to take [him] away. (Sudan Tribune, 2015)

The impact of South Africa arresting President Bashir or even preventing him from leaving would have imperilled our bilateral relations with Sudan, the African Union and other states on the continent.

Sometimes the question of "peace or justice" is not as clearcut as Bennun would like to argue. In our own country, peace was achieved through a negotiated settlement. This is discussed

in Bennun's own book *Negotiating Justice: A New Constitution for South Africa*. The South African Truth and Reconciliation Commission (TRC) was set up by the government of national unity to help deal with what happened under apartheid. The TRC was based on the final clause of the Interim Constitution of 1993 and passed in parliament as the Promotion of National Unity and Reconciliation Act, No 34 of 1995.

Apartheid was recognised as a crime against humanity in 1973. If the aim was "justice at all costs", former President FW de Klerk and other members of the apartheid government would have been arrested and charged them with crimes against humanity. Would we have had justice? Yes. Would we have had a peaceful settlement? No.

Government remains committed to achieving justice both locally and internationally. We also remain committed to achieving peace in Sudan. As international law experts Nahla Valji and Dire Tladi (2013) so aptly write, South Africa's foreign policy has to walk the tightwire between the expectations upon the country as a human rights leader (and the desire to play this role on the global stage) and the inevitable realpolitik of negotiating the shifting sands of a geopolitical landscape where power blocs are forming in new ways. ^{NA}

NOTE

Mervyn Bennun will be offered the opportunity to respond.

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A CENTURY IN PURSUIT OF ACADEMIC EXCELLENCE

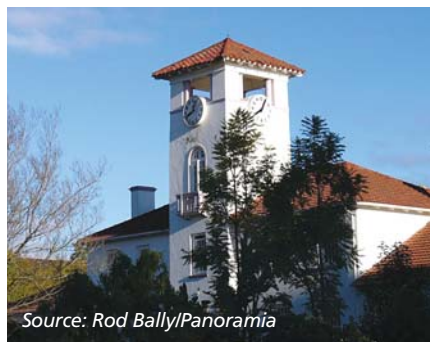


The University Of Fort Hare (UFH) will celebrate its centenary in 2016. The year marks 100 years in pursuit of academic excellence, a century in search of African and global knowledge.

The academic tradition, character and stature of the university have matured during this time and as the countdown to our centenary celebrations has begun in earnest, the University has established a research record which favourably compares with many former advantaged universities in South Africa.

Some of our milestones – of which we are very proud – include:

- In the early 2000s, Fort Hare awarded around 10 doctorates a year and was battling to attract postgraduate students. By May 2012 the University has produced 2489 post and undergraduate degrees and 45 PHD's



Source: Rod Bally/Panoramia



Source: Rod Bally/Panoramia

- By the year end of 2013, we had 19 National Research Foundation (NRF)-rated researchers across all five faculties – Science and Agriculture, Social Sciences and Humanities, Law, Education, Management and Commerce. We had increased our research output by 251% since 2006 and University staff researchers published more than 200 journal articles.
- In 2014 UFH added a second graduation to accommodate those whose programme misses out on the traditional May graduation. A total of 366 first time and post-graduates were capped amongst them 22 PhD's with 8 of them coming from the faculty of Management and Commerce, Science and Agriculture had 5, 3 from faculty of Education and 6 from Social Science and Humanities.

UFH has more than 10 000 students registered across three campuses in Alice, Bhisho and East London, which

provide vital tertiary education and training to students from both rural and urban areas in the Eastern Cape and wider afield in South Africa and the African continent.

The university has nationally and internationally recognised researchers with expertise in areas ranging from biochemistry, ethnobotany, water quality monitoring and management, antibiotic resistance monitoring, primatology, climate smart agriculture, soil science, livestock and pasture science to the socio-economic issues facing both South Africa as a whole and the Eastern Cape province.

The University of Fort Hare will continue to seek ways to engage in critical dialogue with partners to build research in areas which complement the University's historical niche as an African university and national development priorities while ensuring internationally recognised research excellence.

While the University is proud of its research achievements it is in the area of relevance, equity and transformation that Fort Hare University has shown its ability to respond to the needs of the community within which it operates and is committed to the promotion of research as a core university activity and the building of research capacity. Our research strategy recognises the need for research to address local, regional and national needs.

We are very proud that University researchers have steadily improved their academic output from an average of 0.5 refereed papers per individual academic annually to 1.5. When one considers that the top formerly advantaged South African universities attain annual output rates of just over 2.0, this is an impressive comparison. We believe our research priorities and outputs actively contribute to the provincial and national priorities of addressing poverty, inequality and unemployment.

The centenary year presents the opportunity to launch new academic programmes, buildings, facilities etc, as the University redefines itself in the 21st century as a truly world-class African university. It will be time to reflect on the enormous contribution the University has made in the fields of teaching and



Above: Miriam Makeba Centre (Audio Visual Centre)
Below: Dr Mvuyo Tom Vice Chancellor University of Fort Hare

learning, research and community service, but also to focus on how this can be projected into the next century. As we approach our second century, we will engage in a new politics of place, belonging and identity. We will relinquish the rural university label and embrace a new discourse of connection, arguing that its urban and rural campuses are functionally different and separate, but also connected and equivalent.

Fort Hare, together with Ibadan and Makerere, are the three historic African Universities. And thus we reassert our cosmopolitan pan-Africanism by stating that, while in the local, it is also not of the local. The university attracted students from all over the continent and has produced five African heads of state. To re-assert its pan-African role and identity Fort Hare will play a larger role in Africa-wide research and teaching and address some of the major challenges facing the continent. During the Centenary year university stakeholders will attend various events and in this way staff and



African Union Chairperson Dr Nkosazana Dlamini-Zuma conferred by University of Fort Hare

members of Council, current and prospective students, their parents, alumni, governments and various state agencies, the local community, donors, representatives of foreign countries, the media, as well as academics from other local and international universities, research institutions, social partners and others will all have the opportunity to share in our celebrations, our history and our future.

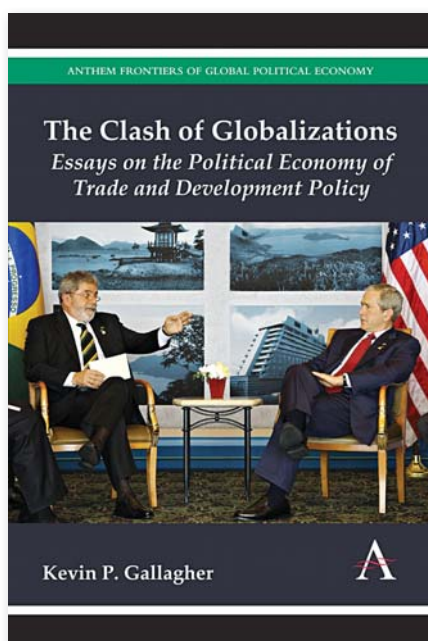
Our overall goal is to initiate and build an awakening of the human spirit, as well as to enable economic equity, social civility, political citizenship, environmental sustainability, social cohesion and national building through rural development and celebration of our South African heritage.



University of Fort Hare
Together in Excellence



Source: Rod Bally/Panoramia



THE CLASH OF GLOBALIZATIONS

Essays on the Political Economy of Trade and Development Policy

Kevin P. Gallagher

Anthem Press: London and New York, 2013. 170 pp

Reviewed by Vuyo Njokweni (Research, Gauteng Provincial Legislature)

Trade politics have traditionally been mainly shaped by domestic concerns. In this collection of essays, Kevin Gallagher explores the extent to which “global trading regime [is] reducing the ability of nation-states to pursue policies for financial stability and economic growth, and ... the political factors explaining such changes in policy space over time, across different types of treaties and across nations” (1).

The vastly different political-economic projects of the developing and the developed world have set the scene for a “clash of globalisations”. Readers of this book should heed Ha-Joon Chang’s prescient statement that “economics is a political argument” – this goes to the heart of the conceptualisation of global trade. At play between developed and developing countries are issues of investment, competition, transparency in government procurement and trade facilitation, otherwise known as the “Singapore issues”. In fact, these have had severe unintended effects on the political autonomy of developing economies.

The thorny issue of the merits or demerits of capital controls is clinically addressed. While conventional economic

theory suggests that capital controls do not have any redeeming features, given their constraining effect on the ability of firms to access and raise capital. But without capital controls, how are developing countries to survive speculative attacks, bubbles and market crashes? Are there reliable policy instruments to circumvent these vagaries? Seemingly, it is a double-edged sword of “damned if you do, damned if you don’t”. Capital markets are not perfect.

The degree of policy leverage that countries can exercise is not only confined to World Trade Organisation (WTO) regulations. The book neatly deals with other constraints encountered by countries deploying capital controls, and is decidedly in favour of capital controls. In the absence of independent monetary policy, capital controls become the necessary antidote for developing countries to manage price stability and output growth. However, the book makes a strong case for capital control under the following conditions: where controls are on capital transactions and not current transactions; and where there are committed financial services as required by the World Bank and the General Agreement on Trade in Services (GATS).

One would have appreciated an exhaustive analysis of alternatives to the WTO, bilateral investment treaties (BITs), free trade agreements (FTAs), World Bank and the GATS in the form of BRICS trade policies and their implications. The rise of BRICS has fundamentally changed the international trade narrative that

used to be dominated by the developed economies. For example, recourse to FTAs between China and its counterparts in the developing world would probably lead to a different conclusion.

Another prickly topic addressed in the book is the practice of bailouts, which, in the opinion of the Gallagher, pose systemic risks such as moral hazard. This is resonant with Hamlet’s injunction to “neither a borrower nor a lender be, for a loan oft loses both itself and friend. And borrowing dulls the edge of husbandry”. The discussion of sovereign debt restructuring is also well timed. In its current form, it literally amounts to a takeover of the debtor nation’s economy. Gallagher aptly states that “sovereign debt restructuring could be interpreted as constituting a direct or indirect expropriation”. The book convincingly concludes that the vulture funds that have been used to pursue debtor nations have not been fair – let alone efficient. Greedy creditors or vulture funds from the developed world created perverse incentives to the detriment of the developing countries, confirming an existing consensus among some leading scholars that there is a need for a new mechanism for sovereign debt restructuring. The lack of collective action to further the interests of the developing countries over the past thirty years is isolated as a major contributor to the lack of policy space for developing countries to pursue their interests.

Overall, the book provides essential nuggets to consider the political economy of trade for policymakers. [NA](#)



CHRIS HANI: A Jacana Pocket Biography

Hugh Macmillan

Jacana: Auckland Park, 2014. 152 pp

Reviewed by Howard Smith

Hugh Macmillan – historian and author of *The Lusaka Years: The ANC in Exile in Zambia 1963–1994* (2013) – has written a biography of Chris Hani that provides the lively introduction promised by Jacana’s “Pocket Guide” series. It also usefully brings together a valuable record of Hani’s life, thought

and contribution to the struggle – information that previously has been accessible only from a variety of sources.

Macmillan’s chronological account briefly covers Hani’s early life and schooling in the rural Transkei and his education at Fort Hare; his move to Cape Town to stay with his father and uncle, where he joined the Communist Party and first underwent military training at the Umkhonto we Sizwe (MK) camp near Mamre; and the first few years after he left the country in 1963, including military training in the Soviet Union. The biography becomes more detailed after Hani returns to Africa. Attaining a senior position in MK, he was involved in both planning and leading the joint ZAPU–ANC force that entered Zimbabwe at the end of July 1967. He was the political commissar and second-in-command of the Luthuli Detachment, the ANC component.

Hani demonstrated military leadership and personal courage in that campaign, but it was his role in the subsequent challenge to aspects of the ANC’s leadership that built his reputation for principled political commitment. Disciplined at first for his critical 1969 Memorandum, his position was vindicated by the subsequent ANC Consultative Conference in Morogoro. From 1975 to 1982, Hani was deployed to Lesotho, where he was responsible with others for the infiltration of ANC cadres into South Africa. He also entered the country himself on numerous occasions. As MK political commissar in the 1980s, he was active in Zambia, Mozambique and Angola. In Angola,

his courage was again displayed in successful interventions to stem revolts in MK camps, where he was resolute but yet able to win the support of the overwhelming majority of cadres.

Macmillan notes Hani’s consistent emphasis on the political control of MK, the need for strong organisation in South Africa, and the importance of political work. As the struggle landscape changed and negotiations became first a distinct possibility and then a reality, Hani adapted to the changed circumstances without wavering from those principles. When the ANC leadership suspended the armed struggle, Hani as MK leader accepted that decision and traversed the country winning support for its implementation.

While other leaders adapted to the new opportunities opened up by negotiations and access to political power, Hani adhered to his political principles and became secretary-general of the rapidly growing South African Communist Party in 1991. Macmillan notes that this choice may have cost Hani positions in the future government.

We cannot know what role Hani would have played after 1994, but we do know that it was because of his role as a communist leader of the people’s struggle that he was assassinated in 1993. The book’s epigraph quotes Hani’s “Socialism is the future” and the comment of Cuban envoy Carlos Mas Abala that “Chris Hani was the future of (South Africa). They murdered the future”. Both quotations, like the book itself, pay fitting tribute to one South Africa’s many great persons. [NA](#)



NELSON MANDELA: A Jacana Pocket Biography

Colin Bundy

Jacana: Auckland Park, 2015. 159 pp

Reviewed by Sivalingum Rungan (Centre for Sustainability in Mining and Industry, University of the Witwatersrand)

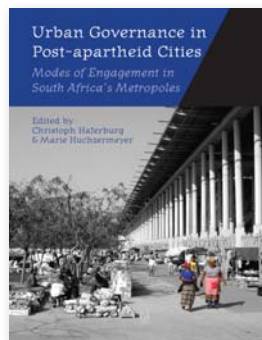
A pocket biography of a person like Mandela cannot capture the essence of the man. Colin Bundy, while recognising this dilemma, has presented a clear and coherent introduction, making it very easy to slip back in time and relive many of the events considered. Those who have not read anything of Mandela would find this book an ➤

honest assessment of the man and his experiences. There is no attempt to gloss over the negative issues, what drove him and what made him do the things that he did. Those who have read about the great man would also find new insights.

The book covers his early life, schooling and university in the Eastern Cape, his move to Johannesburg and activism, his marriages, time in prison and eventual release, the negotiations that lead to democracy, his presidency, his close association with business and its leaders, his retirement, his retirement from retirement, and his passing. It is incredible that Bundy was able to fit all of this in.

Bundy also separates the man from the myth by clearing up misconceptions and providing insights into his difficult relationships with Winnie Mandela and his children, with F.W. de Klerk, and with Thabo Mbeki. Bundy also suggests that Mandela sowed some seeds of the patronage and corruption that are now endemic. His life after retirement leaves one with a bittersweet sensation: his intervention in securing the 2010 Fifa World Cup for South Africa, establishing the 46664 campaign, and the period during his illness when the ANC top brass paraded him before the public.

This honest assessment indicates that many of the cracks in our fledgling democracy were papered over by “Madiba Magic” and started to resurface the moment he left office. It leaves one open to decide for oneself the real legacy of Nelson Mandela. Mandela always said that he was not a saint: he was a man doing what he thought was right. This much is clear from Bundy’s book. Mandela’s errors and lapses in judgment are laid out and we are given a glimpse of a man as he was and not the man shielded by his minders. It is a snapshot of the life and times of South Africa’s greatest leader. [NA](#)



South Africa’s major cities are under enormous pressure to transform into attractive and competent spaces for the advancement of socio-economic development. The tensions and challenges of overcoming the legacy of apartheid spatial planning have been compounded by the flux of people moving to and between cities in the post-apartheid era. Thus the legacy of spatial segregation is still manifest in the “evil triplets” of poverty, unemployment and income inequality, and the scourge of HIV/AIDS.

As well as reflecting on issues of interactive governance within a complex web of stakeholders, manoeuvres to influence policy, and priorities for urban development, *Urban Governance in Post-Apartheid Cities* wrestles with different modes of engaging urban renewal. The book is the result of a German–South Africa collaboration that assembled international and local scholars and practitioners in urban geography, sociology, politics, urban and regional planning, project management and development planning.

The book is partitioned into five parts and 17 chapters. Part I grounds the definitional issues while contextualising both external and internal dynamics in post-apartheid urban governance. Part II intersects city visions as instruments for urban transformation and the city’s challenge to mitigate the intensification of labour strikes that often turn violent. Part III uses case studies to unpack the social restructuring of urban community

URBAN GOVERNANCE IN POST-APARTHEID CITIES

Modes of Engagement in South Africa’s Metropolises

Marie Huchzermeyer and Christoph Haferburg (eds)
KwaZulu-Natal Press: Scottsville, 2015. 352 pp

Reviewed by **Ndwakhulu Tshishonga** (School of Built Environment and Development Studies, UKZN)



Urban Governance in Post-Apartheid Cities wrestles with different modes of engaging urban renewal.

politics due to broader societal, political and economic fragmentation and exclusion of urban poor. A central issue of urban governance is the need for effective, efficient and proactive responses to rapid urbanisation and the mushrooming growth of informal settlements within and adjacent to cities. In Part IV, the book interrogates the role of the private sector in the urban governance lexicon, exploring strategies such as corporate social responsibility and initiatives in the housing and security sectors. The final part forges governance within places and spaces, including the impact that local initiatives could make to expand inclusive and interactive governance.

With its accessible language and skilful use of tables, maps, photographs and pictures, this book would definitely benefit students and practitioners interested in urban development, regional and urban planning, development studies, housing, social movements and social protests. [NA](#)

ARE YOU TRAVEL READY



When travelling with a minor you need:

A valid passport



An unabridged birth certificate



A consent affidavit from
an absent parent or guardian
listed on the birth certificate



HOME AFFAIRS WITH THE
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We Care!



SOUTH AFRICA IS OPEN FOR BUSINESS

The Department of Trade and Industry (**the dti**) facilitated a R3 billion new investment by Unilever South Africa as well as a new Atlantis-based manufacturing facility for components for the wind and solar industries by the Spanish company Gestamp.

Other green-energy production facilities established were Jinko Solar, SMA Solar Technology and Agni Steel in Coega. In September 2014, **the dti** launched a R100-million gold loan scheme to support jewellery manufacturers.

In the same month, a R1.2-billion glass-furnace bottling facility was unveiled by Nampak, supported by the 12I Tax Allowance Incentive Programme.

On the agro-processing front, in December 2014, Abagold Limited, a local Hermanus-based company that farms abalone, announced a significant expansion with support from **the dti** Aquaculture Development and Enhancement Programme.

The company CEO reported at the time: "The investment in the project is budgeted to a total sum of R112 million and we have already received R5.6 million on our first claim from **the dti**. Our maximum production per annum used to be 275 tons of abalone, and with the new project it will grow to more than 500 tons per annum."